



**Rules of Conciliation
of the state certified office of conciliation
GREENFORT**

Explanatory Notes concerning the Rules of Conciliation

The conciliation under the following Rules of Conciliation in front of a conciliator of the state certified office of conciliation GREENFORT¹ pursuant to Section 794 para. 1 no. 1 German Civil Procedure Code (*Zivilprozessordnung/ZPO*) shall not be confused with the mandatory conciliation attempts required in certain civil disputes by Section 1 Hessian Conciliation Act (*Hessisches Schlichtungsgesetz/HSchIG*). The conciliation pursuant to the present Rules of Conciliation is possible in any civil dispute, regardless of the amount in dispute. By conciliation between the parties, the state certified office of conciliation is to bring about an amicable settlement in which the interests of all parties involved are brought to a balance.

In comparison to court proceedings, the conciliation is significantly more effective, faster, and usually more cost-effective. Moreover, the conciliation does not have to be strictly limited to the original matter in dispute. This opens a broad spectrum of possible solutions which can be tailored to the actual interests of the parties. The proceedings are not public and, therefore, confidential.

The costs of conciliation are generally lower than the costs of court proceedings and are invoiced at an hourly rate. In case of a settlement, the conciliator is, in addition to the agreed hourly rate, entitled to a settlement fee pursuant to the German Remuneration of Attorneys' Act (*Rechtsanwaltsvergütungsgesetz/RVG*), which is determined by the amount of dispute. A 1.5 settlement fee will be invoiced pursuant to no. 1000 RVG remuneration schedule.

The conciliator is bound by the statutory and professional requirements regarding confidentiality and consideration of the parties' interests, especially Section 43 et seq. German Federal Lawyers' Act (*Bundesrechtsanwaltsordnung/BRAO*) as well as the provisions of the Rules of Professional Practice (*Berufsordnung für Rechtsanwälte/BORA*). In particular, he has a right to refuse to testify concerning all facts with regard to the conciliation process (according to Section 383 para. 1 no. 6 ZPO, Section 53 para. 1 no. 3 German Code of Criminal Procedure (*Strafprozessordnung/StPO*)).

¹ Greenfort Partnerschaft von Rechtsanwälten mbB.



§ 1

Office of Conciliation; Conciliator

- (1) GREENFORT is a state certified office of conciliation pursuant to Section 794 para. 1 no.1 ZPO for the facilitation of extrajudicial dispute resolution according to Section 6 para. 1 of the HSchIG.
- (2) Only those lawyers of the office of conciliation who fulfill the requirements of Section 8 HSchIG as well as Section 3 para. 4 and Section 4 of these Rules of Conciliation may serve as conciliators. The office of conciliation appoints a conciliator suitable for the matter.

§ 2

Scope; Enforceable Settlements; Suspension of the Limitation Period

- (1) A conciliation proceeding is permissible whenever the parties are entitled to handle their matters on their own and to resolve their dispute themselves.
- (2) The settlements recorded by the office of conciliation can be enforced provided that a certificate of enforceability has been issued (Section 797a ZPO). The office of conciliation is authorized by the Hessian Ministry of Justice to issue the certificate of enforceability according to Section 797a ZPO.
- (3) The receipt of a request for conciliation by the office of conciliation suspends the limitation period provided that the request is served to the other party shortly thereafter (Section 204 para. 1 n. 4 German Civil Code/*Bürgerliches Gesetzbuch*/BGB). Otherwise the suspension of the limitation period starts with the service of the request to the other party.

§ 3

Principles of the Proceeding

- (1) The aim of the conciliation is to find, with the help of the conciliator, an agreement between the parties that is based on their respective interests. The conciliation is no formal court or arbitration proceeding.
- (2) During the conciliation proceeding, the conciliator shall mainly be guided by the parties' interests and try to balance those interests, in accordance with the applicable law, and help the parties to find an agreement.
- (3) The parties involved shall have an opportunity to present – by themselves or through representatives - facts and legal opinions and to express their opinion on the other party's statement.
- (4) The conciliator shall be neutral, independent, impartial and unbiased. No lawyer of the office of conciliation shall advice or represent one of the parties in the matter that is the object of the conciliation, either as a legal counsel or in any other way, whether during



or before the conciliation proceedings. This applies accordingly even after the end of the conciliation proceeding. Any prior consultation by one of the parties with regard to the commencement of the conciliation is permitted. This consultation will be disclosed to the other party at the beginning of the conciliation proceeding.

- (5) The conciliator shall facilitate the resolution of the dispute in any way he considers appropriate. For this purpose, he can propose non-binding suggestions and alternatives to the resolution of the dispute, which he can present to the parties simultaneously or separately. The conciliator has no decision-making power to dissolve the dispute entirely or in parts.
- (6) The conciliator has a duty of confidentiality in relation to all information related to the matter of the conciliation proceeding. Notwithstanding other legal provisions regarding the duty of confidentiality, this duty shall not apply where
 - a) disclosure of the content of the agreement reached in the conciliation is necessary for the implementation or enforcement of that agreement,
 - b) disclosure is necessary for overriding considerations of public policy (*ordre public*), in particular when required to avert a risk posed to a child's well-being or to prevent serious harm to the physical or mental integrity of a person, or
 - c) facts are concerned that are of common knowledge or are not sufficiently significant to require a confidential treatment.
- (7) The conciliator, as well as his assistants, cannot be questioned as witnesses in a court concerning the conciliation proceedings. The conciliator shall invoke any existing rights to refuse testimony, unless he is released from his duty of confidentiality by both parties.
- (8) The parties undertake not to use any opinions or proposals of the other party regarding a possible settlement, any admissions made by the other party during the conciliation process, any proposals made by the conciliator as well as the fact that the other party was willing to accept a settlement proposed by the conciliator, as evidence in arbitration or court proceedings or to invoke them, regardless whether the procedure concerns the dispute that is the object of the conciliation proceeding or not.

§ 4

Person of the Conciliator

- (1) No lawyer of the office of conciliation shall act as conciliator in matters
 - a) in which he himself is a party or in which he is jointly entitled, jointly liable, or jointly liable to recourse with a party;
 - b) of his/her spouse, civil partner or fiancée, even if the marriage, civil partnership or engagement no longer exists;



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- c) of a person with whom he is related in straight line of descent or by marriage, related in collateral line up to the third degree or related by marriage up to the second degree, even if the marriage by which such affinity has been established no longer exists;
- d) in which he is or was appointed as representative or counsel of a party, or in which he is or was entitled to act as statutory representative of a party;
- e) of a person with whom he is or was employed for remuneration or for which he acts or acted as member of the board of directors, supervisory board or an equivalent corporate board.

§ 5

Initiation of the Conciliation Proceeding

- (1) The parties may, by mutual agreement, initiate the conciliation proceeding.
- (2) The conciliation proceeding may also be initiated by request for conciliation of one party. The request for conciliation shall be submitted in writing to the office of conciliation at the following address:

Greenfort Partnerschaft von Rechtsanwälten mbB
– Gütestelle –
Arndtstraße 28
60325 Frankfurt am Main

A written request can also previously be sent via e-mail to schlichtung@greenfort.de, if the request for conciliation in written form follows without undue delay, but within three working days at the latest.

- (3) The request for conciliation shall contain the parties' names and summonable addresses, a short summary of the dispute and the matter in dispute and be signed by the applying party or its representative. The number of copies necessary for the service to the other party shall be appended. Section 130 no. 1 ZPO applies supplementary. If the applicant is represented, a corresponding power of attorney shall be attached or provided upon request.
- (4) The office of conciliation will, without undue delay, provide the applicant with a written confirmation of receipt of the request for conciliation, stating the date of receipt.
- (5) The request for conciliation will be served to the other party without undue delay. The office of conciliation can make the service dependent on the payment of the handling and service fee pursuant to Section 13 para. 4 of these Rules of Conciliation; in that case, the service will only be effected after the receipt of the payment. If the payment of the handling and service fee according to Section 13 para. 4 of these Rules of Conciliation is not received within the period set by the conciliator, the request for conciliation is considered as being withdrawn. In such case, the limitation period will not be suspended. The applicant shall be made aware of this legal consequence.

- (6) Upon service, the other party is requested to declare whether he wants to take part in the conciliation proceeding or not. Simultaneously, the office of conciliation delivers the Rules of Conciliation to the parties. With commencement of the conciliation process, the Rules of Conciliation are accepted.
- (7) The parties undertake not to commence neither court nor arbitration proceedings until the end of the conciliation procedure. This does not affect the right of the parties to initiate preliminary proceedings in court.

§ 6

Determination of the Conciliation Hearing

- (1) If the parties jointly filed the request for conciliation or if the other party agreed to it, the conciliator immediately sets a date for the conciliation hearing, to which the parties shall be summoned personally. The summons shall be issued at least two weeks before the hearing. This period can be shorter, if the parties agree.
- (2) If a party has a statutory representative, the summons shall be delivered to him/her. If a party is represented by a lawyer (*Rechtsanwalt*), the summons may also be delivered to such lawyer, e.g. by using the special electronic lawyer's mail account (*besonderes elektronisches Anwaltspostfach / beA*).
- (3) If a party is not of legal age, his/her statutory representative shall be summoned too.
- (4) The summons shall refer to the Section 7 of these Rules of Conciliation, especially to the consequences of non-attendance.

§ 7

Attendance in Person; Representation and Assistance; Non-Attendance

- (1) The parties shall appear in person to the conciliation hearing.
- (2) This shall not apply if the party delegates a representative who is able to contribute to the clarification of the facts and authorized in writing to conclude an unconditional settlement and the conciliator agrees to the non-attendance of the party.
- (3) During the conciliation hearing, each party may be supported by an assistant or a lawyer.
- (4) If the applicant does not appear at the conciliation hearing without providing an excuse, the proceedings are suspended unless the other party declares the conciliation to be failed. In the case of a suspension, the conciliation proceedings may be resumed at any time. The suspension of the proceedings ends upon the receipt of the application to resume the conciliation proceedings. If the conciliation proceedings are not resumed within three months, the request for conciliation is regarded as being withdrawn.
- (5) A party can excuse its non-attendance to the conciliation hearing because of sickness,



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urgent professional impediments and unavoidable absence at the respective place or because of other important reasons. It has to notify the conciliator of its absence without undue delay and to make the excuse credible. In the case of an excused non-attendance of a party, the conciliator will determine a new hearing.

- (6) If the defendant does not appear to the hearing without providing an excuse, the unsuccessful conciliation procedure shall be recorded in the protocol and the conciliation procedure shall be regarded as having failed. The applicant shall receive a certificate of attempted unsuccessful conciliation ("*Erfolglosigkeitsbescheinigung*") 14 days after the failure at the earliest.

§ 8

Course of the Conciliation Hearing

- (1) The conciliation hearing is not public, unless otherwise agreed by the parties and the conciliator.
- (2) The conciliation hearing shall usually be carried out in one oral hearing. The conciliator will discuss the subject of matter as well as their proposed conflict solutions with the parties. In order to clarify the parties' interests, the conciliator can interview the parties individually with their consent. For complex disputes, the conciliator may request the parties to justify their claims in writing. This especially applies if the parties are legally represented by lawyers. The respective other party may comment in writing.
- (3) If the conciliation hearing cannot be carried out in one single oral hearing, it shall be interrupted; a new hearing for its resumption shall be agreed on without undue delay.
- (4) The conciliator shall not summon witnesses or experts. Witnesses and experts summoned by the parties on their own expenses may be heard during the conciliation hearing if present. Submitted documents may be taken into consideration. With consent and in the presence of the parties and their representatives, on-site visits and visual observations may be conducted.
- (5) The conciliator has no power to receive affidavits or to swear the parties, witnesses or official experts in.
- (6) On the basis of the conciliation hearing, the conciliator may make a settlement proposal to the parties.



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§ 9 Protocol

- (1) The conciliator shall record the conciliation hearing in a protocol. This protocol shall contain:
 - a) the date and location of the conciliation hearing,
 - b) names and surnames as well as the addresses of the present parties, their statutory representatives, representatives or assistants,
 - c) information on the subject-matter of the dispute, the wording of the parties' settlement or the statement that no settlement was agreed on, and
 - d) the mutual consent about cost bearing; the costs of the conciliation procedure shall be listed in the statement.
- (2) The protocol shall be signed by the conciliator. It shall be read out to the parties or their representatives or – especially in the case of a settlement – provided to them for review and signed by them during the conciliation hearing.
- (3) The parties may also accept a settlement by written declaration to the conciliator in the case that one or more parties need additional time for consideration following the conciliation hearing.
- (4) The conciliator provides the parties or their legal successors with a transcript of the protocol. The execution copy consists of a transcript of the protocol provided with a note regarding the issuance of an execution copy. This note shall contain information on the place and time of the execution copy as well as the person provided with the transcript, it shall be signed by the office of conciliation and shall contain the stamp of the office of conciliation. The original protocol remains at the office of conciliation, together with the procedural files for five years after the end of the conciliation procedure.

§ 10 Termination of the Conciliation Proceeding

- (1) Apart from the cases stated in Section 5 para. 5, Section 7 para. 4 and para. 6, the conciliation procedure ends,
 - a) by an agreement ending the dispute (settlement),
 - b) if one of the parties declares that it does not want to take part in the conciliation proceedings,
 - c) if one of the parties declares that it does not want to continue the conciliation proceedings,



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- d) if the conciliator declares the end of the conciliation proceedings because an agreement between the parties cannot be expected,
- e) if the parties mutually declare the end of the conciliation proceedings, or
- f) if the defendant does not respond to the request for conciliation within a three months period after it's receipt.

§ 11

Certificate of Unsuccessfulness

- (1) In case of a failed conciliation attempt, the office of conciliation provides the applicant with a certificate of unsuccessfulness of the conciliation.
- (2) The office of conciliation provides the certificate with a signature and a stamp. The certificate must contain:
 - a) name, surname and address of the parties and their statutory representatives,
 - b) information on the subject-matter of the dispute,
 - c) the dates of the request's receipt and the conciliation's end, and
 - d) place and time of the issuance.

§ 12

Enforcement

The settlement concluded before the conciliator may be enforced if the settlement has been provided with a certificate of enforceability by an authorized entity (Section 797a ZPO).

§ 13

Fees and disbursements

- (1) For his services – including the preparation and follow-up work of the conciliation hearing – the conciliator receives an hourly fee staggered by the amount in dispute.
- (2) The hourly rate is, in case of an amount in dispute
 - a) up to EUR 20,000.00: EUR 250.00,
 - b) between EUR 20,000.01 and EUR 50,000.00: EUR 350.00 and
 - c) from EUR 50,000.01: EUR 450.00,plus the statutory value added tax.
- (3) If a settlement is concluded, the conciliator receives an additional settlement fee



pursuant to the RVG, calculated in proportion to the amount in dispute plus the respective statutory value added tax.

- (4) For the initiation of the proceedings, the service of the request for conciliation and the issuance of the certificate of unsuccessfulness, the office of conciliation shall receive from the applicant a lump sum handling and service fee of EUR 500.00 plus expenses, service costs and VAT. If the request for conciliation is to be served upon more than one party, this fee increases by EUR 200.00 plus expenses, service costs and VAT for every additional party.
- (5) Expenditures and travel expenses will be reimbursed according to the provisions of the RVG.
- (6) The above fee and cost regulations apply, unless a deviating written agreement regarding the remuneration is concluded.

§ 14 Cost Bearing and Maturity

- (1) The conciliator's remuneration shall, unless otherwise agreed, be borne equally between the parties who are liable jointly and severally. If one party does not attend a determined conciliation hearing without adequate excuse, it is solely liable internally for the remuneration claim related to that very conciliation hearing.
- (2) Each party bears its own costs.
- (3) The handling and service fee plus expenses, service costs and VAT is due and payable with filing of the request for conciliation, all other fees and costs are due and payable at the end of the conciliation proceedings, unless the office of conciliation demanded payment of an advance pursuant to Section 15 of these Rules of Conciliation.
- (4) The certificate of unsuccessfulness as well as the executed copies and transcripts of the protocol can be withheld unless the due fees and costs have been paid.

§ 15 Advance

The office of conciliation shall be entitled to request an adequate advance from the parties before the conciliation hearing.

§ 16 Liability

In cases of simple negligence, the office of conciliation's liability is limited to EUR 10 million.

Stand: 2026