

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 1	Decision date:	20 November 2025	Res judicata: Yes
Court:	German Federal Court of Justice (Bundesgerichtshof, BGH)			
Case No. :	I ZB 9/25 Case No. other instances: 26 Sch 1/23 (Higher Regional Court of Frankfurt am Main, OLG Frankfurt am Main) (see GAD 2025, 5)			
Keywords:	Framework supply agreement, breach of contract, claims for damages, arbitration agreement, contract for the benefit of third parties, general terms and conditions (GTCs), priority of individually agreed terms, jurisdiction of the arbitral tribunal			
Key legal provisions:	Section 305 German Civil Code (BGB) Section 328 German Civil Code (BGB) Section 1040 German Code of Civil Procedure (ZPO)			

Extension of an arbitration agreement to non-signatories: German Federal Court of Justice confirms that an individually agreed arbitration clause binds third party beneficiaries and takes precedence over their GTCs

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On 20 November 2025, the German Federal Court of Justice (BGH) held that an arbitration clause individually agreed between a group company and a supplier in a framework supply agreement binds the group company's affiliated entities as third-party beneficiaries, provided their interests were represented and safeguarded by the group company during the contract negotiations. In such a case, the framework supply agreement, including the arbitration clause, is treated as an individual contractual agreement vis-à-vis the third-party beneficiaries and overrides any conflicting general terms and conditions (GTCs) they may have.

Facts

The applicant was a China-based manufacturer of pharmaceutical products, including active pharmaceutical ingredients (APIs). The respondents were several "S. Division Companies", affiliated with S. AG, which marketed patent-free medicines. The applicant and S. AG entered into an API framework supply agreement (framework agreement or contract), under which the applicant undertook to manufacture and supply various pharmaceutical ingredients to S. AG. The contract preamble expressly permitted affiliated companies of S. AG to purchase products under the contract. German law governed the contract, and the courts of Munich had exclusive jurisdiction.

The parties later concluded several amendment agreements, expanding the group of purchasers to include additional S. AG-affiliated companies and modifying the dispute resolution clause. In particular, they introduced an arbitration clause initially under the Chinese European Arbitration Center (CEAC) in Hamburg, later amended to arbitration under the International Chamber of Commerce (ICC) in Frankfurt.

The product prices were negotiated centrally between the applicant and the S. AG Sourcing Office, based on demand forecasts provided by the respondents. The agreed prices were communicated to the respondents and recorded in their SAP systems. When placing orders, the respondents issued purchase orders through SAP, consistently applying the centrally negotiated prices.

GERMAN ARBITRATION DIGEST

Between 2018 and 2019, S. AG had to recall multiple batches of Valsartan after impurities were detected in the applicant's Valsartan-API, resulting in a product shortage. In April 2020, S. AG terminated the framework agreement and, together with the respondents, initiated arbitration proceedings against the applicant.

The applicant objected to the arbitral tribunal's jurisdiction over the respondents' claims, arguing that the affiliated companies were not parties to the arbitration agreement. After the tribunal affirmed its jurisdiction by means of a preliminary ruling, the applicant requested the Higher Regional Court of Frankfurt am Main (OLG Frankfurt am Main) to decide the matter, which dismissed the application. The applicant subsequently lodged a complaint on points of law (complaint) before the BGH.

Key findings

The BGH upheld the OLG's decision, confirming that it had correctly affirmed the arbitral tribunal's jurisdiction.

First, the BGH confirmed that the framework agreement, including the subsequently concluded arbitration agreements, are contracts for the benefit of third parties (Section 328 BGB). While the subjective scope of an arbitration agreement is, in principle, limited to the contracting parties and their legal successors, the arbitration agreement is deemed valid under German law as a contract for the benefit of third parties, and extends to the respondents in their capacity as third-party beneficiaries.

Second, the BGH rejected the argument that the framework agreement constituted GTCs vis-à-vis the respondents. It held that the protective purpose of GTC law is not affected where there is no imbalance in bargaining power and where the respondents' interests were represented during the negotiations and could influence the content of the agreement.

Third, the BGH confirmed that terms individually agreed between the applicant and S. AG (i.e., the framework agreement and its amendments) take precedence over any conflicting GTCs of the respondents (Section 305b BGB). Even if the purchase orders included the respondents' GTCs which were inconsistent with the framework agreement, these are not relevant, as the framework agreement as an individual contractual agreement takes priority.

Comment

The decision confirms the German courts' established approach to third-party beneficiaries, GTC law, and individually agreed terms, and extends the well-settled principles of the German Civil Code to arbitration agreements. The BGH thus reaffirms that contracts for the benefit of third parties provide a valid legal basis for binding non-signatories to arbitration agreements. This is a welcome decision, particularly considering the significantly stricter approaches adopted in many other jurisdictions with respect to extending arbitration agreements to third parties.