



**International Institute of Construction Arbitrators  
("IICArb")**

**Arbitration Rules**

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## **INTRODUCTORY PROVISIONS**

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### **1. Definitions**

- (i) "Parties" shall mean the Claimant and the Defendant.
- (ii) "Claimant" means the person who refers the dispute to arbitration.
- (iii) "Defendant" means the person who defends the Claimant's claim.
- (iv) "Arbitrator(s)" means the independent third Party appointed by the Parties or IICArb who decides the outcome of the dispute.
- (v) "Arbitral Tribunal" includes one or more Arbitrator.
- (vi) "IICArb" means the International Institute of Construction Arbitrators.
- (vii) "agreement" means the written agreement entered into between the Parties which contains their agreement in regard to resolving disputes by way of arbitration.
- (viii) "pleadings" means all documents including notice of arbitration, statement of claim, statement of defence, counterclaim, statement of defence to counterclaim and replications.
- (ix) "days or day" refers to business days which includes Mondays to Fridays and excludes Saturdays, Sundays and Public Holidays.

### **2. Interpretation**

- 2.1. Reference to one gender shall include the other.
- 2.2. If there is any ambiguity or clarification required of these rules, the Arbitral Tribunal may give the clarification which shall be binding on the Parties.

### **3. Notices, Communications and Time Periods**

- 3.1. All notices, communications and pleadings shall be in writing and may be transmitted in hard copy and/or electronic transmission as directed by the Arbitral Tribunal.



- 3.2. All pleadings and other written communications submitted in hard copy shall be supplied in a number of copies sufficient to provide one copy for each Party, plus one for each Arbitrator.
- 3.3. Notifications and communications shall be deemed to have been received: if sent by email, on the date the email was sent; if delivered by hand or courier, on the date of delivery.

## **ARBITRAL TRIBUNAL**

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### **4. Appointment of Arbitrator(s)**

- 4.1. The Parties appoint an Arbitrator or Arbitrators in terms of their agreement. Disputes shall be decided by either a sole Arbitrator or three (Arbitrators) depending on what the Parties agreed to.
- 4.2. In the event that IICArb is requested by either Party to make to appoint an Arbitrator(s), the appointment shall be deemed concluded upon written notification by IICArb to the Parties informing them of the appointment.
- 4.3. The Parties and the Arbitrator shall enter into a written agreement outlining the Arbitrator(s) fees, disbursements, particulars of the Parties and the applicable rules of arbitration.
- 4.4. Where IICArb appoints an Arbitrator(s), it shall take into consideration the Arbitrator's experience and qualifications in the nature of the dispute, nationality, location, availability, impartiality, independence, and any other relevant factors.

### **5. Procedure for appointment of Arbitrator(s)**

- 5.1. Depending on the agreement concluded between the Parties, the Parties may mutually agree on the appointment of either:
  - 5.1.1. one (1) Arbitrator; OR
  - 5.1.2. three (3) Arbitrators in terms of which each Party shall appoint an Arbitrator and the two appointed Arbitrators shall jointly agree on the appointment of the third Arbitrator whom shall act as chairman/chairlady.
- 5.2. In the case of one (1) Arbitrator, save as otherwise stated in the agreement between the Parties, where the Parties have agreed to appoint an Arbitrator by mutual agreement between them, the Arbitrator shall be appointed within a period of ten (10) days from the date on which the Notice of Arbitration was issued to the Defendant.



- 5.3. In the case of three (3) Arbitrators, save as otherwise stated in the agreement between the Parties, each Party shall appoint an Arbitrator within ten (10) days from the date the Notice of Arbitration was issued to the Defendant. The third Arbitrator shall be appointed by the other two Arbitrators within ten (10) days from the date on which the last Arbitrator was appointed by a Party.
- 5.4. If the Parties fail within the aforesaid periods to agree on the appointment of an Arbitrator (in the case of a single Arbitrator) or in the case of three (3) Arbitrators where a Party fails to appoint an Arbitrator or where the Parties have agreed that all Arbitrators in the case of three (3) Arbitrator be appointed by IICArb, either Party may request IICArb to make the appointment by delivering a Request for Appointment with proof of payment of the prescribed fee.
- 5.5. In the case of three (3) Arbitrators, where the two Arbitrators cannot agree on the appointment of the third Arbitrator or have not appointed a third Arbitrator within the period stipulated above, the appointment shall be made by IICArb on request by either Party.
- 5.6. The appointment of Arbitrator(s) by IICArb shall be made within ten (10) days of the Request for Appointment.
- 5.7. Where the Parties have not agreed on the number of Arbitrators, one Arbitrator shall be appointed.
- 5.8. Where there are multiple Claimants and/or multiple Defendants, and the Parties have agreed on three Arbitrators, the multiple Claimants together shall appoint an Arbitrator and the multiple Defendants together shall appoint an Arbitrator. The two appointed Arbitrators shall then appoint a third Arbitrator who shall act as chairman/chairlady of the Arbitral Tribunal. Where the Parties are unable to agree on the appointment, IICArb shall appoint the Arbitrator or the Arbitral Tribunal and shall decide on the chairman/chairlady.
- 5.9. Arbitrators appointed must be impartial and independent of the Parties.

## **6. Challenge of Arbitrator(s)' appointment where the Arbitrator(s) were appointed by IICArb**

- 6.1. Any Party who challenges the appointment of an Arbitrator for whatever reason i.e conflict of interest, shall submit a written statement providing facts and circumstances under which the challenge is made to the President of IICArb.



- 6.2. For a challenge to be admissible, it must be submitted within 10 days after acceptance of the appointment of the Arbitrator, unless a fact or circumstance arisen after the 10 day period which is material in the opinion of the Party challenging the appointment to warrant a potential termination of mandate of the Arbitrator. The President shall assess and investigate the challenge and may request a meeting with the Parties (if necessary) and make such decisions he/she deems fit including upholding the appointment or replacing the Arbitrator. The President may also request the Arbitrator to answer to the challenge, which communication shall also be sent to the Parties.
- 6.3. The President may terminate the appointment of Arbitrator where the President has determined that the challenge is valid and appoint a replacement Arbitrator.

## **7. Replacement of Arbitrator(s)**

- 7.1. If an Arbitrator or Arbitral Tribunal has to be replaced during the course of the arbitration proceedings, the procedure for appointing an Arbitrator or Arbitral Tribunal pursuant to rules 4 to 6 shall apply.
- 7.2. Where three Arbitrators have been appointed and one dies, the deceased Arbitrator shall be replaced by either the Party who appointed the [deceased] Arbitrator, or the two (2) Arbitrators who appointed the chairperson [deceased] whichever is applicable. The replacement Arbitrator must be appointed within 10 days after the Parties became aware of the death, failing which IICarb shall make the appointment.

## **8. Impartiality and independence**

- 8.1. Upon the appointment of an Arbitrator, the Arbitrator shall furnish a statement of disclosure of impartiality and independence included in his/her contract. The Arbitrator shall address any conflict of interest and/or any potential conflict of interest with any of the Parties that he is aware exists or might exist. The Arbitrator(s) shall be obligated to inform the Parties of any future conflict of interest or any other circumstance that arise which may affect his/her impartiality.

## **9. Appointment of an expert or assistant by the Arbitral Tribunal**

- 9.1. Where an expert is required to deliver a report on specific issues to be determined, the Parties shall have the option of appointing their own expert jointly or separately (each Party appoints an expert) or request the Arbitral Tribunal to appoint an expert.
- 9.2. The Arbitral Tribunal may appoint an assistant who acts as advisor only to the extent necessary and agreed by the Parties and only if the Parties have agreed on the payment of the assistant's fees which shall be paid directly to the assistant.



- 9.3. The Parties may by agreement request IICarb to attend to the appointment of an expert.

## **10. Jurisdiction and powers of the Arbitral Tribunal**

- 10.1. An Arbitrator may only adjudicate the dispute(s) submitted to it, and not those disputes/issues which have arisen afterwards and/or during proceedings unless same cannot be separated from the dispute(s) referred to arbitration or the adjudication thereof is necessary in order to arrive at a decision in regard to the dispute(s) referred to arbitration.
- 10.2. The Arbitrator's jurisdiction is set out in the agreement between the Parties. A Claimant must prove:-
- (a) the contract which contains the agreement between the Parties;
  - (b) that the dispute which arose is within the terms of the agreement;
  - (c) that the Arbitrator(s) were / may be appointed in accordance with the agreement.
- 10.3. For matters falling outside the agreement, to fall within the jurisdiction of the Arbitrator, there has to be agreement between the Parties.
- 10.4. The Arbitral Tribunal shall have the right to exercise such power and duties as are considered just or by mutual agreement between the Parties, where the rules are silent on any matter.

## **11. Exclusion of liability**

- 11.1. Save for intentional wrongdoing, the Parties waive, to the fullest extent permitted by law, any claim(s) against the Arbitrator, Arbitral Tribunal, IICarb and any officer, member or person appointed by IICarb.

## **ARBITRAL PROCEEDINGS**

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### **12. Notice of Arbitration**

- 12.1. A Party (Claimant) wishing to refer a dispute to arbitration, shall submit a written Notice of Arbitration to the other Party. Such Notice shall contain the following information:



- (i) the particulars of the Parties;
- (ii) the nature and particulars of the dispute;
- (iii) the relief or remedy sought;
- (iv) the provisions of the agreement concerning arbitration;
- (v) the provisions of the agreement concerning the appointment of an Arbitrator(s);
- (vi) the particulars of the Arbitrator if already agreed upon;
- (vii) a proposal for the appointment of the Arbitrator.

12.2. The arbitration proceedings shall be deemed to have commenced on the date on which the Notice of Arbitration was served on the defendant.

### **13. Statement of Claim**

13.1. Within 20 days after of the date of commencement of arbitration, the Claimant shall submit his Statement of Claim (fully detailed claim) with full supporting particulars and documentation.

### **14. Statement of Defence with/ without Counterclaim**

14.1. Within 20 days after receipt of the Claimant's Statement of Claim, the Defendant shall deliver a Statement of Defence with or without a Counterclaim. The Statement of Defence shall address the averments made in the Statement of Claim accompanied by all relevant documentation. The Counterclaim (if any) shall be fully substantiated accompanied by all relevant documentation.

### **15. Claimant's Replication and Statement of Defence**

15.1. The Claimant shall within 15 days of receipt of the Statement of Defence reply thereto by way of Replication and shall include as a separate section its Statement of Defence to the Defendant's Counterclaim (where a Counterclaim was delivered).

### **16. Defendant's Replication**

16.1. Where the Claimant has delivered a Statement of Defence to the Defendant's Counterclaim, the Defendant shall within 15 days of receipt of the Statement of Defence reply thereto by way of Replication.

### **17. Amendments to documents and additional documentation**



17.1. Any Party may amend or supplement its pleadings with leave of the Arbitral Tribunal and within such period as may be determined by the Arbitral Tribunal.

17.2. Hereafter the pleadings shall be considered closed.

## **18. Evidence**

18.1. The Arbitral Tribunal may require the Parties to make discovery of documents, to allow inspection of goods and property. The Arbitral Tribunal may examine the Parties and their witnesses on any evidence and require them to produce evidence.

18.2. Should discovery take place, it shall take place within 10 days after close of pleadings or within such period is directed by the Arbitral Tribunal.

18.3. The Arbitral Tribunal shall determine the admissibility, weight, relevance and materiality of the evidence.

18.4. Where the Parties have expert witnesses, the particulars of the expert witnesses together with the expert witnesses' summary reports shall be given to the other Party and the Arbitral Tribunal within 10 days after close of pleadings or within such period as may be directed by the Arbitral Tribunal.

## **19. Pre-arbitration hearing**

19.1. The Arbitral Tribunal may request a pre-arbitration hearing to be held with the Parties to address and/or clarify any matter.

19.2. The Arbitral Tribunal shall submit to the Parties an agenda for the pre-arbitration hearing.

## **20. Hearing**

20.1. The Arbitral Tribunal shall decide whether to hold an oral hearing for the presentation of evidence and oral argument, or whether the proceedings shall be conducted on the basis of documents only. The Arbitral Tribunal shall communicate its decision in this regard to the Parties within 10 days after discovery (if there is discovery) or within 10 days after close of pleadings.

20.2. Where an oral hearing will be held, the hearing shall take place within 20 days after the Arbitral Tribunal communicated his/her decision for the need of a hearing to the Parties.



- 20.3. The Arbitral Tribunal shall promptly give notice to the Parties of the particulars of the date of the hearing, the time of the hearing and the place where the hearing will be held.
- 20.4. If any of the Parties fails to appear without valid excuse, the Arbitral Tribunal shall have the power to proceed with the hearing.
- 20.5. Witnesses may be heard under the conditions and in the manner prescribed by the Arbitral Tribunal.

## **21. Close of proceedings**

- 21.1. The arbitration proceedings shall terminate:-
- (a) on final award; or
  - (b) where the Arbitral Tribunal orders that the proceedings are terminated because:-
    - (i) the Claimant has withdrawn his claim;
    - (ii) the Parties so agree;
    - (iii) the Arbitral Tribunal finds it unnecessary or impossible to continue the proceedings.

## **22. Place of Arbitration**

- 22.1. If the Parties have not agreed on a place of arbitration in the agreement, the place of arbitration shall be determined by the Arbitral Tribunal.
- 22.2. Any meetings between the Parties and the Arbitral Tribunal or meeting held by the Arbitral Tribunal may take place at any location and in any manner.

## **23. Language**

- 23.1. The language of all communications, notices, documentation and argument shall be English unless otherwise agreed between the Parties and the Arbitral Tribunal.

## **24. Privacy**

- 24.1. In the event of an oral hearing, the hearing shall take place in camera and only the Parties and/or their representatives and including witnesses shall attend the hearing.
- 24.2. The award shall not be disclosed to any third parties other than the Parties and/or their representatives.



24.3. The above provisions shall apply to privacy unless the Parties and Arbitral Tribunal otherwise agrees and only to the extent permitted by law.

## **25. Joinder and consolidation of proceedings**

25.1. If the Parties so agree or with leave of the Arbitral Tribunal: -

25.1.1. other parties may be joined to the arbitration proceedings; and/or

25.1.2. proceedings may be consolidated if it appears convenient to do so.

## **26. Default**

26.1. If any Party fails to comply with the time periods prescribed under these rules, and/or fails to comply with any of the provisions under these rules, the Arbitral Tribunal shall make such decisions and impose such conditions as it deems fit.

## **27. Interlocutory Proceedings**

27.1. After the filing of the Notice of Arbitration or during the arbitration proceedings but before close of pleadings, any Party may approach the Arbitral Tribunal for an interim order.

27.2. The request for an interim order must be filed without undue delay. The other Party shall have 5 days to respond to the request.

27.3. The Arbitral Tribunal has the discretion to accept or reject the request and shall make such order as it deems fit, pending the outcome of the final award. The Arbitral Tribunal shall give its decision (interim award) before the date of the hearing. If there is no oral hearing, the Arbitral Tribunal shall give its interim award within 10 days after receipt of the response to the request or expiration of the response to the request whichever date is earlier.

27.4. The Arbitral Tribunal may call for any such meetings it considers necessary which the Parties shall attend.

27.5. Requests for interim orders shall be properly substantiated and reasons shall be given as to why the matter cannot be dealt with in the normal course of the arbitration proceedings.

## **28. Applicable Law**



28.1. The applicable law shall be that determined by the Parties in the agreement. Where no applicable law is specified in the agreement, the applicable law shall be the Law of the Republic of South Africa.

## **29. Representation of Parties**

29.1. The Parties may be represented by any person(s) of their choice having regard to relevant legislation. In South Africa only a practising legal practitioner may represent a Party in arbitration proceedings. The names and addresses of such representatives must be communicated to the other Party, and the Arbitral Tribunal.

29.2. At the request of any Party or at the Arbitral Tribunal's discretion, the Arbitral Tribunal may request any Party to furnish proof of authority granted to a representative.

## **30. Summoning of witnesses**

30.1. Any Party may procure in a court having jurisdiction, the issue of a subpoena to compel any person to appear before an Arbitral Tribunal, to give evidence and to produce documents, or things provided that:

- (a) no person shall be compelled by such summons to produce something which would otherwise not be compellable on trial of an action; and
- (b) the court having jurisdiction in the said area, may issue such summons upon payment of the same fees as are chargeable for the issue of a subpoena in a civil case pending in the relevant court.

## **THE AWARD**

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### **31. Time limit for making the award**

31.1. Where no oral hearing takes place, the award shall be made within 20 days after the Arbitral Tribunal informed the Parties that no hearing shall take place.

31.2. Where there is a hearing, the award shall be made within 20 days after the last date of the hearing.

### **32. Making the award where there is more than one Arbitrator**



- 32.1. Where the Arbitral Tribunal consists of three Arbitrators, the decision of the majority shall be the decision of the Arbitral Tribunal. Where the Arbitrators (in the case of three Arbitrators) cannot reach agreement, the Arbitrator's views shall be referred to IICarb and the President of IICarb shall decide the award.

### **33. Formality requirements of the award**

- 33.1. The award shall be in writing and contain reasons for the decisions made in the award. The award shall be delivered by the Arbitral Tribunal, to the Parties or their representatives.
- 33.2. The award shall be signed by all Arbitrators and contain the date on which the award was made.
- 33.3. The award shall be considered published once communicated to the Parties.

### **34. Effect of the arbitration award**

- 34.1. The award shall be binding and final unless the Parties have agreed on the right to appeal.
- 34.2. Notwithstanding the aforesaid provisions, the Arbitral Tribunal shall only be obliged to communicate the award after receipt of payment of all fees and costs.

### **35. Settlement**

- 35.1. The Parties may at any time during the arbitration proceedings settle the dispute on agreed terms provided settlement is reached before publication of the award.
- 35.2. The settlement reached between the Parties shall be made an award and have the same status as any other award on the merits of the case.
- 35.3. Offers of settlement shall be between the Parties only. It is only once a settlement has been reached that the terms of the settlement be disclosed to the Arbitral Tribunal.

### **36. Correcting, interpreting or clarifying the award**

- 36.1. Within 10 days after publication of the award, any Party may request in writing the Arbitral Tribunal to correct, interpret or clarify the award.



- 36.2. Corrections in any award is only possible in the event of clerical mistake or patent error arising from any accidental slip or omission or to clarify any ambiguity.
- 36.3. The Arbitral Tribunal shall within 5 days after receipt of the request, make such correction and give the interpretation, and issue such clarification as it deems justified.
- 36.4. The Arbitral Tribunal may by its own accord make any such corrections, interpretations and/or clarifications within 10 days after the publication of the award.

### **37. Allocation of costs**

- 37.1. Unless the agreement provides otherwise, the award of costs shall be in the discretion of the Arbitral Tribunal, who shall give directions as to taxation of the costs and may direct to whom and by whom and in what manner such costs or any part thereof shall be paid.
- 37.2. Costs of arbitration shall include:
- (i) the administrative fees levied by IICarb;
  - (ii) Arbitrator(s) fees;
  - (iii) reasonable travel and other expenses incurred by the Arbitrators;
  - (iv) reasonable costs of expert advice and other assistance required by the Arbitral Tribunal;
  - (v) costs of summoning witnesses;
  - (vi) costs of taxing consultant;
  - (vii) legal and other costs and expenses incurred by a Party/Parties as a result of the arbitration which includes but is not limited to costs of expert witnesses.
- 37.3. The Arbitral Tribunal's award of costs shall also include an award of costs in respect of any interim awards.

### **URGENT PROCEEDINGS**

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38. The Parties may by mutual agreement, request for any matter to be heard by an Arbitral Tribunal on an urgent basis.
39. The Parties and the Arbitrator shall agree on the conduct of the proceedings as well as a date of hearing, time, location, period for publishing the award etc.
40. Save for the provisions set out in rules 38 and 39, all other provisions of these rules shall apply *mutatis mutandis* to urgent proceedings.



## **AMENDMENT OF THE RULES**

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41. These rules may be amended by IICarb at any time and will be made available on IICarb’s website.
42. Furthermore, these rules may be amended by mutual agreement between the Parties and the Arbitral Tribunal.

## **DOCUMENT FORMALITIES**

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43. All documents prepared by the Parties and Arbitral Tribunal shall conform with the following:-

- Font: Arial
- Font size: 12
- Alignment: Justify
- Line spacing: 2
- Each page of every document drafted must be numbered and every annexure must be marked as such. For example: if the Statement of Claim consists of 20 documents then the pages must be numbered 1 to 20 – if it contains annexures A, B, and C then each annexure must be marked as such and numbered.
- Contain an index of the documents and pages thereto.

