



# Adjudication Rules

for use with the JBCC Principal Building Agreement & Nominated / Selected Subcontract Agreement

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## 1.0 INTERPRETATION

- 1.1 Adjudication is an accelerated form of dispute resolution in which a neutral third party determines the dispute as an expert and not as an arbitrator and whose determination is binding unless and until varied or overturned by an arbitration award
- 1.2 These Rules shall be read in conjunction with clause 40.0 of the JBCC Principal Building Agreement or Nominated/Selected Subcontract Agreement, hereinafter referred to as the "Agreement". The provisions of clause 1.0 of these Agreements are deemed to be incorporated in these Rules
- 1.3 These Rules may be varied by the mutual agreement of the parties provided that, should an adjudicator have already been appointed, his consent to such variation shall not be unreasonably withheld

## 2.0 APPOINTMENT OF THE ADJUDICATOR

- 2.1 The parties shall appoint the adjudicator by mutual agreement and may do so at any time but not later than five (5) working days after the date on which the disagreement was deemed to be a dispute in terms of the Agreement
- 2.2 Where the parties have failed to make such appointment within such period, either party may request the Chairman of the Association of Arbitrators (Southern Africa) to appoint an adjudicator and shall furnish the other party with a copy of such request
- 2.3 The adjudicator shall notify the parties of his acceptance of the appointment which shall be deemed to be an undertaking to be bound by these Rules
- 2.4 Should the appointment of the adjudicator terminate in terms of 4.0 a replacement adjudicator shall be appointed in terms hereof

## 3.0 TERMS OF APPOINTMENT OF THE ADJUDICATOR

- 3.1 The adjudicator is to be impartial and independent of the parties and shall inform the parties immediately of anything of which could affect his impartiality or independence
- 3.2 The adjudicator shall not give advice to the parties or their representatives concerning any aspect of the Agreement in respect of which he has been appointed other than in accordance with these Rules
- 3.3 The adjudicator shall treat all matters which have been referred to him for adjudication as confidential and shall not disclose such without the prior written consent of the parties
- 3.4 The adjudicator may not be called as a witness by either party to give evidence concerning the matter referred or adjudicated by him save as may be necessary for a party to secure the enforcement of a determination
- 3.5 The adjudicator shall not assign, delegate or obtain legal or technical assistance related to his work under these Rules without the approval of the parties. The parties shall respond to any such request within three (3) working days failing which approval shall be deemed to have been given

## 4.0 TERMINATION OF THE APPOINTMENT OF THE ADJUDICATOR

- 4.1 The adjudicator may resign his appointment by giving fourteen (14) calendar days notice to the parties
- 4.2 The appointment of the adjudicator:
  - 4.2.1 May be terminated at any time by the mutual agreement of the parties
  - 4.2.2 Shall be deemed to have been terminated once the certificate of final completion and final payment certificate have been issued by the principal agent

- 4.2.3 Shall be deemed to be terminated should he not perform his duties within ten (10) working days of receipt of a notice from either party specifying the nature of the duty to be performed. A copy of such notice shall be given to the other party
- 4.3 Subject to 5.7 the adjudicator shall not be liable for any claims in respect of any act or omission in discharging his duties unless such act or omission is shown to have been in bad faith

## **5.0 THE FEES OF THE ADJUDICATOR**

- 5.1 The adjudicator shall be entitled to:
- 5.1.1 Be paid a fee for time spent in relation to his appointment at an hourly rate not inconsistent with the rate recommended by the statutory professional body with which he is registered. Where the adjudicator is not registered the rate shall be fair and reasonable. On acceptance of the appointment the adjudicator shall notify the parties of the hourly rate to be charged. Such rate shall be deemed to be inclusive of any taxes applicable by law
- 5.1.2 Be reimbursed by the parties for disbursements reasonably incurred in carrying out his duties. Where exceptional expenditure is contemplated the adjudicator shall obtain the prior approval of the parties. Failure by a party to respond to such request within three (3) working days shall be deemed to be approval thereof
- 5.1.3 Require the parties to pay an initial deposit and further deposits where necessary in respect of his anticipated fees and disbursements. He shall be entitled to suspend work where a required deposit is not paid within ten (10) working days of such request
- 5.1.4 The adjudicator shall be entitled to exercise a lien on his determination until any outstanding payment has been made in full
- 5.2 Where a party fails to comply with a request for payment within the stipulated period the other party may make and recover such payment from the defaulting party
- 5.3 All interim claims due to the adjudicator shall be shared equally by the parties unless otherwise directed by the adjudicator in his determination. Such payments shall be made within ten (10) calendar days of receipt of the adjudicator's account for payment
- 5.4 The adjudicator shall not be entitled to any fees or disbursements where he knowingly breaches any of the provisions of 3.0, acts in bad faith or fails to submit a written determination of the dispute to the parties in terms of 7.1. The adjudicator shall reimburse the parties all fees and disbursements received from the parties where, as a consequence of any such breach, proceedings or decisions of the adjudicator are rendered void or ineffectual

## **6.0 PROCEDURE**

- 6.1 Either party shall submit full details of a dispute arising in terms of 4.2.1 of the Agreement, together with copies of all relevant documents to the adjudicator for his determination. A copy of the submission shall be provided to the other party and where an adjudicator has not been appointed a proposal for such appointment shall be included. The adjudicator shall notify the parties of the date of receipt of such details (the "referral date")
- 6.2 The other party may submit a written response to the details of dispute not later than five (5) working days after the referral date
- 6.3 The adjudicator shall:
- 6.3.1 Act as an expert and not as an arbitrator in determining the dispute
- 6.3.2 Act with fairness and impartiality to both parties
- 6.3.3 Ensure that each party is furnished with a copy of any written communication sent to or received from either party
- 6.3.4 Adopt the most cost- and time-effective procedure consistent with fairness to determine the dispute
- 6.4 The adjudicator may:
- 6.4.1 Conduct a hearing but is not obliged to do so

- 6.4.2 Determine the dispute on the basis of the submitted documents only and/or an inspection of work related to the dispute as is appropriate
- 6.4.3 Meet with the parties either jointly or separately as well as with any professional agent or others related to the dispute as needed
- 6.4.4 Convene a hearing five (5) working days notice of the date, time and the place shall be given to the parties. At such hearing the adjudicator may adopt an inquisitorial procedure and shall observe procedural fairness but shall not be obliged to comply with the rules of evidence. The parties shall not be entitled to be represented at such hearing by practicing lawyers
- 6.4.5 Decide on his own jurisdiction and the scope of the dispute referred to him
- 6.4.6 Make use of his specialist knowledge
- 6.4.7 Require a party to submit within a set period any further information, document or evidence which he may reasonably require to make his determination
- 6.4.8 Open up, review and revise any opinion, instruction, determination, certificate or valuation related to the dispute
- 6.4.9 Decide upon the payment of interest in accordance with the Agreement
- 6.4.10 Decide on the liability apportioned between the parties for the payment of his fees and disbursements
- 6.4.11 Refuse admission to any persons other than the parties and their respective representatives and witnesses to any hearings
- 6.4.12 Process the adjudication and make a determination notwithstanding a party's failure to attend meetings, hearings or to provide information requested

## **7.0 DETERMINATION**

- 7.1 The adjudicator's written determination of the dispute shall:
  - 7.1.1 Be delivered to the parties not later than twenty (20) working days after the referral date provided that on the written request of the adjudicator the parties by mutual agreement may grant an extension of the time limit by no more than ten (10) working days. The parties shall respond to a request for such extension within three (3) working days. Failure by either or both parties to respond within the time limit shall be deemed to confer approval on such request. The time limit shall also be extended in respect of a delay caused by suspension of work by the adjudicator in terms of 5.1.3
  - 7.1.2 Include reasons for his decisions
  - 7.1.3 Be delivered to the parties at their physical addresses as recorded in the Agreement or by facsimile or e-mail. The parties shall give immediate effect to any requirements of the determination
  - 7.1.4 Be binding on the parties unless and until such determination is overturned or varied in whole or in part by arbitration in terms of clause 40.5 of the Agreement
  - 7.1.5 Entitle the adjudicator to deliver to the parties an account of his fees with such determination
- 7.2 Either party may:
  - 7.2.1 in writing request the adjudicator to correct any patent clerical or arithmetical error or clarify any ambiguity in the determination. Such party shall furnish the other party with a copy of such request within five (5) working days of receipt of the determination. The adjudicator shall comply with such request within a further five (5) working days
  - 7.2.2 Apply to court for the enforcement of the determination as a contractual obligation and to that end the parties agree to the jurisdiction of the magistrate's court