



®JBCC Adjudication Rules (published: January 2020)

Forming part of the Adjudicator's appointment, in terms of the dispute resolution clause of -
the JBCC® Principal Building Agreement (PBA), and/or
the JBCC® Nominated/Selected Subcontract Agreement (NSSA), or
the JBCC® Minor Works Agreement (MWA), or
the JBCC® Contract for Small or Simple Works (CSSW)

1.0 INTERPRETATION

- 1.1 Adjudication is an accelerated form of dispute resolution in which a neutral person determines the dispute as an expert (and not as an arbitrator) and whose determination is binding on the parties for immediate compliance and which shall remain in force until varied or overturned by an arbitration award
- 1.2 These rules may be varied by the mutual agreement of the parties in conjunction with the adjudicator provided that should the adjudicator not agree these rules shall apply unvaried
- 1.3 The party referring a dispute for adjudication shall be referred to as the "claimant" and the other party shall be referred to as the "respondent"
- 1.4 Where reference herein is to "the agreement" or "agreement", such reference shall be to the respective agreement stated in the heading above
- 1.5 Words and phrases used in these rules shall have the corresponding meaning as defined in the applicable agreement

2.0 APPOINTMENT OF THE ADJUDICATOR

- 2.1 If a disagreement cannot be resolved by the parties, the party who gave notice of disagreement shall refer the disagreement, now dispute, to the other party or nominating body (CD) for adjudication by issuing a notice of adjudication, which notice must include:
 - 2.1.1 the nature and brief description of the dispute and the parties involved;
 - 2.1.2 details of where and when the dispute has arisen;
 - 2.1.3 nature of redress sought; and
 - 2.1.4 names and addresses of the parties
- 2.2 The parties shall appoint the adjudicator by mutual agreement within five (5) working days after the date on which the disagreement was deemed to be a dispute in terms of the Dispute Resolution clause of the respective agreement(s). Where the parties have failed to make an appointment within such period, either party may request the nominating body to appoint the adjudicator within five (5) working days from date of such request. Neither party shall have the right to object to such an appointment
- 2.3 The adjudicator shall in writing notify the parties of his acceptance of the appointment in terms of these rules within three (3) working days of the date of receipt of the parties' invitation to be appointed as adjudicator or where appointed as adjudicator by the nominating body
- 2.4 Should the appointment of the adjudicator be terminated in terms of rule 7.0, a replacement adjudicator shall be appointed following the same afore-cited procedure
- 2.5 The adjudicator's appointment shall be limited to the dispute he is appointed for, although the adjudicator may at the same time be required to adjudicate more than one dispute arising from the same agreement. The parties may appoint the adjudicator anew at a later stage should a further dispute arise during the construction period of the same project
- 2.5 Any person appointed as adjudicator shall be a natural person acting in his personal capacity

3.0 TERMS OF APPOINTMENT OF THE ADJUDICATOR

- 3.1 The adjudicator shall at all times act impartially and independently of the parties, free of any conflict of interest, be it financial, personal or otherwise, and shall inform the parties immediately of anything 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 information without the prior written consent of the parties

- 3.4 The adjudicator may not, subsequent to a determination having been made in respect of the dispute he is appointed for, be called as a witness in subsequent court or arbitration proceedings 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 specialist assistance related to his work under these rules without the prior approval of the parties, which approval shall not unreasonably be withheld. The parties shall respond to such request within three (3) working days failing which approval by the parties shall be regarded as having been given
- 3.6 The adjudicator shall have complete discretion as to how to conduct the adjudication and shall establish the procedure and timetable to the extent consistent with these rules
- 3.7 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 can be proven to have been made in violation of the adjudication rules, out of negligence, illegally or in bad faith

4.0 THE FEES OF THE ADJUDICATOR

4.1 The adjudicator shall be entitled to:

- 4.1.1 Be paid fees as tendered by the adjudicator at the time of appointment and agreed by the parties
- 4.1.2 Issue notice to 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 the adjudication procedure where a required deposit is not paid within five (5) working days from such notice
- 4.1.3 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, which approval shall not unreasonably be withheld. Failure by a party to respond to such request within three (3) working days shall be regarded that approval has been given
- 4.1.4 Exercise his lien on his determination until any outstanding amount(s) due, owing and payable have been paid in full
- 4.2 Where a party fails to comply with a request for payment within the period stipulated by the adjudicator the other party may make such payment and recover same from the defaulting party
- 4.3 All fees and disbursements 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) working days of receipt of the adjudicator's invoice for payment
- 4.4 The adjudicator shall (subject to rule 4.1.4) not be entitled to any fees or disbursements where he knowingly breaches any of the provisions of rule 3.0, acts illegally or in bad faith or fails to submit a written determination of the dispute to the parties in terms of rule 6.1. The adjudicator shall reimburse the parties all fees and disbursements received from the parties where any such breach, illegal act, act of bad faith or failure occurs

5.0 PROCEDURE

- 5.1 The claimant shall, within ten (10) working days from the date of the appointment of the adjudicator, submit full details of dispute arising in terms of the Dispute Resolution clause of the applicable agreement to the adjudicator for determination together with its notice of adjudication in terms of such agreement(s). The details of dispute shall comprise of:
 - 5.1.1 statement of the party's case;
 - 5.1.2 copy of the applicable agreement;
 - 5.1.3 description of the circumstances giving rise to the dispute;
 - 5.1.4 grounds on which the party seeks redress;
 - 5.1.5 evidence upon which the party relies; and
 - 5.1.6 relief soughtThe adjudicator shall notify the parties of the date of receipt of such details (the "referral date")
- 5.2 The respondent may submit a written response to the details of dispute not later than ten (10) working days from the referral date. Should the respondent not submit such written response to the adjudicator within the said period, it shall be assumed that he does not dispute the details thus submitted by the claimant
- 5.3 The claimant may within five (5) working days of receipt of the response, if applicable, from the respondent, submit a replication, without including new details or argument not contained in the initial details submitted in terms of rule 5.1, to the adjudicator and the respondent

5.4 The adjudicator shall:

- 5.4.1 Act as an expert in determining the dispute
- 5.4.2 Ensure that each party is furnished with a copy of any written communication sent to or received from either party
- 5.4.3 Give five (5) working days notice of a hearing or joint meeting (where applicable) to the parties with full disclosure of the date, time and location. 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 or procedures of any court. The parties shall not be entitled to be represented at such hearing or joint meeting by practicing lawyers, unless otherwise agreed to in writing by the parties
- 5.4.4 Adopt the most cost and time effective procedure consistent with fairness to determine the dispute
- 5.4.5 Determine the dispute based on the submitted documents, evidence submitted during a hearing, evidence submitted during meeting(s) and an inspection of work related to the dispute, as may be appropriate/applicable
- 5.4.6 Decide on his own jurisdiction
- 5.4.7 Apply his specialist knowledge in determining the dispute
- 5.4.8 Require a party within a period determined by the adjudicator to submit any further information, document or evidence which he may reasonably require to make a determination
- 5.4.9 Open up, inspect or review any opinion, instruction, determination, certificate or valuation related to the dispute
- 5.4.10 Refuse admission to any person(s) other than the parties and their respective representatives, if such representation was agreed to in writing by the parties, and witnesses to any hearing or meeting
- 5.4.11 Conclude the adjudication and make a determination notwithstanding a party's failure to attend meetings, hearings or to provide information requested
- 5.4.12 Decide on the liability to be apportioned, if any, between the parties for the payment of his fees and disbursements subject to rule 4.3
- 5.4.13 Decide on the payment of interest in accordance with the agreement

5.5 The adjudicator may:

- 5.5.1 Conduct a hearing provided that the determination is delivered within the time allowed for in rule 6.0
- 5.5.2 Meet jointly with the parties, together with any agent or others involved in the dispute, provided that the determination is delivered within the time allowed for in rule 6.0
- 5.5.3 On a written request of either party grant an extension of time to the parties, to the maximum of five (5) working days, for an action required in respect of rules 5.1 to 5.3.

6.0 DETERMINATION

6.1 The adjudicator's written determination of the dispute shall:

- 6.1.1 Be delivered to the parties, at their respective physical addresses or by e-mail, as recorded in the adjudication contract, not later than twenty-five (25) working days from the referral date. The time limit shall be extended in respect of a delay caused by suspension of work by the adjudicator in terms of rule 4.1.2, as well as where extension has been granted in respect of rule 5.5.3.
- 6.1.2 Include reasons
- 6.1.3 Be binding on the parties for immediate compliance and shall remain in force until such determination of the dispute is overturned or varied in whole or in part by arbitration proceedings in terms of the Dispute Resolution clause of the applicable agreement
- 6.1.4 Constitute a liquid document. In the case where the written determination orders the payment of an amount of money, such amount shall be a liquidated amount

6.2 Either party may:

- 6.2.1 Within five (5) working days, in writing, request the adjudicator to correct any patent clerical, typographical or arithmetical error or clarify any ambiguity in the determination. Such party shall simultaneously furnish the other party with a copy of such request. The adjudicator shall comply with such request within a further five (5) working days
- 6.2.2 Apply to the High Court for the enforcement of the determination. The parties shall accept the jurisdiction of such court

7.0 TERMINATION OF THE APPOINTMENT OF THE ADJUDICATOR

7.1 The adjudicator may resign his appointment by giving five (5) working days notice to the parties

7.2 The appointment of the adjudicator:

7.2.1 May be terminated at any time by the mutual agreement of the parties

7.2.2 Shall be terminated should he not perform his duties within ten (10) working days of receipt of a notice from either party specifying breach of his appointment. A copy of such notice shall simultaneously be served on the other party

7.3 In the event that the adjudicator's contract and mandate is terminated jointly by the parties another adjudicator shall be appointed in terms of rule 2.4 to avoid prolongation of the adjudication procedure, if the matter is to proceed with adjudication