

TeCSA ADJUDICATION RULES

~~2015-2018~~ | Version ~~3.2.1~~3.2.2

PROCEDURAL RULES FOR ADJUDICATION

- 1 The following rules
- 1.1 may be incorporated into any contract by reference to the "TeCSA Adjudication Rules" which expression shall mean, in relation to any adjudication, the most recent edition hereof as at the date of the written notice requiring that adjudication.
- 1.2 meet the requirements of adjudication procedure as set out in section 108 of the Housing Grants, Construction and Regeneration Act 1996 as may be amended from time to time ("the Act"); Part I of the Scheme for Construction Contracts shall thus not apply.

DEFINITIONS

- 2 In these Rules:
- "Chairman" means the Chairman for the time being of the Technology and Construction Solicitors Association ("TeCSA"), or such other committee member thereof as is authorised to deputise for him or her
- "Contract" means the agreement which includes the agreement to adjudicate in accordance with these Rules
- "days" shall have the same meaning as and be calculated in accordance with Part II of the Act.
- "Nomination Documents" means:
- (1) the Notice
 - (2) the completed [application for a](#) nomination form,
 - (3) copy or details of the Contract,
 - (4) TeCSA's appointment fee.
- "Notice" means a written notice of adjudication given by a Party to any other Party requesting adjudication and identifying in

general terms the dispute in respect of which adjudication is required.

"Party" means any party to the Contract and Parties shall be construed accordingly.

"Referral Notice" means the document referring the dispute in writing to the adjudicator accompanied by such documents as the referring party intends to rely upon.

COMMENCEMENT AND APPOINTMENT

- 3 These Rules shall apply upon any Party giving a Notice.
- 4 Where the Parties have agreed upon the identity of an adjudicator who confirms his readiness and willingness to embark upon the Adjudication ~~within 5 days of the Notice requesting adjudication~~, then that person shall be the Adjudicator.
- 5 Where the Parties have not so agreed upon an adjudicator, or where such person has not so confirmed his willingness to act, then any Party shall no later than 2 days after receipt of the Notice by the other Party apply to the Chairman for a nomination. The following procedure shall apply: -
- 5.1 The Notice shall be deemed received if delivered by hand on the day of delivery ~~if~~ sent by electronic mail or facsimile when received by the other Party in readable form and if sent by first class post 2 days after posting.
- 5.2 The application shall be made by the referring party sending the Nomination Documents to the Chairman.
- 5.3 A copy of the Nomination Documents shall be sent to the responding party by email (or, if no email address is known for the responding party, by first class post) at the same time as they are sent to the Chairman.
- ~~5.3~~5.4 The Chairman shall nominate with the object of securing the appointment of an Adjudicator within 5 days from the date of the Notice referred to in Rule 3.
- 5.5 TeCSA is under no obligation to provide a copy of the application form or any other document or communication to the responding party. Nevertheless, TeCSA reserves the right to provide a copy of the application form or any other document or communication to the other party in its absolute discretion.
- 6 Within 7 days from the date of the Notice referred to in Rule 3:-
- 6.1 provided he is willing and able to act, any agreed Adjudicator under Rule 4 or nominated Adjudicator under Rule ~~5.2~~ shall give written notice of his acceptance of appointment to all parties; and

- 6.2 the referring party shall serve the Referral Notice on the Adjudicator and the other party.
- 7 The date of the referral of the dispute shall be the date the Referral Notice is received by the Adjudicator. The Adjudicator shall confirm to the Parties the date of receipt of the Referral Notice.
- 8 Where an Adjudicator has already been appointed in relation to another dispute arising out of the Contract, the Chairman of TeCSA may appoint either the same or a different person as Adjudicator.
- 9 A Notice may be given at any time and notwithstanding that arbitration or litigation has been commenced in respect of such dispute.
- 10 More than one such Notice may be given in respect of disputes arising out of the same contract.

SCOPE OF THE ADJUDICATION

- 11 The scope of the Adjudication shall be the dispute identified in the Notice, together with:
- 11.1 any further matters which all Parties agree should be within the scope of the Adjudication, and
- 11.2 any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and/or meaningful.
- 12 The Adjudicator may decide upon his own substantive jurisdiction and as to the scope of the Adjudication.

THE PURPOSE OF THE ADJUDICATION AND THE ROLE OF THE ADJUDICATOR

- 13 The underlying purpose of the Adjudication is to decide disputes between the Parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.
- 14 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbitrator.
- 15 Unless the Parties agree that any decisions of the Adjudicator shall be final and binding, any decision of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.

- 16 The Adjudicator shall have the like power to open up and review any certificates or other things issued or made pursuant to the Contract as would an arbitrator appointed pursuant to the Contract and/or a court.

CONDUCT OF THE ADJUDICATION

- 17 The Adjudicator shall establish the procedure and timetable for the Adjudication and may proceed if one party does not participate or cooperate.
- 18 Without prejudice to the generality of Rule 17, the Adjudicator may if he thinks fit:
- 18.1 Require the delivery of written statements of case,
 - 18.2 Require any Party to produce a bundle of key documents, whether helpful or otherwise to that Party's case, and to draw such inference as may seem proper from any imbalance in such bundle that may become apparent,
 - 18.3 Require the delivery to him and/or the other Parties of copies of any documents other than documents that would be privileged from production to a court,
 - 18.4 Limit the length of any written or oral submission,
 - 18.5 Require the attendance before him for questioning of any Party or employee or agent of any Party,
 - 18.6 Make site visits,
 - 18.7 Subject to Rule 19 make use of his own specialist knowledge,
 - 18.8 Obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents,
 - 18.9 Make directions for the conduct of the Adjudication orally or in writing, if made orally the directions shall be confirmed by the Adjudicator in writing,
 - 18.10 Review and revise any of his own previous directions,
 - 18.11 Conduct the Adjudication inquisitorially, and take the initiative in ascertaining the facts and the law,
 - 18.12 Reach his decision(s) with or without holding an oral hearing.
- 19 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents.

- 20 The Adjudicator may not:
- 20.1 Request and or require any advance payment of or security for his fees;
 - 20.2 Receive any submissions from one Party that are not also made available to the others;
 - 20.3 Except in the event of misconduct by that representative refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present;
 - 20.4 Act or continue to act if he has a conflict of interest or if there are matters which reasonably give rise to a legitimate concern as to apparent bias; and / or
 - 20.5 Subject to Rule 25, require any Party to pay or make contribution to the legal costs of another Party arising in the Adjudication
- 21 The Adjudicator shall reach a decision within 28 days after receipt of the referral by him as notified to the parties in accordance with Rule 7 or such longer period as is agreed by the Parties after the dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the Party by whom the dispute was referred.

ADJUDICATOR'S FEES AND EXPENSES

- 22 If a Party shall request Adjudication, and it is subsequently established that he was not entitled to do so, that Party shall be solely responsible for the Adjudicator's fees and expenses.
- 23 Save as aforesaid, the Parties shall be jointly and severally responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under Rule 18.8. In his decision, the Adjudicator shall have the discretion to make directions with regard to those fees and expenses. If no such directions are made, the Parties shall bear such fees and expenses in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from other Parties accordingly.
- 24 The Adjudicator's fees shall not exceed the rate of ~~£1,750~~ £2,500 per day plus expenses and VAT.

COSTS

- 25 If the Parties so agree in writing after any Party has given a Notice in accordance with Rule 3, the Adjudicator shall have jurisdiction to award the parties' legal and expert costs in relation to the adjudication as he sees fit.

- 26 Notwithstanding anything to the contrary in any contract between the Parties, the Adjudicator shall have no jurisdiction to require the Party which referred the dispute to adjudication to pay the costs of any other Party solely by reason of having referred the dispute to adjudication.

DECISIONS

- 27 The Adjudicator may in any decision direct the payment of such interest as may be appropriate.
- 28 Any decision shall be in writing. The Adjudicator shall provide written reasons for his decision.
- 29 The Adjudicator may, on his own initiative or on the application of a Party, correct his decision so as to remove any clerical or typographical mistake and/or error arising by accident or omission.
- 30 Any application for the exercise of the Adjudicator's powers under paragraph 29 shall be made within 5 days of the date that the decision is delivered to the Parties or such shorter period as the Adjudicator may specify in his decision.
- 31 Any correction of a decision shall be made as soon as possible after the date that the application was received by the Adjudicator or, where the correction is made by the Adjudicator on his own initiative as soon as possible after he becomes aware of the need to make a correction.

IMMUNITY, CONFIDENTIALITY AND NONCOMPELLABILITY

- 32 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of his functions as Chairman, deputy or Adjudicator (as the case may be) whether in negligence or otherwise, unless the act or omission is in bad faith.
- 33 Unless the Parties otherwise agree the Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings.
- 34 In the event that any Party seeks to challenge or review any decision of the Adjudicator in any subsequent litigation or arbitration, the Adjudicator shall not be joined as a party to, nor shall be summoned or otherwise required to give evidence or provide his notes in such litigation or arbitration.

LAW

- 35 These Rules shall be construed in accordance with the laws of England and Wales.

NOTES to the TeCSA ADJUDICATION RULES

These notes do not form part of the TeCSA Adjudication Rules

These rules may be incorporated into contracts, including contracts contained in correspondence, by suitable wording along the following lines:

"Any dispute arising under this agreement shall in the first instance be referred to adjudication in accordance with the TeCSA Adjudication Rules current at the date of this Contract Version 3.2"

The Act gives parties to a construction contract other than with a residential occupier or an excluded contract entered into after 1st May 1998 a right to refer a dispute arising under the contract to adjudication. If the contract does not incorporate the TeCSA Adjudication Rules or other provisions meeting the compliance criteria set out in the Act, then the terms of Part I of the Scheme for Construction Contracts become applicable.

If the contract does not incorporate the TeCSA Adjudication Rules or otherwise comply with the compliance criteria such that there is no agreed adjudication or nominating body, then a party in dispute may ask TeCSA to appoint an adjudicator; TeCSA is an "adjudicator nominating body" within the meaning of paragraph 2(3) of The Scheme for Construction Contracts (England and Wales) Regulations 1998. An adjudicator so appointed will conduct the adjudication in accordance with the Scheme, or if the parties so agree, the TeCSA Adjudication Rules. The parties to a construction contract may also agree at any time to use the TeCSA Adjudication Rules to determine a dispute under that construction contract by adjudication even if such a contract is with a residential occupier or adjudication would otherwise not be a requirement of the Act.

If the contract contains an arbitration clause, then in order to prevent enforcement difficulties arising out of Section 9 of the Arbitration Act 1996, TeCSA recommends that the arbitration clause should contain wording along the following lines:

"Provided always that the enforcement of any decision of an adjudicator is not a matter which may be referred to arbitration."

Applications for the appointment of an adjudicator to be made to the Chairman of TeCSA using the prescribed form.

TeCSA its Committee and members take no responsibility for loss or damage caused to any user of these Rules or these Notes.

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