

**THE ASSOCIATION OF ARBITRATORS
(SOUTHERN AFRICA)**

NPC

**A COMPENDIUM OF THE FIRST TO EIGHTH EDITIONS OF
THE RULES FOR THE CONDUCT OF ARBITRATIONS
FROM 1980 TO 2018**

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RULES FOR THE CONDUCT OF ARBITRATIONS



RULES FOR THE CONDUCT OF ARBITRATIONS

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1. DEFINITIONS

In these rules:

- 1.1 "day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "rules" means these arbitration rules;
- 1.3 "claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other "claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "defendant" means the party to the arbitration other than the claimant;
- 1.5 "relevant document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including all such plans, diagrams and photographs, but excluding documents which he has a valid objection to produce at the arbitration;
- 1.6 where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the feminine and the neuter.

2. ARBITRATION ACT

Save as varied herein, the provision of the Arbitration Act (Act No. 42 of 1965) shall apply.

3. STATEMENT OF CASE

Not later than 21 days after the date of appointment of the arbitrator, the claimant shall deliver to the arbitrator and the defendant details of

- 3.1 each dispute on which arbitration is sought
- 3.2 the relief claimed and
- 3.3 all the facts and the contentions of law constituting the case of the claimant

together with true copies of all relevant documents, all of which details and copies are hereinafter referred to as the "statement of case".

4. STATEMENT OF DEFENCE

- 4.1 Not later than 21 days after the receipt by the defendant of the statement of case, the defendant shall deliver to the arbitrator and to the claimant details of
 - 4.1.1 his defence stating which contentions of fact or law in the statement of case are admitted and which are denied
 - 4.1.2 the grounds for every denial or objection and
 - 4.1.3 all the facts and contentions of law constituting part of the defendant's case

together with true copies of all relevant documents other than those delivered in terms of Rule 3, all of which details and copies are hereinafter referred to as the "statement of defence".

4.2 Not later than 14 days after the receipt by the claimant of the statement of defence, the claimant may deliver to the arbitrator and the defendant a replication in respect of any allegations made in the statement of defence together with true copies of all relevant documents other than those delivered in terms of Rule 3, all of which are hereinafter referred to as "claimant's replication".

5. DEFENDANT'S COUNTER-CLAIM

At the time of delivery of the statement of defence, the defendant may deliver counter-claims, alleged to fall within the arbitration agreement, to the arbitrator and to the claimant, setting forth mutatis mutandis details of the matters referred to in terms of Rule 3, together with true copies of all relevant documents other than those delivered in terms of Rules 3 or 4, all of which details and copies are hereinafter referred to as the "defendant's counter-claim".

6. CLAIMANT'S REPLY

6.1 Not later than 21 days after the receipt by the claimant of the defendant's counter-claim, the claimant shall deliver to the arbitrator and to the defendant details of

6.1.1 his reply stating which contentions of fact or law in the defendant's counter-claim are admitted and which are denied

6.1.2 the grounds for every denial or objection and

6.1.3 all the facts and contentions of law forming part of the claimant's reply

together with true copies of all relevant documents other than those delivered in terms of Rules 3 to 5, all of which details and copies are hereinafter referred to as the "claimant's reply".

6.2 Not later than 14 days after the receipt by the defendant of the claimant's reply, the defendant may deliver to the arbitrator and the claimant a replication in respect of any allegations made in the claimant's reply together with true copies of all relevant documents other than those delivered in terms of Rules 3, 4 and 5, all of which are hereinafter referred to as "defendant's replication".

7. NO AMENDMENTS OF STATEMENTS

The parties shall not amend the statements referred to in Rules 3 to 6, or deliver any additional statements, except by leave of the arbitrator.

8. INSPECTION AND PRODUCTION OF DOCUMENTS

8.1 Each party shall on written notice from the other party:

8.1.1 allow the other party to inspect and, at his own expense, to make copies of all relevant documents whether delivered in terms of Rules 3 to 6 or not; and

8.1.2 produce at the arbitration hearing any relevant document not delivered in terms of Rules 3 to 6.

8.2 Either party shall be entitled, on written notice to the other party delivered not later than 14 days before the commencement of the arbitration hearing, to require that any relevant document whether delivered in terms of Rules 3 to 6 or to be produced in terms of Rule 8.1.2, shall, notwithstanding the provisions of Rule 16 be produced at the arbitration hearing by a witness under oath.

8.3 Either party shall be entitled to produce at the arbitration hearing, any relevant document not delivered in terms of Rules 3 to 6 provided that:

8.3.1 the party shall have delivered, by not later than 14 days before the arbitration hearing, written notice to the arbitrator and to the other party of the intention so to produce which notice shall be accompanied by a true copy of such document.

8.3.2 such document shall be produced at the arbitration hearing by a witness under oath.

9. TIME LIMITS

The time limits stated in these rules shall not be extended ~~except~~ by leave of the arbitrator.

10. PROCEEDINGS EX PARTE

After the parties have agreed to arbitration the arbitrator may proceed with the arbitration, notwithstanding any failure, neglect or refusal of either party to comply with these rules or to take part or further part in the arbitration.

11. ADMINISTRATION MEETING

11.1 Prior to the commencement of the hearing the arbitrator shall if requested in writing by either party, or may on his own accord, arrange a meeting with the parties for the purpose of determining:

- 11.1.1 the date and venue for the hearing;
- 11.1.2 the times and duration of the sessions; and
- 11.1.3 the manner and extent of recording evidence.

11.2 Should the parties fail to reach agreement at this meeting on any of these matters, the arbitrator shall make the final decision.

11.3 Should no such meeting be held, the arbitrator shall decide these matters and shall give reasonable written notice of his decision to both parties.

12. PRE-HEARING CONFERENCE

12.1 Prior to the commencement of the hearing the parties shall arrange a pre-hearing conference with the object of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

- 12.1.1 the possibility of obtaining admissions of fact and of documents;
- 12.1.2 the holding of any inspection or examination;

- 12.1.3 the making of any discovery of documents;
- 12.1.4 the exchange between parties of the reports of experts;
- 12.1.5 the giving of any further particulars reasonably required for the purposes of the hearing;
- 12.1.6 the plans, diagrams, photographs, models and the like to be used at the hearing;
- 12.1.7 the consolidation of hearings;
- 12.1.8 the quantum of damages, and
- 12.1.9 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated bundle with copies for the arbitrator and both parties.

12.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed in at the commencement of the hearing.

13. AWARD WITHOUT ORAL HEARING

Where the parties so agree and notify the arbitrator in writing, the arbitrator may make his award without an oral hearing after consideration of the statement of case, the statement of defence, the defendant's counter-claim and the claimant's reply.

14. NOTICE OF LEGAL REPRESENTATION

14.1 A party intending to engage representation at the hearing shall give the other party not less than 10 days' written notice before the hearing of his intention to do so and the other party shall thereafter be entitled to engage legal representation without notice.

14.2 No party, shall, save with the leave of the arbitrator or the consent of all parties to the hearing, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall (a) not less than fourteen days before the hearing, have delivered notice of his intention so to do, and (b) not less than ten days before the hearing, have delivered a summary of such expert's opinions and his reasons therefor to the arbitrator and other party.

15. HEARING TO BE IN CAMERA

Unless the parties agree otherwise, the hearing of the arbitration shall be held in camera.

16. DOCUMENTS AS EVIDENCE

Any document delivered in terms of Rules 3 to 6 shall be admitted as evidence without the necessity for its identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the document.

17. DISPUTE ON RULES

Any dispute about the meaning or effect of any of these rules shall be determined by the arbitrator who shall further have power to give directions, not inconsistent with the rules, on the manner and time in which the rules shall be carried into effect.

18. DELIVERY OF AWARD

The arbitrator shall deliver his award in writing to the parties within a reasonable time after the conclusion of the hearing.

19. PUBLICATION

No portion of any relevant document or of evidence or of any ruling or award by the arbitrator shall be published except:

- 19.1 for publication as contemplated in Section 25 of the Arbitration Act; or
- 19.2 for the purpose of a statement of case for opinion in terms of Section 20 of the Arbitration Act; or
- 19.3 with the written consent of both parties; or
- 19.4 to the extent necessary for any proceeding in any court relating to the arbitration or to the rules or to any ruling or award of the arbitrator.

**REËLS VIR
DIE BEHARTIGING VAN
ARBITRASIES**



REËLS VIR DIE BEHARTIGING VAN ARBITRASIES

REËLS VIR DIE BEHARTIGING VAN ARBITRASIES

1. DEFINISIES

In hierdie reëls:

- 1.1 "dag" beteken enige dag behalwe 'n Saterdag, Sondag of openbare vakansiedag;
- 1.2 "reëls" beteken hierdie arbitrasiereëls;
- 1.3 "eiser" beteken dié party tot die arbitrasie wat 'n eis teen die ander party instel, met dien verstande dat indien elke party teen die ander 'n eis instel, "eiser" die party sal beteken wat eerste die geskil na arbitrasie verwys het;
- 1.4 "verweerde" beteken die ander party tot die arbitrasie as die eiser;
- 1.5 "toepaslike dokument" met betrekking tot elke party, beteken alle dokumente van welke aard ook al in sy besit of onder sy beheer, of oorspronklik of afskrifte, met betrekking tot die geskille wat na arbitrasie verwys is, met inbegrip van alle planne, diagramme en foto's, maar uitgesonder dokumente waarteen hy regtens beswaar kan maak om by die arbitrasie voor te lê;
- 1.6 waar toepaslik, sluit die enkeltvoud van woorde die meervoud, en die manlike vorm die vroulike en onsydige vorm in.

2. ARBITRASIEWET

Behalwe vir soverre hierin gewysig, sal die bepalings van die Arbitrasiewet (Wet Nr. 42 van 1965) van toepassing wees.

3. EISER SE DEKLARASIE

Nie later nie as 21 dae na die datum van deklarasieaanstelling van die arbiter, sal die eiser aan die arbiter en die verweerde besonderhede verskaf van

- 3.1 elke geskil ten opsigte waarvan arbitrasie verlang word
- 3.2 die regshulp gevorder en
- 3.3 al die feite en regskontensies wat die eiser se saak uitmaak

tesame met ware afskrifte van alle toepaslike dokumente. Al hierdie besonderhede en afskrifte word hierna die "eiser se deklarasie" genoem.

4. VERWEERSKRIF

- 4.1 Nie later nie as 21 dae na ontvangst deur die verweerde van die eiser se deklarasie, sal die verweerde aan die arbiter en die eiser besonderhede verskaf van

4.1.1 sy verweer waarin gesê word welke kontensies van feite of reg in die eiser se deklarasie erken en welke ontken word

4.1.2 die gronde vir elke ontkenning of beswaar en

4.1.3 al die feite en regskontensies wat die verweerde se saak uitmaak

tesame met ware afskrifte van alle toepaslike dokumente, behalwe dié aangelewer ingevolge Reël 3. Al hierdie besonderhede en afskrifte word hierna die "verweerskrif" genoem.

4.2 Nie later nie as 14 dae na die ontvangs deur die eiser van die verweerskrif, mag die eiser 'n repliek aan die arbiter en die verweerde lewer ten opsigte van enige aantygings gemaak in die verweerskrif tesame met ware afskrifte van alle betrokke dokumente anders as dié gelewer ingevolge Reël 3, wat alles hierna "eisersrepliek" genoem word.

5. VERWEERDER SE VERTEENVORDERING

Ten tye van die lewering van die verteenvordering weerskrif kan die verweerde teeneise wat na bewering binne die bestek van die arbitrasieoorenkoms val, op die arbiter en eiser bestel, waarin mutatis mutandis uiteengesit word besonderhede van die sake waarna in Reël 3 verwys word, tesame met ware afskrifte van alle toepaslike dokumente bo en behalwe dié gelewer ingevolge Reëls 3 of 4. Al hierdie besonderhede en afskrifte word hierna die "verweerde se teenvordering" genoem.

6. EISER SE REPLIEK

6.1 Nie later nie as 21 dae na ontvangs deur die eiser van die verweerde se teenvordering, sal die eiser aan die arbiter en verweerde besonderhede verskaf van

6.1.1 sy antwoord waarin uiteengesit word welke kontensies van feite of reg in die verweerde se teenvordering erken en welke ontken word

6.1.2 die gronde vir elke ontkenning of beswaar en

6.1.3 al die feite en regskontensies wat die eiser se repliek uitmaak tesame

met ware afskrifte van alle toepaslike dokumente, behalwe dié gelewer ingevolge Reëls 3 tot 5. Al hierdie besonderhede en afskrifte word hierna die "eiser se repliek" genoem.

6.2 Nie later nie as 14 dae na die ontvangs deur die verweerde van die eiser se antwoord, mag die verweerde 'n repliek aan die arbiter en die eiser lewer ten opsigte van enige aantygings gemaak in die eiser se antwoord tesame met ware afskrifte van alle betrokke dokumente anders as dié gelewer ingevolge Reëls 3, 4 en 5, wat alles hierna "verweerdersrepliek" genoem word.

7. GEEN WYSIGINGS

Die partye sal nie die verklarings wysig van verklarings waarna in Reëls 3 tot 6 verwys word nie, of enige addisionele verklarings lewer nie, behalwe met die toestemming van die arbiter.

8. INSPEKSIE EN VOORLEGGING VAN DOKUMENTE

8.1 Elke party sal na skriftelike kennisgewing deur die ander party:

8.1.1 die ander party toelaat om alle toepaslike dokumente te ondersoek en om op sy eie koste afskrifte daarvan te maak, of vermelde dokumente ingevolge Reëls 3 tot 6 afgelewer is of nie; en

8.1.2 by die arbitrasieverhoor enige toepaslike dokumente voorlê wat nie ingevolge Reëls 3 tot 6 gelewer is nie.

8.2 Enigeen van die twee partye is geregtig, na skriftelike kennisgewing aan die ander party wat nie later as 14 dae voor die aanvang van die arbitrasieverhooer afgelewer is nie, om te vereis dat enige betrokke dokument, of dit ingevolge Reëls 3 tot 6 afgelewer of ingevolge Reël 8.1.2 verskaf moet word, niteenstaande die bepalings van Reël 16 tydens die arbitrasieverhooor onder eed deur 'n getuie voorgelê word.

8.3 Enigeen van die twee partye is geregtig om enige betrokke dokument wat nie ingevolge Reëls 3 tot 6 afgelewer is nie, tydens die arbitrasieverhooor voor te lê, met dien verstande dat:

8.3.1 die party, nie later nie as 14 dae voor die aanvang van die arbitrasieverhooor, skriftelike kennisgewing aan die arbiter en aan die ander party gelewer het van die voorneme van sodanige voorlegging, welke kennisgewing van 'n ware afskrif van sodanige dokument vergesel moet word

8.3.2 sodanige dokument tydens die arbitrasieverhooor onder eed deur 'n getuie voorgelê word

9. TERMYNBEPALINGS

Die termynbepalings wat in hierdie reëls vervat is, sal nie verleng word nie behalwe met die toestemming van die arbiter.

10. VERRIGTINGE EX PARTE

Nadat die partye toegestem het tot arbitrasie kan die arbiter die arbitrasie voortsit ondanks versuim,

late of weiering deur een van die partye om hierdie reëls na te kom of om deel te neem of verder deel te neem aan die arbitrasie.

11. REËLINGSVERGADERING

- 11.1 Voor die aanvang van die verhoor sal die arbiter, as hy skiftelik versoek word deur een van die partye, of uit eie beweging, 'n vergadering tussen die partye belê met die doel om die volgende te bepaal:
 - 11.1.1 die datum en plek van die verhoor;
 - 11.1.2 die tye en duur van die sessies; en
 - 11.1.3 die wyse en omvang van die op-tekening van getuienis.
- 11.2 Indien die partye op hierdie vergadering nie oor enige van hierdie aangeleenthede kan saamstem nie, sal die arbiter finaal daaroor beslis.
- 11.3 Indien geen sodanige vergadering gehou word nie, sal die arbiter oor hierdie aangeleenthede beslis en redelike skriftelike kennis van sy besluite aan albei partye gee.

12. VOORVERHOORSE SAMESPREKING

- 12.1 Voor die aanvang van die verhoor sal die partye 'n voorverhoorse samespreking reël met die doel om ooreen te kom oor moontlike maniere waaro die duur van die verhoor verkort kan word, en meer bepaald oor soveel moontlik van die volgende aangeleenthede:
 - 12.1.1 erkenning van feite en van dokumente;

- 12.1.2 die hou van 'n inspeksie of ondersoek;
- 12.1.3 die ontdekking van stukke;
- 12.1.4 uitruil tussen die partye van die verslae van deskundiges;
- 12.1.5 verskaffing van verdere besonderhede wat redelik nodig is vir verhoordoeleindes;
- 12.1.6 die planne, tekeninge, foto's, modelle en so meer wat by die verhoor gebruik staan te word;
- 12.1.7 konsolidering van verhore;
- 12.1.8 die quantum van skadevergoeding;
- 12.1.9 voorbereiding en inlewering by die verhoor van afskrifte van korrespondensie en ander stukke in die vorm van 'n gepagineerde bundel met eksemplare vir die arbiter en alle partye.

- 12.2 Na afloop van die samesprekings moet die partye 'n notule opstel van die sake waaroor hulle ooreengekom het en dit onderteken. Dit moet by die aanvang van die verhoor ingehandig word.

13. BESLISSING SONDER VERHOOR

Indien die partye so ooreenkom en die arbiter skriftelik daarvan in kennisstel, kan die arbiter sy beslissing sonder 'n mondelinge verhoor maak na oorweging van die eiser se deklarasie, die verweerskrif, die verweerde se teenvordering en die eiser se repliek.

14. KENNIS VAN REGSVEREENWOORDIGING

14.1 'n Party wat van voorneme is om van regsveteenwoordiging by die verhoorwoordiginggebruik te maak, sal die ander party nie later nie as 10 dae voor die verhoor skriftelik kennis gee van sodanige voorneme en die ander party sal dan geregtig wees om sonder kennisgewing van regsveteenwoordiging gebruik te maak.

14.2 Geen party is geregtig, behalwe met die toestemming van die arbiter of van al die partye betrokke by die verhoor, om enige persoon as getuie te roep om getuenis te lewer as 'n deskundige op enige aangeleentheid waarop die getuenis van deskundige getuies ontvang mag word nie, tensy hy (a) nie minder nie as veertien dae voor die verhoor kennis gegee het van sy voorneme om dit te doen en (b) nie minder nie as tien dae voor die verhoor 'n opsomming van sodanige deskundige se opinies en sy redes daarvoor aan die arbiter en die ander party verskaf het.

15. VERHOOR IN CAMERA

Tensy die party anders besluit, sal die arbitrasieverhoor in camera geskied.

16. DOKUMENTE AS GETUIENIS

Alle dokumente gelewer ingevolge Reëls 3 tot 6 sal as getuenis toegelaat word sonder dat hulle deur enige getuie geïdentifiseer of bevestig hoef te word, maar elke party sal geregtig wees om getuenis ten opsigte van die oorsprong, korrektheid, betekenis en tersaaklikheid van die dokumente aan te bied.

17. DISPUUT OOR REËLS

Enige dispoot met betrekking tot die betekenis of effek van enige van hierdie reëls sal deur die arbiter bygelê word. Hy sal ook die bevoegdheid hê om bevele uit te vaardig wat nie in stryd met hierdie reëls is nie in verband met die wyse en tyd waarop die reëls in werking sal tree.

18. LEWERING VAN UITSPRAAK

Die arbiter sal sy uitspraak binne 'n redelike tyd na afloop van die verhoor skriftelik aan die partye lewer.

19. PUBLIKASIE

Geen gedeelte van enige toepaslike dokument of getuenis of enige bevinding of uitspraak van die arbiter sal gepubliseer word nie behalwe:

- 19.1 publikasie soos voorsien in Artikel 25 van die Arbitrasiewet; of
- 19.2 publikasie vir die doel van 'n deklarasie vir regadvies ingevolge Artikel 20 van die Arbitrasiewet; of
- 19.3 met die skriftelike toestemming van beide partye; of
- 19.4 in soverre dit noodsaaklik is vir enige saak in enige hof met betrekking tot die arbitrasie, of die reëls of enige bevinding of uitspraak van die arbiter.

Appendix III

RULES FOR THE CONDUCT OF ARBITRATIONS

(Published by the Association of Arbitrators: 1990 edition)

(i) STANDARD PROCEDURE RULES

The Standard Procedure Rules shall apply to the conduct of arbitrations unless the parties agree in writing to adopt the Summary Procedure Rules.

1. DEFINITIONS

in these rules:

- 1.1 'Day' means any day other than a Saturday, Sunday or public holiday;
- 1.2 'Rules' means these arbitration rules;
- 1.3 'Claimant' means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, 'claimant' shall mean the party who first referred the dispute to arbitration;
- 1.4 'Defendant' means the party to the arbitration other than the claimant;
- 1.5 'Relevant Document' means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including all such plans, diagrams and photographs, but excluding documents which by reason of privilege he has a valid objection to produce at the arbitration;
- 1.6 'Pleadings' means the Statement of Issues, Statement of Claim, Statement of Defence, Claimant's Replication, Defendant's Counter-claim, Claimant's Reply, Defendant's Replication and any other similar statements permitted by the arbitrator; and
- 1.7 where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the feminine and the neuter.

2. ARBITRATION ACT

Save as varied herein, the provision of the Arbitration Act (Act No. 42 of 1965) shall apply.

3. PRELIMINARY MEETING

On the reference of a dispute to the arbitrator he may convene a preliminary meeting with the parties for the purpose of:

- 3.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 3.2 recording the acceptance by the arbitrator of his appointment and any conditions attached thereto;
- 3.3 arranging for the delivery of Pleadings as provided in Rule 4 or Rules 5 to 10;
- 3.4 determining the date and venue of the hearing, and times and duration of sessions;
- 3.5 determining the manner and extent of recording evidence; and
- 3.6 dealing with any other matters or proposals that might facilitate the arbitration.

If no preliminary meeting is held the arbitrator shall determine the commencement date for the pleadings.

4. STATEMENT OF ISSUES

Not later than 15 days after the preliminary meeting the parties shall jointly prepare and submit to the arbitrator a Statement of Issues containing details of:

- 4.1 relevant matters which are not in dispute;
- 4.2 the disputed issues in which the averments of each are set out, the responses of each to the averments of the other, the facts and contentions of law on which each party relies together with true copies of all the relevant documents; and
- 4.3 the award which each party desires the arbitrator to make.

Provided that if the parties are unable jointly to prepare a Statement of Issues, they shall deliver Pleadings as provided in Rules 5 to 10.

5. STATEMENT OF CLAIM

If the parties been unable to prepare a Statement of Issues, the Claimant shall not later than 20 days after the preliminary meeting deliver to the arbitrator and the Defendant details of:

- 5.1 each dispute on which arbitration is sought;
- 5.2 the relief claimed; and
- 5.3 all the facts and the contentions of law constituting the claim; together with true copies of all relevant documents, all of which details and copies are hereinafter referred to as the 'Statement of Claim'.

6. STATEMENT OF DEFENCE

Not later than 15 days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the arbitrator and to the Claimant details of:

- 6.1 his defence stating which contentions of fact or law in the Statement of Claim are admitted and which are denied;
- 6.2 the grounds for every denial or objection; and
- 6.3 all the facts and contentions of law constituting the defence;

together with true copies of all relevant documents other than those delivered in terms of Rule 5, all of which details and copies are hereinafter referred to as the 'Statement of Defence'.

7. CLAIMANT'S REPLICATION

Not later than 10 days after the receipt by the Claimant of the Statement of Defence, the Claimant may, if necessary, deliver to the arbitrator and the Defendant a replication in respect of any allegations made in the Statement of Defence together with true copies of all relevant documents other than those delivered with any previous Pleading, all of which details and copies are hereinafter referred to as 'Claimant's Replication'.

8. DEFENDANT'S COUNTER-CLAIM

At the time of delivery of the Statement of Defence, the Defendant may deliver counter-claims, alleged to fall within the arbitration agreement, to the arbitrator and to the Claimant, setting forth mutatis mutandis details of the matters referred to in terms of Rule 5, together with true copies of all relevant documents other than those delivered with any previous Pleading, all of which details and copies are hereinafter referred to as the 'Defendant's Counter-claim'.

9. CLAIMANT'S REPLY

Not later than 15 days after the receipt by the Claimant of the Defendant's Counter-claim, the Claimant shall deliver to the arbitrator and to the Defendant details of:

- 9.1 his reply stating which contentions of fact or law in the Defendant's Counter-claim are admitted and which are denied;
- 9.2 the grounds for every denial or objection; and
- 9.3 all the facts and contentions of law constituting the defence to the Counter-claim;

together with true copies of all relevant documents other than those delivered with any previous Pleading, all of which details and copies are hereinafter referred to as the 'Claimant's Reply'.

10. DEFENDANT'S REPLICATION

Not later than 10 days after the receipt by the Defendant of the Claimant's Reply, the Defendant may, if necessary, deliver to the arbitrator and the Claimant a replication in respect of any allegations made in the Claimant's Reply together with true copies of all relevant documents other than those delivered with any previous Pleading, all of which details and copies are hereinafter referred to as 'Defendant's Replication'.

11. NO AMENDMENTS OF PLEADINGS

The parties shall not amend the Pleadings or deliver any additional statements, except by leave of the arbitrator.

12. INSPECTION, PRODUCTION OF DOCUMENTS AND DISCOVERY AFFIDAVIT

- 12.1 Each party shall on written notice from the other party:
 - 12.1.1 allow the other party to inspect and, at his own expense, to make copies of all relevant documents whether delivered with the Pleadings or not; and
 - 12.1.2 produce at the arbitration hearing any relevant document not delivered with the Pleadings.
- 12.2 Either party shall be entitled, on written notice to the other party delivered not later than 10 days before the commencement of the arbitration hearing, to require that any relevant document whether delivered with the Pleadings or not or to be produced in terms of Rule 12.1.2, shall, notwithstanding the provisions of Rule 19, be produced at the arbitration hearing by a witness under oath.
- 12.3 Either party shall be entitled to produce at the arbitration hearing, any relevant document not delivered with the Pleadings provided that:
 - 12.3.1 the party shall have delivered, by not later than 10 days before the arbitration hearing, written notice to the arbitrator and to the other party of the intention so to produce which notice shall be accompanied by a true copy of such document; and
 - 12.3.2 such document shall be produced at the arbitration hearing by a witness under oath.
- 12.4 Either party shall be entitled by written notice to the other party, given not earlier than the date of delivery of the last of the Pleadings, to require the other party to deliver a discovery affidavit.
- 12.5 Within 10 days after receipt of the notice referred to in Rule 12.4 the recipient shall deliver to the other party an affidavit, duly sworn by him or on his behalf;
 - 12.5.1 detailing in respect of relevant documents not delivered with any of the Pleadings:
 - 12.5.1.1 those in his possession or in the possession of any person on his behalf; and
 - 12.5.1.2 those which were previously in such possession but are no longer so, specifying the date of and the reason for the termination of such possession; or
 - 12.5.2 recording that there were or are no relevant documents to which paragraph 12.5.1 applies.

13. TIME LIMITS

The time limits stated in these Rules shall not be extended or shortened except by leave of the arbitrator.

14. PROCEEDINGS ON DEFAULT

After the parties have agreed to arbitration the arbitrator may proceed with the

arbitration, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

15. PRE-HEARING CONFERENCE

15.1 Prior to the commencement of the hearing the parties shall arrange a pre-hearing conference with the object of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

- 15.1.1 the possibility of obtaining admissions of facts;
- 15.1.2 the holding of any inspection or examination;
- 15.1.3 the making of any discovery of documents;
- 15.1.4 the exchange between parties of the reports of experts and the preparation of a joint report by the experts setting out points of agreement and disagreement;
- 15.1.5 the giving of any further particulars reasonably required for the purposes of the hearing;
- 15.1.6 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
- 15.1.7 the consolidation of hearings;
- 15.1.8 the quantum of damages; and
- 15.1.9 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated bundle with copies for the arbitrator and both parties.

15.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed in at the commencement of the hearing.

16. PRIOR HEARING OF POINT OF LAW OR FACT

The arbitrator shall, if both parties so agree, or may, if he so decides, on the application of either party, determine any specified issue of law or fact before other issues in the arbitration are determined to which provision the following conditions shall apply:

- 16.1.1 the hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the arbitrator; and
- 16.1.2 the arbitrator shall make an award on the specified issue which award shall be an interim award if there are other issues remaining to be determined.

17. EVIDENCE OF EXPERT WITNESSES

No party shall, save with the leave of the arbitrator or the consent of all parties to the hearing, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall

- 17.1 not less than 15 days before the hearing, have delivered notice of his intention so to do, and
- 17.2 not less than 10 days before the hearing, have delivered a summary of such expert's opinions and his reasons therefor to the arbitrator and other party.

18. HEARING TO BE IN CAMERA

Unless the parties agree otherwise, the hearing of the arbitration shall be held in camera.

19. DOCUMENTS AS EVIDENCE

Any document delivered with the Pleadings shall be admitted as evidence without the necessity for its identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the document.

20. PAYMENT OF ADMITTED AMOUNT

The Defendant, in respect of the claim, or the Claimant, in respect of the counter-claim, shall be entitled, at any time before the delivery of the arbitrator's award, to pay to the other party an amount of money which he admits to be owing by him, to which provisions the following conditions shall apply:

- 20.1 the payment shall be by cash or currently dated cheque and, if by cheque, shall be effective when the cheque is paid on due presentation;
- 20.2 the payment shall be accompanied by a written notice specifying:
 - 20.2.1 the claim or counter-claim, or part thereof, on which the payment is made; and
 - 20.2.2 any tender which the party makes in respect of costs; and
- 20.3 a copy of the said notice shall be forthwith delivered to the arbitrator who shall take the payment and any tender of costs into account in making his award.

21. OFFER OF SETTLEMENT

The Defendant, in respect of the claim, or the Claimant, in respect of the counter-claim, shall be entitled, at any time before the delivery of the arbitrator's award, to tender payment of a specific amount of money without admission of liability and as an offer of settlement, to which provision the following conditions shall apply:

- 21.1 the tender shall be in the form of a written notice specifying:
 - 21.1.1 the claim or counter-claim, or part thereof, in respect of which the tender is made; and
 - 21.1.2 any tender which the party makes in respect of costs;

- 21.2 the recipient of the tender shall be entitled by written notice delivered within 10 days after his receipt of the tender notice to accept the tender, failing which notice he shall be deemed to have rejected the tender;
- 21.3 on receipt of a notice in terms of paragraph 21.2 the tenderer shall:
 - 21.3.1 within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an award or interim award ordering the payment to be made; and
 - 21.3.2 after such payment, deliver to the arbitrator copies of the notices referred to in paragraphs 21.1 and 21.2 together with a written statement that the payment referred to has been made;
- 21.4 if he received the notices and statement referred to in paragraphs 21.1, 21.2 and 21.3, the arbitrator shall take the facts therein recorded into account in making his award; and
- 21.5 if the tender of settlement is not accepted the fact of the tender and its non-acceptance shall not be made known to the arbitrator until he has announced his decision on all the issues in the arbitration other than costs, whereupon the said facts shall be made known to him, and shall be taken into account by him in his award of costs, provided that if the arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderer shall be entitled to have the award reopened and reconsidered in respect of the costs.

22. AWARD WITHOUT ORAL HEARING

Where the parties so agree and notify the arbitrator in writing, the arbitrator may make his award without an oral hearing after consideration of the Pleadings.

23. AWARD OF COSTS

Disbursements made by a successful party to his representative shall be recoverable by way of an award of costs on a scale to be agreed between the parties, or if not so agreed to be determined by the arbitrator who may in his sole discretion, direct that such costs shall be taxed in accordance with section 35 of the Arbitration Act. If the arbitrator directs that the costs be taxed by the taxing master of the court and the taxing master refuses or is unable to tax such costs then the matter shall revert to the arbitrator who shall make an award of such costs as he deems reasonable in the circumstances.

24. DISPUTE ON RULES

Any dispute about the meaning or effect of any of these Rules shall be determined by the arbitrator who shall further have power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

25. DELIVERY OF AWARD

- 25.1 The award shall be in writing and delivered by the arbitrator, the parties or their representatives being present or having been summoned to appear.
- 25.2 The arbitrator shall deliver his award within three months after the conclusion of the hearing, or the submission of the last document to the arbitrator in the event that there is no hearing. To the extent that this may be later than four months after entering on the reference, the time for making the award shall be deemed to be extended by the parties in terms of section 23 of the Arbitration Act.

26. PUBLICATION

Save to the extent necessary for the purposes of the arbitration or for any court proceedings relating thereto, neither party shall disclose or make available to any other person any information concerning the arbitration or the award.

(ii) SUMMARY PROCEDURE RULES

1. If the parties to a dispute so agree in writing, the dispute shall be determined by arbitration in accordance with the following summary procedure, and save as varied herein, the provisions of the Arbitration Act (Act 42 of 1965) shall apply to the arbitration.
2. The arbitrator shall, at such meeting or meetings with parties as he deems necessary:
 - 2.1 confirm that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
 - 2.2 record the acceptance by the arbitrator of his appointment and any conditions attaching thereto;
 - 2.3 ascertain the claims and counter-claims and defences thereto which the parties make or raise against each other;
 - 2.4 ascertain the facts on which the parties agree and those on which they disagree;
 - 2.5 record in writing signed by himself and the parties the matters referred to in Rules 2.3 and 2.4, which matters are herein called 'the issues'; and
 - 2.6 receive from the parties such documents or copies of documents as they consider relevant to the determination of the issues.
3. If the parties so agree, or if the arbitrator, on the application of either party, so determines, the arbitrator shall make his award without receiving oral evidence or affidavits after consideration of the issues and the documents or copies thereof referred to in Rule 2 and inspection of any property or thing to the extent that the arbitrator deems necessary.
4. If the provisions of Rule 3 shall not have been applied the arbitrator shall, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties, or, if the parties so agree, by the interchange of written

statements or submissions, between the parties with copies to the arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

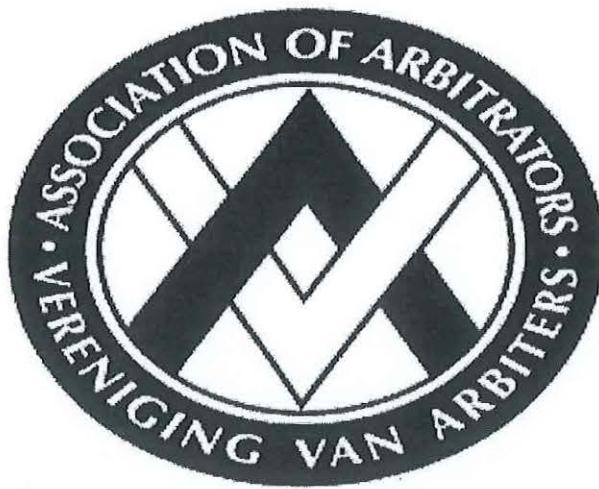
5. The arbitrator shall have the power to:
 - 5.1 depart from any statutory or common-law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;
 - 5.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;
 - 5.3 make such enquiries as he considers necessary or expedient provided that he shall inform the parties of all matters ascertained as the result of such enquiries;
 - 5.4 grant to the parties such opportunity as he deems reasonable of making amendments to the issues or to any statement or submission;
 - 5.5 inspect any property or thing to the extent that he deems necessary;
 - 5.6 proceed with the arbitration in the absence of a party who does not comply with any of the provisions hereof or attend any meeting in terms hereof provided that such non-compliance or non-attendance is persisted in despite the expiry of such notice to the defaulting party concerned as the arbitrator deems reasonable;
 - 5.7 rely, in his award, on his own expert knowledge or experience in any field;
 - 5.8 make such interim awards before his final award as he deems necessary; and
 - 5.9 propose to the parties compromise settlements or agreements in disposal of the whole or portion of the issues and give effect in his award to any settlements or agreements reached between the parties.
6. Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by:
 - 6.1 the party himself, if a natural person, or a partner in the case of a partnership;
 - 6.2 a director in the case of a company;
 - 6.3 a member in the case of a close corporation;
 - 6.4 a bona fide full-time employee or officer of the party concerned; and
 - 6.5 such technically qualified person, other than a practising lawyer, as the arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including without limiting the generality of the foregoing, any Professional Engineer, Architect or Quantity Surveyor in the case of a dispute on a construction contract.
7. Save to the extent necessary for the purposes of the arbitration or for any court proceedings relating thereto, neither party shall disclose or make available to any other person any information concerning the arbitration or the award.

8. DELIVERY OF AWARD

- 8.1 The award shall be in writing and delivered by the arbitrator, the parties

or their representatives being present or having been summoned to appear.

8.2 The arbitrator shall deliver his award within three months after the conclusion of the hearing, or the submission of the last document to the arbitrator in the event that there is no hearing. To the extent that this may be later than four months after entering on the reference, the time for making the award shall be deemed to be extended by the parties in terms of section 23 of the Arbitration Act.



**ASSOCIATION OF ARBITRATORS
(SOUTHERN AFRICA)**

**RULES FOR THE CONDUCT
OF
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RULES FOR THE CONDUCT OF ARBITRATIONS

3rd Edition 1997.

These Rules are intended to facilitate quick and cost-effective arbitrations. They should not be seen as prescriptive, but rather as guidelines which may, and should, be modified when such modification will expedite the process.

The General Provisions apply in all instances, The Standard Procedure Rules are appropriate in most instances, particularly where the parties are represented, and apply except where the parties have agreed to adopt the Summary Procedure Rules.

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules.

GENERAL PROVISIONS

These general provisions shall apply in all instances, irrespective whether the Standard Procedure Rules or the Summary Procedure Rules are followed.

1 Definitions

In these Rules:

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "Rules" means these arbitration rules;
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "Defendant" means the party to the arbitration other than the claimant;
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, diagrams, photographs and recordings on magnetic tape, compact disc and computer disc;
- 1.6 "Representative" means any person engaged by a party to assist him in the preparation of his claim or defense, as the case may be, and to present his claim or defense at the arbitration hearing on his behalf, and shall include an advocate, an attorney, a claims consultant and any other person who, by virtue of his training and experience, is able to present his case.
- 1.6 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defense, Defendant's Counterclaim and Defendant's

5.2 Save to the extent necessary for the purposes of the arbitration or for any court proceedings related thereto, neither party shall disclose or make available to any other person any information concerning the arbitration or the award.

6 Payment of admitted amount

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's award, to pay to the other party an amount of money which he admits to be owing by him, to which provision the following conditions shall apply:

6.1 the payment shall be by cash or currently dated cheque and, if by cheque, shall be effective when the cheque is paid on due presentation;

6.2 the payment shall be accompanied by a written notice specifying:

6.2.1 the claim or counterclaim, or part thereof, on which the payment is made; and

6.2.2 any tender which the party makes in respect of costs; and

6.3 a copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his award.

7 Offer of settlement

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's award, to tender payment of a specific amount of money without admission of liability, and as an offer of settlement, to which provision the following conditions shall apply:

7.1 the tender shall be in the form of a written notice specifying:

8 Award without oral hearing

Where the parties so agree and notify the Arbitrator in writing, the Arbitrator may make his Award without an oral hearing after consideration of the Submissions.

9 Prior hearing of point of law or fact

The arbitrator shall, if both parties so agree, or may, if he so decides on the application of either party or meru motu, determine any specified issue of law or fact before other issues in the arbitration are determined, to which provision the following conditions shall apply:

- 9.1 the hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the arbitrator; and
- 9.2 the arbitrator shall make an award on the specified issue which award shall be an interim award if there are other issues remaining to be determined.

10 Award of costs

- 10.1 Disbursements made by a successful party to his representative in the proceedings shall be recoverable by way of an award of costs on a scale to be agreed between the parties, or if not so agreed, to be determined by the arbitrator who may, in his sole discretion, direct that such costs shall be taxed in accordance with Section 35 of the Arbitration Act.
- 10.2 If the Arbitrator directs that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the Arbitrator who shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as he may himself appoint, or he may make an award of such costs as he deems reasonable in the circumstances.

10.3 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Arbitrator for the due payment on demand of his fees and expenses.

11 Delivery of award

11.1 The Award shall be in writing and delivered by the Arbitrator, the parties or their representatives being present or having been summoned to appear.

11.2 The Arbitrator shall deliver his Award within three months after the conclusion of the hearing, or the submission of the last document to the Arbitrator in the event that there is no hearing. To the extent that this may be later than four months after entering on the reference, the time for making the award shall be deemed to be extended by the parties in terms of Section 23 of the Arbitration Act.

11.3 Where the parties have agreed that the Award may be liable to an appeal in terms of Rule 25, the findings in the Award shall be supported with reasons contained either in the body of the Award or in an annexure thereto.

12 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Arbitrator who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

STANDARD PROCEDURE RULES

The Standard Procedure Rules shall apply to the conduct of the arbitration unless the parties agree in writing to adopt any variation of these Rules or to adopt the Summary Procedure Rules.

13 Preliminary meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of:

- 13.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 13.2 recording the acceptance by the arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 13.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either¹
- 13.4 arranging for the delivery of Submissions as provided in Rule 13 or Rules 14 to 18
- 13.5 determining the dates and venue of the hearing and the times and duration of the sessions;
- 13.6 determining the manner and extent of recording evidence;
- 13.7 deciding whether the Award shall be subject to an appeal in terms of Rule 25: and

¹ Note: If the parties elect to adopt the Summary Procedure Rules, the Preliminary Meeting should proceed in accordance with Rules 254 to 25.8

- 13.8 dealing with any other matters or proposals that might facilitate the conduct of the arbitration.

If no Preliminary Meeting is held the Arbitrator shall determine the commencement date for the Submissions.

14 Statement of issues

Not later than 14 days after the date of the Preliminary Meeting the parties shall, unless otherwise agreed, jointly prepare and submit to the Arbitrator a Statement of Issues containing details of:

- 14.1 relevant matters which are not in dispute;
- 14.2 the disputed issues in which the averments of each are set out, the responses of each to the averments of the other, the facts and contentions of law on which each party relies together with true copies of all the relevant documents; and
- 14.3 the Award which each party desires the Arbitrator to make.

Provided that if the parties are unable jointly to prepare a Statement of Issues or agree not to do so, they shall deliver Submissions as provided in Rules 15 to 18

15 Statement of claim

If the parties have been unable to prepare a Statement of Issues, the Claimant shall not later than 20 days after the Preliminary Meeting deliver to the arbitrator and the Defendant details of

- 15.1 each dispute on which arbitration is sought;
- 15.2 the relief claimed; and
- 15.3 all the facts and the contentions of law constituting the claim;

together with true copies of all relevant documents, all of which details and copies are hereinafter collectively referred to as the "Statement of Claim".

16 Statement of defense

Not later than fifteen days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the Arbitrator and to the Claimant details of:

- 16.1 his defense stating which contentions of fact or law in the Statement of Claim are admitted and which are denied;
- 16.2 the grounds for every denial or objection; and
- 16.3 all the facts and contentions of law constituting the defense;

together with true copies of all relevant documents other than those delivered in terms of Rule 15, all of which details and copies are hereinafter referred to as the "Statement of Defense".

17 Defendant's counterclaim

At the time of delivery of the Statement of Defense, the Defendant may deliver counterclaims, alleged to fall within the arbitration agreement, to the Arbitrator and to the Claimant, setting forth *mutatis mutandis* details of the matters referred to in terms of Rule 15 together with true copies of all relevant documents other than those delivered with any previous Submission, all of which details and copies are hereinafter referred to as the "Defendant's Counterclaim".

18 Claimant's reply

Not later than 15 days after the receipt by the Claimant of the Defendant's Counterclaim, the Claimant shall deliver to the Arbitrator and the Defendant details of its defense to the counterclaim in accordance with the provisions of

Rule 16 mutatis mutandis, all of which details and copies are hereinafter referred to as the "Claimant's Reply".

19 No amendments of submissions

The parties may not amend the Submissions or deliver any additional Submission except by leave of the Arbitrator.

20 Second preliminary meeting

On receipt by the Arbitrator of the Submissions contemplated by Rules 14 to

18 he may, on the application of either party or *meru moto*, convene a Second Preliminary Meeting with the parties for the purpose of considering:

- 20.2 any application by either party for the Arbitrator's consent to the furnishing of further particulars to any Submission, or for the amendment of any Submission, or for the furnishing of any additional Submission.
- 20.2 the desirability of the separation of any issues for prior determination in terms of Rule 9;
- 20.3 any changes to the Rules which might be appropriate for the expeditious and cost-effective resolution of the dispute;
- 20.4 the determination or the amendment of any of the time limits laid down in terms of Rule 2 or of any other Rule;
- 20.5 the discovery of any documents in terms of Rule 21;
- 20.6 the preparation and filing of witness statements in terms of Rule 22;
- 20.7 the adoption of provisions for an appeal against the award in terms of Rule 25; and
- 20.8 any other matter which it is desirable to deal with that might facilitate the arbitration.

21 Documents

- 21.1 The Arbitrator may, on the application of either party or *meru moto*, direct that the parties discover to each other documents and tape, video and magnetic disc recordings relating to any matter in question in the arbitration which is in the possession and control of either of the parties and in such event, shall direct the procedure for such discovery.
- 21.2 Any documents delivered with the Submissions contemplated by Rules 13 to 17 shall be admitted in evidence without the necessity for their identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the documents.
- 21.3 No person shall, save with the leave of the arbitrator or the consent of all the parties, be entitled to tender in evidence any documents or models unless he shall, not less than 15 days before the hearing, have delivered a notice to the Arbitrator and the other party stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit same within 10 days after receipt of the notice.
- 21.4 If the party receiving notice as aforesaid fails within the said period so to admit, the said documents or models shall be received in evidence upon the mere production and without further proof thereof. If such party states that he does not admit them, the said documents or models may be proved at the hearing and the party receiving the notice may be ordered to pay the costs of their proof.

22 Witness statements

- 22.1 The Arbitrator may, on the application of any party or *meru moto*, order that the evidence of witnesses be reduced to writing. Such written statements of evidence, hereinafter referred to as "Witness Statements" shall pertain exclusively to witnesses of fact and shall not include any evidence of an expert nature, and shall be submitted to

the Arbitrator and the other party within time limits prescribed in terms of Rule 2.

- 22.2 A party who is in receipt of such a Witness Statement may, within a time limit prescribed in terms of Rule 2, object to the evidence in whole or in part by delivery to the Arbitrator and the other party of a written notice setting out the grounds of its objection.
- 22.3 In the event that there is an objection in terms of Rule 22.2, the arbitrator shall determine the admissibility of such evidence, In the event of the Arbitrator upholding the objection in whole or in part, the party submitting such Witness Statement shall amend the Statement in accordance with the Arbitrator's ruling and submit it in its revised form to the arbitrator and the other party within a time limit prescribed in terms of Rule 2.
- 22.4 A party shall, within a time limit prescribed in terms of Rule 2, be entitled to submit further or supplementary Witness Statements in response to the other party's Witness Statements, restricted however to the evidence revealed by such latter Statements.
- 22.5 No evidence shall be admissible unless the witness whose Witness Statement is submitted confirms such Statement under oath and, subject to Rule 22.6, is available at the hearing to be cross-examined and re-examined.
- 22.6 A party who intends not to cross-examine a witness whose witness Statement has been submitted in terms of Rule 22.1 shall, not later than 5 days prior to the commencement of the hearing, submit written notice of such intention to the arbitrator and the other party, and the Arbitrator may thereupon excuse such witness from attending the hearing, in the event of failure by a party to comply with the provisions of this Rule shall entitle the Arbitrator to award against such party the costs of the attendance of such witness at the hearing.
- 22.7 Either party shall be entitled to submit to the Arbitrator and the other party a notice of intention to call a witness, who has refused to give a Witness Statement, to give oral evidence, which notice shall state:

- 22.7.1 that a request has been made to such witness to give a Witness Statement but that the witness has refused to do so and the party has no power to compel him to provide such Statement; and
- 22.7.2 the nature of the evidence which such witness will give; and
- 22.7.3 the scope of the evidence which such witness will give.

22.8 The notice referred to in Rule 22.7 shall be given no later than 10 days prior to the commencement of the hearing.

22.9 The Arbitrator shall be entitled, in his absolute discretion, to allow any evidence whether or not there has been an exchange of Witness Statements and whether or not a notice has been given in terms of Rule 22.7 on such terms and conditions as he thinks fit.

23 Evidence of expert witnesses

No party shall, except with the leave of the Arbitrator or the consent of all the parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall, not later than a date specified by the arbitrator, have submitted to the Arbitrator and the other party notice of his intention so to do, in which event the following conditions shall apply:

- 23.1 Such notice shall specify the name and qualifications of each expert witness and shall briefly state the nature of the evidence which each will give.
- 23.2 Within a time limit prescribed in terms of Rule 2, each party shall submit to the Arbitrator and the other party an Expert Witness Statement in respect of each expert witness that it intends to call, in which the evidence and the opinions of such expert witness, and the reasons for such opinions, are set out in detail.
- 23.3 Thereafter experts of like discipline who have been engaged by each party shall hold "without prejudice" meetings, without the the respective parties' representatives being present, with a view to:

- 23.3.1 comparing their respective opinions and endeavouring to reconcile differing points of view with the purpose of narrowing the issues between them; and
- 23.3.2 preparing a minute of such meetings wherein they set out the facts and opinions on which they agree, and those upon which they do not agree
- 23.4 The minutes of the meetings in terms of Rule 23.3 shall be with prejudice, and copies thereof shall be submitted to the Arbitrator and to each party not more than 5 days prior to the commencement of the hearing.
- 23.5 Rules 22.2 to 22.6 shall also apply, mutatis mutandis, to expert witnesses, their reports and their evidence.

24 Expert assessors

The Arbitrator shall have the power to appoint one or more expert assessors to investigate, consider and report on any matter or matters specified by the Arbitrator, to which provision the following conditions shall apply:

- 24.1 the Arbitrator shall submit to each party a written notice of his intention to appoint an expert assessor wherein is furnished the name of the assessor and a copy of the instructions given to such assessor;
- 24.2 the written opinion of such assessor shall be submitted to each party at the same time that it is submitted to the arbitrator;
- 24.3 the assessor shall be available at the hearing to the parties who shall have the opportunity to question him, to present expert witnesses to testify on the points at issue raised by such assessor, and to present argument regarding the opinion of such assessor; and
- 24.4 the qualifying fees of such assessor shall be costs in the cause, and the arbitrator may make such directions regarding the payment of these fees as he deems fit.

25 Pre-hearing conference

25.1 Prior to the commencement of the hearing the parties shall arrange a pre-hearing conference with the object of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

- 25.1.1 the possibility of obtaining admissions of facts;
- 25.1.2 the holding of any inspection or examination;
- 25.1.3 the making of any discovery of documents
- 25.1.4 the giving of any further particulars reasonably required for the purposes of the hearing;
- 25.1.5 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
- 25.1.6 the consolidation of hearings;
- 25.1.7 the quantum of damages; and
- 25.1.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated and indexed bundle with copies for the Arbitrator and both parties.

25.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed in at the commencement of the hearing.

26 Appeal

The parties may, by a written and signed agreement, provide that the Award shall be subject to appeal, to which provision the following conditions shall apply:

26.1 Within 10 days of the publication of the Award either party may give written notice to the other, to the Arbitrator and to the Chairman of

the Association of Arbitrators (Southern Africa) of its intention to refer the Award to an Appeal Tribunal.

- 26.2 The Notice of Appeal shall state whether the whole or part only of the award is appealed against and if only part of such award is appealed against, it shall state which part, and it shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the appeal is founded.
- 26.3 The Chairman of the Association of Arbitrators will appoint an Appeal Tribunal consisting of not less than three members and will give notice to the parties of the date or dates on which and the place where the appeal will be heard and will secure a suitable venue for the hearing
- 26.4 Not less than fifteen days prior to the hearing the Appellant shall deliver to the Appeal Tribunal and to the other party a sufficient number of copies of the record together with a like number of copies of such exhibits as may be necessary for the proper adjudication of the matter, provided that the parties may agree to dispense with the provision of the record together with the exhibits but shall in that event and within the same period for the delivery of the record agree the facts upon which the Appeal is to be heard which facts shall be recorded in writing and signed by the parties and submitted to the Appeal Tribunal.
- 26.5 Within 10 days of giving notice of appeal the Appellant shall complete, sign and submit to the Association of Arbitrators due and proper security to the satisfaction of the Chairman of the Association for the payment of all fees and costs in relation to or concerning the Appeal.
- 26.6 The Arbitrator may submit to the Appeal Tribunal any motivation or reasons for the Award within 10 days of receiving the Notice of Appeal and shall submit copies of such motivation or reasons to the parties.
- 26.7 The time period prescribed by Sections 32 and 33 of the Arbitration Act of 1965 shall not commence to run until such time as the Appeal Tribunal has confirmed or varied the Award of the Arbitrator.
- 26.8 The Appeal Tribunal shall be entitled, but not derogating from its general powers:

- 26.8.1 to dismiss the Appeal on its merits
- 26.8.2 to vary the Award
- 26.8.3 to substitute its own Award
- 26.8.4 to direct that the Award, either in whole or in part, be referred back to the Arbitrator for further consideration and for the making of a new or revised award; and
- 26.8.5 to dismiss the Appeal for non-compliance with the provisions of this Rule.

26.9 In the event that the Appeal Tribunal refers the Award back to the Arbitrator in terms of Rule 28.5.4, the Arbitrator shall, within 30 days of the date on which the award was so referred back to him, make and publish anew or a revised Award in terms of Rule 11 mutatis mutandis, with the proviso that the Appeal tribunal may, on good cause shown, extend such time for making a new or revised award.

26.10 The decision of the Appeal Tribunal shall:

- 26.10.1 be final and binding on the parties;
- 26.10.2 constitute an Award as defined by the Arbitration Act 1965 for all purposes; and
- 26.10.3 be deemed to constitute the award of the Arbitrator.

26.11 For the purposes of this Rule, an Award shall include an Interim Award, and reference to the Chairman of the Association of Arbitrators (Southern Africa) shall include any person to whom the Chairman may assign the rights and duties conferred upon him by this Rule.

27 Power to strike out or debar

Unless otherwise agreed by the parties, the Arbitrator shall have the power, on the application of one of the parties and after hearing argument, to strike out the other party's claim or a part thereof or to debar the other party from adducing expert evidence or evidence of any particular witness of fact where,

in the opinion of the Arbitrator, there has been a serious failure by that party to comply with some aspect of these Rules or some relevant direction of the Arbitrator.

SUMMARY PROCEDURE RULES

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

28 Preliminary meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of:

- 28.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 28.2 recording the acceptance by the arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 28.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules

or any modification of either²

- 28.4 ascertaining the nature of the claims and counterclaims and defenses thereto which the parties make or raise against each other;
- 28.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 28.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 28.4 and 28.5;
- 28.7 arranging for the submission by each party to the Arbitrator and to the other party such documents or copies of documents as they, or the Arbitrator, consider relevant to the determination of the issues; and
- 28.8 arranging the date, time and venue of the hearing.

29 Conduct of the hearing

The Arbitrator may, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

30 Powers of the arbitrator

The Arbitrator shall have the power to:

- 30.1 depart from any Statutory or common law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;

² Note: If the parties elect to adopt the Standard Procedure Rules, the Preliminary Meeting should proceed in accordance with Rules 13.5 to 13.8

- 30.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;
- 30.3 make any enquiries as he considers necessary or expedient provided that he shall inform the parties of all matters ascertained as a result of such enquiries;
- 30.4 grant to the parties such opportunity as he deems reasonable of making amendments to the issues or to any statement or submission;
- 30.5 inspect any property or thing to the extent that he deems necessary; and
- 30.6 rely, in his award, on his own expert knowledge or experience in any field.

31 Representation of the parties

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by:

- 31.1 the party himself, if a natural person, or a partner in the case of a partnership;
- 31.2 a director in the case of a company;
- 31.3 a member in the case of a close corporation;
- 31.4 a bona fide full-time employee or officer of the party concerned; and
- 31.5 such technically qualified person, other than a practising lawyer, as the arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including, without limiting the generality of the foregoing, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.



ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA)

RULES FOR THE CONDUCT OF ARBITRATIONS

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PREAMBLE

The Association of Arbitrators (Southern Africa) advises that where the intervention of the Association is required by the Rules, the party or parties requesting such intervention shall be liable for any charges which the Association may from time to time charge including cover, in advance, for the fees of the arbitral tribunals contemplated under Rules 17 and 30. The parties by the use of these Rules shall be deemed to have accepted this as a precondition to the use of these Rules.



RULES FOR THE CONDUCT OF ARBITRATIONS

4th Edition August 2000

These Rules are intended to facilitate cost-effective arbitrations. They should not be seen as prescriptive, but rather as guidelines which may, and should, be modified when such modification will expedite the process.

The General Provisions apply to Standard and Summary Procedure Rules.

The Standard Procedure Rules are appropriate in most instances, particularly where the parties are represented, and apply except where the parties have agreed otherwise.

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules.

The Small Claims Arbitration Tribunal (SCAT) rules are intended for matters involving less than R60000 and preclude legal representation. The Arbitrator's fee is fixed.

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GENERAL PROVISIONS

These general provisions shall apply in all instances, irrespective whether the Standard Procedure Rules or the Summary Procedure Rules are followed.

1 Definitions

In these Rules:

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "Rules" means these arbitration rules;
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "Defendant" means the party to the arbitration other than the Claimant;
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, diagrams, photographs and recordings on magnetic tape, compact disc and computer disc;
- 1.6 "Representative" means any person engaged by a party to assist him in the preparation of his claim or defence, as the case may be, and to present his claim or defence at the arbitration hearing on his behalf, and shall include an advocate, an attorney, a claims consultant and any other person who, by virtue of his training and experience, is able to present the case.
- 1.7 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant's Counterclaim and Claimant's Reply and any other similar documents permitted by the Arbitrator.
- 1.8 Where appropriate words importing the singular shall include the plural and words importing the masculine shall include the other gender.
- 1.9 "Arbitrator" shall include more than one Arbitrator where the agreement between the party provides or requires the appointment thereof.
- 1.10 "Association" shall mean the Association of Arbitrators (Southern Africa).
- 1.11 "Deliver" or "Delivery" shall mean delivery by hand and/or by facsimile and/or by mail or e-mail.
- 1.12 "Act" means the Arbitration Act 42 of 1965, as amended from time to time, or any repealing legislation.

2 Arbitration Act

Save as varied herein or, insofar as the provisions of the Arbitration Act are mandatory, the Act shall apply.

3 Appointment of Arbitrator

Where an agreement to refer a dispute to arbitration requires that the Rules of the Association shall apply thereto but does not identify the Arbitrator or the method by which the Arbitrator is to be appointed, the Chairman for the time being of the Association shall, on the application of either party to the reference, appoint the Arbitrator.

4 Time Limits

- 4.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Arbitrator, unless the parties have otherwise agreed, such period shall be stipulated by the Arbitrator.
- 4.2 The time limits stated in these Rules shall not be extended or shortened except by leave of the Arbitrator.

5 Proceedings on Default

After the parties have agreed to arbitration the Arbitrator may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

6 Confidentiality

Unless the parties otherwise agree, the proceedings and any Award(s) published therein shall be confidential save to the extent that disclosure may be required in order to protect or pursue a legal right or to enforce or challenge an award in any legal proceedings.

7 Payment of Admitted Amount

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to pay to the other party an amount of money which he admits to be owing by him, to which provision the following conditions shall apply:

- 7.1 The payment shall be by cash or currently dated cheque and, if by cheque, shall be effective when the cheque is paid on due presentation;
- 7.2 The payment shall be accompanied by a written notice specifying:
 - 7.2.1 the claim or counterclaim, or part thereof, on which the payment is made; and
 - 7.2.2 any tender which the party makes in respect of costs; and
- 7.3 A copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his Award.

8 Offer of Settlement

- 8.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to tender payment of a specific amount of money without admission of liability, and as an offer of settlement, to which provision the following conditions shall apply:

- 8.1.1 The tender shall be in the form of a written notice specifying:

8.1.1.1 the claim or counterclaim, or part thereof, in respect of which the tender is being made; and

8.1.1.2 any tender which the party makes in respect of costs;

8.2 The recipient of the tender shall be entitled by written notice delivered within 10 days after his receipt of the notice of tender to accept the tender failing which notice he shall be deemed to have rejected the tender.

8.3 On receipt of a notice in terms of paragraph 8.2 the tenderer shall:

8.3.1 within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an Award or an Interim Award ordering the payment to be made; and

8.3.2 after such payment, deliver to the Arbitrator copies of the notices referred to in paragraphs 8.1.1 and 8.2 together with a written statement that the payment referred to has been made;

8.4 If he received the notices and statement referred to in paragraphs 8.1.1 and 8.2 and 8.3, the Arbitrator shall take the facts therein recorded into account in making his Award; and

8.5 If the tender of settlement is not accepted the fact of the tender and its non-acceptance shall not be made known to the Arbitrator until he has made his Award on all the issues in the arbitration other than costs, whereupon the said facts shall be made known to him, and shall be taken into account by him in his award of costs, *provided that* if the Arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderer shall be entitled to have the award reopened and reconsidered in respect of the costs.

9 Award Without Oral Hearing

Where the parties so agree and notify the Arbitrator in writing, the Arbitrator may make his Award without an oral hearing after consideration of the Submissions.

10 Prior Hearing of Point of Law or Fact

10.1 The Arbitrator shall, if both parties so agree, or may, if he so decides on the application of either party or at his own instance determine any specified issue of law or fact before other issues in the arbitration are determined, to which provision the following conditions shall apply:

10.1.1 the hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the Arbitrator; and/or

10.2 The onus will be on the party seeking to oppose the separation of the issue of law and/or fact to establish that such separation will not contribute to the expeditious determination of the dispute and/or that the questions cannot conveniently be decided separately.

11 Award of Costs

11.1 The Arbitrator shall, unless the parties otherwise agree, determine the issue of costs and shall be entitled to employ the services of a professional taxing consultant to assist him in determining the amount of such costs to be awarded.

11.2 In the event of the Arbitrator employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause but paid by the parties to the arbitration in equal shares prior to the Award being published.

- 11.3 Disbursements made by a successful party to his representative in the proceedings shall be recoverable by way of an Award of costs on a scale to be agreed between the parties, or if not so agreed, to be determined by the Arbitrator who may, in his sole discretion, direct that such costs shall be taxed in accordance with Section 35 of the Arbitration Act.
- 11.4 If the parties agree that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the Arbitrator who shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as he may himself appoint, or he may make an award of such costs as he deems reasonable in the circumstances.
- 11.5 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Arbitrator for the due payment on demand of his fees and expenses.
- 11.6 The Arbitrator may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.
- 11.7 Any directive made by the Arbitrator under sub-rule 11.6 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.
- 11.8 The Arbitrator shall not exercise his powers under sub-rules 11.3 and/or 11.4 without affording the parties an opportunity to make submissions to him thereon.

12 Delivery of Award

- 12.1 The Award shall be in writing and shall be published by delivery of a copy thereof to the respective parties.
- 12.2 The Arbitrator shall provide the reasons for his Award simultaneously with publication unless the parties otherwise agree or the Award is made in terms of Rule 32.

13 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Arbitrator who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

14 Proper Law of the Arbitration

- 14.1 Unless the parties agree to the contrary, the seat of the arbitration shall be the Republic of South Africa.
- 14.2 The Arbitrator may hold hearings, meetings, receive argument and issue awards at any geographical place in his discretion whether within the borders of the Republic of South Africa or elsewhere.
- 14.3 Where hearings, meetings, argument or awards are held, received or made outside the borders of the Republic of South Africa, in the absence of agreement by the parties as to the proper law of the arbitration, the arbitration shall be deemed to be an arbitration conducted within the Republic of South Africa and any award as an award made within the Republic of South Africa.

STANDARD PROCEDURE RULES

The Standard Procedure Rules shall apply to the conduct of the arbitration unless the parties agree in writing to adopt any variation of these Rules or to adopt the Summary Procedure or SCAT Rules.

15 Preliminary Meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties for the purpose of:

- 15.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 15.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 15.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 15.4 arranging for the delivery of Submissions as provided in Rules 18 to 22;
- 15.5 determining the dates and venue of the hearing and the times and duration of the sessions;
- 15.6 determining the manner and extent of recording evidence;
- 15.7 deciding whether the Award shall be subject to an Appeal in terms of Rule 30: and
- 15.8 dealing with any other matters or proposals that might facilitate the conduct of the arbitration.

If no Preliminary Meeting is held the Arbitrator shall determine the commencement date for the Submissions.

16 Additional Preliminary Meetings

The Arbitrator may, at his own instance, or on the application of either party to the reference, convene a Preliminary Meeting with the parties, in addition to those specifically provided by these Rules, for any purpose which the Arbitrator deems would advance the expeditious hearing of the matter.

17 Challenge

17.1 If any Arbitrator :

- 17.1.1 falls seriously ill, or becomes unable or unfit to act; or
- 17.1.2 lacks the necessary independence; or
- 17.1.3 for any other reason ought not to continue as Arbitrator (e.g. lacks impartiality);

the Chairman of the Association or his nominee from time to time shall convene a committee consisting of not less than three members of the Executive of the Association ("the Committee") who may revoke the Arbitrator's appointment and appoint another Arbitrator.

- 17.2 A party who intends to challenge an Arbitrator in terms of Rule 17.1, shall make written application to the Chairman of the Association within 10 days of him becoming aware of any circumstances referred to in Rule 17.1, which application will set out fully the reasons for the challenge failing which neither party shall be entitled to make such challenge.
- 17.3 Any other party to the reference who receives an application referred to in Rule 17.2 and who wishes to oppose such application shall within 10 days of receipt by him of the application submit a written response fully motivating its opposition.
- 17.4 A copy of the application and any reply shall be served by the respective parties on the Arbitrator who shall be entitled within 10 days of receipt thereof to reply in writing.
- 17.5 Unless the parties agree to the withdrawal of the Arbitrator, the Committee will decide the challenge.
- 17.6 Where an Arbitrator is to be replaced the committee shall decide whether or not to follow the original nominating process or to appoint a replacement who shall give directives as to if and to what extent prior proceedings shall be repeated.
- 17.7 The Committee shall give directives in relation to the costs of the challenge and any costs incurred in the proceedings.

18 Statement of Issues

Not later than 15 days after the date of the Preliminary Meeting the parties shall, unless otherwise agreed, jointly prepare and submit to the Arbitrator a Statement of Issues containing details of:

- 18.1 relevant matters which are not in dispute;
- 18.2 the disputed issues in which the averments of each are set out, the responses of each to the averments of the other, the facts and contentions of law on which each party relies together with true copies of all the relevant documents; and
- 18.3 the Award which each party desires the Arbitrator to make.

Provided that if the parties are unable jointly to prepare a Statement of Issues or agree not to do so, they shall deliver Submissions as provided in Rules 19 to 22.

19 Statement of Claim

If the parties have been unable to prepare a Statement of Issues, the Claimant shall, not later than 20 days after the Preliminary Meeting, deliver to the Arbitrator and the Defendant details of :

- 19.1 each dispute on which arbitration is sought;
- 19.2 the relief claimed; and
- 19.3 all the facts and the contentions of law constituting the claim;

together with true copies of all relevant documents, all of which details and copies are hereinafter collectively referred to as the "Statement of Claim".

20 Statement of Defence

Not later than 15 days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the Arbitrator and to the Claimant details of:

- 20.1 his defence stating which contentions of fact or law in the Statement of Claim are admitted and which are denied;
- 20.2 the grounds for every denial or objection; and
- 20.3 all the facts and contentions of law constituting the defence;

together with true copies of all relevant documents other than those delivered in terms of Rule 19, all of which details and copies are hereinafter referred to as the "Statement of Defence".

21 Defendant's Counterclaim

At the time of delivery of the Statement of Defence, the Defendant may deliver counterclaims, alleged to fall within the arbitration agreement, to the Arbitrator and to the Claimant, setting forth, with the necessary changes, details of the matters referred to in terms of Rule 19 together with true copies of all relevant documents other than those delivered with any previous Submission, all of which details and copies are hereinafter referred to as the "Defendant's Counterclaim".

22 Claimant's Reply

Not later than 15 days after the receipt by the Claimant of the Defendant's Counterclaim, the Claimant shall deliver to the Arbitrator and the Defendant details of his defence to the counterclaim in accordance with the provisions of Rule 20, with the necessary changes, all of which details and copies are hereinafter referred to as the "Claimant's Reply".

23 No Amendments of Submissions

The parties may not amend the Submissions or deliver any additional Submission except by leave of the Arbitrator.

24 Second Preliminary Meeting

On receipt by the Arbitrator of the Submissions contemplated by Rules 18 to 22 he may, on the application of either party or at his own instance, convene a Second Preliminary Meeting with the parties for the purpose of considering:

- 24.1 any application by either party for the Arbitrator's consent to the furnishing of further particulars to any Submission, or for the amendment of any Submission, or for the furnishing of any additional Submission.
- 24.2 the desirability of the separation of any issues for prior determination in terms of Rule 10;
- 24.3 any changes to the Rules which might be appropriate for the expeditious and cost-effective resolution of the dispute;
- 24.4 the determination or the amendment of any of the time limits laid down in terms of Rule 4 or of any other Rule;
- 24.5 the discovery of any documents in terms of Rule 25;
- 24.6 the preparation and filing of witness statements in terms of Rule 26;
- 24.7 the adoption of provisions for an Appeal against the Award in terms of Rule 30; and
- 24.8 any other matter which it is desirable to deal with that might facilitate the arbitration.

25 Documents

- 25.1 The Arbitrator may, on the application of either party or at his own instance, direct that the parties discover to each other documents and tape, video and magnetic disc recordings relating to any matter in question in the arbitration which is in the possession and control of either of the parties and, in such event, shall direct the procedure for such discovery.
- 25.2 Any documents delivered with the Submissions contemplated by Rules 18 to 22 shall be admitted in evidence without the necessity for their identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the documents.
- 25.3 No person shall, save with the leave of the Arbitrator or the consent of all the parties, be entitled to tender in evidence any documents or models unless he shall, not less than 15 days before the hearing, have delivered a notice to the Arbitrator and the other party stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit same within 10 days after receipt of the notice.
- 25.4 If the party receiving said notice fails within the said period to admit same, the said documents or models shall be received in evidence upon the mere production and without further proof thereof. If such party states that he does not admit them, the said documents or models may be proved at the hearing and the party receiving the notice may be ordered to pay the costs of their proof.

26 Witness Statements

- 26.1 The Arbitrator shall enter upon the reference and proceed without unnecessary delay to establish the facts by such fair means as may be appropriate.
- 26.2 Before any hearing the Arbitrator may require, either at his own instance or on the application of either party, that the parties to the reference deliver written notice of:
 - 26.2.1 the identity of the witnesses that each party wishes to call;
 - 26.2.2 the subject matter of the witness' testimony;
 - 26.2.3 a summary of the content of such witness' testimony alternatively full written statements.
- 26.3 Neither party shall be entitled to lead the evidence of any witness where the Arbitrator has given a directive in terms of Rule 26.2 without having complied therewith, save with the leave of the Arbitrator.
- 26.4 Where, by virtue of the refusal of a witness to give a statement, a party is unable to comply with any directive given in terms of Rule 26.2, such party shall:
 - 26.4.1 comply with the directive insofar as he is able;
 - 26.4.2 give notice of the reason for his inability to comply therewith.
- 26.5 In the event of the Arbitrator giving a directive in terms of Rule 26.2 he shall determine whether the notices by the parties are to be given simultaneously or, if not, he shall fix the time in which each of the parties shall give notice.
- 26.6 The fact that a party has given notice as required pursuant to Rule 26.2 shall not compel such party to call the witness to give evidence.

26.7 A notice given pursuant to a directive in terms of Rule 26.2, unless the parties agree to the contrary, shall not constitute evidence in the arbitration unless the witness is called to give evidence at the hearing.

27 Evidence of Expert Witnesses

No party shall, except with the leave of the Arbitrator or the consent of all the parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall, not later than a date specified by the Arbitrator, have submitted to the Arbitrator and the other party notice of his intention so to do, in which event the following conditions shall apply:

27.1 Such notice shall specify the name and qualifications of each expert witness and shall briefly state the nature of the evidence which each will give.

27.2 Within a time limit prescribed in terms of Rule 4 each party shall submit to the Arbitrator and the other party an Expert Witness Statement in respect of each expert witness that it intends to call, in which the evidence and the opinions of such expert witness and the reasons for such opinions are set out in detail.

27.3 Thereafter experts of like discipline who have been engaged by each party shall hold "without prejudice" meetings, without the respective parties' representatives being present, with a view to:

- 27.3.1 comparing their respective opinions and endeavouring to reconcile differing points of view with the purpose of narrowing the issues between them; and
- 27.3.2 preparing a minute of such meetings wherein they set out the facts and opinions on which they agree, and those upon which they do not agree.

27.4 The minutes of the meetings in terms of Rule 27.3 shall be with prejudice, and copies thereof shall be submitted to the Arbitrator and to each party not less than 5 days prior to the commencement of the hearing.

27.5 The Arbitrator shall have the power to appoint one or more chairpersons to preside over the meetings contemplated by Rule 27.3 and the cost thereof shall be costs in the cause, and the Arbitrator shall give such directions regarding payments of these fees as he deems fit.

28 Expert Assessors

28.1 The Arbitrator shall have the power to appoint one or more expert assessors to investigate, consider and report on any matter or matters specified by the Arbitrator, to which provision the following conditions shall apply:

- 28.1.1 the Arbitrator shall submit to each party a written notice of his intention to appoint an expert assessor wherein is furnished the name of the Assessor and a copy of the instructions given to such Assessor;
- 28.1.2 the written opinion of such Assessor shall be submitted to each party at the same time that it is submitted to the Arbitrator;
- 28.1.3 the Assessor shall be available at the hearing to the parties who shall have the opportunity to question him, to present expert witnesses to testify on the points at issue raised by such Assessor, and to present argument regarding the opinion of such assessor; and
- 28.1.4 the qualifying fees of such Assessor shall be costs in the cause, and the Arbitrator may make such directions regarding the payment of these fees as he deems fit.

28.1.5 The Assessor shall not act as an Arbitrator and will not participate in the decision of the Arbitrator.

29 Pre-hearing Conference

29.1 Prior to the commencement of the hearing the parties may arrange a pre-hearing conference with the object of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

- 29.1.1 the possibility of obtaining admissions of facts;
- 29.1.2 the holding of any inspection or examination;
- 29.1.3 the making of any discovery of documents;
- 29.1.4 the giving of any further particulars reasonably required for the purposes of the hearing;
- 29.1.5 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
- 29.1.6 the consolidation of hearings;
- 29.1.7 the quantum of damages; and
- 29.1.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated and indexed bundle with copies for the Arbitrator and both parties.

29.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed to the Arbitrator at the commencement of the hearing.

30 Appeal

The parties *may*, by a written and signed agreement, provide that the Award shall be subject to Appeal, to which provision the following conditions shall apply:

30.1 Within 10 days of the publication of the Award either party may give written notice to the other, to the Arbitrator and to the Chairman of the Association of its intention to refer the Award to an Appeal Tribunal.

30.2 The Notice of Appeal shall state whether the whole or part only of the Award is appealed against and if only part of such Award is appealed against, it shall state which part, and it shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the Appeal is founded.

30.3 The Chairman of the Association will appoint an Appeal Tribunal consisting of not less than three members and will give notice to the parties of the date or dates on which and the place where the Appeal will be heard and will secure a suitable venue for the hearing.

30.4 Not less than 15 days prior to the hearing the Appellant shall deliver to the Appeal Tribunal and to the other party a sufficient number of copies of the record together with a like number of copies of such exhibits as may be necessary for the proper adjudication of the matter, *provided that* the parties may agree to dispense with the provision of the record together with the exhibits but shall in that event and within the same period for the delivery of the record agree the facts upon which the Appeal is to be heard which facts shall be recorded in writing and signed by the parties and submitted to the Appeal Tribunal.

- 30.5 Within 10 days of giving Notice of Appeal the Appellant shall complete, sign and submit to the Association due and proper security to the satisfaction of the Chairman of the Association for the payment of all fees and costs in relation to or concerning the Appeal.
- 30.6 The Arbitrator may submit to the Appeal Tribunal any motivation or reasons for the Award within 10 days of receiving the Notice of Appeal and shall submit copies of such motivation or reasons to the parties.
- 30.7 The time period prescribed by Sections 32 and 33 of the Arbitration Act shall not commence to run until such time as the Appeal Tribunal has confirmed or varied the Award of the Arbitrator.
- 30.8 The Appeal Tribunal shall be entitled, but not derogating from its general powers:
 - 30.8.1 to dismiss the Appeal on its merits
 - 30.8.2 to vary the Award
 - 30.8.3 to substitute its own Award
 - 30.8.4 to direct that the Award, either in whole or in part, be referred back to the Arbitrator for further consideration and for the making of a new or revised Award; and
 - 30.8.5 to dismiss the Appeal for non-compliance with the provisions of this Rule.
- 30.9 In the event that the Appeal Tribunal refers the Award back to the Arbitrator in terms of Rule 30.8.4, the Arbitrator shall, within 30 days of the date on which the Award was so referred back to him, make and publish a new or a revised Award in terms of Rule 12 with the proviso that the Appeal Tribunal may, on good cause shown, extend such time for making a new or revised Award.
- 30.10 The decision of the Appeal Tribunal shall:
 - 30.10.1 be final and binding on the parties;
 - 30.10.2 constitute an Award as defined by the Arbitration Act for all purposes; and
 - 30.10.3 be deemed to constitute the Award of the Arbitrator.
- 30.11 For the purposes of this Rule, an Award shall include an Interim Award, and reference to the Chairman of the Association shall include any person to whom the Chairman may assign the rights and duties conferred upon him by this Rule.

31 Power to Strike out or Debar

Unless otherwise agreed by the parties, the Arbitrator shall have the power, on application and after hearing argument, to strike out the other party's claim or a part thereof or to debar the other party from adducing expert evidence or evidence of any particular witness of fact where, in the opinion of the Arbitrator, there has been a serious failure by that party to comply with some aspect of these Rules or some relevant direction of the Arbitrator.

32 Consent Award

If, during the arbitration proceedings the parties settle the dispute or any part thereof, the Tribunal may, if requested by the parties and not objected to by the Tribunal, record the settlement in the form of an Award on agreed terms.

33 Jurisdiction

- 33.1 Unless the arbitration agreement provides to the contrary, the Arbitrator may at the instance of any party to a reference or on his own initiative rule on his own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- 33.2 A party to the reference wishing to challenge the jurisdiction of the Arbitrator shall do so by no later than the first preliminary meeting, failing which he shall be deemed to have consented to the jurisdiction of the Arbitrator.
- 33.3 Nothing contained in Rule 33.2 shall derogate from a party's right to contend that the Arbitrator has exceeded his jurisdiction during the course of the proceedings.

34 Arbitrator's Expert Knowledge - Weight of Evidence

- 34.1 Unless the parties agree to the contrary, the Arbitrator may, subject to the provisions of these Rules and subject to the rules of natural justice:
 - 34.1.1 rely on his own expert knowledge and experience provided he discloses same to the parties;
 - 34.1.2 have regard to all the evidence and attribute such weight to the evidence as he shall deem appropriate, whether or not that evidence is given under oath, and whether or not that evidence is admissible in civil proceedings in a Court.

35 Security for Costs

Unless the parties agree to the contrary, the Arbitrator may, on the application of the Defendant in convention or reconvention, order a Claimant in convention or reconvention to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.

36 Corrections to the Award

- 36.1 Unless the parties agree to the contrary, an Arbitrator shall be entitled, whether on application of either party or on his own initiative:
 - 36.1.1 to correct in any Award any clerical mistake or error;
 - 36.1.2 to clarify an ambiguity or uncertainty in any Award.
- 36.2 If the Arbitrator acts on his own initiative he shall do so within 15 days of the Award being published.
- 36.3 An application by either party in terms of sub-rule 36.1 shall be made within 15 days of the Award being delivered, failing which neither party shall be entitled to seek such correction or clarification.
- 36.4 A correction or clarification under sub-rule 36.1 must, save where the parties agree to the contrary, be made within 15 days after the application has been delivered.
- 36.5 In the event of the Arbitrator having erroneously omitted to include in an Award a decision in relation to a claim presented in the proceedings, either party may make application as contemplated by sub-rule 36.1 in respect thereof.

- 36.6 The Arbitrator shall not act as contemplated by sub-rule 36.1 without first having afforded the parties an opportunity to make submissions to him thereon, which submissions must be made within 5 days of being called upon to do so by the Arbitrator or on receipt of an application contemplated by Rule 36.3.
- 36.7 If it appears to the Arbitrator that further submissions are required before he gives a direction pursuant to sub-rule 36.1, he shall have the power to extend the time limits referred to in the relevant sub-rule.

37 Procedural Directives

- 37.1 Any procedural directive made by the Arbitrator pursuant to the Rules may be varied at any stage provided that it is necessary or desirable for the expeditious and economic hearing of the matter.
- 37.2 The Arbitrator shall not exercise his powers under sub-rule 37.1 without affording the parties an opportunity to make submissions to him thereon.

SUMMARY PROCEDURE RULES

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the Arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

38 Preliminary Meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of :

- 38.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 38.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 38.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 38.4 ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;
- 38.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 38.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 38.4 and 38.5;
- 38.7 arranging for the submission by each party to the Arbitrator and to the other party such documents or copies of documents as they, or the Arbitrator, consider relevant to the determination of the issues; and
- 38.8 arranging the date, time and venue of the hearing.

39 Conduct of the Hearing

The Arbitrator may, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

40 Powers of the Arbitrator

The Arbitrator shall have the power to:

- 40.1 depart from any statutory or common law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;
- 40.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;
- 40.3 make any enquiries as he considers necessary or expedient provided that he shall inform the parties of all matters ascertained as a result of such enquiries;
- 40.4 grant to the parties such opportunity, as he deems reasonable of making amendments to the issues or to any statement or submission;
- 40.5 inspect any property or thing to the extent that he deems necessary; and
- 40.6 rely, in his Award, on his own expert knowledge or experience in any field.

41 Representation of the Parties

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by;

- 41.1 the party himself, if a natural person or a partner in the case of a partnership;
- 41.2 a director in the case of a company;
- 41.3 a member of a close corporation;
- 41.4 a bona fide full-time employee or officer of the party concerned; and
- 41.5 such technically qualified person, other than a practicing lawyer, as the Arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including without limiting the generality of the foregoing, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.

RULES AND GUIDELINES FOR THE CONDUCT OF THE SMALL CLAIMS ARBITRATION TRIBUNAL

GUIDELINES

1. These basic guidelines are intended to facilitate an understanding of the purpose and workings of the Small Claims Arbitration Tribunal. The process is not only structured to produce a quick, economical, and effective dispute resolution system but is also simple to implement. The parties do not require knowledge or experience of the arbitration process. The Arbitrator plays an active, interventionist role and shall assist the parties to achieve a process best suited to their search for justice.
2. The parties are not permitted to be represented by practising attorneys or advocates though they may seek the assistance of suitably qualified advisors to prepare their written submissions to the Tribunal.
3. After the appointment of the Arbitrator, he may consider it appropriate to meet with the disputing parties so that a procedure to suit the nature of the dispute can be devised by discussion.
4. At this initial discussion the Arbitrator may consider it opportune to suggest an alternative dispute resolution process such as facilitating a settlement rather than continuing with the arbitration.
5. Should the parties wish to continue with an arbitration the dispute may be handled on the basis of each party submitting written pleadings and supporting evidence only, as opposed to written pleadings and supporting documents becoming the basis for further aural presentation, including supporting witnesses where necessary, at a hearing.
6. In deciding the issue or issues being disputed, including the matter of costs, the Arbitrator may find that it is adequate to resolve the issues by simply awarding financial remedies, which by virtue of the process, become binding on the parties. In complex issues the Arbitrator may decide to make a reasoned Award. Naturally, a reasoned Award is usually more time consuming and therefore costly. At the initial meeting the parties may wish to discuss the matter with the Arbitrator and express their views. They may even agree, with the concurrence of the Arbitrator, to instruct him one way or the other.
7. Should the Tribunal agree to deal with the dispute where the value of the claim or other compensation exceeds R50 000 net, the cost structure may be agreed by negotiation with the parties. However, the Association registration fee of R1250,00 shall not be negotiable.
The cost of the arbitration process for class A, B and C arbitrations shall be in accordance with the currently recommended scale or as amended by the Association from time to time.
8. Even though the Small Claims Arbitration Tribunal process is a much simplified one, it substantially adheres to the Arbitration Act of 1965, thus ensuring a process which operates within well-tried legal parameters.

RECOMMENDED COST STRUCTURE

THREE CLASSES OF PROCESS ENVISAGED

A CLASS 1

Claim up to R6 000 (documents only arbitration – no reasoned Award)

Cost Structure Proposed	
1.	Association registration
2.	Arbitrator: Fixed fee
	TOTAL COST

200,00
1 200,00
R1 400,00

B CLASS 2

Claim from R6 000 to R30 000 (documents only arbitration – no reasoned award)

Cost Structure Proposed	
1.	Association registration
2.	Arbitrator: 8 hrs @ R500 per hr (maximum)
3.	Sundries
4.	Inspection allowance, if any
	TOTAL COST

750,00
4 000,00
100,00
400,00
R5 250,00

C CLASS 3

Claim from R30 000 to R60 000

Cost Structure Proposed	
1.	Association registration
2.	Arbitrator: 12 hrs @ R500 per hr (maximum)
3.	Sundries
4.	Inspection allowance, if any
5.	Reasoned Award allowance
	TOTAL COST

1 000,00
6 000,00
200,00
500,00
500,00
R9 200,00

All the above plus VAT

RULES

1 Definitions

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "Rules" means these arbitration Rules;
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "Defendant" means the party to the arbitration other than the Claimant;
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, photographs and recordings on magnetic tape, compact disc and computer disc;

- 1.6 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant's Counterclaim and Claimant's Reply and any other similar documents permitted by the Arbitrator;
- 1.7 Where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the other genders.
- 1.8 "The Association" means Association of Arbitrators (Southern Africa)

2 Matters not Subject to the Small Claims Arbitration Process of the Association of Arbitrators (Southern Africa)

A reference to the Small Claims Arbitration Rules shall not be permissible in respect of:

- 2.1 any matter involving representation in conflict with 9 below;
- 2.2 any matter requiring an Award not relating to financial redress expressed only in monetary value;
- 2.3 a dispute where the value of the claims or other compensation exceeds R50 000 net except where, by permission of the Tribunal, this sum may be exceeded;
- 2.4 a dispute where more than two parties are involved.

3 Preliminary Procedure

- 3.1 After a dispute has arisen between two parties this dispute shall be referred to arbitration only if a prior written agreement exists between them to so proceed. However, should no such agreement exist on the emergence of a dispute, the parties can agree in writing to refer the matter to the Association, requesting the appointment of a Small Claims Tribunal provided both parties become signatories to the document.
- 3.2 The reference shall be initiated by the Claimant who shall submit his Statement of Claim against the Defendant and shall set out the nature of any other relief claimed. This letter shall include a certified copy of the original signed agreement together with the letter signed by the parties agreeing to refer their dispute to the Small Claims Tribunal.
- 3.3 The Chairman of the Association or his nominee shall respond to the Claimant enclosing an "Application for Appointment of Tribunal" form setting out the required application fee.
- 3.4 On receipt of the application form and payment of the required fee, the Chairman or his nominee shall appoint the Tribunal, sending it copies of the application form and the Claimant's Statement of Claim.
- 3.5 The application fee shall not be refundable. The Tribunal shall consider this payment as part of the costs in this arbitration, when making its Award.
- 3.6 The Tribunal shall send a written confirmation of its acceptance of this appointment to the Chairman of the Association. It shall then write to the parties informing them of the appointment and request the Defendant to submit to it and to the Claimant the Statement of Defence and Counterclaim, if any, by a stipulated date.
- 3.7 Should the Defendant not respond by the stipulated date, the Tribunal may proceed to give notice to both parties of a Preliminary Meeting where the matters at issue, including the Defendant's response, will be discussed to enable the Tribunal to formulate the process to be followed.

4 Proceedings Private and Confidential

- 4.1 Unless the parties agree otherwise, the hearing of the arbitration shall be held in camera.
- 4.2 Save to the extent necessary for the purposes of the arbitration or for any court proceedings related thereto, or where otherwise under a legal obligation to do so, neither party shall disclose or make available to any other person any information concerning the arbitration or the Award.

5 Powers of the Tribunal

The Tribunal shall have the power to;

- 5.1 assist the parties to reach a settlement;
- 5.2 depart from any statutory or common law rules of evidence provided that the departure is not in breach of the Tribunal's duty to act fairly;
- 5.3 put questions to each party or its witnesses where applicable, on any matter relevant to the issues;
- 5.4 make any enquiries that it considers necessary or expedient, provided that it shall inform the parties of all matters ascertained as a result of such enquiries;
- 5.5 grant to the parties such opportunity as it deems reasonable for making amendments to the issues or to any statement or submission;
- 5.6 inspect any property or thing to the extent that it deems necessary;
- 5.7 rely, in its Award, on his own expert knowledge or experience in any field particularly when evaluating evidence presented.

6 Proceedings on Default

After the parties have agreed to arbitration, the Tribunal may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

7 Award of Costs

- 7.1 Reasonable disbursements made by a successful party to a representative of that party referred to in 9.5 below, if any, may be awarded by the Tribunal, in an amount to be determined by the Tribunal.
- 7.2 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Tribunal for the due payment, on demand, of its fees and expenses. Initially the Claimant shall be responsible for these payments but the Tribunal shall reasonably apportion costs as part of its Award.

8 Delivery of Award

Unless the parties otherwise agree, the Tribunal shall deliver its Award within four weeks after the conclusion of the hearing, or the submission of the last document to the Tribunal in the event that there is no hearing. This provision shall constitute a variation to S23 (a) of the Arbitration Act.

9 Representation of the Parties

Neither of the parties shall be entitled to be represented in the arbitration except by:

- 9.1 the party himself; if a natural person, or a partner in the case of a partnership;
- 9.2 a director in the case of a company;
- 9.3 a member in the case of a close corporation;
- 9.4 a bona-fide full-time employee or officer of the party concerned; and
- 9.5 such technically qualified person, other than a practising lawyer, as the Tribunal considers to be reasonably necessary for the presentation of technical expertise relating to the disputed issues.

10 Limits

- 10.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Tribunal, unless the parties shall have otherwise agreed, such period shall be stipulated by the Tribunal.
- 10.2 The time limits stated in these Rules shall not be extended or shortened except by leave of the Tribunal.

11 Dispute on Rules

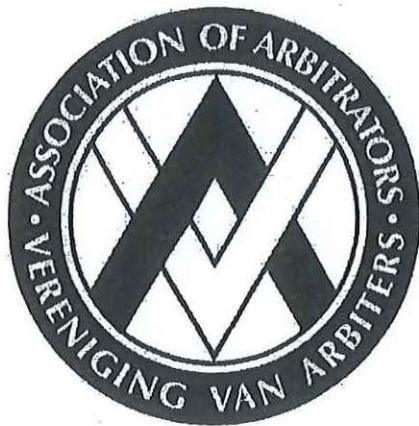
Any dispute about the meaning or effect of any of these Rules shall be determined by the Tribunal who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

12 Tribunal's Fee

- 12.1 The Tribunal shall be entitled to charge a time-related fee with a set maximum cost as laid down by the Association from time to time.
- 12.2 The Tribunal shall be entitled to charge an initial retainer of 40% of the maximum allowable fee in terms of 12.1 above.
- 12.3 The Tribunal may withhold its Award until its fee is paid.

13 Arbitration Act

Save as varied herein, the provisions of the Arbitration Act (Act No 42 of 1965) shall apply.



**ASSOCIATION OF ARBITRATORS
(SOUTHERN AFRICA)**

**RULES FOR THE CONDUCT
OF
ARBITRATIONS**

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RULES FOR THE CONDUCT OF ARBITRATIONS

5th Edition August 2005

These Rules are intended to facilitate cost-effective arbitrations. They should not be seen as prescriptive, but rather as guidelines which may, and should, be modified when such modification will expedite the process.

The General Provisions apply to the Standard and Summary Procedure Rules.

The Standard Procedure Rules are appropriate in most instances, particularly where the parties are represented, and apply except where the parties have agreed otherwise.

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules.

The Small Claims Arbitration Tribunal (SCAT) Rules are intended for matters involving less than R50 000 and preclude legal representation. The Arbitrator's fee is fixed.

For any of the above Rules to apply to an arbitration, the parties thereto must have agreed, in their arbitration agreement, or otherwise in writing, that such Rules are applicable. Where the parties have so agreed, they thereby confer on the Association of Arbitrators (Southern Africa) authority to act as provided for herein.

An Arbitrator who applies the Rules thereby submits to the authority of the Association of Arbitrators (Southern Africa) to the extent applicable to him as stipulated herein.

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GENERAL PROVISIONS

These general provisions shall apply to the Standard Procedure Rules and the Summary Procedure Rules.

Preamble

Nothing shall oblige the Association to appoint an Arbitrator. The Association reserves the right to charge such administration fees, as its executive committee may, from time to time, deem appropriate for the appointment of an Arbitrator. The Association reserves its right to refuse to appoint an Arbitrator.

1 Definitions

In these Rules:

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.2 "Rules" means these arbitration rules;
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration;
- 1.4 "Defendant" means the party to the arbitration other than the Claimant;
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, diagrams, photographs and recordings on magnetic tape, compact disc and computer disc or other electronic storage media;
- 1.6 "Representative" means any person engaged by a party to assist him in the preparation of his claim or defence, as the case may be, and to present his claim or defence at the arbitration hearing on his behalf, and shall include an advocate, an attorney, a claims consultant or any other person who, by virtue of his training and experience, is able to present the case.
- 1.7 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant's Counterclaim and Claimant's Reply and any other similar documents permitted by the Arbitrator.
- 1.8 Where appropriate words importing the singular shall include the plural and words importing the masculine shall include the other gender.
- 1.9 "Arbitrator" shall include more than one Arbitrator where the Agreement so provides or requires the appointment thereof.
- 1.10 "Association" shall mean the Association of Arbitrators (Southern Africa).
- 1.11 "Deliver" or "Delivery" shall mean delivery by hand and/or by facsimile and/or by mail or e-mail to a party at the address or addresses chosen by that party and notified by him in writing to the Arbitrator and the other party. A party may vary such addresses from time to time by notification by him in writing to the Arbitrator and the other party.
- 1.12 "Act" means the Arbitration Act 42 of 1965, as amended from time to time, or any repealing or amending legislation.
- 1.13 "Party" shall mean either the Claimant or the Defendant, and "Parties" shall mean both the Claimant and the Defendant.

- 1.14 "Agreement" means the written arbitration agreement entered into between the parties.
- 1.15 "Agree" means consensus by the parties, and the Arbitrator where applicable, in writing and signed by the parties, and the Arbitrator where applicable.

2 Application of Arbitration Act

Save as varied herein or, insofar as the provisions of the Arbitration Act are mandatory, the Act shall apply.

3 Time Limits

- 3.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Arbitrator, unless the parties have otherwise agreed, such period shall be stipulated by the Arbitrator.
- 3.2 Unless the parties otherwise agree, the time limits stated in these Rules shall not be extended or shortened except by leave of the Arbitrator.

4 Confidentiality

Unless the parties otherwise agree, the proceedings and any Award(s) published therein shall be confidential save to the extent that disclosure may be required in order to protect or pursue a legal right or to enforce or challenge an award in any legal proceedings.

5 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Arbitrator who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

6 General Principles

- 6.1 The Arbitrator may conduct the arbitration in such manner as he considers appropriate, subject to these Rules, provided he ensures the equal treatment of the parties and their right to be heard.
- 6.2 The parties to the arbitration shall at all times act in good faith.

STANDARD PROCEDURE RULES

The Standard Procedure Rules shall apply to the conduct of the arbitration unless the parties agree to adopt any variation of these Rules or to adopt the Summary Procedure or SCAT Rules.

7 Appointment of Arbitrator

- 7.1 Where an agreement to refer a dispute to arbitration requires that the Rules of the Association shall apply thereto but does not identify the Arbitrator or the method by which the Arbitrator is to be appointed, the Chairman for the time being of the Association alternatively the Vice Chairman, alternatively such other member of the executive committee as the Chairman or Vice Chairman shall nominate for the purpose of appointing an Arbitrator may, on the application of either party to the reference, appoint the Arbitrator.
- 7.2 Before appointment, a prospective arbitrator shall sign a statement to the effect that there are no grounds known to him which are likely to give rise to justifiable doubts regarding his independence and impartiality, and the arbitrator must further disclose in writing any facts or circumstances which may be of such a nature as to call into question the arbitrator's independence or impartiality in the eyes of the parties. This statement must be delivered to the parties by not later than the first preliminary meeting.

8 Challenge

8.1 If any Arbitrator :

- 8.1.1 falls seriously ill, or becomes unable or unfit to act; or
- 8.1.2 lacks the necessary independence; or
- 8.1.3 for any other reason ought not to continue as Arbitrator (e.g. lacks impartiality);

the Chairman of the Association or his nominee from time to time shall, upon application as provided below, subject to Rule 8.7, convene a committee consisting of not less than three members ("the Committee") who may revoke the Arbitrator's appointment and appoint another Arbitrator.

- 8.2 A party who intends to challenge an Arbitrator in terms of Rule 8.1, shall make written application to the Chairman of the Association within 10 days of him becoming aware of any circumstances referred to in Rule 8.1, which application will set out fully the reasons for the challenge, failing which such party shall forfeit the right to make such challenge. A copy of the application shall simultaneously be served on the other party.
- 8.3 Within 10 days of the date of receipt by the applicant of notice from the Association as to the relevant fee, the applicant shall lodge with the Association the relevant fee as determined by the executive committee of the Association from time to time.
- 8.4 Failure to lodge the fee shall render the challenge invalid.

- 8.5 Any other party to the reference who receives an application referred to in Rule 8.2 and who wishes to oppose such application shall within 10 days of receipt by him of the application submit a written response fully motivating its opposition.
- 8.6 A copy of the application and any reply shall be served by the respective parties on the Arbitrator who shall be entitled within 10 days of receipt thereof to reply in writing.
- 8.7 Unless the parties agree to the withdrawal of the Arbitrator, the Committee will decide the challenge.
- 8.8 Where an Arbitrator is to be replaced and the parties are unable to agree on the replacement arbitrator, the Committee shall decide whether or not to follow the original nominating process or to appoint a replacement arbitrator.
- 8.9 The Committee shall give directives regarding the costs of the challenge and, if the challenge is successful, the amount of fees and expenses to be paid for the former arbitrator's services, but shall only give directions regarding the costs of the arbitration proceedings if the parties so agree.
- 8.10 When a new Arbitrator is appointed, the proceedings shall continue as if the new Arbitrator had been the Arbitrator from the commencement of the reference, unless the Arbitrator decides otherwise.

9 Preliminary Meeting

- 9.1 On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties for the purpose of:
 - 9.1.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
 - 9.1.2 confirming the Arbitrator's jurisdiction to determine the dispute;
 - 9.1.3 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
 - 9.1.4 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
 - 9.1.5 arranging for the delivery of Submissions as provided in Rules 12 to 16;
 - 9.1.6 determining the dates and venue of the hearing and the times and duration of the sessions;
 - 9.1.7 determining the manner and extent of recording evidence;
 - 9.1.8 deciding whether the Award shall be subject to an Appeal in terms of Rule 39; and

- 9.1.9 dealing with any other matters or proposals that might facilitate the conduct of the arbitration.
- 9.2 If no Preliminary Meeting is held the Arbitrator shall determine the commencement date for the Submissions.

10 Procedural Directives

- 10.1 The Arbitrator may, at any time, make or vary any procedural directives which, in his opinion, will expedite the matter or render it more cost effective.
- 10.2 The Arbitrator shall not exercise his powers under sub-rule 10.1 without affording the parties an opportunity to make representations to him thereon.

11 Jurisdiction

- 11.1 The Arbitrator may decide any dispute regarding the existence, validity, or interpretation of the arbitration agreement and, unless otherwise provided therein, may rule on his own jurisdiction to act.
- 11.2 A party to the reference wishing to challenge the jurisdiction of the arbitrator or who avers that the arbitrator is exceeding his jurisdiction shall raise the jurisdictional issue at the first available opportunity, failing which he shall be deemed to have consented to the arbitrator's jurisdiction.
- 11.3 Where the Arbitrator has made a jurisdictional ruling pursuant to this rule otherwise than in an award, a party who wishes to contest that ruling in court may only do so after the award, in the absence of exceptional circumstances.
- 11.4 For the purposes of this Rule an arbitration clause which forms part of a contract shall be regarded as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not of itself result in invalidity of the arbitration clause.
- 11.5 The Arbitrator shall have the jurisdiction to determine a defence of set-off even when the relationship out of which the defence is said to arise is not within the scope of the arbitration clause or is subject to another arbitration agreement.

12 Statement of Issues

Not later than 15 days after the date of the Preliminary Meeting the parties shall jointly prepare and submit to the Arbitrator a Statement of Issues detailing:

- 12.1 relevant matters which are not in dispute;
- 12.2 the disputed issues, in respect of each of which are set out:
 - 12.2.1 the averments of the party concerned;

- 12.2.2 the other party's response thereto; and
- 12.2.3 the facts and contentions of law on which each party relies;

together with true copies of all relevant documents necessary to sustain the above; and

12.3 the Award which each party desires the Arbitrator to make.

Provided that if the parties are unable jointly to prepare a Statement of Issues or agree not to do so, they shall deliver Submissions as provided for in Rules 13 to 16.

13 Statement of Claim

Where a Statement of Issues is not submitted, the Claimant shall, not later than 20 days after the Preliminary Meeting, deliver to the Arbitrator and the Defendant a Statement of Claim, consisting of:

- 13.1 the averments constituting the claim;
- 13.2 all the facts and contentions of law on which the Claimant bases its claim;
- 13.3 the relief sought; and
- 13.4 true copies of all relevant documents necessary to sustain the above.

14 Statement of Defence

Not later than 15 days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the Arbitrator and to the Claimant a Statement of Defence, consisting of:

- 14.1 a response admitting, denying or objecting to each contention of fact and law in the Statement of Claim;
- 14.2 the grounds for every denial or objection;
- 14.3 all the facts and contentions of law on which the Defendant bases its defence; and
- 14.4 true copies of all relevant documents necessary to sustain the above, unless already delivered as part of the Statement of Claim.

15 Defendant's Counterclaim

At the time of delivery of the Statement of Defence, the Defendant may deliver counterclaims, to the Arbitrator and to the Claimant, setting forth, with the necessary changes, details of the matters referred to in terms of Rule 13 together with true copies of all relevant documents other than those delivered with any previous Submission, all of which details and copies are hereinafter referred to as the "Defendant's Counterclaim".

16 Claimant's Reply

Not later than 15 days after the receipt by the Claimant of the Defendant's Counterclaim, the Claimant shall deliver to the Arbitrator and the Defendant details of his defence to the Defendant's Counterclaim in accordance with the provisions of Rule 14, with the necessary changes, all of which details and copies are hereinafter referred to as the "Claimant's Reply".

17 Amendments and Submissions

- 17.1 Subject to Rule 18.2, either party may amend or supplement its statement of claim or statement of defence, unless the Arbitrator considers it inappropriate to allow such amendment, having regard to the delay in making it or the prejudice to the other party or any other circumstance.
- 17.2 A claim may not be amended in such a manner as would exclude the claim from the scope of the arbitration agreement.
- 17.3 The Arbitrator may make such order as to costs incurred or wasted by such amendment as he considers appropriate.

18 Second Preliminary Meeting

On receipt by the Arbitrator of the Submissions contemplated by Rules 12 to 16 he may, on the application of either party or at his own instance, convene a Second Preliminary Meeting with the parties for the purpose of considering:

- 18.1 whether the Submissions exchanged under Rules 12 to 16 duly comply with those Rules;
- 18.2 any application by either party for the Arbitrator's consent to the furnishing of further particulars to any Submission, or for the amendment of any Submission, or for the furnishing of any additional Submission;
- 18.3 the desirability of the separation of any issues for prior determination in terms of Rule 22;
- 18.4 any changes to the Rules which might be appropriate for the expeditious and cost-effective resolution of the dispute;
- 18.5 the determination or the amendment of any of the time limits laid down in terms of Rule 3 or of any other Rule;
- 18.6 the discovery of any documents in terms of Rule 26;
- 18.7 the preparation and filing of witness statements in terms of Rule 27;
- 18.8 the adoption of provisions for an Appeal against the Award in terms of Rule 39;
- 18.9 a summary of the documents or chronology of significant events;
- 18.10 the preparation of a concise schedule tabulating the parties' opposing contentions on each issue (a Scott schedule); and
- 18.11 any other matter which it is desirable to deal with that might facilitate the arbitration.

19 Additional Preliminary Meetings

The Arbitrator may, at his own instance, or on the application of either party to the reference, convene additional Preliminary Meetings for any purpose which, in the opinion of the Arbitrator, will expedite the matter or render it more cost effective.

20 Proper Law of the Arbitration

- 20.1 Unless the parties agree to the contrary, the seat of the arbitration shall be the Republic of South Africa.
- 20.2 The Arbitrator may hold hearings, meetings, receive argument and issue awards at any geographical place in his discretion whether within the borders of the Republic of South Africa or elsewhere.
- 20.3 Where hearings, meetings, argument or awards are held, received or made outside the borders of the Republic of South Africa, in the absence of agreement by the parties as to the proper law of the arbitration, the arbitration shall be deemed to be an arbitration conducted within the Republic of South Africa and any award as an award made within the Republic of South Africa.

21 Security for Costs

- 21.1 Subject to Rule 21.2 and unless the parties agree to the contrary, the Arbitrator may, on the application of the Defendant in convention or reconvention, order a Claimant in convention or reconvention to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.
- 21.2 In the event that the party ordered to provide the security fails to do so within the time stipulated by the Arbitrator without sufficient cause being shown, the Arbitrator shall terminate the arbitration in relation to that party's claim and, if appropriate, direct that the arbitration proceed to determine the other party's claim.

22 Prior Hearing of Point of Law or Fact

The Arbitrator shall, if both parties so agree, or may, on the application of either party or at his own discretion, determine any particular issue of law or fact either separately or before other issues are determined.

- 22.1 The hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the Arbitrator; and
- 22.2 The onus will be on the party seeking to oppose the separation of the issue of law and/or fact to establish that such separation will not contribute to the expeditious determination of the dispute and/or that the questions cannot conveniently be decided separately;
- 22.3 The Arbitrator shall not exercise his powers under sub-rule 22.1 without affording the parties an opportunity to make representations to him thereon.

23 Award Without Oral Hearing

Where the parties so agree and notify the Arbitrator in writing, the Arbitrator may make his Award without an oral hearing after consideration of the Submissions and any documents tendered by the parties and his observations made in any inspection *in loco*.

24 Default

- 24.1 In the event of the Claimant not submitting its statement of claim within the time stipulated by the Arbitrator without showing good cause, the Arbitrator may issue a directive terminating the proceedings.
- 24.2 In the event of the Defendant not submitting its statement of defence within the time stipulated by the Arbitrator without showing good cause, the Arbitrator may issue a directive that the proceedings continue.
- 24.3 In the event that any party, without showing sufficient cause, fails to appear at a hearing or to produce documentary evidence, having received due notice to that effect, the Arbitrator may continue the proceedings and make the award on the evidence before him.

In the event that one party (the "defaulting party") fails, neglects or refuses to comply with these Rules or to take part or further part in the arbitration, the Arbitrator may, after giving written notice to the defaulting party to remedy its default within a specified time which shall be reasonable in the circumstances, and the defaulting party fails to so remedy its default, proceed with the arbitration and make an Award.

25 Power To Strike Out or Debar

The Arbitrator shall have the power, on application by one party and after hearing argument from both parties, to strike out the other party's claim or a part thereof or to debar the other party from adducing expert evidence or evidence of any particular witness of fact where, in the opinion of the Arbitrator, there has been a serious failure by such other party to comply with some aspect of these Rules or some relevant direction of the Arbitrator, where such failure will, in the opinion of the Arbitrator, materially prejudice the applicant.

26 Documents

- 26.1 The Arbitrator may, on the application of either party or at his own instance, direct that one or both parties discover to the other documents and other material, including but not limited to, tape, video and magnetic disc recordings, relating to any matter in question in the arbitration which is in the possession or under the control of such party and, in such event, shall direct the procedure for such discovery.
- 26.2 Any documents delivered with the Submissions contemplated by Rules 12 to 16 shall be admitted in evidence without the necessity for their identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the documents.
- 26.3 No person shall, save with the leave of the Arbitrator or the consent of all the parties, be entitled to tender in evidence any documents or models unless he shall, not less than 15 days before the hearing, have delivered a notice to the Arbitrator and the other party stating his

intention to do so, offering inspection thereof and requiring the party receiving notice to admit same within 10 days after receipt of the notice.

- 26.4 If the party receiving said notice fails within the said period to admit same, the said documents or models shall be received in evidence upon their mere production and without further proof thereof.
- 26.5 If such party states that he does not admit them, the said documents or models may be proved at the hearing and the party receiving the notice may be ordered to pay the costs of their proof.

27 Evidence

- 27.1 The Arbitrator shall commence the arbitration and proceed without unnecessary delay to establish the facts by such fair means as may be appropriate.
- 27.2 Before any hearing the parties shall deliver the information specified in sub-rules 27.2.1 and 27.2.2. Thereafter the Arbitrator may require, either at his own instance or on the application of either party, that the parties to the reference deliver written notice in terms of sub-rule 27.2.3:
 - 27.2.1 the identity of the witnesses that each party wishes to call;
 - 27.2.2 the subject matter of the witness' testimony;
 - 27.2.3 a summary of the content of such witness' testimony, alternatively, full written statements.
- 27.3 Neither party shall be entitled to lead the evidence of any witness without complying with Rules 27.2.1 and 27.2.2 or where the Arbitrator has given a directive under Rule 27.2.3 without complying therewith, save with the leave of the Arbitrator.
- 27.4 Where, by virtue of the refusal of a witness to give a statement, a party is unable to comply with any directive given in terms of Rule 27.2.3, such party shall:
 - 27.4.1 comply with the directive insofar as he is able;
 - 27.4.2 give notice of the reason for his inability to comply therewith.
- 27.5 In the event of the Arbitrator giving a directive in terms of Rule 27.2.3 he shall determine whether the summaries or statements by the parties are to be given simultaneously or, if not, he shall fix the time within which each of the parties shall deliver the statements or summaries.
- 27.6 The fact that a party has given notice as required by Rules 27.2.1 and 27.2.2 or delivered a summary or statement pursuant to Rule 27.2.3 shall not compel such party to call the witness to give evidence.

27.7 A summary or statement pursuant to a directive in terms of Rule 27.2.3, unless the parties agree to the contrary, shall not constitute evidence in the arbitration unless the witness is called to give evidence at the hearing.

28 Evidence of Expert Witnesses

No party shall, except with the leave of the Arbitrator or the consent of all the parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall, not later than a date specified by the Arbitrator, have submitted to the Arbitrator and the other party notice of his intention so to do, in which event the following conditions shall apply:

28.1 Such notice shall specify the name and qualifications of each expert witness and shall briefly state the nature of the evidence which each will give.

28.2 Not less than 20 days prior to the commencement date of the hearing, alternatively within a time limit prescribed in terms of Rule 3, alternatively as may be otherwise agreed between the parties each party shall submit to the Arbitrator and the other party an Expert Witness Statement in respect of each expert witness that it intends to call, in which the evidence and the opinions of such expert witness and the reasons for such opinions are set out in detail.

28.3 Thereafter experts of like discipline who have been engaged by each party shall hold "without prejudice" meetings, without the respective parties' representatives being present, with a view to:

- 28.3.1 comparing their respective opinions and endeavouring to reconcile differing points of view with the purpose of narrowing the issues between them; and
- 28.3.2 preparing a minute of such meetings wherein they set out the facts and opinions on which they agree, and those upon which they do not agree.

28.4 The minutes of the meetings in terms of Rule 28.3 shall be **with prejudice**, and copies thereof shall be submitted to the Arbitrator and to each party not less than 5 days prior to the commencement of the hearing.

28.5 The Arbitrator shall have the power to appoint one or more chairpersons to preside over the meetings contemplated by Rule 28.3 and the cost thereof shall be costs in the cause, and the Arbitrator shall give such directions regarding payments of these fees as he deems fit.

28.6 In the event of the Arbitrator expressing dissatisfaction with the minutes of the meeting of experts or in the absence of such meeting taking place, the Arbitrator shall be entitled to give any directive in respect to the manner in which the expert evidence is to be adduced and the order in which such evidence is to be called.

29 Expert Assessors

The Arbitrator shall have the power to appoint one or more expert assessors to investigate, consider and report on any matter or matters specified by the Arbitrator, to which provision the following conditions shall apply:

- 29.1 the Arbitrator shall submit to each party a written notice of his intention to appoint an expert assessor wherein is furnished the proposed name of the Assessor and a copy of the instructions proposed to be given to such Assessor;
- 29.2 the arbitrator shall thereafter consult with the parties in regard to:
 - 29.2.1 the decision to appoint an Assessor/s;
 - 29.2.2 the person/s proposed;
 - 29.2.3 the instructions to be given;
- 29.3 the written report of such Assessor shall be submitted to each party at the same time that it is submitted to the Arbitrator;
- 29.4 unless otherwise agreed by the parties, if a party so requests or if the Arbitrator considers it necessary, the Assessor shall, after delivery of his written report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue; and
- 29.5 the qualifying fees of such Assessor shall be costs in the cause, and the Arbitrator may make such directions regarding the payment of such fees as he deems fit;
- 29.6 the Assessor shall not act as an Arbitrator and will not participate in the decision of the Arbitrator.

30 Pre-hearing Conference

- 30.1 Prior to the commencement of the hearing the parties may arrange a pre-hearing conference with the objective of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:
 - 30.1.1 the possibility of obtaining admissions of facts;
 - 30.1.2 the holding of any inspection or examination;
 - 30.1.3 the making of any discovery of documents;
 - 30.1.4 the giving of any further particulars reasonably required for the purposes of the hearing;

- 30.1.5 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
- 30.1.6 the consolidation of hearings;
- 30.1.7 the quantum of damages; and
- 30.1.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated and indexed bundle with copies for the Arbitrator and both parties.

- 30.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed to the Arbitrator at the commencement of the hearing.

31 Inspections in Loco

- 31.1 The Arbitrator shall, if both parties so agree, or may, if he so decides on the application of either party or at his own instance, at any time make an inspection in loco of any site, building, structure or premises which relate to any matter in dispute in which event the following conditions shall apply:

- 31.1.1 unless otherwise agreed by the parties, the Arbitrator shall give both parties not less than ten days' written notice of the date and time when he intends to make such inspection.
- 31.1.2 the parties, together with their representatives and any relevant witnesses that they intend to call, may be present at such inspection and may point out to the Arbitrator such features or aspects of the site, building, structure or premises that they wish the Arbitrator to observe.
- 31.1.3 save with the express permission of the arbitrator, no evidence shall be led and no argument shall be advanced during such inspection.
- 31.1.4 the arbitrator shall record his observations in such manner as may be agreed by the parties, or in the absence of such agreement, in such manner as he may decide and such record of his observations shall form part of the record of the proceedings of the arbitration.

- 31.2 The absence of any party from an inspection arranged by the Arbitrator in terms of this Rule shall not preclude the arbitrator from proceeding with such inspection.

32 Payment of Admitted Amount

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to pay to the other party an amount of money which he admits to be owing by him, to which provision the following conditions shall apply:

- 32.1 the payment shall be by cash, currently dated cheque or electronic deposit into the other party's bank account and, if by cheque, shall be effective when the cheque is paid on due presentation;

- 32.2 the payment shall be accompanied by a written notice specifying:
 - 32.2.1 the claim or counterclaim, or part thereof, against which the payment is made; and
 - 32.2.2 any tender which the party makes in respect of costs; and
- 32.3 a copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his Award.

33 Offer of Settlement

- 33.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to tender payment of a specific amount of money without admission of liability, and as an offer of settlement, to which provision the following conditions shall apply:
 - 33.1.1 the claim or counterclaim, or part thereof, in respect of which the tender is being made; and
 - 33.1.2 any tender which the party makes in respect of costs;
- 33.2 the recipient of the tender shall be entitled, by written notice delivered within 10 days after his receipt of the notice of tender, to accept the tender failing which notice he shall be deemed to have rejected the tender.
- 33.3 on receipt of a notice in terms of paragraph 33.2 the tenderer shall:
 - 33.3.1 within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an Award or an Interim Award ordering the payment to be made; and
 - 33.3.2 after such payment, deliver to the Arbitrator copies of the notices referred to in paragraphs 33.1.1 and 33.2 together with a written statement that the payment referred to has been made;
- 33.4 subject to receipt of the notices and statement referred to in paragraphs 33.1.1 and 33.2, the Arbitrator shall take the facts therein recorded into account in making his Award; and
- 33.5 if the tender of settlement is not accepted the fact of the tender and its non-acceptance shall not be made known to the Arbitrator until he has made his Award on all the issues in the arbitration other than costs, whereupon the said facts shall be made known to him, and shall be taken into account by him in his award of costs, *provided that* if the Arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderer shall be entitled to have the award reopened and reconsidered in respect of the costs.

34 Arbitrator's Expert Knowledge - Weight of Evidence

Unless the parties agree to the contrary, the Arbitrator may, subject to the provisions of these Rules and subject to the rules of natural justice:

- 34.1 rely on his own expert knowledge and experience provided he discloses same to the parties;

34.2 have regard to all the evidence and attribute such weight to the evidence as he shall deem appropriate, whether or not that evidence is given under oath, and whether or not that evidence would be admissible in civil proceedings in a Court.

35 Delivery of Award

35.1 The Award shall be in writing and shall be published by delivery of a copy thereof to the respective parties.

35.2 The Arbitrator shall provide the reasons for his Award simultaneously with publication unless the parties otherwise agree or the Award is made in terms of Rule 36.

35.3 The award shall be deemed to have been published to the parties on the date on which it was so delivered.

35.4 Unless the parties otherwise agree, the Arbitrator shall deliver his award as soon as practicable but in any event within 20 days after the conclusion of the hearing, or the submission of the last document to the Arbitrator in the event that there is no hearing, provided that the parties, at the request of the Arbitrator, can extend this period in writing signed by them.

36 Consent Award

If, during the arbitration proceedings the parties settle the dispute or any part thereof, the Arbitrator may, if requested by the parties, record the settlement in the form of an Award on agreed terms.

37 Corrections to the Award

37.1 Unless otherwise agreed by the parties, the Arbitrator shall be entitled, whether on the application of a party or on his own initiative:

37.1.1 correct in any Award any clerical mistake or any error arising from any accidental slip or omission; or

37.1.2 clarify an ambiguity or uncertainty in the Award; or

37.1.3 make an additional Award with respect to claims presented in the proceedings but omitted from the Award.

37.2 If the Arbitrator acts on his own initiative under sub-rule 37.1, he shall do so within 15 days of the Award being delivered.

37.3 An application made by either party under sub-rule 37.1 shall be made within 15 days of the delivery of the Award, failing which neither party shall be entitled to seek such correction or clarification.

37.4 A correction, clarification or additional award under sub-rule 37.1 shall, unless the parties otherwise agree, be made within 30 days of the delivery of the Award.

- 37.5 Before exercising his powers under sub-rule 37.1, the Arbitrator shall first give the parties an opportunity to make representations, which representations must be made within 5 days of being called upon to so do by the Arbitrator.
- 37.6 If it appears to the Arbitrator that further submissions are required to enable him to make a decision pursuant to sub-rule 37.1, he shall have the power to extend the time limits referred to in the relevant sub-rule.
- 37.7 A correction or clarification under sub-rules 37.1.1 and 37.1.2 shall take the form of an addendum to the Award, which shall be signed and dated by the Arbitrator and delivered under sub-rule 35.1.
- 37.8 Sub-rules 35.1 to 35.3 shall apply to an additional Award under sub-rule 37.1.3.

38 Award of Costs

- 38.1 Unless the arbitration agreement otherwise provides, or the parties otherwise agree, the award of costs shall be at the discretion of the Arbitrator who may direct the costs to be taxed, alternatively, may himself settle the costs.
- 38.2 If the Arbitrator settles the costs he shall be entitled to employ the services of a professional taxing consultant to assist him in determining the amount of such costs to be awarded. However, in determining such costs the Arbitrator shall also be guided by the provisions of sub-rules 38.4 and 38.10.
- 38.3 In the event of the Arbitrator employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause subject to the Arbitrator's directive as to costs in his final award.
- 38.4 Disbursements made by a successful party to his representative in the proceedings shall be recoverable by way of an Award of costs on a scale to be agreed between the parties, or if not so agreed, to be determined by the Arbitrator who may, in his sole discretion, direct that such costs shall be taxed in accordance with Section 35 of the Arbitration Act.
- 38.5 If the parties agree that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the Arbitrator who shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as he may himself appoint, or make an award of such costs as he deems reasonable in the circumstances.
- 38.6 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Arbitrator for the due payment on demand of his fees and expenses.
- 38.7 The Arbitrator may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.
- 38.8 Any directive made by the Arbitrator under sub-rule 38.7 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.

38.9 The Arbitrator shall not exercise his powers under sub-rules 38.7 and 37.8 without affording the parties an opportunity to make submissions to him thereon.

38.10 Nothing herein contained shall be construed as compelling the Arbitrator to use any tariff such as that contained in the Rules of the Supreme Court in making an award in relation to the amount of recoverable costs, unless the parties otherwise agree.

39 **Appeal**

The parties may, by a written and signed agreement, provide that the Award shall be subject to Appeal, to which provision the following conditions shall apply:

39.1 within 10 days of the publication of the Award either party may give written notice to the other, to the Arbitrator and to the Chairman of the Association of its intention to refer the Award to an Appeal Tribunal;

39.2 the Notice of Appeal shall state whether the whole or part only of the Award is appealed against and if only part of such Award is appealed against, it shall state which part, and it shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the Appeal is founded;

39.3 the Chairman of the Association will appoint an Appeal Tribunal consisting of not less than three members and will give notice to the parties of the date or dates on which and the place where the Appeal will be heard and will secure a suitable venue for the hearing;

39.4 not less than 15 days prior to the hearing the Appellant shall deliver to the Appeal Tribunal and to the other party a sufficient number of copies of the record together with a like number of copies of such exhibits as may be necessary for the proper adjudication of the matter, *provided that* the parties may agree to dispense with the provision of the record together with the exhibits but shall in that event and within the same period for the delivery of the record agree the facts upon which the Appeal is to be heard which facts shall be recorded in writing and signed by the parties and submitted to the Appeal Tribunal;

39.5 within 10 days of giving Notice of Appeal the Appellant shall complete, sign and submit to the Association due and proper security to the satisfaction of the Chairman of the Association for the payment of all fees and costs in relation to or concerning the Appeal;

39.6 the Arbitrator may submit to the Appeal Tribunal any motivation or reasons for the Award within 10 days of receiving the Notice of Appeal and shall submit copies of such motivation or reasons to the parties;

39.7 the time period prescribed by Sections 32 and 33 of the Arbitration Act shall not commence to run until such time as the Appeal Tribunal has confirmed or varied the Award of the Arbitrator;

39.8 the Appeal Tribunal shall be entitled, but not derogating from its general powers:

39.8.1 to dismiss the Appeal on its merits;

- 39.8.2 to vary the Award;
- 39.8.3 to substitute its own Award;
- 39.8.4 to direct that the Award, either in whole or in part, be referred back to the Arbitrator for further consideration and for the making of a new or revised Award; and
- 39.8.5 to dismiss the Appeal for non-compliance with the provisions of this Rule;

39.9 In the event that the Appeal Tribunal refers the Award back to the Arbitrator in terms of Rule 39.8.4, the Arbitrator shall, within 30 days of the date on which the Award was so referred back to him, make and publish a new or a revised Award in terms of Rule 35 with the proviso that the Appeal Tribunal may, on good cause shown, extend such time for making a new or revised Award;

39.10 the decision of the Appeal Tribunal shall:

- 39.10.1 be final and binding on the parties;
- 39.10.2 constitute an Award as defined by the Arbitration Act for all purposes; and
- 39.10.3 be deemed to constitute the Award of the Arbitrator.

For the purposes of this Rule, an Award shall include an Interim Award, and reference to the Chairman of the Association shall include any person to whom the Chairman may assign the rights and duties conferred upon him by this Rule.

40 **Waiver**

40.1 The parties are deemed to know the provisions and requirements of these Rules.

40.2 Any party who, in the knowledge that any provision or requirement of the Rules has not been complied with, proceeds with the arbitration without promptly objecting to such non-compliance, shall be deemed to have waived his right to object.

SUMMARY PROCEDURE RULES

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the Arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

41 Application of Certain Standard Procedure Rules

The provisions of rules 7, 8, 11, 20, 22, 23, 24, 32, 33, 35 and 40 of the Standard Procedure Rules shall apply with the changes required by the context to an arbitration conducted under the Summary Procedure Rules. For the purposes of applying sub-rule 35.4 the period shall be 10 days.

42 Preliminary Meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of :

- 42.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 42.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 42.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 42.4 ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;
- 42.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 42.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 42.4 and 42.5 which shall constitute the Statement of Issues;
- 42.7 arranging for the submission by each party to the Arbitrator and to the other party such documents or copies of documents as they, or the Arbitrator, consider relevant to the determination of the issues; and
- 42.8 arranging the date, time and venue of the hearing.

43 Conduct of the Hearing

The Arbitrator may, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

44 Powers of the Arbitrator

44.1 The Arbitrator shall have the power to:

- 44.1.1 depart from any statutory or common law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;

- 44.1.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;
- 44.1.3 make any enquiries as he considers necessary or expedient;
- 44.1.4 grant to the parties such opportunity, as he deems reasonable, of making amendments to the issues or to any statement or submission;
- 44.1.5 inspect any property or thing to the extent that he deems necessary; and
- 44.1.6 rely, in his Award, on his own expert knowledge or experience in any field.

44.2 The Arbitrator shall inform the parties of information gathered or obtained pursuant to sub-rules 44.1.3, 44.1.5 and 44.1.6 and give the parties an opportunity to respond before proceeding to rely thereon.

45 Representation of the Parties

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by;

- 45.1 the party himself, if a natural person or a partner in the case of a partnership;
- 45.2 a director in the case of a company;
- 45.3 a member of a close corporation;
- 45.4 a bona fide full-time employee or officer of the party concerned;
- 45.5 a trustee of a trust; or
- 45.6 such technically qualified person, other than a practicing lawyer, as the Arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including without limiting the generality of the foregoing, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.

**RULES AND GUIDELINES
FOR THE CONDUCT OF THE
SMALL CLAIMS ARBITRATION TRIBUNAL
("SCAT")**

GUIDELINES

- 1 These basic guidelines are intended to facilitate an understanding of the purpose and workings of the Small Claims Arbitration Tribunal ["SCAT"]. The process is not only structured to produce a quick, economical, and effective dispute resolution system but is also simple to implement. The parties do not require knowledge or experience of the arbitration process. The Arbitrator plays an active, interventionist role and shall assist the parties to achieve a cost effective process best suited to their search for justice.
- 2 The parties are not permitted to be represented by practising attorneys or advocates though they may seek the assistance of suitably qualified advisors to prepare their written submissions to the Tribunal.
- 3 After the appointment of the Arbitrator, he may consider it appropriate to meet with the disputing parties so that a procedure to suit the nature of the dispute can be devised by discussion.
- 4 At this initial discussion the Arbitrator may consider it opportune to suggest an alternative dispute resolution process such as facilitating a settlement rather than continuing with the arbitration.
- 5 Should the parties wish to continue with arbitration, it may be more cost-effective to conduct the process on the basis of "documents only", with each party delivering written submissions and documentary evidence, rather than on the basis of a hearing with witnesses adducing oral evidence before the Arbitrator
- 6 Further savings of time and costs may be achieved by the parties and the Arbitrator agreeing, in appropriate circumstances, that the Arbitrator deliver an Award without reasons. Whether the Award is reasoned or unreasoned, it is final and binding on the parties.
- 7 Small Claims Arbitrations fall into one of three categories (as set out in the "Recommended Cost Structure" which forms an Annexure to these Rules) depending on the combined value of the claim and counterclaim, if any. The Recommended Cost Structure is updated by the Association from time to time, and the parties and the Arbitrator are advised to confirm that they are in possession of the latest edition.
- 8 Although SCAT is a highly simplified and flexible arbitration process, it remains subject to the Arbitration Act No. 42 of 1965, as amended, and all peremptory provisions of the Act must be complied with.

RECOMMENDED COST STRUCTURE**ANNEXURE TO SCAT RULES**

The parameters set out herein are, with the exception of the Association registration fees (which are mandatory), merely guidelines which apply in the absence of any other agreement between the parties and the Arbitrator. The parties and the Arbitrator may, notwithstanding the maximum value recommended for Class 3 matters, agree to apply the SCAT Rules to matters in excess of such value

CATEGORIES OF SCAT ARBITRATIONS**A CLASS 1 MATTERS**

Combined value of claim and counterclaim, if any, up to R7,000

Recommended process: Documents only, unreasoned Award

Recommended Cost Structure:

1.	Association registration fee	200.00
2.	Arbitrator: Fixed fee	1,200.00
TOTAL COST		R1,400.00

B CLASS 2 MATTERS

Combined value of claim and counterclaim, if any, from R7,000 to R30,000

Recommended process: Documents only, unreasoned Award

Recommended Cost Structure:

1.	Association registration fee	750.00
2.	Arbitrator: R500 per hr (8 hours max)	4,000.00
3.	Sundries	100.00
4.	Inspection allowance, if any	400.00
MAXIMUM TOTAL COST		R5,250.00

C CLASS 3 MATTERS

Combined value of claim and counterclaim, if any, from R30,000 to R60,000

Recommended process: Hearing with oral evidence, reasoned Award

Recommended Cost Structure:

1.	Association registration fee	1,000.00
2.	Arbitrator: R500 per hr (12 hours max)	6,000.00
3.	Sundries	200.00
4.	Inspection allowance, if any	500.00
5.	Reasoned Award allowance	1,500.00
MAXIMUM TOTAL COST		R9,200.00

SCAT RULES

1.0 Definitions

- 1.1 "Day" means any day other than a Saturday, Sunday or public holiday.
- 1.2 "Rules" means these SCAT arbitration Rules.
- 1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration.
- 1.4 "Defendant" means the party to the arbitration other than the Claimant.
- 1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, photographs and recordings on magnetic tape, compact disc and computer disc or other electronic storage media, and "documentary" has the corresponding meaning.
- 1.6 "Submission" means any averment, denial, argument, or evidence in support thereof, submitted by a party to the Tribunal as part of its case, whether orally or in documentary form.
- 1.7 "Close of Submissions" means that stage in the proceedings when the parties have completed the presentation of their respective cases and of their responses to the other party's case, and the Tribunal commences to consider the Award.
- 1.8 Where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the other genders.
- 1.9 "The Association" means Association of Arbitrators (Southern Africa).
- 2.0 **Matters not Subject to the Small Claims Arbitration Process of the Association of Arbitrators (Southern Africa)**

A matter may not be referred to arbitration under the SCAT Rules where:

- 2.1 the parties are represented in conflict with Rule 9 below;
- 2.2 the nature of the Award sought is anything other than monetary relief;
- 2.3 the combined value of the claim and counterclaim, if any, exceeds the limit recommended for a Class 3 matter, unless the parties and the Arbitrator agree otherwise;
- 2.4 more than two parties are involved;
- 2.5 there is no dispute between the parties;
- 2.6 there is no written agreement between the parties to refer the dispute to arbitration; or
- 2.7 where the nature of the matter is a matrimonial dispute or one concerning status.

3.0 Preliminary Procedure

- 3.1 Unless the arbitration agreement provides that the arbitration is to take place in accordance with the SCAT Rules of the Association, the parties must, by written and signed agreement, commit themselves thereto.
- 3.2 The reference shall be initiated by the Claimant who shall, in writing, request from the Association an "Application for Appointment of a Small Claims Tribunal" form [the "Application Form"].
- 3.3 The Claimant shall, in its request, state the nature of its claim and the relief sought, and shall include therewith a copy of the arbitration agreement, and, if required by Rule 3.1, the written and signed agreement that the arbitration is to take place under the SCAT Rules.
- 3.4 The Association shall by return issue to the Claimant the Application Form and a copy of the current Recommended Cost Structure, and indicate the registration fee payable.
- 3.5 On receipt by the Association of the Application Form and the registration fee, the Chairman of the Association or his nominee shall appoint the Tribunal and provide copies of the Application Form.
- 3.6 The registration fee shall not be refundable. The Tribunal shall take payment of the registration fee into account when deciding its award of costs.
- 3.7 The Tribunal shall confirm acceptance of its appointment in writing to the Chairman of the Association and to both parties.
- 3.8 The Tribunal may then call for a Preliminary Meeting with the parties to agree the procedure to be adopted to resolve the dispute and/or take any other steps which it may deem appropriate in the circumstances.

4.0 Proceedings Private and Confidential

Save to the extent necessary for the purposes of the arbitration, or for any court proceedings related thereto, or where otherwise under a legal obligation to do so, neither party shall, without the agreement of the other party, disclose or make available, to any other person, any information concerning the arbitration or the Award.

5.0 Powers of the Tribunal

The Tribunal shall, subject to the Rules of Natural Justice, have the power to;

- 5.1 assist the parties to reach a settlement;
- 5.2 depart from any statutory or common law rules of evidence;
- 5.3 put questions to each party or its witnesses where applicable, on any matter relevant to the issues;
- 5.4 make any enquiries that it considers necessary or expedient, provided that it shall inform the parties of all matters ascertained as a result of such enquiries;
- 5.5 grant to the parties such opportunity as it deems reasonable for making amendments to submissions;
- 5.6 inspect any property or thing to the extent that it deems necessary; and
- 5.7 rely, in its Award, on his own expert knowledge or experience in any field, particularly when evaluating evidence presented.

6.0 Proceedings on Default

The Tribunal may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

7.0 Award of Costs

- 7.1 Reasonable disbursements made by a successful party to a representative of that party referred to in Rule 9.5 below, if any, may be awarded by the Tribunal against the other party, in an amount to be determined by the Tribunal.
- 7.2 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Tribunal for the due payment, on demand, of its fees and expenses. Initially the Claimant shall be responsible for such payments but the Tribunal shall, in its Award, make any adjustments necessary to properly reflect liability for costs.

8.0 Delivery of Award

Unless the parties otherwise agree, the Tribunal shall deliver its Award within four weeks after the last Submission to the Tribunal.

9.0 Representation of the Parties

Neither of the parties shall be entitled to be represented in the arbitration except by:

- 9.1 the party himself; if a natural person, or a partner in the case of a partnership;
- 9.2 a director in the case of a company;
- 9.3 a member in the case of a close corporation;
- 9.4 a bona-fide full-time employee or officer of the party concerned; and
- 9.5 a person, other than a practising lawyer, as the Tribunal considers to be reasonably necessary for the presentation of technical expertise relating to the disputed issues.

10.0 **Limits**

Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Tribunal, the parties have not agreed, such period shall be stipulated by the Tribunal.

11.0 **Dispute on Rules**

Any dispute about the meaning or effect of any of these Rules shall be determined by the Tribunal who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

12.0 **Tribunal's Fee**

- 12.1 The Tribunal shall be entitled to charge a time-related fee up to the maximum set by the Association in the Recommended Cost Structure current at the time of issue of the Application Form to the Claimant.
- 12.2 The Tribunal shall be entitled to charge an initial non-refundable deposit equivalent to 25% of the maximum fee allowed in the Recommended Cost Structure current at the time of issue of the Application Form to the Claimant.
- 12.3 The Tribunal may withhold its Award until its fee is paid in full.

13.0 **Arbitration Act**

Save as varied herein, the provisions of the Arbitration Act (Act No 42 of 1965), as amended, shall apply to all arbitrations under the SCAT Rules.

Rules for the conduct of Arbitrations

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RULES FOR THE CONDUCT OF ARBITRATIONS

6th Edition

These Rules are intended to facilitate cost-effective arbitrations. They should not be seen as prescriptive, but rather as guidelines which may, and should, be modified when such modification will expedite the process.

The General Provisions apply to the Standard and Summary Procedure Rules.

The Standard Procedure Rules are appropriate in most instances, particularly where the parties are represented, and apply except where the parties have agreed otherwise.

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules.

The Small Claims Arbitration Tribunal (SCAT) Rules are intended for matters involving less than R60 000 and preclude legal representation. The Arbitrator's fee is fixed.

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GENERAL PROVISIONS

Preamble

These general provisions shall apply to the Standard Procedure Rules and the Summary Procedure Rules.

Nothing shall oblige the Association to appoint an Arbitrator. The Association reserves the right to charge such administration fees, as its executive committee may, from time to time, deem appropriate for the appointment of an Arbitrator. The Association reserves its right to refuse to appoint an Arbitrator.

By electing to use and apply these Rules the Arbitrator and the Parties agree to submit to the authority of the Association for the purposes of the Association exercising its functions in terms of the Rules.

1 Definitions

In these Rules:

- 1.1 "Act" means the Arbitration Act 42 of 1965, as amended from time to time, or any repealing or amending legislation.
- 1.2 "Agreement" means the written arbitration agreement entered into between the parties;
- 1.3 "Arbitrator" shall include more than one Arbitrator where the Agreement so provides or requires the appointment thereof;
- 1.4 "Association" shall mean the Association of Arbitrators (Southern Africa);
- 1.5 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration;
- 1.6 "Day" means any day other than a Saturday, Sunday or public holiday;
- 1.7 "Defendant" means the party to the arbitration other than the Claimant;

- 1.8 "Deliver" or "Delivery" whether to an Arbitrator or to a party, unless otherwise agreed by the parties and the Arbitrator shall mean delivery by hand and/or by facsimile and/or by mail or e-mail to a party at the address or addresses chosen by that party and notified by him in writing to the Arbitrator and the other party. A party may vary such addresses from time to time by notification by him in writing to the Arbitrator and the other party.
- 1.9 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, diagrams, photographs and recordings on magnetic tape, compact disc and computer disc or other electronic storage media;
- 1.10 "Interim measure" means any temporary measure, by which, at any time prior to the delivery of the final award, the Arbitrator orders a party to maintain or restore the status quo pending determination of the dispute; or to provide a means of preserving assets out of which a subsequent award may be satisfied; or to preserve evidence that may be relevant and material to the resolution of the dispute.
- 1.11 "Party" shall mean either the Claimant or the Defendant, and "Parties" shall mean both the Claimant and the Defendant.
- 1.12 "Representative" means any person engaged by a party to assist him in the preparation of his claim or defence, as the case may be, and to present his claim or defence at the arbitration hearing on his behalf, and shall include an advocate, an attorney, a claims consultant or any other person who, by virtue of his training and experience, is able to present the case.
- 1.13 "Rules" means these arbitration rules;
- 1.14 "Submissions" means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant's Counterclaim and Claimant's Reply and any other similar documents permitted by the Arbitrator.
- 1.15 Where appropriate words importing the singular shall include the plural and words importing the masculine shall include the other gender.



2 Application of Arbitration Act

2.1 Save as varied herein or, insofar as the provisions of the Arbitration Act are mandatory, the Act shall apply.

3 Time Limits

3.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Arbitrator, unless the parties have otherwise agreed, such period shall be stipulated by the Arbitrator.

3.2 Unless the parties otherwise agree, the time limits stated in these Rules shall not be extended or shortened except by leave of the Arbitrator.

4 Confidentiality

Unless the parties otherwise agree, the proceedings and any Award(s) published therein shall be confidential save to the extent that disclosure may be required in order to protect or pursue a legal right or to enforce or challenge an award in any legal proceedings.

5 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Arbitrator who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

6 General Principles

- 6.1 The Arbitrator may conduct the arbitration in such manner as he considers appropriate, subject to these Rules, provided he ensures the equal treatment of the parties and their right to be heard.
- 6.2 The Arbitrator shall commence the arbitration and proceed without unnecessary delay to establish the facts by such fair means as may be appropriate.
- 6.3 The parties to the arbitration shall at all times act in good faith.

7 Security for Arbitrator's Fees

- 7.1 The Parties shall be liable, jointly and severally to the Arbitrator for the due payment of his fees and expenses.
- 7.2 The Arbitrator may order the Parties to provide him with security in advance payment of his fees within such time, amount and manner as he deems appropriate.
- 7.3 If the security ordered by the Arbitrator in terms of Rule 7.2 of this Rule is not provided as directed, the Arbitrator may suspend the proceedings until it has been provided. Any Party shall be free to pay the whole advance of the security ordered by the Arbitrator should the other party fail to pay.
- 7.4 In the event of a party paying the whole advance as provided for in terms of Rule 7.3 such party shall be entitled to apply to the Arbitrator for an award that the other party make payment to him of his portion of the security.

STANDARD PROCEDURE RULES

The Standard Procedure Rules shall apply to the conduct of the arbitration unless the parties agree to adopt any variation of these Rules or to adopt the Summary Procedure or SCAT Rules.

8 Appointment of Arbitrator

- 8.1 Except as provided in Rule 8.2, when any agreement requires the Association to appoint or nominate an arbitrator the Association may appoint or nominate an Arbitrator.
- 8.2 Should a dispute arise as to whether the Association has authority to make an appointment or nomination of an arbitrator or should it appear from the application to the Association that the Association may not have the authority to appoint or nominate an arbitrator, the Association will, in its sole discretion, decide whether or not to make the nomination or appointment.
- 8.3 Upon accepting appointment, a prospective arbitrator shall sign a statement to the effect that there are no grounds known to him which are likely to give rise to justifiable doubts regarding his independence and impartiality, and the arbitrator must further disclose in writing any facts or circumstances which may be of such a nature as to call into question the arbitrator's independence or impartiality in the eyes of the parties. A copy of this statement must be transmitted to each party..
 - 8.3.1 Within 5 days of the receipt of such disclosure, the parties shall state in writing if they intend to challenge the arbitrator;
 - 8.3.2 The provisions of Rule 9 shall apply to the challenge of an arbitrator on the basis of circumstances disclosed by the Arbitrator
 - 8.3.3 A party who fails to challenge an arbitrator within the period of time specified in Rule 8.3.1 shall not be permitted to challenge the arbitrator based on the circumstances already disclosed by the arbitrator.



- 8.4 Where an Arbitrator, duly appointed or nominated by the Association dies, the Association, may, unless the Parties otherwise agree, appoint another arbitrator to continue with the arbitration.
- 8.5 Rule 9.10 applies to a new Arbitrator appointed under Rule 8.4.

9 Challenge

- 9.1 If any Arbitrator :
 - 9.1.1 falls seriously ill, or becomes unable or unfit to act; or
 - 9.1.2 lacks the necessary independence; or
 - 9.1.3 for any other reason ought not to continue as Arbitrator (e.g. lacks impartiality);

the Chairman of the Association or his nominee from time to time shall, upon application as provided below, subject to Rule 9.7, convene a committee consisting of not less than three members ("the Committee") who may revoke the Arbitrator's appointment and appoint another Arbitrator.
- 9.2 A party who intends to challenge an Arbitrator in terms of Rule 9.1, shall make written application to the Chairman of the Association within 10 days of him becoming aware of any circumstances referred to in Rule 9.1, which application will set out fully the reasons for the challenge, failing which such party shall forfeit the right to make such challenge. A copy of the application shall simultaneously be served on the other party.
- 9.3 Within 10 days of the date of receipt by the applicant of notice from the Association as to the relevant fee, the applicant shall lodge with the Association the relevant fee as determined by the executive committee of the Association from time to time.
- 9.4 Failure to lodge the fee shall render the challenge invalid.



- 9.5 Any other party to the reference who receives an application referred to in Rule 9.2 and who wishes to oppose such application shall within 10 days of receipt by him of the application submit a written response fully motivating its opposition.
- 9.6 A copy of the application and any reply shall be served by the respective parties on the Arbitrator who shall be entitled within 10 days of receipt thereof to reply in writing.
- 9.7 Unless the parties agree to the withdrawal of the Arbitrator, the Committee will decide the challenge.
- 9.8 Where an Arbitrator is to be replaced and the parties are unable to agree on the replacement arbitrator, the Committee shall decide whether or not to follow the original nominating process or to appoint a replacement arbitrator.
- 9.9 The Committee shall give directives regarding the costs of the challenge and, if the challenge is successful, the amount of fees and expenses to be paid for the former arbitrator's services, but shall only give directions regarding the costs of the arbitration proceedings if the parties so agree.
- 9.10 Unless otherwise agreed by the parties or determined by the new Arbitrator, after giving the parties the opportunity to address him, the Arbitrator shall continue with the proceedings as if he had been the Arbitrator from the commencement of the reference.

10 Preliminary Meeting

- 10.1 On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties for the purpose of:
 - 10.1.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
 - 10.1.2 confirming the Arbitrator's jurisdiction to determine the dispute;
 - 10.1.3 recording by the Arbitrator of his appointment;



- 10.1.4 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 10.1.5 arranging for the delivery of Submissions as provided in Rules 13 to 17;
- 10.1.6 determining the dates and venue of the hearing and the times and duration of the sessions;
- 10.1.7 determining the manner and extent of recording evidence;
- 10.1.8 deciding whether the Award shall be subject to an Appeal in terms of Rule 40; and
- 10.1.9 dealing with any other matters or proposals that might facilitate the conduct of the arbitration.

10.2 If no Preliminary Meeting is held the Arbitrator shall, in his discretion, determine the procedures and time table for the arbitration.

11 Procedural Directives

- 11.1 The Arbitrator may, at any time, make or vary any procedural directives which, in his opinion, will expedite the matter or render it more cost effective.
- 11.2 The Arbitrator shall not exercise his powers under Rule 11.1 without affording the parties an opportunity to make representations to him thereon.

12 Jurisdiction

- 12.1 The Arbitrator may decide any dispute regarding the existence, validity, or interpretation of the arbitration agreement and, unless otherwise provided therein, may rule on his own jurisdiction to act.

12.2 A party to the reference wishing to challenge the jurisdiction of the arbitrator or who avers that the arbitrator is exceeding his jurisdiction shall raise the jurisdictional issue at the first available opportunity, failing which he shall be deemed to have consented to the arbitrator's jurisdiction.

12.3 Where the Arbitrator has made a jurisdictional ruling pursuant to this Rule otherwise than in an award, a party who wishes to contest that ruling in court may only do so after publication of the award, in the absence of exceptional circumstances.

12.4 For the purposes of this Rule an arbitration clause which forms part of a contract shall be regarded as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not of itself result in invalidity of the arbitration clause.

12.5 The Arbitrator shall have the jurisdiction to determine a defence of set-off even when the relationship out of which the defence is said to arise is not within the scope of the arbitration clause or is subject to another arbitration agreement.

13 Statement of Issues

Not later than 15 days after the date of the Preliminary Meeting the parties may jointly prepare and submit to the Arbitrator a Statement of Issues detailing:

13.1 relevant matters which are not in dispute;

13.2 the disputed issues, in respect of each of which are set out:

- 13.2.1 the averments of the party concerned;
- 13.2.2 the other party's response thereto; and
- 13.2.3 the facts and the law on which each party relies;

together with copies of documents relied on in the Statement of Issues; and

13.3 the Award which each party desires the Arbitrator to make.



14 Statement of Claim

Where a Statement of Issues is not submitted, the Claimant shall, not later than 20 days after the Preliminary Meeting, deliver to the Arbitrator and the Defendant a Statement of Claim, consisting of:

- 14.1 the averments constituting the claim;
- 14.2 the facts and the conclusions of law on which the Claimant bases its claim;
- 14.3 the relief sought; and
- 14.4 copies of all documents relied on in the Statement of Claim.

15 Statement of Defence

Not later than 15 days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the Arbitrator and to the Claimant a Statement of Defence, consisting of:

- 15.1 the averments constituting the defence;
- 15.2 the facts and the conclusions of law on which the Defendant bases its defence; and
- 15.3 copies of all documents relied on in the Statement of Defence, unless already delivered as part of the Statement of Claim.

16 Defendant's Counterclaim

At the time of delivery of the Statement of Defence, the Defendant may deliver counterclaims, to the Arbitrator and to the Claimant, setting forth, with the necessary changes, details of the matters referred to in terms of Rule 14 together with copies of all relevant documents other than those delivered with any previous Submission, all of which details and copies are hereinafter referred to as the "Defendant's Counterclaim".



17 Claimant's Reply

Not later than 15 days after the receipt by the Claimant of the Defendant's Counterclaim, the Claimant shall deliver to the Arbitrator and the Defendant details of his defence to the Defendant's Counterclaim in accordance with the provisions of Rule 15, with the necessary changes, all of which details and copies are hereinafter referred to as the "Claimant's Reply".

18 Replication

A Party, within 15 days of the filing of a statement of defence to a claim or counterclaim, may replicate thereto failing which the Party shall not be entitled to replicate except by leave of the Arbitrator.

19 Amendments and Submissions

- 19.1 The parties may not amend the submissions or deliver any additional submission or replication, other than as provided in Rule 18, except by leave of the Arbitrator.
- 19.2 A claim may not be amended in such a manner as would exclude the claim from the scope of the arbitration agreement.
- 19.3 The Arbitrator may make such order as to costs incurred or wasted by such amendment, replication or further submission as he considers appropriate.

20 Second Preliminary Meeting

On receipt by the Arbitrator of the Submissions contemplated by Rules 13 to 17 he may, on the application of either party or at his own instance, convene a Second Preliminary Meeting with the parties for the purpose of considering:

- 20.1 whether the Submissions exchanged under Rules 13 to 17 duly comply with those Rules;



- 20.2 any application by either party for the Arbitrator's consent to the furnishing of further particulars to any Submission, or for the amendment of any Submission, or for the furnishing of any additional Submission;
- 20.3 the desirability of the separation of any issues for prior determination in terms of Rule 24;
- 20.4 any changes to the Rules which might be appropriate for the expeditious and cost-effective resolution of the dispute;
- 20.5 the determination or the amendment of any of the time limits laid down in terms of Rule 3 or of any other Rule;
- 20.6 the discovery of any documents in terms of Rule 27;
- 20.7 the preparation and filing of witness statements in terms of Rule 28;
- 20.8 the adoption of provisions for an Appeal against the Award in terms of Rule 40;
- 20.9 a summary of the documents or chronology of significant events;
- 20.10 the preparation of a concise schedule tabulating the parties' opposing contentions on each issue (a Scott schedule); and
- 20.11 any other matter which it is desirable to deal with that might facilitate the arbitration.

21 Additional Preliminary Meetings

The Arbitrator may, at his own instance, or on the application of either party to the reference, convene additional Preliminary Meetings for any purpose which, in the opinion of the Arbitrator, will expedite the matter or render it more cost effective.

22 Proper Law of the Arbitration

- 22.1 Unless the parties agree to the contrary, the seat of the arbitration shall be the Republic of South Africa.
- 22.2 The Arbitrator may hold hearings, meetings, receive argument and issue awards at any geographical place in his discretion whether within the borders of the Republic of South Africa or elsewhere.
- 22.3 Where hearings, meetings, argument or awards are held, received or made outside the borders of the Republic of South Africa, in the absence of agreement by the parties as to the proper law of the arbitration, the arbitration shall be deemed to be an arbitration conducted within the Republic of South Africa and any award as an award made within the Republic of South Africa.

23 Security for Costs

- 23.1 Subject to Rule 23.2 and unless the parties agree to the contrary, the Arbitrator may, on the application of a party, order any claiming or counterclaiming party to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.
- 23.2 In the event that the party ordered to provide the security fails to do so within the time stipulated by the Arbitrator without sufficient cause being shown, the Arbitrator shall terminate the arbitration in relation to that party's claim and, if appropriate, direct that the arbitration proceed to determine the other party's claim.

24 Prior Hearing of Point of Law or Fact

The Arbitrator shall, if both parties so agree, or may, on the application of either party or at his own discretion, determine any particular issue of law or fact either separately or before other issues are determined.

- 24.1 The hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the Arbitrator; and
- 24.2 The onus will be on the party seeking to oppose the separation of the issue of law and/or fact to establish that such separation will not contribute to the expeditious determination of the dispute and/or that the questions cannot conveniently be decided separately;
- 24.3 The Arbitrator shall not exercise his powers under Rule 24.1 without affording the parties an opportunity to make representations to him thereon.

25 Award Without Oral Hearing

Where the parties so agree and notify the Arbitrator in writing, the Arbitrator may make his Award without an oral hearing after consideration of the Submissions and any documents tendered by the parties and his observations made in any inspection *in loco*.

26 DEFAULT

- 26.1 If, without good cause, a claimant fails to deliver its claim, or a defendant its defence, in due time, the Arbitrator may either order the termination of the arbitration or that it proceed without the defence, whichever is appropriate..
- 26.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitrator may proceed with the arbitration.
- 26.3 If a Party, without good cause, does not produce in time any documentary evidence which the Arbitrator has directed it to produce, the Arbitrator may proceed to make his award without that document and solely on the evidence before him.

27 Documents

- 27.1 The Arbitrator may, on the application of either party or at his own instance, direct that one or both parties discover to the other documents and other material, including but not limited to, tape, video and magnetic disc recordings, relating to any matter in question in the arbitration which is in the possession or under the control of such party and, in such event, shall direct the procedure for such discovery.
- 27.2 Any documents delivered with the Submissions contemplated by Rules 13 to 17 shall be admitted in evidence without the necessity for their identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the documents.
- 27.3 No person shall, save with the leave of the Arbitrator or the consent of all the parties, be entitled to tender in evidence or rely on any documents or models unless he shall, not less than 15 days before the hearing, have delivered a notice to the Arbitrator and the other party stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit same within 10 days after receipt of the notice.
- 27.4 If the party receiving said notice fails within the said period to admit same, the said documents or models shall be received in evidence upon their mere production and without further proof thereof.
- 27.5 If such party states that he does not admit them, the said documents or models may be proved at the hearing and the party receiving the notice may be ordered to pay the costs of their proof.

28 Evidence

- 28.1 Before any hearing the parties shall deliver the information specified in Rules 28.1.1 and 28.1.2. Thereafter the Arbitrator may require, either at his own instance or on the application of either party, that the parties to the reference deliver written notice in terms of Rule 28.1.3:
 - 28.1.1 the identity of the witnesses that each party wishes to call;



- 28.1.2 the subject matter of the witness' testimony;
- 28.1.3 a summary of the content of such witness' testimony, alternatively, full written statements.

28.2 Save with the leave of the Arbitrator neither party shall be entitled to lead the evidence of any witness without complying with Rules 28.1.1 and 28.1.2 or where the Arbitrator has given a directive under Rule 28.1.3 without complying therewith.,

28.3 Where, by virtue of the refusal of a witness to give a statement, a party is unable to comply with any directive given in terms of Rule 28.1.3, such party shall:

- 28.3.1 comply with the directive insofar as he is able;
- 28.3.2 give notice of the reason for his inability to comply therewith.

28.4 In the event of the Arbitrator giving a directive in terms of Rule 28.1.3 he shall determine whether the summaries or statements by the parties are to be given simultaneously or, if not, he shall fix the time within which each of the parties shall deliver the statements or summaries.

28.5 The fact that a party has given notice as required by Rules 28.1.1 and 28.1.2 or delivered a summary or statement pursuant to Rule 28.1.3 shall not compel such party to call the witness to give evidence.

28.6 A summary or statement pursuant to a directive in terms of Rule 28.1.3, unless the parties agree to the contrary, shall not constitute evidence in the arbitration unless the witness is called to give evidence at the hearing.

29 Evidence of Expert Witnesses

No party shall, except with the leave of the Arbitrator or the consent of all the parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall, not later than 30 days prior to the hearing, have submitted to the Arbitrator and the



other party notice of his intention so to do, in which event the following conditions shall apply:

- 29.1 Such notice shall specify the name and qualifications of each expert witness and shall briefly state the nature of the evidence which each will give.
- 29.2 Not less than 20 days prior to the commencement date of the hearing, alternatively within a time limit prescribed in terms of Rule 3, alternatively as may be otherwise agreed between the parties each party shall submit to the Arbitrator and the other party an Expert Witness Statement in respect of each expert witness that it intends to call, in which the evidence and the opinions of such expert witness and the reasons for such opinions are set out in detail.
- 29.3 Thereafter experts of like discipline who have been engaged by each party shall hold "without prejudice" meetings, without the respective parties' representatives being present, with a view to:
 - 29.3.1 comparing their respective opinions and endeavouring to reconcile differing points of view with the purpose of narrowing the issues between them; and
 - 29.3.2 preparing a minute of such meetings wherein they set out the facts and opinions on which they agree, and those upon which they do not agree.
- 29.4 The minutes of the meetings in terms of Rule 29.3 shall be **with prejudice**, and copies thereof shall be submitted to the Arbitrator and to each party not less than 5 days prior to the commencement of the hearing.
- 29.5 The Arbitrator shall have the power to appoint one or more chairpersons to preside over the meetings contemplated by Rule 29.3 and the cost thereof shall be costs in the cause, and the Arbitrator shall give such directions regarding payments of these fees as he deems fit.
- 29.6 In the event of the Arbitrator expressing dissatisfaction with the minutes of the meeting of experts or in the absence of such meeting taking place, the Arbitrator shall be entitled to give any directive in respect to the manner in



which the expert evidence is to be adduced and the order in which such evidence is to be called.

30 Expert Assessors

The Arbitrator shall have the power to appoint one or more expert assessors to investigate, consider and report on any matter or matters specified by the Arbitrator, to which provision the following conditions shall apply:

- 30.1 the Arbitrator shall submit to each party a written notice of his intention to appoint an expert assessor appointed wherein is furnished the proposed name of the Assessor and a copy of the instructions proposed to be given to such Assessor;
- 30.2 the arbitrator shall thereafter consult with the parties in regard to:
 - 30.2.1 the decision to appoint an Assessor/s;
 - 30.2.2 the person/s proposed;
 - 30.2.3 the instructions to be given;
- 30.3 the Parties will contract with the expert assessor, will be responsible for and make payment of his fees;
- 30.4 the written report of such Assessor shall be submitted to each party at the same time that it is submitted to the Arbitrator;
- 30.5 unless otherwise agreed by the parties, if a party so requests or if the Arbitrator considers it necessary, the Assessor shall, after delivery of his written report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue; and
- 30.6 the qualifying fees of such Assessor shall be costs in the cause, and the Arbitrator may make such directions regarding the payment of such fees as he deems fit;



30.7 the Assessor shall not act as an Arbitrator and will not participate in the decision of the Arbitrator.

31 Pre-hearing Conference

31.1 Prior to the commencement of the hearing the parties may arrange a pre-hearing conference with the objective of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

- 31.1.1 the possibility of obtaining admissions of facts;
- 31.1.2 the holding of any inspection or examination;
- 31.1.3 the making of any discovery of documents;
- 31.1.4 the giving of any further particulars reasonably required for the purposes of the hearing;
- 31.1.5 the production of plans, diagrams, photographs, models and the like to be used at the hearing;
- 31.1.6 the consolidation of hearings;
- 31.1.7 the quantum of damages; and
- 31.1.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated and indexed bundle with copies for the Arbitrator and both parties.

31.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed to the Arbitrator at the commencement of the hearing.

32 Inspections in Loco and Interim Measures

32.1 The Arbitrator shall, if both parties so agree, or may, if he so decides on the application of either party or at his own instance, at any time make an



inspection in loco of any site, building, structure or premises which relate to any matter in dispute in which event the following conditions shall apply:

32.1.1 unless otherwise agreed by the parties, the Arbitrator shall give both parties not less than ten days' written notice of the date and time when he intends to make such inspection.

32.1.2 the parties, together with their representatives and any relevant witnesses that they intend to call, may be present at such inspection and may point out to the Arbitrator such features or aspects of the site, building, structure or premises that they wish the Arbitrator to observe.

32.1.3 save with the express permission of the arbitrator, no evidence shall be led and no argument shall be advanced during such inspection.

32.1.4 the arbitrator shall record his observations in such manner as may be agreed by the parties, or in the absence of such agreement, in such manner as he may decide and such record of his observations shall form part of the record of the proceedings of the arbitration.

32.2 The absence of any party from an inspection arranged by the Arbitrator in terms of this Rule shall not preclude the arbitrator from proceeding with such inspection.

32.3 The Arbitrator may at the request of a party grant any interim measures it deems appropriate and may order the party requesting the interim measures to provide appropriate security for such measures and may attach such conditions which it considers necessary..

33 Payment of Admitted Amount

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to pay to the other party an amount of money which he admits to be owing by him, to which provision the following conditions shall apply:

- 33.1 the payment shall be by cash, currently dated cheque or electronic deposit into the other party's bank account and, if by cheque, shall be effective when the cheque is paid on due presentation;
- 33.2 the payment shall be accompanied by a written notice specifying:
 - 33.2.1 the claim or counterclaim, or part thereof, against which the payment is made; and
 - 33.2.2 any tender which the party makes in respect of costs; and
- 33.3 a copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his Award.

34 Offer of Settlement

- 34.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to tender payment of a specific amount of money without admission of liability, and as an offer of settlement, to which provision the following conditions shall apply:
 - 34.1.1 the tender shall be in the form of a written notice to the other party specifying:
 - 34.1.1.1 the claim or counterclaim, or part thereof, in respect of which the tender is being made; and
 - 34.1.1.2 any tender which the party makes in respect of costs;
- 34.2 the recipient of the tender shall be entitled, by written notice delivered within 10 days after his receipt of the notice of tender, to accept the tender failing which notice he shall be deemed to have rejected the tender.
- 34.3 on receipt of a notice in terms of Rule 34.2 the tenderer shall:
 - 34.3.1 within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an Award or an Interim Award ordering the payment to be made; and



34.3.2 after such payment, deliver to the Arbitrator copies of the notices referred to in Rules 33.1.1 and 33.2 together with a written statement that the payment referred to has been made;

34.4 subject to receipt of the notices and statement referred to in Rules 33.1.1 and 33.2, the Arbitrator shall take the facts therein recorded into account in making his Award; and

34.5 if the tender of settlement is not accepted the fact of the tender and its non-acceptance shall not be made known to the Arbitrator until he has made his Award on all the issues in the arbitration other than costs, whereupon the said facts shall be made known to him, and shall be taken into account by him in his award of costs, *provided that* if the Arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderer shall be entitled to have the award reopened and reconsidered in respect of the costs.

35 Arbitrator's Expert Knowledge - Weight of Evidence

Unless the parties agree to the contrary, the Arbitrator may, subject to the provisions of these Rules and subject to the rules of natural justice:

35.1 rely on his own expert knowledge and experience provided he discloses same to the parties;

35.2 have regard to all the evidence and attribute such weight to the evidence as he shall deem appropriate, whether or not that evidence is given under oath, and whether or not that evidence would be admissible in civil proceedings in a Court.

36 Delivery of Award

36.1 The Award shall be in writing and shall be published by delivery of a copy thereof to the respective parties.



- 36.2 The Arbitrator shall provide the reasons for his Award simultaneously with publication unless the parties otherwise agree or the Award is made in terms of Rule 37.
- 36.3 The award shall be deemed to have been published to the parties on the date on which it was so delivered.
- 36.4 Unless the parties otherwise agree, the Arbitrator shall make his award as soon as practicable but in any event within 20 days after the conclusion of the hearing, or the submission of the last document to the Arbitrator in the event that there is no hearing, provided that the parties, at the request of the Arbitrator, can extend this period in writing signed by them.
- 36.5 The Arbitrator shall only be obliged to publish his award after receipt of payment of all his fees and expenses.

37 Consent Award

If, during the arbitration proceedings the parties settle the dispute or any part thereof, the Arbitrator may, if requested by the parties, record the settlement in the form of an Award on agreed terms.

38 Corrections to the Award

- 38.1 Unless otherwise agreed by the parties, the Arbitrator shall be entitled, whether on the application of a party or on his own initiative:
 - 38.1.1 correct in any Award any clerical mistake or any error arising from any accidental slip or omission; or
 - 38.1.2 clarify an ambiguity or uncertainty in the Award; or
 - 38.1.3 make an additional Award with respect to claims presented in the proceedings but omitted from the Award.
- 38.2 If the Arbitrator acts on his own initiative under Rule 38.1, he shall do so within 15 days of the Award being delivered.



38.3 An application made by either party under Rule 38.1 shall be made within 15 days of the delivery of the Award, failing which neither party shall be entitled to seek such correction or clarification.

38.4 Save where the arbitrator acts under his own initiative under Rule 38.2 any correction, clarification or additional award under sub-rule 38.1 shall, unless the parties otherwise agree, be made within 30 days of the delivery of the Award.

38.5 Before exercising his powers under Rule 38.1, the Arbitrator shall first give the parties an opportunity to make representations, which representations must be made within 5 days of being called upon to do so by the Arbitrator.

38.6 If it appears to the Arbitrator that further submissions are required to enable him to make a decision pursuant to Rule 38.1, he shall have the power to extend the time limits referred to in the relevant Rule.

38.7 A correction or clarification under Rules 38.1.1 and 38.1.2 shall take the form of an addendum to the Award, which shall be signed and dated by the Arbitrator and delivered under Rule 36.1.

38.8 Rules 36.1 to 36.3 shall apply to an additional Award under Rule 38.1.3.

39 Award of Costs

39.1 Unless the arbitration agreement otherwise provides, or the parties otherwise agree, the award of costs shall be at the discretion of the Arbitrator who may direct the costs to be taxed, alternatively, may himself settle the costs.

39.2 If the Arbitrator settles the costs he shall be entitled to employ the services of a professional taxing consultant to assist him in determining the amount of such costs to be awarded. However, in determining such costs the Arbitrator shall also be guided by the provisions of Rules 39.4 and 39.9.

39.3 In the event of the Arbitrator employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause subject to the Arbitrator's directive as to costs in his final award.

39.4 Disbursements made by a successful party to his representative in the proceedings shall be recoverable by way of an Award of costs on a scale to be agreed between the parties, or if not so agreed, to be determined by the Arbitrator who may, in his sole discretion, direct that such costs shall be taxed in accordance with Section 35 of the Arbitration Act.

39.5 If the parties agree that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the Arbitrator who shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as he may himself appoint, or make an award of such costs as he deems reasonable in the circumstances.

39.6 The Arbitrator may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.

39.7 Any directive made by the Arbitrator under Rule 39.6 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.

39.8 The Arbitrator shall not exercise his powers under Rules 39.6 and 39.7 without affording the parties an opportunity to make submissions to him thereon.

39.9 Nothing herein contained shall be construed as compelling the Arbitrator to use any tariff such as that contained in the Rules of the Supreme Court in making an award in relation to the amount of recoverable costs, unless the parties otherwise agree.

40 **Appeal**

The parties may, by a written and signed agreement, provide that the Award shall be subject to Appeal, to which provision the following conditions shall apply:

- 40.1 within 10 days of the publication of the Award either party may give written notice to the other, to the Arbitrator and to the Chairman of the Association of its intention to refer the Award to an Appeal Tribunal;
- 40.2 the Notice of Appeal shall state whether the whole or part only of the Award is appealed against and if only part of such Award is appealed against, it shall state which part, and it shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the Appeal is founded;
- 40.3 the Chairman of the Association will appoint an Appeal Tribunal consisting of not less than three members and will give notice to the parties of the date or dates on which and the place where the Appeal will be heard and will secure a suitable venue for the hearing;
- 40.4 not less than 15 days prior to the hearing the Appellant shall deliver to the Appeal Tribunal and to the other party a sufficient number of copies of the record together with a like number of copies of such exhibits as may be necessary for the proper adjudication of the matter, *provided that* the parties may agree to dispense with the provision of the record together with the exhibits but shall in that event and within the same period for the delivery of the record agree the facts upon which the Appeal is to be heard which facts shall be recorded in writing and signed by the parties and submitted to the Appeal Tribunal;
- 40.5 within 10 days of giving Notice of Appeal the Appellant shall complete, sign and submit to the Association due and proper security to the satisfaction of the Chairman of the Association for the payment of all fees and costs in relation to or concerning the Appeal, this security shall be interim and the Chairman shall have the right to request further security from time to time failing payment of which the Chairman shall have the right to terminate the Appeal. The Parties shall be jointly and severally liable for the costs of the Appeal;
- 40.6 the Arbitrator may submit to the Appeal Tribunal any motivation or reasons for the Award within 10 days of receiving the Notice of Appeal and shall submit copies of such motivation or reasons to the parties;

40.7 the time period prescribed by Sections 32 and 33 of the Arbitration Act shall not commence to run until such time as the Appeal Tribunal has confirmed or varied the Award of the Arbitrator;

40.8 the Appeal Tribunal shall be entitled, but not derogating from its general powers:

- 40.8.1 to dismiss the Appeal on its merits;
- 40.8.2 to vary the Award;
- 40.8.3 to substitute its own Award;
- 40.8.4 to direct that the Award, either in whole or in part, be referred back to the Arbitrator for further consideration and for the making of a new or revised Award; and
- 40.8.5 to dismiss the Appeal for non-compliance with the provisions of this Rule;
- 40.8.6 make any directive regarding the award of costs in regard to the Appeal;

40.9 in the event that the Appeal Tribunal refers the Award back to the Arbitrator in terms of Rule 40.8.4, the Arbitrator shall, within 30 days of the date on which the Award was so referred back to him, make and publish a new or a revised Award in terms of Rule 35 with the proviso that the Appeal Tribunal may, on good cause shown, extend such time for making a new or revised Award;

40.10 the decision of the Appeal Tribunal shall:

- 40.10.1 be final and binding on the parties;
- 40.10.2 constitute an Award as defined by the Arbitration Act for all purposes; and
- 40.10.3 be deemed to constitute the Award of the Arbitrator.

For the purposes of this Rule, an Award shall include an Interim Award, and reference to the Chairman of the Association shall include any person to whom the Chairman may assign the rights and duties conferred upon him by this Rule.

41 Waiver

- 41.1 The parties are deemed to know the provisions and requirements of these Rules.
- 41.2 Any party who, in the knowledge that any provision or requirement of the Rules has not been complied with, proceeds with the arbitration without promptly objecting to such non-compliance, shall be deemed to have waived his right to object.

SUMMARY PROCEDURE RULES

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the Arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

42 Application of Certain Standard Procedure Rules

The provisions of Rules 8, 9, 12, 22, 24, 25, 26, 33, 34, 36, 37, 38, 39 and 41 of the Standard Procedure Rules shall apply with the changes required by the context to an arbitration conducted under the Summary Procedure Rules. For the purposes of applying Rule 36.4 the period shall be 10 days.

43 Preliminary Meeting

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of :

- 43.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 43.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;
- 43.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;
- 43.4 ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;



- 43.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 43.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 43.4 and 43.5 which shall constitute the Statement of Issues;
- 43.7 arranging for the submission by each party to the Arbitrator and to the other party such documents or copies of documents as they, or the Arbitrator, consider relevant to the determination of the issues; and
- 43.8 arranging the date, time and venue of the hearing.

44 Conduct of the Hearing

The Arbitrator may, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

45 Powers of the Arbitrator

- 45.1 The Arbitrator shall have the power to:
 - 45.1.1 depart from any statutory or common law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;
 - 45.1.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;
 - 45.1.3 make any enquiries as he considers necessary or expedient;



- 45.1.4 grant to the parties such opportunity, as he deems reasonable, of making amendments to the issues or to any statement or submission;
- 45.1.5 inspect any property or thing to the extent that he deems necessary; and
- 45.1.6 rely, in his Award, on his own expert knowledge or experience in any field.

45.2 The Arbitrator shall inform the parties of information gathered or obtained pursuant to Rules 45.1.3, 45.1.5 and 45.1.6 and give the parties an opportunity to respond before proceeding to rely thereon.

46 Representation of the Parties

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by;

- 46.1 the party himself, if a natural person or a partner in the case of a partnership;
- 46.2 a director in the case of a company;
- 46.3 a member of a close corporation;
- 46.4 a bona fide full-time employee or officer of the party concerned;
- 46.5 a trustee of a trust; or
- 46.6 such technically qualified person, other than a practicing lawyer, as the Arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including without limiting the generality of the foregoing, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.



RULES AND GUIDELINES FOR THE CONDUCT OF THE SMALL CLAIMS ARBITRATION TRIBUNAL ("SCAT")

GUIDELINES

1. These basic guidelines are intended to facilitate an understanding of the purpose and workings of the Small Claims Arbitration Tribunal ["SCAT"]. The process is not only structured to produce a quick, economical, and effective dispute resolution system but is also simple to implement. The parties do not require knowledge or experience of the arbitration process. The Arbitrator plays an active, interventionist role and shall assist the parties to achieve a cost effective process best suited to their search for justice.
2. The parties are not permitted to be represented by practising attorneys or advocates though they may seek the assistance of suitably qualified advisors to prepare their written submissions to the Tribunal.
3. After the appointment of the Arbitrator, he may consider it appropriate to meet with the disputing parties so that a procedure to suit the nature of the dispute can be devised by discussion.
4. At this initial discussion the Arbitrator may consider it opportune to suggest an alternative dispute resolution process such as facilitating a settlement rather than continuing with the arbitration.
5. Should the parties wish to continue with arbitration, it may be more cost-effective to conduct the process on the basis of "documents only", with each party delivering written submissions and documentary evidence, rather than on the basis of a hearing with witnesses adducing oral evidence before the Arbitrator.
6. Further savings of time and costs may be achieved by the parties and the Arbitrator agreeing, in appropriate circumstances, that the Arbitrator deliver an Award without reasons. Whether the Award is reasoned or unreasoned, it is final and binding on the parties.



7. Small Claims Arbitrations fall into one of three categories (as set out in the "Recommended Cost Structure" which forms an Annexure to these Rules) depending on the combined value of the claim and counterclaim, if any. The Recommended Cost Structure is updated by the Association from time to time, and the parties and the Arbitrator are advised to confirm that they are in possession of the latest edition.
8. Although SCAT is a highly simplified and flexible arbitration process, it remains subject to the Arbitration Act No. 42 of 1965, as amended, and all peremptory provisions of the Act must be complied with.



RECOMMENDED COST STRUCTURE**ANNEXURE TO SCAT RULES**

The parameters set out herein are, with the exception of the Association registration fees (which are mandatory), merely guidelines which apply in the absence of any other agreement between the parties and the Arbitrator. The parties and the Arbitrator may, notwithstanding the maximum value recommended for Class 3 matters, agree to apply the SCAT Rules to matters in excess of such value

CATEGORIES OF SCAT ARBITRATIONS**A CLASS 1 MATTERS**

Combined value of claim and counterclaim, if any, up to R7,000

Recommended process: Documents only, unreasoned Award

Recommended Cost Structure available from the Secretariat

B CLASS 2 MATTERS

Combined value of claim and counterclaim, if any, from R7,000 to R30,000

Recommended process: Documents only, unreasoned Award

Recommended Cost Structure available from the Secretariat

C CLASS 3 MATTERS

Combined value of claim and counterclaim, if any, from R30,000 to R60,000

Recommended process: Hearing with oral evidence, reasoned Award

Recommended Cost Structure available from the Secretariat



SCAT RULES

1.0 Definitions

- 1.1 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration.
- 1.2 "Close of Submissions" means that stage in the proceedings when the parties have completed the presentation of their respective cases and of their responses to the other party's case, and the Tribunal commences to consider the Award."Day" means any day other than a Saturday, Sunday or public holiday.
- 1.3 "Defendant" means the party to the arbitration other than the Claimant.
- 1.4 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, photographs and recordings on magnetic tape, compact disc and computer disc or other electronic storage media, and "documentary" has the corresponding meaning."Rules" means these SCAT arbitration Rules.
- 1.5 "Submission" means any averment, denial, argument, or evidence in support thereof, submitted by a party to the Tribunal as part of its case, whether orally or in documentary form.
- 1.6 "The Association" means Association of Arbitrators (Southern Africa).
- 1.7 Where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the other genders.

2.0 **Matters not Subject to the Small Claims Arbitration Process of the Association of Arbitrators (Southern Africa)**

A matter may not be referred to arbitration under the SCAT Rules where:



- 2.1 the parties are represented in conflict with Rule 9 below;
- 2.2 the nature of the Award sought is anything other than monetary relief;
- 2.3 the combined value of the claim and counterclaim, if any, exceeds the limit recommended for a Class 3 matter, unless the parties and the Arbitrator agree otherwise;
- 2.4 more than two parties are involved;
- 2.5 there is no dispute between the parties;
- 2.6 there is no written agreement between the parties to refer the dispute to arbitration; or
- 2.7 where the nature of the matter is a matrimonial dispute or one concerning status.

3.0 Preliminary Procedure

- 3.1 Unless the arbitration agreement provides that the arbitration is to take place in accordance with the SCAT Rules of the Association, the parties must, by written and signed agreement, commit themselves thereto.
- 3.2 The reference shall be initiated by the Claimant who shall, in writing, request from the Association an "Application for Appointment of a Small Claims Tribunal" form [the "Application Form"].
- 3.3 The Claimant shall, in its request, state the nature of its claim and the relief sought, and shall include therewith a copy of the arbitration agreement, and, if required by Rule 3.1, the written and signed agreement that the arbitration is to take place under the SCAT Rules.
- 3.4 The Association shall by return issue to the Claimant the Application Form and a copy of the current Recommended Cost Structure, and indicate the registration fee payable.



- 3.5 On receipt by the Association of the Application Form and the registration fee, the Chairman of the Association or his nominee shall appoint the Tribunal and provide copies of the Application Form.
- 3.6 The registration fee shall not be refundable. The Tribunal shall take payment of the registration fee into account when deciding its award of costs.
- 3.7 The Tribunal shall confirm acceptance of its appointment in writing to the Chairman of the Association and to both parties.
- 3.8 The Tribunal may then call for a Preliminary Meeting with the parties to agree the procedure to be adopted to resolve the dispute and/or take any other steps which it may deem appropriate in the circumstances.

4.0 **Proceedings Private and Confidential**

Save to the extent necessary for the purposes of the arbitration, or for any court proceedings related thereto, or where otherwise under a legal obligation to do so, neither party shall, without the agreement of the other party, disclose or make available, to any other person, any information concerning the arbitration or the Award.

5.0 **Powers of the Tribunal**

The Tribunal shall, subject to the Rules of Natural Justice, have the power to;

- 5.1 assist the parties to reach a settlement;
- 5.2 depart from any statutory or common law rules of evidence;
- 5.3 put questions to each party or its witnesses where applicable, on any matter relevant to the issues;
- 5.4 make any enquiries that it considers necessary or expedient, provided that it shall inform the parties of all matters ascertained as a result of such enquiries;



- 5.5 grant to the parties such opportunity as it deems reasonable for making amendments to submissions;
- 5.6 inspect any property or thing to the extent that it deems necessary; and
- 5.7 rely, in its Award, on his own expert knowledge or experience in any field, particularly when evaluating evidence presented.

6.0 Proceedings on Default

The Tribunal may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

7.0 Award of Costs

- 7.1 Reasonable disbursements made by a successful party to a representative of that party referred to in Rule 9.5 below, if any, may be awarded by the Tribunal against the other party, in an amount to be determined by the Tribunal.
- 7.2 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Tribunal for the due payment, on demand, of its fees and expenses. Initially the Claimant shall be responsible for such payments but the Tribunal shall, in its Award, make any adjustments necessary to properly reflect liability for costs.

8.0 Delivery of Award

Unless the parties otherwise agree, the Tribunal shall deliver its Award within four weeks after the last Submission to the Tribunal.

9.0 Representation of the Parties

Neither of the parties shall be entitled to be represented in the arbitration except by:

- 9.1 the party himself; if a natural person, or a partner in the case of a partnership;
- 9.2 a director in the case of a company;
- 9.3 a member in the case of a close corporation;
- 9.4 a bona-fide full-time employee or officer of the party concerned; and
- 9.5 a person, other than a practising lawyer, as the Tribunal considers to be reasonably necessary for the presentation of technical expertise relating to the disputed issues.

10.0 Limits

Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Tribunal, the parties have not agreed, such period shall be stipulated by the Tribunal.

11.0 Dispute on Rules

Any dispute about the meaning or effect of any of these Rules shall be determined by the Tribunal who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

12.0 Tribunal's Fee

- 12.1 The Tribunal shall be entitled to charge a time-related fee up to the maximum set by the Association in the Recommended Cost Structure current at the time of issue of the Application Form to the Claimant.

- 12.2 The Tribunal shall be entitled to charge an initial non-refundable deposit equivalent to 25% of the maximum fee allowed in the Recommended Cost Structure current at the time of issue of the Application Form to the Claimant.
- 12.3 The Tribunal may withhold its Award until its fee is paid in full.

13.0 Arbitration Act

Save as varied herein, the provisions of the Arbitration Act (Act No 42 of 1965), as amended, shall apply to all arbitrations under the SCAT Rules.



THE ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA)

RULES FOR THE CONDUCT OF ARBITRATIONS 2013 EDITION STANDARD PROCEDURE RULES

The Standard Procedure Rules are closely based on the UNCITRAL Arbitration Rules (2010) and shall apply to the conduct of an arbitration under the Association's Rules, unless the parties agree to vary these Rules or to adopt the Restricted Representation Arbitration Rules (formerly the Summary Procedure Rules).

These Rules provide for ad hoc arbitration based on the UNCITRAL Arbitration Rules (2010), with the Association of Arbitrators (Southern Africa) assuming the role of the parties' chosen appointing authority. Certain changes and additions have been made to facilitate the application of the Rules in the context of current arbitration legislation in Southern Africa.

These changes and additions have been deliberately kept to a minimum. A comparative version of these Rules, in which the modifications to the UNCITRAL Arbitration Rules (2010) are italicised, is available on the website of the Association: www.arbitrators.co.za.

Nothing shall oblige the Association to appoint an arbitrator or to decide on the challenge of an arbitrator. The Association reserves the right to charge such administration fees, as its executive committee may, from time to time, deem appropriate for the appointment or the challenge of an arbitrator. The Association reserves its right to refuse to appoint an Arbitrator or to decide a challenge.

By electing to use and apply these Rules the arbitral tribunal and the parties agree to submit to the authority of the Association for the purposes of the Association exercising its functions in terms of the Rules and the parties agree to pay on demand any fees and disbursements as may be levied by the Association in its sole discretion.

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Section I. Introductory Rules

Scope of Application and Interpretation

Article 1

1. Where parties have agreed in writing that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the Association's Rules for the Conduct of Arbitration, then such disputes shall be settled in accordance with these Standard Procedure Rules subject to such modification as the parties may agree in writing.
2. For purposes paragraph 1 an agreement in writing includes an electronic communication if the information contained in it is accessible so as to be useable for subsequent reference.
3. For purposes of paragraph (2), "electronic communication" means a communication by means of data messages and "data message" means data generated, sent, received or stored by electronic means and includes a stored record.
4. These Rules shall come into force on 1 January 2013 and unless the parties have agreed otherwise, shall apply to any arbitration which is commenced on or after that date.
5. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
6. In these Rules:

"Agreement" means the written agreement entered into between the parties.

"Association" refers to the Association of Arbitrators (Southern Africa) or a non-profit company incorporated as its successor.

"Arbitral tribunal" includes a sole arbitrator or all the arbitrators where more than one are appointed.

"Interim measure" refers to an interim measure as defined in article 26, paragraph 2.

Notice and Calculation of Periods of Time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by document, facsimile or e-mail.
2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received.

Delivery by facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:
 - (a) Received if it is physically delivered to the addressee; or
 - (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of Arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent. This deeming provision shall not derogate from a party's right to contend for an earlier date with respect to the interruption of any applicable time bar such as prescription.
3. The notice of arbitration shall include the following:
 - (a) A demand that the dispute be referred to arbitration;
 - (b) The names and contact details of the parties;
 - (c) The name and contact details of any arbitrator already agreed upon by the parties;

- (d) Identification of the arbitration agreement that is invoked;
- (e) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (f) A brief description of the claim and an indication of the amount involved, if any;
- (g) The relief or remedy sought;
- (h) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

- (a) A proposal for the appointment of a sole arbitrator referred to in article 8;
- (b) Notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be resolved by the arbitral tribunal.

Response to the Notice of Arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;
- (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (h).

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
- (b) A proposal for the appointment of a sole arbitrator referred to in article 8;
- (c) Notification of the appointment of an arbitrator referred to in article 9 or 10;
- (d) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

- (e) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
- 3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be resolved by the arbitral tribunal.

Representation

Article 5

Each party may be represented by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. The arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

The Association as Appointing Authority

Article 6

- 1. In exercising its functions under these Rules, the Association may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers appropriate. All such communications to and from the Association shall also be provided by the sender to all other parties.
- 2. When the Association is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the Association copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.
- 3. The Association shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

Section II. Composition of the Arbitral Tribunal

Number of Arbitrators

Article 7

- 1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be three arbitrators, a sole arbitrator shall be appointed.
- 2. If no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the Association may, at the request of a party, appoint a sole

arbitrator pursuant to the procedure provided for in article 8, if it determines that, in view of the circumstances of the case, this is more appropriate.

3. Notwithstanding section 11(1)(b) of the Arbitration Act 42 of 1965, any decision by the parties for purposes of these Rules that the arbitral tribunal shall comprise three arbitrators shall imply that the third arbitrator is the presiding arbitrator and not an umpire.

Appointment of Sole Arbitrator

Article 8

1. Where the arbitral tribunal is to comprise of only one arbitrator, if within 30 days of the receipt of the notice for arbitration the parties have not agreed on the arbitrator, a sole arbitrator may, at the request of a party, be appointed by the Association.

Tribunal of Three Arbitrators

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the Association to appoint the second arbitrator.
3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the Association may appoint the presiding arbitrator in the same way as a sole arbitrator would be appointed under article 8.

Tribunals for Multi-party Arbitrations

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the Association may, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or

reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and Challenge of Arbitrators (articles 11 to 13)

Article 11

1. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.
2. Before accepting appointment, the arbitrator shall also provide a signed statement of availability.

Grounds for Challenge

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Challenge Procedure

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge, in which case the arbitrator shall withdraw from his or her office. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party

making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the Association.

Replacement of an Arbitrator

Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, the Association determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the Association may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of Hearings in the Event of the Replacement of an Arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal, after consultation with the parties, decides otherwise.

Exclusion of Liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the Association and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral Proceedings

General Provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid

unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. Within 30 days of its constitution, the arbitral tribunal shall convene a preliminary meeting with the parties and shall notify the parties of the time and venue. The arbitral tribunal may direct that the preliminary meeting be conducted through means of telecommunication that do not require the physical presence of the parties. The arbitral tribunal, after inviting the parties to express their views, shall establish the provisional timetable for the arbitration.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of Arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

1. Subject to any prior agreement by the parties on the issue, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of

claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of Claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
2. The statement of claim shall include the following particulars:
 - (a) The names and contact details of the parties;
 - (b) A statement of the facts supporting the claim;
 - (c) The points at issue;
 - (d) The relief or remedy sought;
 - (e) The legal grounds supporting the claim.
3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
4. The statement of claim shall be accompanied by all relevant documents relied upon by the claimant to sustain an averment in the statement of claim.

Statement of Defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence shall be

accompanied by all relevant documents relied upon by the respondent to sustain an averment in its statement of defence.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (e), and a claim relied on for the purpose of a set-off.

Amendments to the Claim or Defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Pleas as to the Jurisdiction of the Arbitral Tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is a nullity shall not automatically invalidate the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further Written Statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of Time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim Measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
 - (a) Maintain or restore the status quo pending determination of the dispute;
 - (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
 - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied;
 - (d) Preserve evidence that may be relevant and material to the resolution of the dispute; or
 - (e) Provide security for costs.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) and (e) shall satisfy the arbitral tribunal that:
 - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim or defence, as the case may be. The determination

on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2(d), the requirements in paragraphs 3(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement, except that by agreeing to arbitration under these rules, a party will be deemed to have agreed not to apply to any judicial authority for relief available from the arbitral tribunal under paragraphs 2(e) and 10.
10. Subject to paragraphs 3 and 11 and unless the parties agree otherwise, the arbitral tribunal may, on the application of a party, order any claiming or counterclaiming party to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.
11. In the event that the party ordered to provide the security fails to do so within the time stipulated by the arbitral tribunal without sufficient cause being shown, the arbitral tribunal shall terminate the arbitration in relation to that party's claim and, if appropriate, direct that the arbitration proceed to determine the other party's claim.

Evidence

Article 27

1. The arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in

any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts Appointed by the Arbitral Tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
 - (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
 - (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
2. If a party, duly notified under these Rules, fails to attend a hearing or other meeting, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration or meeting.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of Hearings

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of Right to Object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The Award

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and Effect of the Award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. Unless the parties otherwise agree, the arbitral tribunal shall make its award as soon as practicable, but in any event within 60 days after the closure of the hearing, or the submission of the last document to the arbitral tribunal in the event that there is no hearing, provided that the parties, at the request of arbitral tribunal, can extend this period in writing signed by them. The Association may also, at the request of the arbitral tribunal, extend this period by means of a written notice to the parties and the arbitral tribunal.

6. Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain - save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
7. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.
8. Notwithstanding the provisions of article 34.5, the arbitral tribunal shall only be obliged to communicate its award after receipt of payment of all its fees and expenses.

Applicable Law, Amiable Compositeur

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.
4. The arbitration tribunal may, at the request of a party apply the provisions of any law applicable at the place of the arbitration or which applies to the dispute and which provides for the reduction of any penalty or liquidated damages claim.

Settlement or Other Grounds for Termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4, 6 and 8 shall apply.

Interpretation of the Award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 4 and 6 to 8, shall apply.

Correction of the Award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 4 and 6 to 8, shall apply.

Additional Award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 4 and 6 to 8, shall apply.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs of arbitration” includes only:
 - (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator;
 - (b) The reasonable travel and other expenses incurred by the arbitrators;
 - (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) Any fees and expenses of the Association.
3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (d), but may not charge additional fees.
4. The parties are jointly and severally liable to the arbitral tribunal and the Association for the costs of arbitration.

Allocation of costs

Article 41

1. Unless the parties otherwise agree, the award of costs is in the discretion of the arbitral tribunal. In exercising its discretion, the tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
2. For purposes of paragraph 1 “costs” includes costs of arbitration as defined in article 40, paragraph 2 and:
 - (a) The legal and other costs incurred by the parties in relation to the arbitration;
 - (b) The reasonable travel and other expenses of witnesses.
3. If the arbitral tribunal settles the costs it shall be entitled to employ the services of a professional taxing consultant to assist it in determining the amount of such costs to be awarded. In the event of the arbitral tribunal employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause subject to the arbitral tribunal’s directive as to costs in its final award.
4. If the parties agree or the arbitral tribunal directs that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the arbitral tribunal, which shall either refer the costs to be taxed by such professional taxing service as may be agreed

or, in the absence of agreement, as it may appoint, or make an award of such costs as it deems reasonable in the circumstances.

5. At any time during the arbitral proceedings, the arbitral tribunal may, on the application of a party, make a decision on costs and order payment in an award. For this purpose, costs include a deposit required from one party by the arbitral tribunal and paid by another under article 42, paragraph 3.
6. The arbitral tribunal may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.
7. Any directive made by the arbitral tribunal under paragraph 6 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.
8. The arbitral tribunal shall not exercise its powers under paragraphs 6 and 7 without first affording the parties an opportunity to make submissions to it.

Deposit of Costs

Article 42

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
4. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

RESTRICTED REPRESENTATION ARBITRATION RULES (FORMERLY THE SUMMARY PROCEDURE RULES)

The Restricted Representation Arbitration Rules (RRA Rules) are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of adversarial-style arbitration procedure. They require that the arbitral tribunal plays a more active and interventionist role than it would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

1 Composition of Arbitral Tribunal

The tribunal shall consist of one arbitrator, unless the parties otherwise agree in writing.

2 Application of Certain Standard Procedure Rules

The provisions of articles 1(2)-(4), 2, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17(1) and (4), 18, 19, 23, 26, 27, 28, 30(2) and (3), 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 of the Standard Procedure Rules shall apply with the changes required by the context to an arbitration conducted under the RRA Rules. For the purposes of applying Article 34(5) the period shall be 10 days and for purposes of applying articles 37(2), 38(1) and 39(2) the arbitral tribunal shall give the interpretation, make the correction, or render the additional award within 10 days of receipt of the request.

3 Preliminary Meeting

On the reference of the dispute to the arbitral tribunal, it may convene a Preliminary Meeting with the parties with the purpose of:

- 3.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 3.2 recording the acceptance by the arbitrator of his or her appointment and acceptance by the parties of any conditions attached thereto;
- 3.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the RRA Rules or any modification of either;
- 3.4 ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;
- 3.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 3.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 3.4 and 3.5 which shall constitute the Statement of Issues;

- 3.7 arranging for the submission by each party to the arbitral tribunal and to the other party such documents or copies of documents as they, or the arbitral tribunal, consider relevant to the determination of the issues; and
- 3.8 arranging the date, time and venue of the hearing.

4 **Conduct of the Hearing**

The arbitral tribunal may, as it deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the arbitral tribunal, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

5 **Powers of the Arbitral Tribunal**

- 5.1 The arbitral tribunal shall have the power to:
 - 5.1.1 depart from any statutory or common law rules of evidence to the extent that it deems reasonable provided that the rules of natural justice shall be observed;
 - 5.1.2 question the parties or their witnesses on any matter relevant to the issues;
 - 5.1.3 make any enquiries as the arbitral tribunal considers necessary or expedient;
 - 5.1.4 grant to the parties such opportunity, as the arbitral tribunal deems reasonable, of making amendments to the issues or to any statement or submission;
 - 5.1.5 inspect any property or thing to the extent that the arbitral tribunal deems necessary; and
 - 5.1.6 rely, in its Award, on its own expert knowledge or experience in any field.
- 5.2 The arbitral tribunal shall inform the parties of information gathered or obtained pursuant to rules 5.1.3, 5.1.5 and 5.1.6 and give the parties an opportunity to respond before proceeding to rely thereon.

6 **Representation of the Parties**

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by;

- 6.1 the party himself, if a natural person or a partner in the case of a partnership;
- 6.2 a director in the case of a company;
- 6.3 a member of a close corporation;
- 6.4 a bona fide full-time employee or officer of the party concerned;
- 6.5 a trustee of a trust; or
- 6.6 such technically qualified person, other than a practicing lawyer, as the arbitral tribunal considers to be reasonably necessary for the presentation of the case of the party concerned, including, for example and without limitation, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.



ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA) NPC

RULES FOR THE CONDUCT OF ARBITRATIONS: 2018 EDITION (1 JANUARY 2018)

STANDARD PROCEDURE RULES

The Standard Procedure Rules are closely based on the UNCITRAL Arbitration Rules (2010) and shall apply to the conduct of an arbitration under the Association's Rules, unless the parties agree to vary these Rules or to adopt the Restricted Representation Arbitration Rules (formerly the Summary Procedure Rules).

These Rules provide for ad hoc arbitration based on the UNCITRAL Arbitration Rules (2010), with the Association of Arbitrators (Southern Africa) assuming the role of the parties' chosen appointing authority. Certain changes and additions have been made to facilitate the application of the Rules in the context of current arbitration legislation in Southern Africa.

These changes and additions have been deliberately kept to a minimum. A comparative version of these Rules, in which the modifications to the UNCITRAL Arbitration Rules (2010) are *italicised*, is available on the website of the www.arbitrators.co.za.

Nothing shall oblige the Association to appoint an arbitrator or to decide on the challenge of an arbitrator. The Association reserves the right to charge such administration fees as its Board of Directors may, from time to time, deem appropriate for the appointment or the challenge of an arbitrator. The Association reserves its right to refuse to appoint an Arbitrator or to decide a challenge.

By electing to use and apply these Rules the arbitral tribunal and the parties agree to submit to the authority of the Association for the purposes of the Association exercising its functions in terms of the Rules and the parties agree to pay on demand any fees and disbursements as may be levied by the Association in its sole discretion.

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SECTION I: INTRODUCTORY RULES

1. Scope of Application and Interpretation

Article 1

1. Where parties have agreed in writing that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the Association's Rules for the Conduct of Arbitration, then such disputes shall be settled in accordance with these Standard Procedure Rules subject to such modification as the parties may agree in writing.
2. For purposes of paragraph 1, an agreement in writing includes an electronic communication if the information contained in it is accessible so as to be useable for subsequent reference.
3. For purposes of paragraph 2, "electronic communication" means a communication by means of data messages and "data message" means data generated, sent, received or stored by electronic means and includes a stored record.
4. These Rules shall come into force on 1 January 2018 and, unless the parties have agreed otherwise, shall apply to any arbitration which is commenced on or after that date.
5. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
6. In these Rules:
 - (a) "Agreement" means the written agreement entered into between the parties;
 - (b) "Association" refers to the Association of Arbitrators (Southern Africa) or a non-profit company incorporated as its successor;
 - (c) "Arbital tribunal" includes a sole arbitrator or all the arbitrators where more than one are appointed;
 - (d) "Interim measure" refers to an interim measure as defined in article 26, paragraph 2.

2. Notice and Calculation of Periods of Time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by document, facsimile or e-mail.
2. If an address has been designated by a party specifically for this purpose or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received.

Delivery by facsimile or e-mail may only be made to an address so designated or authorised.

3. In the absence of such designation or authorisation, a notice is:
 - (a) Received if it is physically delivered to the addressee; or
 - (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3. Notice of Arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the "initiating party") shall communicate to the other party or parties (hereinafter called the "receiving party") a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the receiving party. This deeming provision shall not derogate from:
 - (a) A party's right to contend for an earlier date with respect to the interruption of any applicable time bar such as prescription; or
 - (b) Any preceding agreement between the parties regarding the initiation or commencement of arbitral proceedings, or the appointment of an arbitral tribunal.
3. The notice of arbitration shall include the following:
 - (a) A demand that the dispute be referred to arbitration;
 - (b) The names and contact details of the parties;

- (c) Identification of the arbitration agreement that is invoked;
- (d) Identification of the context in which the dispute has arisen and is to be determined, including to the extent relevant:
 - (i) Any contract or other legal instrument defining the relationship between the parties;
 - (ii) Preceding attempts at resolution of the dispute;
 - (iii) Any agreement regarding the appointment of an arbitral tribunal;
 - (iv) A brief description of the dispute;
- (e) The name and contact details of any arbitrator already agreed upon by the parties; and
- (f) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such a contract or instrument, a brief description of the relevant relationship.

4. The notice of arbitration may also include any proposals and/or requests for consideration by the receiving party, including proposals regarding the appointment of the arbitral tribunal.

5. Regardless of who is the initiating party, the decision regarding who shall be the claimant and respondent respectively shall be by agreement between the parties and, failing such agreement, shall be determined by the arbitral tribunal.

6. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be resolved by the arbitral tribunal.

4. Response to the Notice of Arbitration

Article 4

1. The receiving party shall, within 30 days of the receipt of the notice of arbitration, communicate to the initiating party a response to the notice of arbitration, which shall include:

- (a) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraph 3;
- (b) Any response to the proposals and/or requests contained in the notice of arbitration; and
- (c) Any other matter considered by the receiving party to be relevant to the commencement of the arbitration proceedings.

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

- (b) A proposal for the appointment of a sole arbitrator referred to in article 8;
- (c) Notification of the appointment of an arbitrator referred to in article 9 or 10;
- (d) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (e) A notice of arbitration in accordance with article 3 in case the receiving party formulates a claim against a party to the arbitration agreement other than the initiating party.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the receiving party's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be resolved by the arbitral tribunal.

5. Representation

Article 5

Each party may be represented by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. The arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

6. The Association as Appointing Authority

Article 6

- 1 In exercising its functions under these Rules, the Association may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers appropriate. All such communications to and from the Association shall also be provided by the sender to all other parties.
- 2 When the Association is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the Association copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.
- 3 The Association shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

NUMBER OF ARBITRATORS

7. Number of Arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be three arbitrators, a sole arbitrator shall be appointed.
2. If no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the Association may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, if it determines that, in view of the circumstances of the case, this is more appropriate.
3. Notwithstanding section 11(1)(b) of the Arbitration Act 42 of 1965, any decision by the parties for purposes of these Rules that the arbitral tribunal shall comprise three arbitrators shall imply that the third arbitrator is the presiding arbitrator and not an umpire.

8. Appointment of Sole Arbitrator

Article 8

Where the arbitral tribunal is to comprise of only one arbitrator, if within 30 days of the receipt of the notice of arbitration the parties have not agreed on the arbitrator, a sole arbitrator may, at the request of a party, be appointed by the Association.

9. Tribunal of Three Arbitrators

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the Association to appoint the second arbitrator.
3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the Association may appoint the presiding arbitrator in the same way as a sole arbitrator would be appointed under article 8.

10. Tribunals for Multi-party Arbitrations

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the Association may, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

11. Disclosures by and Challenge of Arbitrators (articles 11 to 13)

Article 11

1. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.
2. Before accepting appointment, the arbitrator shall also provide a signed statement of availability.

12. Grounds for Challenge

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

13. Challenge Procedure

Article 13

- 1 A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.
- 2 The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
- 3 When an arbitrator has been challenged by a party, all parties may agree to the challenge, in which case the arbitrator shall withdraw from his or her office. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 4 If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the Association.

14. Replacement of an Arbitrator

Article 14

- 1 Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
- 2 If, at the request of a party, the Association determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the Association may, after giving an opportunity to the parties and the remaining arbitrators to express their views:
 - (a) Appoint the substitute arbitrator; or
 - (b) After the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

15. Repetition of Hearings in the Event of the Replacement of an Arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was

replaced ceased to perform his or her functions, unless the arbitral tribunal, after consultation with the parties, decides otherwise.

16. Exclusion of Liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the Association and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

SECTION III: ARBITRAL PROCEEDINGS GENERAL PROVISIONS

17. General Provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. Within 30 days of its constitution, the arbitral tribunal shall convene a preliminary meeting with the parties and shall notify the parties of the time and venue. The arbitral tribunal may direct that the preliminary meeting be conducted through means of telecommunication that do not require the physical presence of the parties. The arbitral tribunal, after inviting the parties to express their views, shall establish the provisional timetable for the arbitration.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

18. Place of Arbitration

Article 18

- 1 If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
- 2 The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

19. Language

Article 19

- 1 Subject to any prior agreement by the parties on the issue, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- 2 The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

20. Statement of Claim

Article 20

- 1 The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
- 2 The statement of claim shall include the following particulars:
 - (a) The names and contact details of the parties;
 - (b) A statement of the facts supporting the claim;
 - (c) The points at issue;
 - (d) The relief or remedy sought;
 - (e) The legal grounds supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
4. The statement of claim shall be accompanied by all relevant documents relied upon by the claimant to sustain an averment in the statement of claim.

21. Statement of Defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (article 20, paragraph 2). The statement of defence shall be accompanied by all relevant documents relied upon by the respondent to sustain an averment in its statement of defence.
3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2(e), and a claim relied on for the purpose of a set-off.

22. Amendments to the Claim or Defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

23. Pleas as to the Jurisdiction of the Arbitral Tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent

of the other terms of the contract. A decision by the arbitral tribunal that the contract is a nullity shall not automatically invalidate the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

24. Further Written Statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

25. Periods of Time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

26. Interim Measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
 - (a) Maintain or restore the status quo pending determination of the dispute;
 - (b) Take action that would prevent, or refrain from taking action that is likely to cause:
 - (i) Current or imminent harm; or

- (ii) Prejudice to the arbitral process itself;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied;
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute; or
- (e) Provide security for costs.

3. The party requesting an interim measure under paragraphs 2(a) to (c) and (e) shall satisfy the arbitral tribunal that:

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim or defence, as the case may be. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2(d), the requirements in paragraphs 3(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement, except that by agreeing to arbitration under these Rules, a party will be deemed to have agreed not to apply to any judicial authority for relief available from the arbitral tribunal under paragraphs 2(e) and 10.

10. Subject to paragraphs 3 and 11 and unless the parties agree otherwise, the arbitral tribunal

may, on the application of a party, order any claiming or counterclaiming party to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.

11. In the event that the party ordered to provide the security fails to do so within the time stipulated by the arbitral tribunal without sufficient cause being shown, the arbitral tribunal shall terminate the arbitration in relation to that party's claim and, if appropriate, direct that the arbitration proceed to determine the other party's claim.

27. Evidence

Article 27

1. The arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

28. Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

29. Experts Appointed by the Arbitral Tribunal

Article 29

- 1 After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
- 2 The expert shall, before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
- 3 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
- 4 Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
- 5 At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

30. Default

Article 30

- 1 If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
 - (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
 - (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's

allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to attend a hearing or other meeting, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration or meeting.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

31. Closure of Hearings

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to re-open the hearings at any time before the award is made.

32. Waiver of Right to Object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

SECTION IV: THE AWARD DECISIONS

33. Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

34. Form and Effect of the Award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. Unless the parties otherwise agree, the arbitral tribunal shall make its award as soon as practicable, but in any event within 60 days after the closure of the hearing, or the submission of the last document to the arbitral tribunal in the event that there is no hearing, provided that the parties, at the request of the arbitral tribunal, can extend this period in writing signed by them. The Association may also, at the request of the arbitral tribunal, extend this period by means of a written notice to the parties and the arbitral tribunal.
6. Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain - save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority.
7. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.
8. Notwithstanding the provisions of article 34.5, the arbitral tribunal shall only be obliged to communicate its award after receipt of payment of all its fees and expenses.

35. Applicable Law, *Amiable Compositeur*

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if

any, and shall take into account any usage of trade applicable to the transaction.

4. The arbitration tribunal may, at the request of a party, apply the provisions of any law applicable at the place of the arbitration or which applies to the dispute and which provides for the reduction of any penalty or liquidated damages claim.

36. Settlement or Other Grounds for Termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4, 6 and 8 shall apply.

37. Interpretation of the Award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 4 and 6 to 8, shall apply.

38. Correction of the Award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 4 and 6 to 8, shall apply.

39. Additional Award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 4 and 6 to 8, shall apply.

40. Definition of Costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term "costs of arbitration" includes only:
 - (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator;
 - (b) The reasonable travel and other expenses incurred by the arbitrators;
 - (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) Any fees and expenses of the Association.
3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2(b) to (d), but may not charge additional fees.
4. The parties are jointly and severally liable to the arbitral tribunal and the Association for the costs of arbitration.

41. Allocation of Costs

Article 41

- 1 Unless the parties otherwise agree, the award of costs is in the discretion of the arbitral tribunal. In exercising its discretion, the tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
- 2 For purposes of paragraph 1 “costs” includes costs of arbitration as defined in article 40, paragraph 2 and:
 - (a) The legal and other costs incurred by the parties in relation to the arbitration;
 - (b) The reasonable travel and other expenses of witnesses.
- 3 If the arbitral tribunal settles the costs it shall be entitled to employ the services of a professional taxing consultant to assist it in determining the amount of such costs to be awarded. In the event of the arbitral tribunal employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause subject to the arbitral tribunal’s directive as to costs in its final award.
- 4 If the parties agree or the arbitral tribunal directs that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the arbitral tribunal, which shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as it may appoint or make an award of such costs as it deems reasonable in the circumstances.
- 5 At any time during the arbitral proceedings, the arbitral tribunal may, on the application of a party, make a decision on costs and order payment in an award. For this purpose, costs include a deposit required from one party by the arbitral tribunal and paid by another under article 42, paragraph 3.
- 6 The arbitral tribunal may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.
- 7 Any directive made by the arbitral tribunal under paragraph 6 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.
- 8 The arbitral tribunal shall not exercise its powers under paragraphs 6 and 7 without first affording the parties an opportunity to make submissions to it.

42. Deposit of Costs

Article 42

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2(a) to (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
4. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

43. General Rule

Article 43

Regarding all matters not expressly provided for in the arbitration agreement, the arbitral tribunal and each of the parties shall at all times act in good faith, respecting the spirit of the arbitration agreement, and shall make every reasonable effort to ensure that any award is legally recognised and enforceable at the place of arbitration.

RESTRICTED REPRESENTATION ARBITRATION RULES (FORMERLY THE SUMMARY PROCEDURE RULES)

The Restricted Representation Arbitration Rules (RRA Rules) are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of adversarial-style arbitration procedure. They require that the arbitral tribunal plays a more active and interventionist role than it would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

1. Composition of Arbitral Tribunal

The tribunal shall consist of one arbitrator, unless the parties otherwise agree in writing.

2. Application of Certain Standard Procedure Rules

The provisions of articles 1(2) to (4), 2, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17(1) and (4), 18, 19, 23, 26, 27, 28, 30(2) and (3), 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 of the Standard Procedure Rules shall apply with the changes required by the context to an arbitration conducted under the RRA Rules. For the purposes of applying article 34(5) the period shall be 10 days and, for purposes of applying articles 37(2), 38(1) and 39(2), the arbitral tribunal shall give the interpretation, make the correction, or render the additional award within 10 days of receipt of the request.

3. Preliminary Meeting

On the reference of the dispute to the arbitral tribunal, it may convene a Preliminary Meeting with the parties with the purpose of:

- 3.1. Confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;
- 3.2. Recording the acceptance by the arbitrator of his or her appointment and acceptance by the parties of any conditions attached thereto;
- 3.3. Determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the RRA Rules or any modification of either;
- 3.4. Ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;
- 3.5. Ascertaining the allegations of fact on which the parties agree and those on which they disagree;
- 3.6. Recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 3.4 and 3.5 which shall constitute the Statement of Issues;

- 3.7. Arranging for the submission by each party to the arbitral tribunal and to the other party such documents or copies of documents as they, or the arbitral tribunal, consider relevant to the determination of the issues; and
- 3.8. Arranging the date, time and venue of the hearing.

4. Conduct of the Hearing

The arbitral tribunal may, as it deems fit, follow formal or informal procedures and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the arbitral tribunal, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

5. Powers of the Arbitral Tribunal

- 5.1. The arbitral tribunal shall have the power to:
 - 5.1.1. Depart from any statutory or common law rules of evidence to the extent that it deems reasonable provided that the rules of natural justice shall be observed;
 - 5.1.2. Question the parties or their witnesses on any matter relevant to the issues;
 - 5.1.3. Make any enquiries as the arbitral tribunal considers necessary or expedient;
 - 5.1.4. Grant to the parties such opportunity, as the arbitral tribunal deems reasonable, of making amendments to the issues or to any statement or submission;
 - 5.1.5. Inspect any property or thing to the extent that the arbitral tribunal deems necessary; and
 - 5.1.6. Rely, in its Award, on its own expert knowledge or experience in any field.
- 5.2. The arbitral tribunal shall inform the parties of information gathered or obtained pursuant to Rules 5.1.3, 5.1.5 and 5.1.6 and give the parties an opportunity to respond before proceeding to rely thereon.

6. Representation of the Parties

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by:

- 6.1. The party himself, if a natural person or a partner in the case of a partnership;
- 6.2. A director in the case of a company;
- 6.3. A member of a Close Corporation;
- 6.4. A *bona fide* full-time employee or officer of the party concerned;
- 6.5. A trustee of a trust; or
- 6.6. Such technically qualified person, other than a practicing lawyer, as the arbitral tribunal considers to be reasonably necessary for the presentation of the case of the party concerned, including, for example and without limitation, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.