



# JBCC Adjudication Rules (published: September 2013)

For use with the JBCC™ Principal Building Agreement (PBA)  
and the JBCC™ Nominated / Selected Subcontract Agreement (NSA)  
or the JBCC™ Minor Works Agreement (MWA)  
and the MBSA Domestic Subcontract Agreement (DSA)

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## 1.0 DEFINITIONS

**AGENT:** The entity [CD] appointed by the **employer** to deal with specific aspects of the **works** delegated by the **employer** or the **principal agent**

**AGREEMENT:** The JBCC™ Principal Building Agreement and/or JBCC™ Nominated/Selected Subcontract Agreement / or the JBCC™ Minor Works Agreement and their respective completed JBCC™ **contract data** and the MBSA Domestic Subcontract Agreement and the completed DSA **contract data**

Note No reference is made to the edition of a particular **agreement**, only to the clause name as clause numbers are different. **Agreements** of the same edition must be used in conjunction with one another i.e. PBA 6.0 with NSA 6.0, etc

**NOTICE:** A communication issued by either **party**, the **principal agent** and/or **agents** to the other **party** or any **agent** to, inter alia, record an event, request for outstanding information and/or where **suspension** and/or resumption of the **works**, or termination of an **agreement** is contemplated

**PARTY:** The **employer** or the **contractor** and “**parties**” shall refer to both of them

**RULES:** This document forming the basis of the adjudicator’s appointment by the **parties**

**WORKING DAYS:** Calendar days which exclude Saturdays, Sundays, proclaimed public holidays and recorded annual builders’ holiday periods [CD]

The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and a person includes juristic or artificial persons

## 2.0 INTERPRETATION

2.1 Adjudication is an accelerated form of dispute resolution in which a neutral person determines the dispute as an expert and not as an arbitrator and whose determination is binding unless and until varied or overturned by an arbitration award

2.2 The application of these **rules** shall be read in conjunction with the ‘Dispute Resolution’ clause of the listed agreements hereinafter referred to as the **agreement**. The interpretation of other clauses in these **agreements** are deemed to be incorporated in these **rules**

2.3 These **rules** may be varied by the mutual agreement of the **parties** in conjunction with the adjudicator provided that, should an adjudicator have been appointed, his consent to such variation shall not be unreasonably withheld; failing which, these **rules** shall apply

## 3.0 APPOINTMENT OF THE ADJUDICATOR

3.1 The **parties** shall appoint the adjudicator by mutual agreement at any time but not later than five (5) **working days** after the date on which the disagreement was deemed to be a dispute in terms of the Dispute Resolution clause of the respective **agreement(s)**

3.2 Where the **parties** have failed to make an appointment within such period, either **party** may request the Chairman of the Association of Arbitrators (Southern Africa) to appoint an adjudicator and shall furnish the other **party** with a copy of such request. No objection to such an appointment by either **party** shall be admissible

3.3 The adjudicator shall notify the **parties** of his acceptance of the appointment in terms of these **rules** within three (3) **working days** of the date of receipt of the **party**’s request to appoint the adjudicator

3.4 Should the appointment of the adjudicator be terminated in terms of rule 8.0 a replacement adjudicator shall be appointed in terms of rule 3.2

3.5 The adjudicator’s appointment by the **parties** shall be limited to the current dispute. The **parties** may re-appoint the adjudicator should a further dispute arise during the construction period on the same project

## 4.0 TERMS OF APPOINTMENT OF THE ADJUDICATOR

- 4.1 The adjudicator shall at all times act impartially and independently of the **parties** and shall inform the **parties** immediately of anything which could affect his impartiality or independence
- 4.2 The adjudicator shall not give advice to the **parties** or their representatives concerning any aspect of the **agreement** in respect of which he has been appointed other than in accordance with these **rules**
- 4.3 The adjudicator shall treat all matters which have been referred to him for adjudication as confidential and shall not disclose such information without the prior written consent of the **parties**
- 4.4 The adjudicator may not be called as a witness by either **party** to give evidence concerning the matter referred or adjudicated by him save as may be necessary for a **party** to secure the enforcement of a determination
- 4.5 The adjudicator shall not assign, delegate or obtain specialist assistance related to his work under these **rules** without the prior approval of the **parties**, which approval shall not be unreasonably withheld. The **parties** shall respond to such request within three (3) **working days** failing which approval by the **parties** shall be deemed to have been given

## 5.0 THE FEES OF THE ADJUDICATOR

- 5.1 The adjudicator shall be entitled to:
- 5.1.1 Be paid fees as notified by the adjudicator
- 5.1.2 Require the **parties** to pay an initial deposit and further deposits where necessary in respect of his anticipated fees and disbursements. He shall be entitled to suspend the adjudication procedure where a required deposit is not paid within ten (10) **working days** of such request
- 5.1.3 Be reimbursed by the **parties** for disbursements reasonably incurred in carrying out his duties. Where exceptional expenditure is contemplated the adjudicator shall obtain the prior approval of the **parties**, which approval shall not be unreasonably withheld. Failure by a **party** to respond to such request within three (3) **working days** shall be deemed to be approval thereof
- 5.1.4 Exercise his lien on his determination until any outstanding amount(s) due, owing and payable have been paid in full
- 5.2 Where a **party** fails to comply with a request for payment within the period stipulated by the adjudicator the other **party** may make and recover such payment from the defaulting **party**
- 5.3 All fees and disbursement due to the adjudicator shall be shared equally by the **parties** unless otherwise directed by the adjudicator in his determination. Such payments shall be made within ten (10) **working days** of receipt of the adjudicator's account for payment
- 5.4 The adjudicator shall (subject to rule 5.1.4) not be entitled to any fees or disbursements where he knowingly breaches any of the provisions of rule 4.0, acts in bad faith or fails to submit a written determination of the dispute to the **parties** in terms of rule 7.1. The adjudicator shall reimburse the **parties** all fees and disbursements received from the **parties** where any such breach, act of bad faith or failure occurs

## 6.0 PROCEDURE

- 6.1 The referring **party** shall submit full details of a dispute arising in terms of the 'Dispute Resolution' clause of the respective agreements, together with copies of all relevant documents to the adjudicator for determination on confirmation of the adjudicator's appointment together with its notice of adjudication in terms of such agreement(s). The adjudicator shall notify the **parties** of the date of receipt of such details (the "referral date")
- 6.2 The other **party** may submit a written response to the details of dispute not later than fifteen (15) **working days** after the referral date
- 6.3 The claimant may:
- 6.3.1 Within five (5) **working days** of receipt of the response from the other **party** [6.2] submit a replication to the adjudicator and the other **party**
- 6.4 The adjudicator shall:
- 6.4.1 Act as an expert and not as an arbitrator in determining the dispute
- 6.4.2 Act independently with fairness and impartiality to both **parties**
- 6.4.3 Ensure that each **party** is furnished with a copy of any written communication sent to or received from either **party**
- 6.4.4 Meet in his sole discretion jointly with the **parties** together with any **agent** or others involved in the dispute

- 6.4.5 Decide on the liability to be apportioned, if any, between the **parties** for the payment of his fees and disbursements subject to rule 5.3
- 6.4.6 Adopt the most cost and time effective procedure consistent with fairness to determine the dispute
- 6.5 The adjudicator may:
  - 6.5.1 Conduct a hearing but is not obliged to do so
  - 6.5.2 Determine the dispute on the basis of the submitted documents only and/or an inspection of work related to the dispute as may be appropriate
  - 6.5.3 Give **notice** of a hearing with the **parties** within five (5) **working days** of such **notice** on a specified date and time and location. At such hearing the adjudicator may adopt an inquisitorial procedure and shall observe procedural fairness but shall not be obliged to comply with the rules of evidence. The **parties** shall not be entitled to be represented at such hearing by practicing lawyers
  - 6.5.4 Decide on his own jurisdiction
  - 6.5.5 Apply his specialist knowledge in determining the dispute
  - 6.5.6 Require a **party** within a period determined by the adjudicator to submit any further information, document or evidence which he may reasonably require to make a determination
  - 6.5.7 Open up, review and revise any opinion, instruction, determination, certificate or valuation related to the dispute
  - 6.5.8 Decide on the payment of interest in accordance with the **agreement**
  - 6.5.9 Refuse admission to any persons other than the **parties** and their respective representatives and witnesses to any hearings
  - 6.5.10 Conclude the adjudication and make a determination notwithstanding a **party's** failure to attend meetings, hearings or to provide information requested

## 7.0 DETERMINATION

- 7.1 The adjudicator's written determination of the dispute shall:
  - 7.1.1 Be delivered to the **parties** not later than ten (10) **working days** after receipt of (a) the initial details of the dispute, (b) the response from the other **party** and (c) receipt of the replication, if any (rule 6.3). On a written request of either **party** the adjudicator may grant an extension of time for an action required of either **party** by a maximum of five (5) **working days**. Further, the adjudicator, on his own discretion, may grant an extension of time of five (5) **working days** in respect of the time available to him/her, after receipt of the initial details of the dispute, the response from the other **party** and receipt of the replication, if any, to deliver his determination to the **parties**. The time limit shall also be extended in respect of a delay caused by suspension of work by the adjudicator in terms of rule 5.1.2
  - 7.1.2 Include reasons for his decisions
  - 7.1.3 Be delivered to the **parties** at their physical addresses as recorded in the **agreement** or by facsimile or by E-mail. The **parties** shall give immediate effect to any requirements of such determination
  - 7.1.4 Be binding on the **parties** unless and until such determination of the dispute is overturned or varied in whole or in part by an arbitration in terms of the Dispute Resolution clause of the **agreement**
- 7.2 Either **party** may:
  - 7.2.1 In writing request the adjudicator to correct any patent clerical or arithmetical error or clarify any ambiguity in the determination. Such **party** shall furnish the other **party** with a copy of such request within five (5) **working days** of receipt of the determination. The adjudicator shall comply with such request within a further five (5) **working days**
  - 7.2.2 Apply to the High Court for the enforcement of the determination. The **parties** shall accept the jurisdiction of such court

## 8.0 TERMINATION OF THE APPOINTMENT OF THE ADJUDICATOR

- 8.1 The adjudicator may resign his appointment by giving five (5) **working days notice** to the **parties**
- 8.2 The appointment of the adjudicator:

- 8.2.1 May be terminated at any time by the mutual agreement of the **parties**
- 8.2.2 Shall be deemed to be terminated should he not perform his duties within five (5) **working days** of receipt of a **notice** from either **party** specifying such breach of his appointment. A copy of such **notice** shall be given to the other **party**
- 8.3 The adjudicator shall not be liable for any claims in respect of any act or omission in discharging his duties unless such act or omission is shown to have been in bad faith

**DISPUTE ADJUDICATION AGREEMENT – APPOINTMENT OF THE ADJUDICATOR**

- Works \*
- Site \*
- Claimant** \*
- Physical address \*
- Electronic address \*
- Defendant** \*
- Physical address \*
- Electronic address \*
- Adjudicator** \*
- Physical address \*
- Electronic address \*
- Law of the country \*

The parties have entered into the **agreement** for the execution of the **works** on the **site** and desire to appoint the adjudicator – as recorded above

The parties and the adjudicator jointly agree that:

The **agreements** and these JBCC Adjudication Rules (September 2013) and this Dispute Adjudication Agreement are deemed to be mutually explanatory of one another. In the event of ambiguity, discrepancy, divergence or inconsistency in or between them, this Dispute Adjudication Agreement shall prevail over all other contract documents

The following fees of the adjudicator in terms of rule 5.1 shall be paid by the parties:

An hourly fee of:

A deposit of:

Disbursements to cover ...

The **parties** jointly undertake to pay the adjudicator the consideration due in accordance with these JBCC Adjudication Rules

Signed by	Signed by	Signed by
For and on behalf of the Claimant	For and on behalf of the Defendant	For and on behalf of the Adjudicator
(.....)	(.....)	
In the presence of	In the presence of	In the presence of
Witness	Witness	Witness
Name	Name	Name
Address	Address	Address
Date	Date	Date

TIMETABLE not part of the Adjudication Rules

Disagreement not resolved = Notice of dispute within 10 working days

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Appointment of adjudicator  
Confirm fees / pay deposit

Claimant submits details

Adjudicator: Receipt of details = referral date

Response by other party ... 15 working days = 15 working days

Replication 2\*5 working days = 25 working days

Adjudicator: may convene hearing (05 working days)

Adjudicator: formulate determination 10(+5) working days = 35-40 working days  
(from referral/replication)

Parties request corrections etc 05 working days = 40-45 working days

Adjudicator makes corrections, etc 05 working days = 45-50 working days