



® JBCC Adjudication Rules (published: October 2014)

Forming part of the Adjudicator's appointment, in terms of the dispute resolution clause of -
the JBCC® Principal Building Agreement (PBA), and/or
the JBCC® Nominated / Selected Subcontract Agreement (NSA), or
the JBCC® Minor Works Agreement (MWA), or
the MBSA Domestic Subcontract Agreement (DSA)

1.0 INTERPRETATION

- 1.1 Adjudication is an accelerated form of dispute resolution in which a neutral person determines the dispute as an expert and not as an arbitrator and whose determination is binding unless and until varied or overturned by an arbitration award
- 1.2 These rules may be varied by the mutual agreement of the parties in conjunction with the adjudicator provided that, should an adjudicator have been appointed, his consent to such variation shall not be unreasonably withheld; failing which, these rules shall apply

2.0 APPOINTMENT OF THE ADJUDICATOR

- 2.1 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)
- 2.2 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
- 2.3 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
- 2.4 Should the appointment of the adjudicator be terminated in terms of rule 7.0 a replacement adjudicator shall be appointed
- 2.5 The adjudicator's appointment 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

3.0 TERMS OF APPOINTMENT OF THE ADJUDICATOR

- 3.1 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
- 3.2 The adjudicator shall not give advice to the parties or their representatives concerning any aspect of the agreement in respect of which he has been appointed other than in accordance with these rules
- 3.3 The adjudicator shall treat all matters which have been referred to him for adjudication as confidential and shall not disclose such information without the prior written consent of the parties
- 3.4 The adjudicator may not be called as a witness by either party to give evidence concerning the matter referred or adjudicated by him save as may be necessary for a party to secure the enforcement of a determination
- 3.5 The adjudicator shall not assign, delegate or obtain 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

4.0 THE FEES OF THE ADJUDICATOR

- 4.1 The adjudicator shall be entitled to:
 - 4.1.1 Be paid fees as notified by the adjudicator
 - 4.1.2 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
 - 4.1.3 Be reimbursed by the parties for disbursements reasonably incurred in carrying out his duties. Where exceptional expenditure is contemplated the adjudicator shall obtain the prior approval of the parties, which approval shall not be unreasonably withheld. Failure by a party to respond to such request within three (3) working days shall be deemed to be approval thereof

- 4.1.4 Exercise his lien on his determination until any outstanding amount(s) due, owing and payable have been paid in full
- 4.2 Where a party fails to comply with a request for payment within the period stipulated by the adjudicator the other party may make and recover such payment from the defaulting party
- 4.3 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
- 4.4 The adjudicator shall (subject to rule 4.1.4) not be entitled to any fees or disbursements where he knowingly breaches any of the provisions of rule 3.0, acts in bad faith or fails to submit a written determination of the dispute to the parties in terms of rule 6.1. The adjudicator shall reimburse the parties all fees and disbursements received from the parties where any such breach, act of bad faith or failure occurs

5.0 PROCEDURE

- 5.1 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")
- 5.2 The other party may submit a written response to the details of dispute not later than ten(10) working days after the referral date
- 5.3 The claimant may:
 - 5.3.1 Within five (5) working days of receipt of the response from the other party [rule 5.2] submit a replication to the adjudicator and the other party
- 5.4 The adjudicator shall:
 - 5.4.1 Act as an expert and not as an arbitrator in determining the dispute
 - 5.4.2 Act independently with fairness and impartiality to both parties
 - 5.4.3 Ensure that each party is furnished with a copy of any written communication sent to or received from either party
 - 5.4.4 Meet in his sole discretion jointly with the parties together with any agent or others involved in the dispute
 - 5.4.5 Decide on the liability to be apportioned, if any, between the parties for the payment of his fees and disbursements subject to rule 4.3
 - 5.4.6 Adopt the most cost and time effective procedure consistent with fairness to determine the dispute
- 5.5 The adjudicator may:
 - 5.5.1 Conduct a hearing but is not obliged to do so
 - 5.5.2 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
 - 5.5.3 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
 - 5.5.4 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
 - 5.5.5 Decide on his own jurisdiction
 - 5.5.6 Apply his specialist knowledge in determining the dispute
 - 5.5.7 Require a party within a period determined by the adjudicator to submit any further information, document or evidence which he may reasonably require to make a determination

- 5.5.8 Open up, review and revise any opinion, instruction, determination, certificate or valuation related to the dispute
- 5.5.9 Decide on the payment of interest in accordance with the agreement
- 5.5.10 Refuse admission to any persons other than the parties and their respective representatives and witnesses to any hearings
- 5.5.11 Conclude the adjudication and make a determination notwithstanding a party's failure to attend meetings, hearings or to provide information requested

6.0 DETERMINATION

- 6.1 The adjudicator's written determination of the dispute shall:
 - 6.1.1 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 5.3). The time limit shall also be extended in respect of a delay caused by suspension of work by the adjudicator in terms of rule 4.1.2
 - 6.1.2 Include reasons for his decisions
 - 6.1.3 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
 - 6.1.4 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
- 6.2 Either party may:
 - 6.2.1 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
 - 6.2.2 Apply to the High Court for the enforcement of the determination. The parties shall accept the jurisdiction of such court

7.0 TERMINATION OF THE APPOINTMENT OF THE ADJUDICATOR

- 7.1 The adjudicator may resign his appointment by giving five (5) working days notice to the parties
- 7.2 The appointment of the adjudicator:
 - 7.2.1 May be terminated at any time by the mutual agreement of the parties
 - 7.2.2 Shall be deemed to be terminated should he not perform his duties within ten (10) 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
- 7.3 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 *
 Telephone number(s) *
 DEFENDANT *
 Physical address *
 Electronic address *
 Telephone number(s) *
 ADJUDICATOR *
 Physical address *
 Electronic address *
 Telephone number(s) *
 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 (October 2014) 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 4.1 shall be paid by the parties: An hourly or daily 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

NOT PART OF THE RULES

TIMETABLE not part of the Adjudication Rules

Disagreement not resolved = Notice of dispute within 10 working days

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 (from referral/replication) 10(+5) working days = 35-40 working days

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

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