



# ARBITRATION PROTOCOL

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## 1 PREAMBLE

An arbitration is a dispute resolution process which is embarked upon by agreement between the parties. The dispute or differences between the parties are referred to one or more persons who are appointed by the parties to make an independent and impartial decision.

The objective of the arbitration process is to resolve differences or disputes quickly and economically without the need to issue proceedings through the Court. The Arbitrators' and Mediators' Institute of New Zealand Inc. maintains a Panel of Arbitrators and provides an appointment service for the appointing of suitably qualified and experienced arbitrators. The Panel of Arbitrators can be found on the Institute's website at [www.aminz.org.nz](http://www.aminz.org.nz)

This protocol is designed to provide a method of operation for arbitrators and parties. It may be adopted or varied by agreement between the parties. All arbitrations will be accordance with the Arbitration Act 1996.

## 2 INITIATION OF ARBITRATION

- 2.1 If there is an existing valid arbitration clause, one party may give notice to the other party of its intention to arbitrate a dispute or difference between the parties.
- 2.2 If there is no such arbitration clause the parties may agree in writing to refer a dispute to arbitration.
- 2.3 The party relying on the arbitration clause or requesting arbitration should identify the dispute that is to be referred to arbitration.
- 2.4 Third parties, such as subcontractors or insurers, may be invited to join the arbitration by agreement between all parties.

## 3 APPOINTMENT OF ARBITRAL TRIBUNAL

- 3.1 If the arbitration clause or agreement has provided either a nominated arbitrator or a nominated method of appointment of an arbitrator, the parties shall appoint the arbitrator or arbitrators (herein referred to as the arbitral tribunal) in accordance with the clause.

- 3.2 If there is no nominated arbitrator in the agreement to arbitrate, the parties may appoint one. The arbitrator should be suitably qualified in arbitration and have any other qualifications required by the parties.
- 3.3 If the parties are unable to agree upon an arbitral tribunal the parties agree that the President of the Arbitrators' and Mediators' Institute of New Zealand Inc., or the President's nominee, will appoint the arbitral tribunal. Either party may request in writing that the President appoint the arbitrator or arbitrators.
- 3.4 The proposed arbitrator or arbitrators will have no interest in the matters in dispute and, prior to accepting the appointment, will disclose any dealings or acquaintance with any of the parties to the dispute and any knowledge of the dispute, thereby giving either party the opportunity to object to his or her appointment.
- 3.5 The appointment will not be complete until it has been agreed by the parties in writing and accepted in writing by the nominated arbitrator or arbitrators.

#### **4 ROLE OF THE ARBITRAL TRIBUNAL**

- 4.1 The arbitral tribunal is an independent decision maker and is not an advocate for any party. The tribunal will act impartially, fairly and objectively, and will treat each party fairly. The tribunal will not discuss the issues or any matter relating to the dispute with one party in the absence of the other party. The tribunal may, however, telephone the parties in relation to procedural matters, provided both parties receive the same message. The tribunal will not hear evidence in the absence of one party without the written agreement of that party except where, following written notice of the hearing, one party fails to appear. An arbitrator who has been appointed because of that person's specialist knowledge will be entitled to use that specialist knowledge in a fair and open manner for the purpose of deciding the issues referred.
- 4.2 The arbitral tribunal will conduct the reference without undue delay and will commence and conclude the arbitration as promptly as is appropriate in the circumstances.
- 4.3 The arbitral tribunal will decide all the issues referred and will not delegate any part of the decision making process to any other person.
- 4.4 Unless the parties agree otherwise, the arbitral tribunal shall decide all disputes according to the rules of law. If the parties are unable to agree on procedural matters, the tribunal shall have the power to make directions as appropriate.

## **5 REPRESENTATION AND ATTENDANCE**

- 5.1 Each party may elect to have legal representation or to be represented by some other person. The names and addresses of such persons shall be communicated in writing to the arbitral tribunal and to the other participants.
- 5.2 Each party or its representative will assist in the proper conduct of the reference and will cooperate with the tribunal throughout the process.
- 5.3 Other persons may attend the preliminary meeting or the hearing only with the consent of all parties. Consent is normally given to advisers such as legal, managerial, technical or resource persons to attend. If the parties are unable to agree, then the arbitral tribunal may decide whether or not such advisers should be permitted to attend.

## **6 PRELIMINARY MEETING**

- 6.1 The parties will co-operate with the arbitral tribunal in attending a preliminary meeting, either by telephone conference, or in person, or through their advocates.
- 6.2 The purpose of the preliminary meeting is to agree on the steps which need to be completed prior to the hearing and on a procedure for the conduct of the hearing. The steps to be completed prior to the hearing will be by way of an agreed timetable. The parties will co-operate in agreeing to a timetable and in agreeing to the procedure for the conduct of the hearing. In the absence of agreement, the arbitral tribunal will make a decision about how to proceed.
- 6.3 During the preliminary meeting the parties will make provisions for the arbitrator's costs. A deposit for the estimated costs of the arbitrator should be deposited in the AMINZ stakeholder account.
- 6.4 Following the preliminary meeting the parties will follow the agreed (or determined) timetable and procedure without undue delay.

## **7 DOCUMENT DISCLOSURE PRIOR TO THE HEARING**

- 7.1 Prior to the hearing the parties will disclose all relevant documents to each other and, unless otherwise agreed or directed by the arbitral tribunal will provide points of claim and response to the tribunal and to each other.
- 7.2 All documents or correspondence sent to the arbitral tribunal by one party will be copied and sent to the other party.

7.3 The parties will prepare an agreed bundle of documents.

## **8 CONDUCT OF THE HEARING**

8.1 The conduct of the hearing will be as agreed between the parties and, failing agreement, as the tribunal thinks fit, in accordance with the rules of natural justice.

8.2 The hearing will be convened at a time, date and place reasonably determined by the arbitral tribunal.

8.3 The parties will cooperate throughout the hearing with the arbitral tribunal and will comply with the tribunal's directions to attend meetings or hearings, and to provide documents, information and written submissions.

8.4 No member of the arbitral tribunal will, without the prior written agreement of the parties, obtain from any person who is not a participant, advice or opinion on any aspect of the dispute. The tribunal may seek independent legal advice. Although it is not essential, the tribunal should endeavour to obtain the agreement of the parties to so consult and whom to consult.

8.5 During the hearing of the issues, the members of the arbitral tribunal may ask questions of the parties or witnesses and may ask the parties to exchange or further explain their submissions. The tribunal may ask for written submissions on any question which arises and in respect of which the parties have not already agreed to provide written submissions.

8.6 The tribunal will ensure that the parties have an adequate opportunity to be heard in the presence and with the knowledge of the other party.

## **9 CONFIDENTIALITY**

9.1 Arbitration is a private procedure. The parties and the arbitral tribunal shall maintain privacy and will not divulge any aspect of the arbitration to the media or others not involved with the process without the prior agreement of the parties. The tribunal may require any parties or witnesses to sign a confidentiality agreement.

## **10 FINALITY**

10.1 The parties agree that the decision of the arbitral tribunal will be final and binding and that they will not seek recourse to the Courts other than as agreed.

## **11 COSTS AND FEES**

- 11.1 The parties agree to pay the arbitral tribunal's fee as directed.
- 11.2 The arbitral tribunal's fee will be charged on an hourly or a daily basis at the rate. The parties agree to pay GST on the fee, and any expenses reasonably incurred by the tribunal in connection with the arbitration.
- 11.3 The tribunal may from time to time invoice the parties for fees and expenses incurred and may require a payment by way of security for future fees and expenses. All invoices will be paid within 14 days.
- 11.4 The tribunal may require payments by way of security to be deposited into the stakeholder account of the Arbitrators' and Mediators' Institute of New Zealand Inc. , P O Box 1477, Wellington, New Zealand.
- 11.5 The tribunal may charge a reasonable fee following cancellation or disruption of the hearing.
- 11.6 The parties will pay equally any amounts invoiced by the tribunal, unless otherwise agreed between the parties. Payments made will be subject to adjustment between the parties in terms of the award.
- 11.7 The parties agree to pay the tribunal's fee (or any unpaid balance) within 14 days of being notified that the award is available for uplifting.

## **12 THE AWARD**

- 12.1 The award will be made available without any undue delay and the tribunal will publish the award within 3 months of the conclusion of the hearing or within such extended time as the tribunal may reasonably require. The tribunal may, where appropriate, issue an interim or partial award.
- 12.2 The parties may require the tribunal to provide reasons for the award, and to include the reasons in the award, or to expressly provide that the reasons are not to be included in the award. Alternatively, the parties may require the tribunal to provide an award without reasons.

### **13 CHALLENGE TO THE AWARD**

- 13.1 If a party takes steps to challenge the award, no member of the arbitral tribunal will be named as a party to the proceeding, unless the basis of the challenge is bad faith, bias, or dishonesty.

### **14 EXCLUSION OF LIABILITY**

- 14.1 Any comments, recommendations or assessments by the arbitral tribunal or any member of the tribunal are not intended to be relied upon as professional advice.
- 14.2 The Arbitrators' and Mediators' Institute of New Zealand Inc. shall not be liable to any person, including the parties, for any act or omission including negligence or breach of confidentiality for any action taken or advice or information provided in relation to the arbitration, or for any other matter arising out of the arbitration or the award. Each of the parties agrees to indemnify the members of the Arbitrators' and Mediators' Institute of New Zealand Inc in respect of any such claim.
- 14.3 The arbitral tribunal shall not be liable to any person, including the parties, for any act or omission including negligence or breach of confidentiality for any action taken or advice or information provided in relation to the arbitration, or for any other matter arising out of the arbitration or the award. Each of the parties agrees to indemnify the arbitral tribunal in respect of any such claim.

### **15 SETTLEMENT**

- 15.1 If the parties reach a settlement of the issues in dispute prior to the conclusion of the arbitration, the arbitral tribunal may assist in preparing an award which reflects the terms of settlement.
- 15.2 Settlement of the issues in dispute will terminate the arbitration but will not relieve the parties from their obligation to pay the tribunal's fees and expenses.

### **16 TERMINATION**

- 16.1 The arbitration may be terminated by agreement between the parties, the issue of a final award, or by Court order.
- 16.2 The parties expressly empower the arbitral tribunal to dismiss any claim for want of prosecution.

- 16.3 Termination of the arbitration at any stage will not relieve the parties from their obligation to pay the tribunal's accrued fees and expenses.

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#### **DISCLAIMER**

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