

ANTHONY GLAISTER FCI Arb

PROCEDURAL MEETING / CONFERENCE CALL

AGENDA

1. Establish the parties of the parties:
 - 1.1 full and correct names
 - 1.2 addresses
 - 1.3 telephone and fax details
 - 1.4 names and status of decision-makers

2. Establish particulars of the parties' authorised representatives:
 - 2.1 full and correct names
 - 2.2 addresses
 - 2.3 telephone and fax details
 - 2.4 names and status of the persons having care and conduct, and extent of decision making

3. Confirm that the Arbitrator's terms and conditions have been accepted by the parties, and that they have executed the appropriate Form of Appointment.

4. Establish the basis of the reference to arbitration:
 - 4.1 specific arbitration agreement
 - 4.2 arbitration clause in a contract or sub-contract
 - 4.3 statutory requirement
 - 4.4 Order of the Court

5. A copy of the arbitration agreement, contract or sub-contract, ministerial direction, or Order of the Court is to be provided to the Arbitrator.

6. Copies of all other documents between the parties are to be provided to the Arbitrator, if, and to the extent that, they modify or qualify in any way the Tribunal's powers and authority under statute law or the private law of the arbitration or otherwise concern the conduct of the reference. Is the Arbitrator to decide the substantive issues strictly according to the law, or is he to decide on principles of fairness and equity by the application of commercial or trade practices?

7. Establish by list or otherwise, the issues that are referred to the Arbitrator for his determination and award.

8. Establish whether any questions of jurisdiction arise at this stage of the arbitration. Provide outline synopses of the matters in dispute:
 - 8.1 establish that the parties are aware of all matters in dispute or difference, and referred to the Arbitrator's decision and award
 - 8.2 establish any matters outside the Arbitrator's jurisdiction

- 8.3 consider whether the scope of the Arbitrator's authority requires to be broadened in any respect.
9. Status of the parties:
 - 9.1 which is to be the Claimant?
 - 9.2 which is to be the Respondent?
 - 9.3 is the Respondent also to be Counter-claimant?
 - 9.4 will economies of time and cost be achieved if each party is designated Claimant for different elements of the reference?
 - 9.5 if more than two parties are involved in "parallel" references, can consolidation be achieved with economy of time and cost? Are other parties committed to/willing to consolidate?
10. Are formal rules to apply? If so, establish the precise basis.
11. Basic consideration of the most appropriate procedure in order to achieve economy of time and cost:
 - 11.1 documents only
 - 11.2 documents and limited hearing (with or without inspection)
 - 11.3 documents with hearing options reserved
 - 11.4 documents with oral Expert evidence
 - 11.5 documents with oral address
 - 11.6 full attended hearing.
12. Should alternative ADR procedures be recommended – mediation or conciliation, or independent expert determination. If any of these are agreed should the arbitrator act as mediator/conciliator thus resigning as arbitrator, or should he suspend the arbitration for sufficient time for the ADR process to take place? If the latter, is there agreement for him to appoint or commend an appropriate individual?
13. Will Expert opinion evidence be required?
 - 13.1 of what disciplines?
 - 13.2 in what numbers?
 - 13.3 when will Experts be appointed?
14. Should liability be taken prior to quantum in order to effect economies of time and cost? Should preliminary issues be determined before the substantive dispute? Would any interim award procedure be in the interests of the parties?
15. General procedure:
 - 15.1 is the reference suitable for Statements of Case? In full or limited form?
 - 15.2 are pleadings appropriate? If so, can supporting documents, calculations, precedents and arguments be appended?
 - 15.3 will Scott or other schedules serve to clarify the issues, or any of them, and to save time and cost?

- 15.4 is the dispute, or are any specific parts suitable for the exercise of inquisitorial procedures – in whole or in part?
16. Timetable generally – dates for service:
 - 16.1 Claimant’s case (Points of Claim or Statement of Case)
 - 16.2 Respondent’s Defence
 - 16.3 Counterclaim (if any)
 - 16.4 Reply to Defence and Defence to Counterclaim
 - 16.5 Reply to Defence and Counterclaim
 - 16.6 directions relating to any request for Further and Better Particulars
 - 16.7 will it be possible for Experts of like discipline to meet early, and without prejudice, in an endeavour to clarify issues and limit matters in difference? Meetings between Arbitrator and Experts? Experts to check their respective briefs for compatibility.
 - 16.8 will it be possible for Experts to prepare a joint Report on a range of issues?
 - 16.9 agreement of documents and figures – as such.
17. Preparation of documents:
 - 17.1 date for exchange of Experts’ Reports – initial/final
 - 17.2 date for exchange of Witness Statements
 - 17.3 basis of discovery? Lists of file types, omitting detailed document lists?
 - 17.4 applications for Orders for specific discovery
 - 17.5 timetable for discovery: lists to be exchanged
 - 17.6 inspection
 - 17.7 preparation of trial bundle: reference system
 - 17.8 draft bundle by Claimant
 - 17.9 means of identifying and inserting Respondent’s documents
 - 17.10 final bundle
 - 17.11 core bundle
18. Documents – only: procedures:
 - 18.1 dates for delivery to the Arbitrator
 - 18.2 parties’ commentaries
 - 18.3 date for commencement of examination
 - 18.4 inspection
 - 18.5 reservation of time (conditions relating to any limited oral hearing?)
 - 18.6 timetable for any oral address
 - 18.7 provisional date for award
19. Attended hearing: procedures:
 - 19.1 representation for the parties
 - 19.2 limitation on attendances
 - 19.3 estimate of time
 - 19.4 limitation of time – “chess clock” procedures
 - 19.5 dates to be reserved
 - 19.6 locus: facilities required: responsibility for reservation and payment

- 19.7 four or five day sittings?
 - 19.8 written or limited opening addresses
 - 19.9 no necessity to prove documents in the agreed bundle
 - 19.10 Experts' Reports as evidence in chief
 - 19.11 Witness Statements as evidence in chief
 - 19.12 oral evidence on oath or affirmation
 - 19.13 inquisitorial sessions
 - 19.14 closing addresses – consider
20. Should the subject matter be inspected? When? Attendance upon inspection.
21. Does any party wish to make an opening application for an Order to impose any limit on recoverable costs?
22. Is it likely that any party will apply for an Order for security for costs?
23. Would there be benefit in the Arbitrator meeting with Experts prior to the commencement or during the course of the hearing?
24. The Arbitrator's awards:
- 23.1 with reasons or unreasoned?
 - 23.2 with reasons only upon pre-identified and particularised points of law?
 - 23.3 reasons to be confined to documents separate from the awards? Status of any document
 - 23.4 inclusive of costs or costs left over to a further and/or final award?
 - 23.5 authority for taxation of costs
25. Estimate of total time and cost for each part of the reference.
26. All communications with the Arbitrator to be in writing and delivered by either post or telefax (not both). All communications to be copied contemporaneously to the other party.
27. Any offer made without prejudice should not be disclosed to the Arbitrator without the consent of the other party or parties.
28. No document for which privilege is claimed shall be disclosed to the Arbitrator, save upon application to and direction by the Arbitrator.

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York

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