

PAUL E. BIDDINGTON
JP. GDip Bus Studs. AAMINZ. AREINZ.



STANDARD TERMS OF ENGAGEMENT AS ARBITRATOR

1. The parties agree to submit the dispute(s) between them to arbitration and appoint Paul E Biddington of Christchurch as sole Arbitrator.

2. The Arbitrator is an independent decision maker who will act impartially and objectively, and treat each party fairly.

For the benefit of the parties, the following terms 3-9 are suggested and will apply unless crossed out by either party at the time of signing these terms:

3. The Arbitrator's jurisdiction shall include all disputes arising out of or in connection with the subject contract, up to an including issues identified and disputed during pleadings.

4. The conduct of the arbitration shall be as agreed between the parties and, failing agreement, as the Arbitrator thinks fit in accordance with the rules of natural justice.

5. Each party may elect to have legal representation or be represented by some other person. The names and addresses of such persons shall be communicated in writing to the Arbitrator and to the other parties.

6. Other persons may attend an arbitration meeting or hearing only with the consent of all parties. Consent is normally given to advisers such as legal, managerial, technical or resource persons. If the parties are unable to agree, the Arbitrator will decide whether or not such advisers may attend.

7. Each party or its representative shall co-operate in good faith with the Arbitrator throughout the process. They will comply with the Arbitrator's reasonable directions to attend meetings and to provide documents, information and submissions.

8. The parties intend that the Arbitrator will finally decide the dispute(s), including all questions of law involved. Hence, in the interests of achieving finality and maintaining confidentiality, the parties do not agree that the Court may give leave for any party to appeal on any question of law arising out of the award, without the consent of all parties. The parties expressly opt out of clause 5(1)(c) of the Second Schedule of the Arbitration Act 1996.

9. The parties intend that the Arbitrator will finally fix and allocate the costs and expenses of the arbitration. Hence the parties agree, even if an "international" arbitration, that clause 6 of the Second Schedule will apply, and expressly opt out of clause 6(3) and 6(4) of the Second Schedule of the Arbitration Act 1996.

For the benefit of the Arbitrator, the following terms 10-18 shall apply unless otherwise agreed with the Arbitrator:

10. The Arbitrator shall not be contacted by telephone, except in regard to urgent questions of procedure.

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11. At the time that any party sends any communication, correspondence, documents, evidence or other information to the Arbitrator, that party shall immediately send copies of the same information to all other parties. Information sent to the Arbitrator shall show that copies have been sent. Fax or e-mail should only be used for brief communications.

12. Documents provided to the Arbitrator shall not include any which refer to an offer of settlement or compromise. Except only that after all other issues have been decided, evidence of written offers of settlement to be expressed to be "without prejudice except as to costs" or equivalent may be provided and taken into account where relevant to fixing and allocation of costs.

13. The Arbitrator's fees shall be charged at his hourly rate of.....for all time involved, plus expenses and GST.

14. The Arbitrator may from time to time invoice the parties for fees and expenses incurred and/or for reasonable amounts by way of security for future fees and expenses. Invoices must be paid within 14 days. If any invoice is not paid within 30 days, the Arbitrator may withdraw from the arbitration.

15. If appointed by all parties, the parties shall be jointly and severally liable for the Arbitrator's invoices and undertake in the first instance to pay them in equal amounts. If appointed by only one party, or if only one party agrees to or complies with these terms and requires the arbitration to proceed anyway, then that party undertakes in the first instance to pay the accounts in full.

16. If a hearing is cancelled or postponed or disrupted, then the Arbitrator shall be entitled to charge for a reasonable amount of the time allocated for the hearing.

17. Any comments, recommendations or assessments by the Arbitrator are not intended to be relied upon as professional advice.

18. The Arbitrator shall not be liable to any person or entity, including the parties, for any act or omission including negligence or breach of confidentiality or any comments or recommendations or assessments associated with his engagement or for any matter arising out of or incidental to the arbitration or award. Each of the parties agrees to indemnify the Arbitrator in respect of any such claims, and also in respect of having to attend or prepare or provide evidence in any litigation.

The Arbitration Act 1996 governs arbitration in New Zealand. It is based on the Model Law on Arbitration adopted by UNCITRAL. The Act includes a number of additional provisions, not mentioned in the above terms, including many which may be changed by agreement between the parties. Independent legal advice should be obtained by each party.