

THE INSTITUTE *of* ARBITRATORS & MEDIATORS AUSTRALIA

ABN 80 008 520 045

Conflict Management Expertise

**RULES FOR THE CONDUCT OF COMMERCIAL
ARBITRATIONS**

(incorporating the Expedited Commercial Arbitration Rules)

AUTHORITY FOR RULES

The Council of the Institute of Arbitrators & Mediators Australia resolved at a meeting on 13 August 1999 that, where parties have agreed between them that a dispute arising or having arisen between them shall be submitted to arbitration in accordance with:

1. The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations; or
2. The Institute of Arbitrators & Mediators Australia Expedited Commercial Arbitration Rules,

then the Rules numbered 1 to 21 hereafter shall apply.

PART I	PRELIMINARY
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RULE 1 Nomination of Arbitrators

1. Nomination of arbitrators shall be by the Institute, which may, in the exercise of its powers, delegate its power of nomination to the person acting as:
 - a. the President; or
 - b. the Chairman of any State or Territory Chapter.
2. Nothing in these Rules shall prevent the parties to a dispute from agreeing on an arbitrator or arbitrators of their choice.

RULE 2 Notice of Dispute

1. This Rule applies to the extent that it is not inconsistent with the Agreement (as defined in Rule 16).
2. If a dispute or difference arises of a kind covered by the submission to arbitrate in the Agreement, any party to the dispute and the Agreement may give written notice thereof to the other party or parties to the dispute and the Agreement.
3. The notice (hereafter referred to as the Notice of Dispute) shall be served at the address for such party or parties specified in the Agreement. Unless otherwise provided in the Agreement, service may be effected personally, by mail, or by facsimile or other means of telecommunication or electronic transmission.
4. Ten (10) days after service of the Notice of Dispute or deemed receipt of same, then such dispute or difference, unless settled, shall be and is hereby referred to arbitration in accordance with these Rules.

5. If the parties agree in writing that the giving of notice under this Rule shall not be required, then the parties may jointly call for nomination of an arbitrator by the Institute in accordance with paragraph 2 of Rule 4.

RULE 3 Nomination Fee

1. The party giving a Notice of Dispute shall also provide evidence that it has deposited with the Institute of Arbitrators & Mediators Australia the prescribed Nomination Fee.
2. If the parties agree in writing that the giving of notice under Rule 2 shall not be required then, unless the parties otherwise agree, they shall jointly deposit with the Institute of Arbitrators & Mediators Australia the prescribed Nomination Fee.
3. The Nomination Fee shall be the sum of \$250.00 or such other sum as prescribed by the Institute from time to time.
4. Lodgement of the prescribed Nomination Fee shall be a pre-requisite to the nomination of an arbitrator under Rule 4.

RULE 4 Call for Nomination

1. Where a Notice of Dispute has been given pursuant to the Agreement or pursuant to Rule 2, and such dispute has not been settled within the time provided, any party may thereafter request the Institute in writing to nominate an arbitrator and, in so doing, shall submit the following to the Institute:
 - a. a copy of the Notice of Dispute;
 - b. a copy of the Agreement containing the submission to arbitration;
 - c. the names and addresses of the parties to the dispute;
 - d. a brief description of the nature of the dispute containing such particulars of the dispute as will permit the Institute to nominate an appropriate arbitrator.
2. If the parties agree in writing that the giving of notice under Rule 2 shall not be required then, in addition to the material referred to in paragraph 1 of this Rule, they shall provide to the Institute of Arbitrators & Mediators Australia a copy of their written agreement to that effect.
3. Within ten (10) days after receipt of the material submitted pursuant to paragraphs 1 or 2 of this Rule, or such further information as to the nature of the dispute as the Institute may reasonably require for the purposes of nomination, the Institute shall nominate an arbitrator and advise the parties and the Nominee Arbitrator accordingly.
4. Unless the Agreement otherwise provides, upon receiving a Call for Nomination, the Institute shall nominate one arbitrator only.

RULE 5 Entry on Reference to Arbitration

1. The Nominee Arbitrator shall, within seven (7) days of receiving advice of his or her nomination or agreed appointment, give written notice to the parties of the time and place of a Preliminary Conference which the parties or their duly authorized representatives shall attend. At or prior to that Preliminary Conference, the Nominee Arbitrator may advise any conditions he or she wishes to impose (including provision of security for the fees and expenses of the Nominee Arbitrator) and request the agreement of the parties to such conditions and to his or her jurisdiction to determine the matter referred.
2. On the parties agreeing to any such conditions, the Nominee Arbitrator shall accept appointment and shall then be deemed to have entered on the reference as Arbitrator.
3. If any party fails to attend the Preliminary Conference or does not agree with the conditions or jurisdiction of the Nominee Arbitrator, then the Nominee Arbitrator shall notify the parties and the Institute in writing within two (2) days as to whether he or she accepts appointment as Arbitrator notwithstanding that disagreement. On acceptance of appointment, the Nominee Arbitrator shall be deemed to have entered on the reference as Arbitrator. If appointment is declined by the Nominee Arbitrator, then the Institute shall within ten (10) days nominate a replacement Nominee Arbitrator.

RULE 6 Nominee Arbitrator Failing to Act / Loss of Arbitrator

Unless the parties otherwise agree in writing or a Court otherwise orders, the Institute shall nominate a replacement arbitrator, within ten (10) days of being called on to do so by a party, if:

1. a Nominee Arbitrator does not enter upon the reference to arbitration within one (1) month of the date of his or her nomination;
2. after entering on the reference to arbitration, an Arbitrator shall die or shall otherwise become incapable by reason of ill health or otherwise, or be debarred in law, from continuing on the reference to arbitration.

RULE 7 Liability of Institute for acts or omissions

The parties agree that the Institute of Arbitrators & Mediators Australia its officers and employees are not liable to any party for or in respect of any act or omission in the discharge or purported discharge of the Institute's functions under these Rules unless such act or omission is shown to have been fraudulent.

RULE 8 Provision of Security

The Arbitrator may direct that the parties provide security for the costs of the reference in such form, such amount or amounts and at such time or times as directed by the Arbitrator. Any such security shall be deposited and applied as directed by the Arbitrator. If there is any default in provision of security as directed by the Arbitrator,

then the Arbitrator may make such directions for the further conduct of the arbitration as the Arbitrator then considers appropriate.

PART II	THE ARBITRAL PROCEDURE
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RULE 9 Preliminaries not to Prejudice Scope of Arbitration

Unless otherwise agreed in writing by the parties:

1. Any description identifying a claim given in a Notice of Dispute under Rule 2 or by way of description in accordance with Rule 4 shall not be taken as defining or limiting the scope of the arbitration.
2. Any party may raise in its claim, defence, cross claim or defence to cross claim, any other dispute or difference which has arisen under the Agreement.
3. Thereafter any amendment or addition to claims will be in the discretion of the Arbitrator, and shall be subject to any conditions as to costs or otherwise that the Arbitrator may consider appropriate.

RULE 10 General Duty of Arbitrator

1. The Arbitrator shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the matters in dispute.
2. The Arbitrator shall be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to be heard on the procedure adopted by the Arbitrator.

RULE 11 General Duty of Parties

1. The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the arbitral proceedings.
2. Without limiting the generality of the foregoing, the parties shall comply without delay with any direction or ruling by the Arbitrator as to procedural or evidentiary matters and shall, where appropriate, take without delay any necessary steps to obtain a decision of a Court on a preliminary question of jurisdiction or law.

RULE 12 Waiver of Right to Object

1. Subject to any Statute Law or principle of common law or equity, or prior written agreement of the parties, if a party to arbitral proceedings takes part, or continues to take part, in those proceedings without making forthwith or within a reasonable time thereafter any objection:
 - a. that the Arbitrator lacks substantive jurisdiction;
 - b. that the proceedings have been improperly conducted,
 - c. that there has been a failure to comply with the Agreement; or

- d. that there has been any other irregularity affecting the Arbitrator or the proceedings,

then that party shall be deemed to have waived its right to make such objection later, before the Arbitrator or a Court, unless it shows that, at the time it took part or continued to take part in the proceedings, it did not know and could not with reasonable diligence have discovered the grounds for the objection.

2. Subject to any Statute Law or prior written agreement of the parties, where the Arbitrator rules that he or she has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling in a Court does not do so within any time fixed by the Arbitrator (or if no time is fixed, within a reasonable time and not later than the conclusion of any hearing), then that party shall be deemed to have waived any right it may otherwise have had to later object to the Arbitrator's substantive jurisdiction on any ground which was the subject of that ruling, and shall be deemed to have submitted to the Arbitrator's jurisdiction.

RULE 13 Procedural Directions

1. Subject to any Statute Law or prior written agreement of the parties, and the requirements of Rule 10, the Arbitrator shall make such directions or rulings in respect of procedural and evidentiary matters as he or she sees fit.
2. Subject to any agreement of the parties to the contrary, and without limiting the generality of the foregoing:
 - a. unless the arbitration is to be conducted in accordance with The Institute of Arbitrators & Mediators Australia Expedited Commercial Arbitration Rules, the provisions of Schedule 1 shall apply;
 - b. where the arbitration is to be conducted in accordance with The Institute of Arbitrators & Mediators Australia Expedited Commercial Arbitration Rules, the provisions of Schedule 2 shall apply.

RULE 14 Views and Other Material

1. The Arbitrator may, in his or her discretion, view the subject matter or site of any dispute, the view of which might assist the Arbitrator in determining the issues in dispute. The Arbitrator may use his or her own observation not merely to assist in understanding the evidence but also as material which he or she may use in determining the issues in dispute provided that, in so doing, the Arbitrator puts the parties on notice of any preliminary adverse conclusion which is based solely on the Arbitrator's observations on the view and then affords such parties a reasonable opportunity to meet it.
3. Subject to any Statute Law or contrary agreement of the parties, the Arbitrator shall be at liberty to obtain such technical and/or legal assistance or advice as the Arbitrator may, in his or her discretion, reasonably require provided that, in so doing, the Arbitrator complies with the rules of natural justice. The costs or expenses of so doing shall form part of the Arbitrator's fees and expenses of the arbitration.

RULE 15 Awards

1. Subject to any Statute Law or the Agreement, the Arbitrator shall within a reasonable time deliver one or more interim awards so as to deal with all issues in the arbitration except for the costs of the arbitration.
2. Thereafter, at the time and in the manner directed by the Arbitrator, the parties shall place before the Arbitrator such evidence and submissions on which they respectively rely on the question of costs, and the Arbitrator shall as soon as reasonably practicable thereafter deliver a final award which includes the Arbitrator's determination on costs, including by whom and in what manner the whole or any part of the costs of the arbitration are to be paid.
3. Awards of the Arbitrator shall be made in writing, and either forwarded by mail to the successful party (and a signed copy thereof shall be forwarded to the other party or parties) or the Arbitrator may advise the parties that the award may be collected at some place nominated by the Arbitrator.
4. In the event that security moneys lodged are less than that which the Arbitrator determines as the Arbitrator's fees and expenses and any other amounts to be paid from that security, then the Arbitrator may withhold the award until a party pays the outstanding balance so determined by the Arbitrator, whereupon such party may collect the award.

PART III	GENERAL
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RULE 16 Definitions

In these Rules:

'The Institute' means the Council of the Institute of Arbitrators & Mediators Australia.

'Agreement' means any agreement between the parties embodying a submission of present or future disputes to arbitration.

'Arbitrator' means an arbitrator who has entered on the reference to arbitration.

'the costs of the arbitration' includes the costs of the reference and the costs and disbursements of the parties.

'the costs of the reference' includes the fees and expenses of an Arbitrator or Nominee Arbitrator, any Nomination Fee or other fee payable to the Institute of Arbitrators & Mediators Australia, the costs of room hire or transcript, and any fees or expenses pursuant to paragraph 2 of Rule 14.

'Court' means any Court which has jurisdiction under the Statute Law which governs arbitration in the place where the arbitration is held.

'days' means normal working days and shall exclude Saturdays, Sundays and public holidays.

'domestic arbitration' means any arbitration which is not an international arbitration.

'international arbitration' means arbitration where one or more of the parties to the Agreement does not carry on business within the Commonwealth of Australia.

'Nominee Arbitrator' means an arbitrator who has been nominated by the Institute or agreed by the parties but who has not entered on the reference to arbitration.

‘the UNCITRAL Rules’ means the Arbitration Rules as adopted by the United Nations Commission on International Trade Law at its Ninth Session in 1976 and recommended by the General Assembly of the United Nations on 9 December 1976 as are in force at the time of commencement of the arbitral process under these Rules.

RULE 17 Application of Rules

1. These Rules are subject to the Statute Law which governs arbitration in the place where the arbitration is held and to any agreement between the parties in relation to the arbitration process. Otherwise where the parties to a dispute have agreed to arbitration in accordance with these Rules, they are thereby bound to comply with these Rules.
2. These Rules shall apply to domestic arbitrations and, subject to Rule 21, to international arbitrations.

RULE 18 Counting of Days

1. For the purpose of counting days under these Rules, such period shall begin to run on the day following the day when notice, notification, communication or proposal is actually received or deemed to be received under paragraph 2 of this Rule, whichever is earlier. If the last day of such period is a public or official holiday or a non-business day at the residence or place of business of the addressee, then the period is extended until the first business day which follows.
2. Any such notice, notification, communication or proposal which is posted is deemed to have been received on the second day following the day of posting. Any such notice, notification, communication or proposal which is sent by facsimile or other means of telecommunication or electronic transmission is deemed to have been received on the day of transmission.

RULE 19 Multiple Arbitrators – Appointment of Umpire

1. Where there is more than one Arbitrator then, where the context requires it, references in these Rules to an Arbitrator shall be read as a reference to the Arbitrators and, subject to Rule 20, to any umpire who is appointed.
2. Subject to the operation of any applicable Statute Law, where there is an even number of Arbitrators, those Arbitrators may thereafter appoint an umpire, and shall do so if the Arbitrators fail to agree on any matter for determination.
3. If the Arbitrators are unable to agree on the identity of the umpire within seven (7) days of their disagreement, then they shall notify the parties accordingly in writing, and any party may then make a written request to the Institute to nominate an umpire. The Institute shall within ten (10) days thereafter nominate an umpire and advise the parties, the Arbitrators and the nominated umpire accordingly.

RULE 20 Determination by an Umpire

1. Where an umpire is appointed pursuant to Rule 19 and the Arbitrators fail to agree on any matter for determination, then the Arbitrators shall provide the umpire with a written statement of the points of agreement and points of

- disagreement, but without reasons, together with all other written material relevant to the arbitration including exhibits and items marked for identification but excluding private notes of the Arbitrators.
2. The Arbitrators shall provide the material referred to in the preceding paragraph to the umpire within a period of seven (7) days of written notice by the umpire that he or she has accepted nomination as umpire or seven (7) days of their disagreement, whichever be the later. The Arbitrators shall, by the same time, provide copies of their written statement of the points of agreement and points of disagreement to the parties.
 3. Unless otherwise agreed by the parties in writing, the umpire shall then proceed to deliver an award as soon as reasonably practicable and, in so doing, shall take into account the evidence before the Arbitrators but shall not be bound by any of the points of agreement expressed by the Arbitrators, and no further evidence shall be led before the umpire unless the umpire considers it appropriate.

RULE 21 International Arbitrations

1. The UNCITRAL Rules shall apply to any international arbitration under these Rules.
2. The provisions of Rules 1 to 20 inclusive shall also apply to any international arbitration under these Rules to the extent that any such Rule or Rules are not inconsistent with the UNCITRAL Rules which shall prevail to the extent of any inconsistency.
4. The appointing body referred to in Article 6 of the UNCITRAL Rules shall be the Institute which may, by resolution of Council and in accordance with the Memorandum and Articles of Association of the Institute of Arbitrators & Mediators Australia, delegate the power of appointment to the President for the time being or the person so acting.

SCHEDULE 1

The Arbitrator may make such directions or rulings as he or she considers to be reasonably appropriate, including in respect of the following:

1. The form and extent of any pleadings or other documents defining the issues in dispute, including the extent to which particularisation should be provided by a party in respect of its contentions on all or some of the issues in dispute.
2. The preparation of any joint statement of issues, in such manner and at such time as the Arbitrator considers appropriate, to define and narrow the issues in dispute.
3. The holding of further Preliminary Conferences, meetings between experts and/or representatives of the parties, or Experts' Conclaves chaired by the Arbitrator, so as to narrow issues in dispute, including the time at which and manner in which they are conducted and who may attend, and preparation of any written document recording the results thereof.

4. The preparation of joint reports by experts engaged by the parties following any meetings between such experts or any Experts' Conclave, recording the matters on which they agree, the matters on which they disagree, and identifying the reasons for any such disagreement and their respective contentions in relation to same.
5. The preparation of joint bundles of documents for use in the arbitration, including at any meetings between experts and/or representatives of the parties and any Experts' Conclaves, or preparation of any joint report of experts.
6. The provision of factual information to experts for the parties for use in their joint deliberations or preparation of any joint report.
7. The manner in which and the extent to which the parties shall produce documents for inspection by any opposing party.
8. The form of any evidence in chief, by witness statement or otherwise, and the time or times at which it is to be provided to the Arbitrator and any other party.
9. The extent to which an oral hearing is required and any limitations in relation to same, including reasonable time limits on oral evidence and the provision of written opening addresses and final submissions.
10. The service of offers of settlement without prejudice except as to costs.

SCHEDULE 2

The arbitration shall be conducted in the following manner:

1. The claimant shall, within twenty one (21) days of the date on which the Arbitrator enters on the reference pursuant to Rule 5, provide the following to each other party and to the Arbitrator:
 - a. a statement in writing detailing the nature of the dispute, the legal and factual issues involved, its contentions in relation to those issues, and the quantum of its claim;
 - b. all statements of evidence and copies of all documents on which it relies;
 - c. any expert reports on which it relies;
 - d. its written submissions on the legal and factual issues involved in its claim.
2. Thereafter, each party other than the claimant shall, within a further period of twenty one (21) days, provide the following to each other party and to the Arbitrator:
 - a. a statement in writing indicating whether or not it agrees with the claimant's written statement pursuant to paragraph 1a and, if not, its statement of the nature of the dispute (including any cross claim pursuant to Rule 9), the legal and factual issues involved in the claimant's claim and any such cross claim, its contentions in relation to those issues, and the quantum of any such cross claim;
 - b. all statements of evidence and copies of all documents on which it relies;
 - c. any expert reports on which it relies;

- d. any objections which it has to the statements of evidence, experts reports, and documents served by the claimant, detailing the basis of any such objection;
 - e. its written submissions on the legal and factual issues involved in the claimant's claim and any cross claim brought by it.
3. Thereafter, any party may reply to written material served pursuant to paragraph 2, within a further period of twenty one (21) days, by providing the following to each other party and to the Arbitrator:
 - a. a statement in writing in reply indicating whether or not it agrees with the written statement pursuant to paragraph 2a and, if not, its reply as to the nature of the dispute, the issues likely to arise and its contentions in relation to same;
 - b. all statements of evidence and copies of documents in reply to material served pursuant to paragraph 2b;
 - c. any expert reports in reply to material served pursuant to paragraph 2c;
 - d. any objections which it has to the statements of evidence, experts reports, and documents served pursuant to paragraph 2b, detailing the basis of any such objection;
 - e. its written submissions in reply on the legal and factual issues involved.
 4. If a cross claim is made in accordance with paragraph 2, then the cross claimant may reply, in the same manner as set out in paragraph 3, to written material served in respect of such cross claim pursuant to paragraph 3.
 5. If the Arbitrator considers it appropriate, he or she may direct that expert reports not be served in accordance with paragraphs 1c, 2c, 3c and 4 above and that, instead, the experts retained by the parties are to be each provided with the material otherwise served pursuant to paragraphs 1, 2, 3 and 4, and then jointly confer (by a time fixed by the Arbitrator) and produce a joint report or reports (by a time fixed by the Arbitrator) recording the matters on which they agree, the matters on which they disagree, and identifying the reasons for any such disagreement and their respective contentions in relation to same.
 6. If the Arbitrator considers it appropriate, he or she may direct that the experts retained by the parties attend one or more Experts' Conclaves chaired by the Arbitrator, so as to narrow issues in dispute, which Conclaves are to be held at a time and are to be conducted and recorded in a manner directed by the Arbitrator.
 7. The Arbitrator may make such other directions or rulings as he or she considers to be reasonably appropriate, including directions or rulings in terms as provided in paragraphs 1, 2, 3, 5, 6, 7 and 10 of Schedule 1.
 8. Thereafter the Arbitrator shall determine the matter based on the written material served or produced pursuant to this Schedule 2 unless the Arbitrator determines that an oral hearing is necessary to explain or resolve conflicts in that written material in relation to any one or more of the issues in dispute.
 9. If the Arbitrator determines that an oral hearing should be held in relation to any one or more of the issues in dispute, then that oral hearing shall be conducted as soon as practicable at a time and in the manner directed by the Arbitrator,

including any reasonable time limits on oral evidence and the provision of written opening addresses and final submissions.

10. Any times fixed pursuant to this Schedule 2 may be varied by agreement of the parties. In the absence of such agreement, on proper cause being shown by a party, the Arbitrator may vary the times fixed on such terms as to costs or otherwise as the Arbitrator, in his or her discretion, considers reasonable in the circumstances.