



# Resolution Institute Arbitration Rules 2023

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# Resolution Institute Arbitration Rules 2023

## Introduction

Since 2015 Resolution Institute has been the successor membership organisation which performs the functions previously performed by the Institute of Arbitrators Australia (IAA), Institute of Arbitrators and Mediators Australia (IAMA) and LEADR. Resolution Institute has adopted these Rules for use by parties in arbitration.

On 3 December 2019 the Board of Resolution Institute resolved that for arbitration agreements entered into on or after 1 January 2020 the Resolution Institute Arbitration Rules 2020 (the 2020 Rules) apply where the parties have submitted a dispute to arbitration in accordance with:

- a) The Resolution Institute Arbitration Rules;
- b) The IAA Arbitration Rules;
- c) The IAMA Arbitration Rules;

By Rule 1.2 of the 2020 Rules parties to an arbitration agreement made after 1 January 2020 that refer to the Resolution Institute Arbitration Rules are presumed to have referred to the Resolution Institute Arbitration Rules in effect on the date of the commencement of the arbitration unless they have expressly agreed to apply a particular year version of the Resolution Institute Arbitration Rules.

On 20 December 2022 the Board of Resolution Institute resolved that effective on and from 1 January 2023, the 2020 Rules are replaced by these Rules; the Resolution Institute Arbitration Rules 2023.

## Application

These Rules are based on the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules (2021). The UNCITRAL Arbitration Rules (2021) are the arbitration rules recommended by the United Nations General Assembly for in the settlement of disputes arising in the context of international relations.<sup>1</sup> The same numbering has been used. Where UNCITRAL Arbitration Rules have no equivalent in these Rules they are marked "Not Used". There are, however, a number of differences which include:

These Rules are consistent with the *Commercial Arbitration Act* in operation in each state and territory of Australia (**CAA**), the *International Arbitration Act 1974* (Cth) (**IAA**) and the *Arbitration Act 1996* (NZ) (**NZAA**). The IAA incorporates the Model Law<sup>2</sup> but with some additional provisions whereas the CAAs, which are similar but not identical across Australia, largely restate the Model Law. The NZAA applies to both international arbitrations and domestic arbitrations within New Zealand and, like the CAA largely restates the Model Law.

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<sup>1</sup> UNCITRAL Arbitration Rules (2021) being the subject of the General Assembly Resolution adopted 9 December 2021

<sup>2</sup> UNCITRAL Model Law on International Commercial Arbitration (As adopted by UNCITRAL on 21 June 1985, and as amended by UNCITRAL on 7 July 2006); reproduced as Schedule 2 to IAA.

These Rules provide for a single arbitrator. If the parties wish to have their dispute determined by 3 arbitrators, they must make express provision for such by amending Rule 7 of these Rules and may agree to incorporate by reference Articles 9 and 10 of the UNCITRAL Arbitration Rules or make other provisions.

These Rules are silent on the potential for consolidation of arbitrations between different parties such as provided by s.24 of IAA, s.27C of CAA and Schedule 2 of NZAA. If the parties wish to vary the default provisions in the applicable Arbitration Act in this regard, they should, if so permitted, expressly do so.

These Rules provide in Rule 22 a process for the consolidation of arbitrations between the same parties. They provide that the arbitrator appointed to an arbitration commenced first in time may determine to consolidate or hear together subsequent disputes between the same parties. These Rules do not modify the operation of s.24 of IAA, s.27C of CAA or Schedule 2 of NZAA other than in this case.

These Rules may be adopted in an arbitration agreement or by an agreement in writing at any time before or after a dispute has arisen.

Section VI of these Rules introduces an Expedited Arbitration Procedure that applies on an Opt In basis for arbitration agreements that reference the Rules that were entered into before 1 January 2023 and on an Opt Out basis for arbitration agreements that reference the Rules entered into on or after 1 January 2023. Unless otherwise agreed, the expedited procedure applies where the amount in dispute is less than AU\$2million. UNCITRAL introduced expedited arbitration rules in July 2021 that operate only on an Opt In basis.

## Suggested clauses

The following model clause may be adopted by the parties to a contract who wish to have any future dispute referred to arbitration in accordance with these Rules:

*Any dispute or difference whatsoever arising out of or in connection with this contract or the performance or non-performance of the obligations of the parties under it shall be submitted to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules.*

Parties that intend to “Opt Out” of the Expedited Arbitration Procedure contained in Section VI (Rules 47 and 48) should include the following sentence in their contract immediately after the clause set out above or jointly agree at the commencement of the arbitration:

*The parties agree that the Resolution Institute Expedited Arbitration Rules (Rules 47 and 48) do not apply.*

Parties to an existing dispute who wish to refer that dispute to arbitration under these Rules, may agree to do so in the following terms:

*We the undersigned, agree to refer to arbitration under the Resolution Institute Arbitration Rules all disputes or differences arising out of or in connection with:*

*[#insert brief description of contract, project or relationship under which disputes or differences have arisen or may arise]*

## History and Philosophy of the Resolution Institute Arbitration Rules

Then called Institute of Arbitrators Australia (IAA), Resolution Institute first published its Rules for the Conduct of Commercial Arbitrations in 1981. Since that time Resolution Institute has steadfastly maintained its institutionally light approach to its Arbitration Rules.

If the parties agree upon the arbitrator, Resolution Institute's Arbitration Rules can be used without any fee payable to Resolution Institute and without any involvement by Resolution Institute in the arbitration. If the parties do not agree upon the arbitrator, then on request Resolution Institute will appoint one to fill the gap; but it does not provide an administration service for the conduct of the arbitration.

None of the CAA, the IAA, the NZAA nor the Model Law on which these statutes are based contemplate or require an arbitral institution to provide an administration service.

In 2016 Resolution Institute adopted, with some modification, the arbitral rules promoted by the UNCITRAL. These rules are similarly institutionally light.

Resolution Institute first offered Expedited Arbitration Rules in the IAA Expedited Arbitration Rules in 1988 and included that option in all its Rules published through to the 2016 revision. The UNCITRAL Rules did not include an expedited process at that time; one was introduced by UNCITRAL in July 2021.

The arbitrator that Resolution Institute will appoint if the parties do not agree will be drawn from its professional members who are graded 1 (highest) to 3. They have passed a rigorous qualification process, must comply with annual CPD requirements, successfully complete a triannual masterclass, are bound to the Resolution Institute ethical code and are subject to the Resolution Institute complaints process.

Resolution Institute takes the view that all matters of procedure not agreed between the parties should be determined by the arbitrator and not by an arbitral institution.

Resolution Institute's Arbitration Rules facilitate the fair and final resolution of commercial disputes by an impartial tribunal without unnecessary delay or expense.

The Resolution Institute Arbitration Rules 2023 now include the Resolution Institute Expedited Arbitration Rules (Rules 47 and 48) for arbitration agreements made on or after 1 January 2023 unless the parties agree otherwise.

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# Resolution Institute Arbitration Rules 2023

## Section I. Introductory rules

### Application of the Rules

#### Rule 1.

- 1) There parties have agreed in writing that any dispute between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under:
  - a) The Resolution Institute Arbitration Rules;<sup>3</sup> or
  - b) The IAMA Arbitration Rules;<sup>4</sup>
  - c) The IAA Arbitration Rules;<sup>5</sup>

then such disputes shall be arbitrated in accordance with these Rules subject to such modification as the parties may agree.

- 2) Subject to Rule 2(a) below, the parties to an arbitration agreement made after 1 January 2020 that incorporates by reference the Resolution Institute Arbitration Rules shall be presumed to have referred to the Resolution Institute Arbitration Rules in effect on the date of the commencement of the arbitration, unless the parties have expressly agreed to apply a particular version of the Resolution Institute Arbitration Rules.
  - a) The parties to an arbitration agreement made before 1 January 2023 shall not be presumed to have agreed to Section VI (the Resolution Institute Expedited Arbitration Rules) but may adopt the Expedited Rules by written agreement at any time.
- 3) These Rules are to be construed and understood in conjunction with the relevant Act covering arbitration (**the Act**) in force in the place of arbitration (**the Seat of the arbitration**). Within Australia that will be the International Arbitration Act 1974 (Cth) (**the IAA**) or, if not applicable, the relevant Commercial Arbitration Act of the Seat of the arbitration (**the CAA**). Within New Zealand that will be the Arbitration Act 1996 (NZ) (**NZAA**).
- 4) These Rules shall govern the arbitration provided that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate that provision shall prevail.

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<sup>3</sup> Published in 2016, 2020 and now 2023.

<sup>4</sup> Published in 1999 as the Rules for the Conduct of Commercial Arbitrations, published in 2017 as the IAMA Arbitration Rules Incorporating the IAMA Fast Track Arbitration Rules, and in 2014 as the IAMA Arbitration Rules.

<sup>5</sup> Published in 1981 as the Rules for the Conduct of Commercial Arbitrations and supplemented in 1988 with the Expedited Commercial Arbitration Rules and Notes.



- 5) These Rules are to be interpreted and applied so as to facilitate the fair and final resolution of commercial disputes without unnecessary delay or expense.
- 6) Where in the Act the parties are permitted to agree to vary the terms of any provision in the Act or to depart from any such provision, the adoption by the parties of these Rules constitutes an agreement by them to vary or depart from a provision of the Act which differs from these Rules, but only to the extent of that difference.

## Notice and calculation of periods of time

### Rule 2.

- 1) Any written communication or notice, including a notification, communication or proposal, may be transmitted by any means of communication which provides or allows for a record of its transmission.
- 2) If an address, electronic or physical, has been designated by a party specifically for this purpose or authorised by the arbitrator, any written communication or notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorised.
- 3) In the absence of such designation or authorisation, any written communication or notice is:
  - a) Received if it is physically delivered to the addressee; or
  - b) Received if an electronic document is opened or viewed; or
  - c) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
- 4) If, after reasonable efforts, delivery cannot be effected in accordance with Rule 2.2 or 2.3 then such written communication or notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered mail or any other means which provides a record of delivery or of attempted delivery.
- 5) A written communication notice shall be deemed to have been received on the day it is delivered in accordance with Rule 2.2, Rule 2.3 or Rule 2.4.
- 6) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a written communication or notice is received. If the last day of such period is an 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. Official holidays or non-business days occurring during the running of a period of time are included in the calculation of that period of time.

## Notice of Arbitration

### Rule 3.

- 1) The party or parties initiating an arbitration (**the claimant**) shall by written notice, notify the other party or parties (**the respondent**) of the dispute and request or demand the dispute be referred to arbitration (**the Notice of Arbitration**).
- 2) The arbitration shall be deemed to commence on the date on which the Notice of Arbitration is received by the respondent.
- 3) The Notice of Arbitration shall include the following:
  - a) A request or demand that the dispute be referred to arbitration;
  - b) The names and contact details of each of the parties;
  - c) A copy of the arbitration agreement which is invoked;
  - d) A brief description of the relevant relationship between the parties;
  - e) A brief description of the claims the subject of the dispute and an indication of the amount involved, if any; and
  - f) The relief or remedy sought.
- 4) The Notice of Arbitration may also include:
  - a) A copy of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship between the parties;
  - b) A proposal for the Seat of the arbitration, if the parties have not previously agreed thereon; and
  - c) Suggestion of the names of one or more persons, who would serve as the arbitrator.
- 5) The appointment of the arbitrator shall not be hindered by any controversy with respect to the sufficiency of the Notice of Arbitration, which shall be finally resolved by the arbitrator.

## Response to Notice of Arbitration

### Rule 4.

- 1) Within 14 days of receipt of the Notice of Arbitration, the respondent shall communicate to the claimant a Response to Notice of Arbitration (**the Response to Notice of Arbitration**), which shall include:
  - a) The name and contact details of each respondent;
  - b) A response to the information set forth in the Notice of Arbitration, pursuant to Rule 3.3(c) to (e) and Rule 3.4(a) to (c); and
  - c) A brief description of any counterclaim or of any claim raised for the purpose of a set-off including where relevant, an indication of the amounts involved, and the relief or remedy sought.
  
- 2) The Response to Notice of Arbitration may also include:
  - a) Any submission that an arbitrator appointed or to be appointed under these Rules lacks or may lack jurisdiction;
  - b) If none of the names of potential arbitrators suggested by the claimant are accepted by the respondent, the names of one or more persons, one of whom would serve as arbitrator; and
  - c) A Notice of Arbitration in accordance with Rule 3 in the case where the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
  
- 3) The appointment of the arbitrator shall not be hindered by any controversy with respect to the respondent's failure to communicate the Response to Notice of Arbitration, or an incomplete or late Response to Notice of Arbitration, which shall be finally resolved by the arbitrator.

## Representation and assistance

### Rule 5

Each party may be represented in the arbitration or assisted by persons chosen by it. The names and contact details of such persons must be communicated to all parties and to the arbitrator. Such communication must specify whether the appointment of that person is being made for the purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitrator, on his or her own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitrator may determine.

### Rule 6.

Not used

## Section II. The arbitrator

### Number of arbitrators

#### Rule 7.

The dispute referred to arbitration by the Notice of Arbitration is to be decided by one arbitrator unless otherwise agreed by the parties.

### Appointment of the arbitrator

#### Rule 8.

- 1) The parties are free to agree the identity of the arbitrator at any time failing which the parties have agreed on the following procedure for the appointment of the arbitrator.
- 2) Either party may propose the names of one or more persons, one of whom would serve as the sole arbitrator. As referred to in Rules 3 and 4, such a proposal may be made in the Notice of Arbitration and/or Response to Notice of Arbitration.
- 3) If the parties have not reached agreement on the choice of a sole arbitrator within 21 days of the receipt by the claimant of the Response to Notice of Arbitration, or, if no Response to Notice of Arbitration is received by the claimant within 28 days of receipt by the respondent of the Notice of Arbitration, the arbitrator shall be the nominee of Resolution Institute and Rule 41.2 shall apply.

- 4) Resolution Institute shall, promptly after the nomination is made, notify the nominee arbitrator and the parties of the nomination and its terms.
- 5) The nominee arbitrator shall promptly advise Resolution Institute and the parties of the nominee arbitrator's acceptance of the nomination and its terms. The date upon which Resolution Institute receives this acceptance shall be the date of appointment for the purpose of Rule 16.
- 6) Upon acceptance of a nomination by Resolution Institute or an appointment by the parties the arbitrator shall promptly advise the parties of the proposed Terms of Engagement setting out the proposed arrangement in respect of the liability of the parties to pay the arbitrator's fees and expenses including the Resolution Institute nomination fee, if applicable.

## Rule 9.

Not used

## Rule 10.

Not used

## Disclosure by the arbitrator

### Rule 11.

When a person is approached in connection with a possible nomination or appointment as an arbitrator, that person shall disclose any circumstances likely to give rise to justifiable doubts as to the person's impartiality or independence. The arbitrator, from the time of appointment and throughout the arbitration, shall without delay make disclosure of any such circumstances to the parties unless they have already been informed by the arbitrator of these circumstances.

## Challenge of the arbitrator

### Rule 12.

The arbitrator may be challenged at any time if circumstances exist which give rise to a real danger of bias on the arbitrator's behalf.

## Rule 13.

- 1) The parties have agreed on the following procedure for challenging an arbitrator.
- 2) A party who intends to challenge the arbitrator shall send its Notice of Challenge to the other parties, the arbitrator and the Resolution Institute within the period ending 15 days after it has been notified of the nomination of the arbitrator or after the circumstance mentioned in Rule 12 first became known to that party, whichever last occurs.
- 3) The Notice of Challenge shall state the reasons for the challenge and a summary of the evidence upon which the challenging party relies in support of the challenge.
- 4) When an arbitrator has been challenged by a party, the other party may agree to the challenge in which case the arbitrator must withdraw. If the other party does not agree to the challenge or remains neutral, the arbitrator may withdraw. In neither case does this imply acceptance of the validity of any ground of the challenge.
- 4) If the arbitrator does not withdraw within 7 days from receiving the Notice of Challenge, the challenging party shall, within a further 7 days, advise the other parties, the arbitrator and Resolution Institute that the challenge is pressed. The arbitrator shall thereafter provide the parties with an opportunity to be heard and shall decide on the challenge as soon as possible.
- 5) If the challenging party does not provide advice that the challenge is pressed within the time required by Rule 13.5 the challenging party shall be deemed to have withdrawn the challenge.
- 6) If the arbitrator decides to withdraw, the parties and Resolution Institute shall be notified. The arbitrator shall be entitled to payment of the arbitrator's fees and disbursements for all work undertaken up until the withdrawal.
- 7) If the parties fail to agree upon a replacement arbitrator within 14 days of being notified of the withdrawal, then Resolution Institute shall nominate a substitute arbitrator and Rule 41.2 shall apply.

## Replacement of the arbitrator

### Rule 14.

Where the arbitrator has to be replaced a party may communicate by notice in writing to the other party and the arbitrator that it requires the appointment of a replacement arbitrator. If within a further 14 days after that notice a replacement arbitrator has not been agreed by the parties, then the replacement Arbitrator shall be the nominee of Resolution Institute and Rule 41.2 shall apply.

## Continuation of the arbitration when an arbitrator is replaced

### Rule 15.

If the arbitrator is replaced, the arbitration shall resume at the stage where the arbitrator who was replaced ceased to perform the arbitrator's functions, unless the parties or the replacement arbitrator decide otherwise.

## Section III. The arbitration

### Time limit

#### Rule 16.

The arbitrator shall use best endeavours to deliver all awards within the period of 365 days after the date of appointment or within such other period as the parties have agreed at the date of appointment. If the arbitrator is unable to deliver all awards within that period, the arbitrator shall provide to the parties and Resolution Institute the reasons for the delay and notice of the further time estimated to be required to deliver all awards.

### General Provisions

#### Rule 17.

- 1) Subject to the provisions of any applicable Act, these Rules, and any other agreement of the parties, the arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate, provided that the parties are to be treated equally and that at an appropriate stage of the arbitration each party is given a reasonable opportunity to know the case to be presented by every other party and to present its case. The arbitrator, in exercising the arbitrator's discretion, shall conduct the arbitration so as to avoid unnecessary delay and expense and provide a fair and efficient process for resolving the parties' dispute.
- 2) As soon as practicable after the arbitrator's appointment and after inviting the parties to express their views, the arbitrator shall establish the provisional timetable for the arbitration. The arbitrator may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
- 3) All communications to the arbitrator by one party shall be communicated by that party to all other parties at the same time.

- 4) The arbitrator may, after inviting the parties to express their views and taking into account the circumstances of the arbitration, utilize any technological means considered appropriate to conduct the proceedings, including to communicate with the parties and to hold procedural conferences and hearings remotely.

## Seat of arbitration

### Rule 18.

Failing agreement by the parties on the Seat of the arbitration it shall be determined by the arbitrator having regard to the circumstances of the dispute, including the convenience of the parties.

## Language

### Rule 19.

- 1) Unless otherwise agreed by the parties, the language to be used in the arbitration is English
- 2) The arbitrator may order that any documentary evidence be accompanied by a translation into the language or languages agreed by the parties or determined by the arbitrator and may require that translation to be a certified translation.

## Statement of Account

### Rule 20.

- 1) Unless otherwise directed by the arbitrator, the claimant shall communicate its Statement of Claim in writing to the respondent and to the arbitrator within a period of time to be determined by the arbitrator. The arbitrator may permit the claimant to treat its Notice of Arbitration referred to in Rule 3 as a Statement of Claim, provided that the Notice of Arbitration also complies with the requirements of Rules 20.2 to 20.4.
- 2) Unless otherwise directed by the arbitrator, the Statement of Claim shall include the following particulars:
  - (a) The names and contact details of the parties;
  - (b) A statement of the relevant facts supporting the claim;
  - (c) The points at issue;
  - (d) The legal grounds or arguments supporting the claim and
  - (e) The relief or remedy sought.



- 3) Unless otherwise directed by the arbitrator, a copy of any contract or other legal instrument out of or in relation to which the dispute arises and the arbitration agreement shall be annexed to the Statement of Claim.
- 4) Unless otherwise directed by the arbitrator, the Statement of Claim should, as far as possible, be accompanied by copies of all documents and other evidence to be relied upon by the claimant or contain references to them.

## Statement of Defence

### Rule 21.

- 1) Unless otherwise directed by the arbitrator, the respondent shall communicate its Statement of Defence in writing to the claimant and to the arbitrator within a period of time to be determined by the arbitrator. The respondent may elect to treat its Response to Notice of Arbitration referred to in Rule 4 as a Statement of Defence, provided that the Response to the Notice of Arbitration also complies with the requirements of Rule 21.2.
- 2) Unless otherwise directed by the arbitrator, the Statement of Defence shall respond to all particulars of the Statement of Claim, and, as far as possible, be accompanied by copies of all documents and other evidence to be relied upon by the respondent or contain references to them.
- 3) In its Statement of Defence, or at a later stage in the arbitral proceedings if the arbitrator decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that it falls within the jurisdiction of the arbitrator.

## Amendments to the Statement of Claim or Defence

### Rule 22.

- 1) During the arbitration, a party may apply to amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, provided the arbitrator considers it appropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to the other party or any other circumstance. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that falls outside the jurisdiction of the arbitrator.
- 2) An amendment or supplement may be allowed notwithstanding that the effect is to add or substitute a cause of action arising after the commencement of the arbitration.

- 3) Where a further dispute arises under the same contract, and under the same Rules, in respect of which an arbitration has previously been commenced, a party may apply to the arbitrator for hearing together or consolidation of that dispute into the arbitration.
- 4) Where separate arbitrations in respect of disputes under the same contract, and under the same Rules, have been commenced:
  - a) a party may apply to the arbitrator of the arbitration commenced first in time (**the first arbitration**) for the arbitration commenced second in time (**the second arbitration**) to be heard with or consolidated into the first arbitration;
  - b) if the arbitrator of the dispute(s) in the first arbitration determines the dispute(s) in the second arbitration should be heard together or consolidated with the first arbitration, that arbitrator shall be the arbitrator of both disputes or the consolidated arbitration and the arbitrator of the second arbitration shall withdraw upon payment of the arbitrator's fees and expenses.
  - c) The arbitrator of the first arbitration may have regard to any relevant matter and make any order or direction the arbitrator deem fit for the procedure to be followed in considering consolidation or hearing together of the disputes.

## Pleas as to the jurisdiction of the arbitration

### Rule 23.

- 1) If the Seat of the arbitration is not in Australia or New Zealand and none of the IAA, the CAA or the NZAA apply to it then, and only then, the following applies:
  - a) The arbitrator shall have the power to rule on jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of that contract. A decision by the arbitrator that the contract is null and void shall not automatically entail the invalidity of the arbitration agreement.
  - b) A plea that the arbitrator does not have jurisdiction shall be raised no later than in the Statement of Defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the Defence to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitrator is exceeding the scope of jurisdiction shall be raised as soon as the matter alleged to be beyond the scope of jurisdiction is raised during the arbitration. The arbitrator may, in either case, admit a later plea if the arbitrator considers the delay justified.

- c) The arbitrator may rule on a plea referred to in Rule 23.1(b) either as a preliminary question or in an award on the merits. The arbitrator may continue the arbitration and make an award, notwithstanding any pending challenge to jurisdiction before a court.

## Further written statements

### Rule 24.

In addition to the Statement of Claim and the Statement of Defence, the arbitrator shall decide which further written statements shall be required from the parties or may be presented by them and shall fix the periods of time for the delivery of such further statements.

## Periods of time

### Rule 25.

The periods of time fixed by the arbitrator for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 30 days. However, the arbitrator may extend the time limits if the arbitrator considers that an extension of time is justified in all the circumstances.

## Interim Measures

### Rule 26.

The arbitrator may, at the request of a party, grant interim measures.

## Evidence

### Rule 27.

- 1) Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 2) Witnesses, including expert witnesses, who are presented by the parties to testify at the arbitration on any issue of fact or matter of expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party.
- 3) Unless otherwise directed by the arbitrator, statements by witnesses, including expert witnesses, may be presented in writing and signed by them. Where such a statement is to be presented by a party:

- a) the arbitrator must direct that the party provide a copy of the statement and any exhibits or annexure to all other parties and the arbitrator in a reasonable time before the statement is presented; and
  - b) any other party may request the arbitrator to require the witness to attend to verify the statement on oath. Where a witness fails to comply with this requirement the arbitrator may refuse to accept the statement into evidence.
- 4) At any time during the arbitration the arbitrator may require a party to produce documents, exhibits or other evidence within such a period of time as the arbitrator shall determine.
  - 5) The rules of evidence do not apply to the arbitration.
  - 6) The arbitrator shall determine the admissibility, relevance, materiality and weight of any evidence presented.

## Hearings

### Rule 28.

- 1) If at an appropriate stage of the arbitration any party so requests, the arbitrator shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request the arbitrator shall decide whether to hold such hearings or whether the arbitration shall be conducted on the basis of documents and other materials.
- 2) The arbitrator, unless otherwise agreed by the parties, may hear from witnesses, experts or the parties, or inspect goods, other property or documents, in any place.
- 3) The arbitrator shall give the parties sufficient advance notice of the date, time and place of any oral hearing.
- 4) Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner determined by the arbitrator.
- 5) Hearings shall be held in private unless the parties agree otherwise.
- 6) The arbitrator may require or permit the retirement or presence of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, without good reason, be directed to retire. The arbitrator may permit a person to be present to assist a party during the hearing or any part of it.
- 7) The arbitrator may direct those witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as video conference).

## Experts appointed by the arbitrator

### Rule 29.

Unless the parties agree otherwise, the arbitrator may appoint an expert to report on any matter arising in the arbitration and the parties shall, in the first instance and subject to the arbitrator's discretion as to costs, pay the expert's fee and expenses in equal shares. If the arbitrator receives a report from an arbitrator-appointed expert the parties must also be provided with the report and be given an opportunity to cross-examine the arbitrator-appointed expert on it. The arbitrator is not permitted to discuss with an arbitrator-appointed expert any matter the subject of the report unless in the presence of the parties or their representatives.

## Default

### Rule 30.

- 1) If, without showing sufficient cause:
  - a) The claimant fails to deliver its Statement of Claim, the arbitrator may terminate the arbitration and require all arbitrator fees and expenses up to the termination be paid as the arbitrator determines;
  - b) The respondent fails to deliver its Response to Notice of Arbitration or its Statement of Defence, the arbitrator may continue the arbitration without treating such failure in itself as an admission of the claimant's allegations; or
  - c) any party fails to appear at a hearing or to produce documentary evidence, the arbitrator may continue the arbitration and make an award on the evidence presented.
- 2) If a party fails to do something necessary for the proper and expeditious conduct of the arbitration then the arbitrator, after giving that party an opportunity to explain the default, may if satisfied that:
  - a) there has been inordinate and inexcusable delay in pursuing a claim - publish an award dismissing the claim or give directions (with or without conditions) for the speedy determination of the claim; or
  - b) there has been a failure to comply with any order or direction of the arbitrator without sufficient explanation - make an order requiring the party to comply with the terms of the earlier order or direction within the period specified by the arbitrator (**a Peremptory Order**).
- 3) If a party, without sufficient cause, fails to comply with a Peremptory Order, the arbitrator may do any of the following:
  - a) direct that the party in default is not to be entitled to rely on any allegation or material which was the subject matter of the Peremptory Order;

- b) draw such inferences from the failure to comply as the circumstances justify;
- c) proceed to make an award on the basis of any materials that have been properly provided to the arbitrator;
- d) without limiting Rule 40 make an award giving any direction or order that the arbitrator thinks fit as to the payment of the costs incurred as a consequence of the non-compliance.

## Closure of the hearing

### Rule 31.

- 1) The arbitrator may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, may declare the hearing closed.
- 2) The arbitrator may decide, if the arbitrator considers it necessary owing to exceptional circumstances, on the arbitrator's own initiative or upon application of a party, to reopen the hearing at any time before the award is made.

### Rule 32.

Not used

## Section IV. The award

### Rule 33.

Not used

## Form and effect of the award

### Rule 34.

- 1) The arbitrator may make separate awards on different issues at different times.
- 2) All awards shall be made in writing and must be signed by the arbitrator and state the date of its making and the place of the arbitration (the Seat of the arbitration).
- 3) The award must state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is on agreed terms under Rule 36.
- 4) After the award is made a copy signed by the arbitrator must be delivered to each party.
- 5) The award shall be final and binding on the parties. The parties shall comply with all awards without delay.
- 6) An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

## Applicable law

### Rule 35.

- 1) The arbitrator must decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.
- 2) Failing any designation by the parties, the arbitrator must apply the law determined by the conflict of law rules which the arbitrator considers appropriate.
- 3) In all cases, the arbitrator must determine the dispute in accordance with the terms of the contract and must take into account the usage of the trade applicable to the transaction.
- 4) Unless otherwise agreed by the parties the law of the arbitration agreement shall be the law of the contract.

## Settlement or other grounds for termination of the arbitration

### Rule 36.

- 1) If, during the arbitration, the parties settle the dispute, the arbitrator must terminate the arbitration and, if requested by the parties and not objected to by the arbitrator, record the settlement in the form of an arbitral award on agreed terms. An award on agreed terms must comply with Rule 34.
- 2) Upon settlement of any dispute the subject of the arbitration, the parties shall pay the arbitrator's fees and expenses in accordance with the arbitrator's Terms of Engagement, or if the arbitrator's Terms of Engagement were not agreed, in accordance with Rule 41.3.

### Rule 37.

Not used

### Rule 38.

Not used

### Rule 39.

Not used

## Costs

### Rule 40.

The amount of the costs of an arbitration (including the fees and expenses of the arbitrator) are to be in the discretion of the arbitrator. The arbitrator may direct that the costs of an arbitration or any part of the arbitration, are to be limited to a specified amount.

## Fees of the Arbitrator and Resolution Institute Nomination Fee

### Rule 41.

- 1) If the parties do not agree to the Terms of Engagement proposed by the arbitrator for payment of the arbitrator's fees and expenses, or any part of them including the Resolution Institute nomination fee, then the arbitrator may refuse to act as arbitrator or may withdraw as arbitrator.



- 2) If the arbitrator is nominated by Resolution Institute the parties acknowledge that it will require the nominee arbitrator to agree to pay a nomination fee to Resolution Institute which will be an expense of the arbitrator (the Resolution Institute nomination fee). The nomination fee the arbitrator will be obliged to pay to the Resolution Institute will be 10% of the total fees invoiced by the arbitrator to conduct the arbitration.
- 3) If the arbitrator's Terms of Engagement are not agreed between the arbitrator and the parties or one of them, and the arbitrator has not refused to act as arbitrator and has not withdrawn, then the arbitrator's fees and expenses shall be fixed on the following basis:
  - a) the arbitrator shall be remunerated on the basis of an hourly rate plus expenses at cost;
  - b) if any party has not agreed the hourly rate of the arbitrator, the hourly rate shall be fixed by Resolution Institute taking into account the amount in dispute, the complexity of the subject matter of the dispute, the standing and experience of the arbitrator, whether any party has agreed to the hourly rate and any other circumstance relevant to the dispute.

## Rule 42.

Not used

## Deposit of costs

### Rule 43.

- 1) The arbitrator may, from time to time, direct each party to deposit into a nominated holding account an amount as security for the arbitrator's fees and expenses. The parties authorise the arbitrator to withdraw monies paid into the nominated holding account upon the arbitrator being entitled to payment of fees or expenses and upon provision of a time record and tax invoice to the parties.
- 2) If a party fails to pay a deposit in accordance with a direction of the arbitrator, the arbitrator may order the suspension or termination of the arbitration, dismissal of the defaulting party's claim or make whatever direction the arbitrator deems fit.
- 3) After the award has been made, the arbitrator shall render an account to the parties setting out the deposits received, the total fees and expenses of the arbitrator and direct the return of any unexpended balance of the deposits to the parties.
- 4) In relation to arbitration assistance agreements:
  - a) A party shall at the earliest opportunity after the commencement of the arbitration inform the other parties and the arbitrator of any agreement between it or any related company or individual and any other company or individual under which financial or other assistance is provided to conduct the arbitration in return for consideration that is wholly or partially dependent on the outcome of the dispute.

- b) The arbitrator may after inviting the parties to express their views order a party to disclose the existence of any such agreement, the parties to it, its terms and to produce the agreement for inspection.
- c) The arbitrator may have regard to the matters disclosed and the agreement produced in making an order for costs or security for costs.

## Section V. General

### Decisions made by Resolution Institute

#### Rule 44.

- 1) Decisions made by Resolution Institute will be made by a person or persons to whom the Board of Resolution Institute has delegated decision making authority.
- 2) Decisions made by Resolution Institute with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the arbitrator. Resolution Institute shall not be required to provide reasons for any decision it makes.
- 3) To the extent permitted by the law of the Seat of the arbitration, the parties shall be taken to have waived any right of appeal or review to any court or other judicial authority in respect of any decision made by Resolution Institute.
- 4) Neither Resolution Institute nor its members, officers, servants, or agents shall be liable for any decision made or any action taken or the failure to make any decision or take any action under these Rules.

### Immunity of Arbitrator

#### Rule 45.

The arbitrator or nominee arbitrator is not liable for anything done or omitted to be done in good faith in their capacity as arbitrator or under or in relation to these Rules.

### Confidentiality

#### Rule 46.

If the Seat of the arbitration is not in Australia or New Zealand and none of the IAA, the CAA or NZAA apply to it then, and only then, the following applies:

The parties, the arbitrator and Resolution Institute undertake to keep confidential the existence of the arbitration, all awards and rulings, all documents in the arbitration created for the purpose of the arbitration and all other documents produced by any other party in the arbitration not otherwise in the public domain, save and to the extent that disclosure may be required by legal duty, to protect or pursue a legal right, or to enforce or challenge an award.

## Section VI. Resolution Institute Expedited Arbitration Rules

### Application of Section VI

#### Rule 47.

- 1) This Section may be referred to as the Resolution Institute Expedited Arbitration Rules.
- 2) This Section applies to and only to any arbitration:
  - a) Where the arbitration agreement was made before 1 January 2023 if all parties agree or
  - b) Where the arbitration agreement was made on or after 1 January 2023 and the amount in dispute, that is the amount of the claim plus counterclaim, is not greater than \$AU 2million (**the Expedited Threshold**) unless all parties agree that this section does not apply.
- 3) To the extent that a Rule in this Section differs from or conflicts with a Rule in any other Section, the Rule in this Section prevails.
- 4) If the amount in dispute changes to an amount over or under \$2M during the arbitration, the application of this Section may commence to apply or cease to apply as the case may be. As referred to in Rule 48(7)(b) this may constitute exceptional circumstances.

### Expedited Procedure

#### Rule 48.

- 1) All matters referred to arbitration to which the Resolution Institute Expedited Arbitration Rules apply other than costs are subject to the following Time Limits.
  - a) The arbitration must be conducted within the **Parties' Time Limit** of four months from the end of the first procedural conference to the completion of the hearing or delivery of the last closing submission on all matters referred to arbitration other than costs, whichever is later.
  - b) Parties' Time Limit can be extended only pursuant to Rule 48.2.

- c) The award must be delivered within the **Arbitrator's Time Limit** of one month from the delivery of the last closing submission or the conclusion of the hearing on all matters referred to arbitration other than costs, whichever is later.
  - d) The delivery of an award outside of the Arbitrator's Time Limit does not affect its validity but the arbitrator must give reasons for the failure, specifying the exceptional circumstances which led to the failure.
- 2) The Parties' Time Limit can be extended only:
- a) by the agreement of all parties;
  - b) upon the application for an extension of time made by a party and after inviting the parties to express their views, by determination of the arbitrator together with reasons specifying the exceptional circumstances which led or were likely to lead to the failure to comply with the Parties' Time Limit; or
  - c) upon the arbitrator's own motion and after inviting the parties to express their views, by the determination of the arbitrator together with reasons specifying the exceptional circumstances which led or were likely to lead to the failure to comply with the Parties' Time Limit. An extension or extensions of time under this Rule 48.2(c) may be for a maximum total period of two months.
- 3) The reasons of the arbitrator specifying the exceptional circumstances referred to in Rules 48.1(d), 48.2(b), 48.2(c) and 48.6(c) above must be provided in writing to the parties within five business days of the determination and either party may provide those reasons to Resolution Institute should it so choose.
- 4) All procedural directions and orders made by the arbitrator must be directed to complying with the Time Limits in Rules 48.1(a) and 48.1(c) and must have regard to the provisions of Rule 48.6.
- 5) Subject to arbitrator's general discretion and Rule 48.6(e) the parties agree that no hearing will be held.
- 6) Without limiting the generality of Rule 48.4, the parties agree that:
- a) The arbitrator may determine that a failure to comply with a time limit in a direction for the presentation of evidence or a submission may have the consequence that the evidence or submission provided late may not be taken into account by the arbitrator in the arbitration,
  - b) Applications for amendment to the Statement of Claim, Statement of Defence and Counterclaim (if any) will not be permitted unless the Parties' Time Limit can be complied with or exceptional circumstances exist,
  - c) Disclosure of documents will be highly limited, and the arbitrator may reject a request, unless made with the consent of all parties, to establish a procedure whereby each party can request the other party to produce documents,

- d) Procedural disputes will be resolved on the papers or on a video conference of less than half a day (or both) and within five business days of being raised,
  - e) The arbitrator alone will determine whether there shall be a hearing for the presentation of evidence or for oral argument and, if so, whether it should be a hearing conducted face to face or by any technological means,
  - f) The arbitrator alone will determine the duration of the hearing (if any) having regard to a presumption that it will not exceed five days,
- 7) Without limiting what matters an arbitrator might regard as exceptional circumstances, the following may constitute them:
- a) an arbitration where a party has conducted itself in a way so as to gain a significant procedural advantage over the other party though the operation of a Time Limit,
  - b) if the amount in dispute varies during the procedural life of an arbitration over or under the Expedited Threshold,
  - c) for the avoidance of doubt, if the Resolution Institute Expedited Arbitration Rules cease to apply to an arbitration, the arbitrator shall remain in place and the arbitration will continue under the Resolution Institute Arbitration Rules save that this Section shall not apply, and
  - d) the failure to deliver the award within the Arbitrator's Time Limit due to the failure of a party to pay the fees and expenses of the arbitrator as and when directed.
- 8) Notwithstanding any Rule in this Section, the arbitrator is entitled to withhold delivery of an award until all its fees and expenses are paid.