

## Rules Of Arbitration

### 1. Claims That Qualify

1.1 The rules of the Online Arbitration Centre (hereafter called “Centre”) are applicable to any Dispute, difference in opinion or claim which is based on a liquid claim or document (hereafter called “Dispute”).

1.2 Financial claims include any claims where the Dispute is based on a liquid claim or document as defined and explained by The Magistrate’s Court Act 32 of 1944 with regards to an application for a summary judgment.

1.3 The sole purpose of the Centre is to offer the South African public an opportunity to adjudicate Disputes in a speedy, user-friendly and cost-effective manner, accompanied by an order that is final and binding on both the Applicant and Respondent (hereafter called “Parties”).

### 2. General Rules

2.1 This manner of Arbitration aims to eliminate the need for argumentation or calling of witnesses to testify in the matter, either by the Parties themselves or their legal representatives, except for instances where the Arbitrator requests, at his/her sole discretion, an informal discussion between the Parties where they may present their versions and evidence. The Arbitrator may also request an informal discussion with only one of the Parties, if any uncertainties (procedural or on merit) exist, which needs to take place with the consent of the other Party, alternatively, in the presence of the other Party. Both Parties’ versions will be judged, as far as possible, based on documentation in the form of affidavits with addendums to serve as proof of evidence (accepted in Afrikaans or English).

2.2 Both parties may employ legal counsel to assist with the preparation and drafting of their documentation. If the Arbitrator requests further evidence, the parties may request their legal counsel to be present during these discussions. Legal representatives may attend only with the Arbitrator's permission. All discussions will take place informally via an online video conference call.

The Arbitrator has the widest possible discretion with regards to this decision, in which case, all rules applicable to the argumentation and led of evidence shall be determined and given through to the Parties by the Arbitrator.

2.3 The Arbitrator shall also have the widest discretion and powers allowed by law to ensure the just, speedy, user-friendly, economical and final determination of all the Disputes raised in proceedings, including the matter of costs.

2.4 All Disputes reported to the Centre, will be dealt with by a single Arbitrator.

2.5 The total costs of the Arbitration on any Disputes, as determined by the Online Arbitration Centre rules will be calculated as follows:

2.5.1 Registration Fee is payable by the Applicant on date of registration:

R5, 000.00 for claims of R1.00 to R75,000.00;

R7,000.00 for claims of R75,000.01 to R200,000.00;

R10,000.00 for claims of R200,000.01 to R400,000.00;

R20,000.00 for claims of R400,000.01 to R1,000,000.00;

R30,000.00 for claims of R1,000,000.01 and above.

PLUS an Arbitration Fee of R 5,000.00 or 10% of the capital claimed, up to a maximum fee of R150,000.00, whichever is the greater. The Arbitration Fee will be payable within 14 days of registration of the claim. The Arbitration Fee is payable by the Applicant. (all amounts exclude VAT)

2.5.2 If there is a counterclaim instituted by the Respondent, the Respondent shall be responsible to also pay a Registration Fee as set out above to register his/her counterclaim plus an Arbitration Fee of R 5,000.00 or 10% of the counterclaim amount, up to a maximum amount of R150,000.00, whichever is greater. The Registration Fee together with the Arbitration Fee is due and payable by the Respondent on the date of filing the counterclaim. (all amounts exclude VAT)

2.5.3 If the Dispute registered by the Applicant is unopposed by the Respondent, the Arbitration Costs only consists of the Registration Fee PLUS an Arbitration Fee of 5% of the capital claimed by the Applicant, with a minimum Arbitration Fee of R 5,000.00 and a maximum Arbitration Fee of R75,000.00. (all amounts exclude VAT)

2.5.4 Neither the Applicant nor the Respondent's claims will be attended to without receipt of the mentioned fees, on the dates as indicated above. However, the Centre will have the sole discretion to decide if any exemptions will be allowed.

2.5.5 If the Respondent has a counterclaim filed without payment of his Registration Fee and Arbitration Fee, then the Arbitration process will proceed as if no counterclaim was received.

2.5.6 The Arbitrator shall in its award direct which Party will be liable for all the costs of the Arbitration, which will include the Registration Fees, Arbitration Fees and Legal costs. These costs will be due and payable within 7 calendar days from the date of the award.

2.5.7 The Party responsible for payment of the costs consents to payment of all legal costs on an attorney and client scale plus collection commission of 10% if the award is not adhered to within 7 calendar days, and the successful Party needs to proceed with legal action to collect the capital amount, interest and costs.

2.6 Should the Dispute between the Parties be settled before an Arbitration award has been made, then the Parties may request the Arbitrator to make such settlement the award of the Arbitrator. The Centre will not issue refunds for any payments made on matters that have been settled between the parties.

2.7 The Centre will always aim to finalise any Dispute within 90 calendar days from the date on which the Dispute has been registered (if there is no counterclaim).

2.8 The Centre will only register a Dispute if all the requirements as outlined in the Request for Arbitration Form have been met.

2.9 The Online Arbitration Centre will appoint an Arbitrator solely based on his or her discretion, although no Arbitrator will have less than 10 years' experience in his/her field of knowledge. The appointed Arbitrator shall then determine the Dispute outcome in accordance with the rules of the Online Arbitration Centre. Both Parties will be informed of who the appointed Arbitrator is.

2.10 In the unlikely event that the Arbitrator is unable to proceed with or attend to the Arbitration, the Chairperson of the Centre shall appoint a substitute Arbitrator at their sole discretion.

2.11 If any Party is dissatisfied with the appointment of a specific Arbitrator and prefers another Arbitrator, who must be approved by the Chairperson of the Centre, the requesting Party shall be responsible for the difference in fees between the Centre-appointed Arbitrator and the preferred Arbitrator. This is due to the Centre's established fee agreements with its Arbitrators.

2.12 All discussions and correspondence related to the Dispute between the Applicant, Respondent, and Arbitrator must include all Parties. Exceptions are allowed only with written consent from the absent Parties, permitting discussions or further correspondence in their absence.

2.13 The Arbitrator maintains the right, and may at any time, amend any clause of the Rules of the Online Arbitration Centre, based on his or her sole discretion. This can be done on the condition that such an amendment would still serve the moral values of that which is fair and reasonable as well as the objectives of the Online Arbitration Centre. In the unlikely event of such a change, both Parties will be informed of the amendment via email as well as SMS.

2.14 The Arbitrator may at any time, based on his or her sole discretion, appoint one or more experts or advisors on any matter or refer any legal Dispute or question of law for legal counsel to a third Party in order to obtain an opinion or recommendation. Such an opinion, advise or recommendation may be incorporated into an order and the Arbitrator will indicate which Party will be responsible for such costs, although the costs will usually follow the Arbitration award.

2.15 The Arbitrator may at any time, based on his or her sole discretion, refer any legal Dispute or claim to any competent court of law with jurisdiction to obtain a declaratory order or any other legal aid required by the Arbitrator. The Parties shall be timeously informed of such a decision made by the Arbitrator. A declaratory order or any other legal remedy may be included in the Arbitrator's reward. The Arbitrator will specify which Party will be responsible for such costs, typically following the Arbitration award.

2.16 The award of the Arbitrator will be final and binding upon both Parties and neither one of the Parties may appeal the award of the Arbitrator.

2.17 The Arbitration is treated as private and confidential.

## 3. Procedural Rules

3.1 The Arbitration process, done in accordance with the rules of the Online Arbitration Centre, will commence as soon as the Centre receives a Request for Arbitration Form from the Applicant. The Centre will first verify if there is an agreement between the Parties that provides for Arbitration by the Centre in accordance with the Online Arbitration Centre's rules. Once confirmed, the Centre will appoint an Arbitrator. The request will be considered submitted only when accompanied by proof of payment for the Registration Fee and a correctly completed Request for Arbitration Form.

3.2 The Centre shall always serve all the documents received from the Parties on the Applicant or the Respondent/s as required by the rules of the Online Arbitration Centre. This can be done in one of the following ways:

3.2.1 via registered post or email with 'track and trace' as proof that the documents have been sent; or

3.2.2 via email with proof that it has been sent to the Party's nominated email address; or

3.2.3 delivered by hand with proof that it has been delivered.

3.3 The Request for Arbitration Form, must be accompanied by the Applicant's claim in the form of an affidavit, together with all the applicable evidence (supporting documents). The Parties versions as contained in their respective affidavits may not exceed 5000 words per affidavit.

3.4 All the additional required documentation, as stipulated in the form, must be attached to the Request for Arbitration Form.

3.5 The Respondent must submit their defense to the Centre within 14 calendar days after receiving the Request for Arbitration Form and accompanying addendums. This defense should be in the form of an affidavit and include all necessary supporting documents, as well as the Respondent's counterclaim, if applicable. The Centre will acknowledge receipt of any documents it receives. However, it remains the responsibility of the Respondent to ensure that the Centre has indeed received the defense and counterclaim (if applicable). The Centre will then serve these documents to the Applicant in the same manner as stipulated in clause 3.2 above. If the Respondent has a counterclaim, proof of payment for the Registration Fee and Arbitration Fee must also be submitted.

3.6 If there is a counterclaim, the Applicant must respond within 14 calendar days from when the counterclaim was served. This response should be in the form of an affidavit, accompanied by necessary supporting documents. The documents should be submitted to the Centre, which will acknowledge receipt. It is the Applicant's responsibility to confirm that the Centre has received these documents. The Centre will then serve the documents to the Respondent in the prescribed manner.

3.7 If there is no counterclaim, the Applicant may reply to the defence of the Respondent within 14 calendar days. The replying documents shall be sent to the Centre and then by the Centre to the Respondent in the prescribed manner. If the Applicant does not reply to the defence of the Respondent, it shall be deemed that the Applicant disputes the defence of the Respondent, and the Arbitration shall proceed accordingly

3.8 If there is a counterclaim to which the Applicant has filed its defence in terms of clause 3.6, the Respondent may reply to the defence of the Applicant within 14 calendar days. The replying documents shall be sent to the Centre, who will serve it on the Applicant in the prescribed manner. If the Respondent wishes not to reply to the defence of the Applicant, it shall be seen that the Respondent disputes the defence of the Applicant and the Arbitration shall proceed.

3.9 The Centre shall send all documents, indexed and paginated, to the Arbitrator, where after the Arbitrator shall indicate if a Pre-Arbitration meeting is required. During this meeting the Arbitrator shall indicate the rules and procedures to be followed in the event that argumentation and further evidence is needed. If no Pre-Arbitration meeting is needed, the Arbitrator shall proceed with the Arbitration on the documents filed.

3.10 If any additional information is needed by the Arbitrator to finalise his or her award, the Arbitrator may request such information from the Applicant or the Respondent. This request should be acceded to within 7 calendar days after the date of the request and should be submitted in the form of an affidavit together with the necessary proof (supporting documents). This request and response will be revealed to and served on all Parties in the same manner as previously indicated.

3.11 If either party fails to submit their respective documents or respond to requests from the Arbitrator, the Centre will notify them via SMS and/or email, specifying that they must rectify the situation within 14 calendar days. Failure to comply will authorise the Arbitrator to proceed with resolving the dispute without the defaulting party's defense or requested information, as if the defaulting party had consented to this course of action.

3.12 The Arbitrator must submit their award to the Centre within 14 calendar days of receiving the last documents or information from the Parties. An extension may be requested by the Arbitrator, subject to approval by the Chairperson of the Centre. Both Parties will be notified of the award and/or any extension granted by the Centre via SMS and/or email.

3.13 Each Party should sign his or her affidavit as confirmation that it indeed contains the specific version of the Party and that the content is true and correct.

3.14 The Arbitrator is fully empowered to issue any appropriate cost order of which the costs might be determined on an attorney-own-client scale as explained in the Uniform Rules for Court of the High Court of South Africa.

3.15 The Arbitrator is also entitled to issue an appropriate award with regards to the apportionment of interest at a set rate from the specific date. If the Arbitrator makes no order as to interest, simple interest will be paid at a rate of mora tore interest, from the date on which the award has been issued, up to the date on which the award has been complied with.

3.16 Any party may request the Chairperson of the Centre, at the Chairperson's discretion, to appoint an independent third party to tax any account related to the arbitration order. The taxation process will follow procedures similar to those outlined in Rule 70 of the Uniform Rules for the High Court of South Africa. The Arbitrator will decide which party is responsible for paying the fees of the third-party taxation service, and this decision will be included in the Arbitrator's final award, or alternatively, the award will be issued post-taxation.

3.17 Only the Arbitrator will have the power to allow an extension with regards to any due date and time frames. Furthermore, all interim requests and/or procedural requests will be dealt with by the Arbitrator and will be decided by him or her based solely on his or her own discretion. The Arbitrator will deal with the latter in the same manner as if it has been dealt with by a judge of the High Court of South Africa. Only if the South African law prohibits an Arbitrator to deal with such a request or to issue such an award will the request be referred to the applicable High Court which has jurisdiction in the matter.

3.18 The Arbitrator has the authority to decide and rule on their own jurisdiction, which includes making rulings on any disputes regarding the existence or validity of the arbitration agreement or its scope.

3.19 The Arbitrator will notify the Online Arbitration Centre once the arbitration award is ready, and the Centre will then distribute it to both Parties as previously outlined. If either Party does not receive the award, they may contact the Centre via email for reissuance.

3.20 Both Parties agree that if the 'unsuccessful' Party fails to fully comply with its obligations within 7 calendar days from the date of the Arbitration award, the award may be enforced as a court order. Alternatively, the 'unsuccessful' Party may give notice within the same 7- day period of its intention to file an Application for Review, which must be submitted within 6 weeks from the date of the award.



3.21 Both Parties agree to the enforcement of the arbitral award by any court that has the necessary jurisdiction.

## **4. Indemnity**

4.1 The Centre will accept no responsibility or liability for any conduct or action or lack thereof by the Arbitrator towards any of the Parties involved with regards to anything related to the Arbitration which has taken place under the auspices of the Online Arbitration Centre, and are indemnified by both Parties. Furthermore, no Arbitrator, who has been appointed by the Centre, will accept any responsibility or liability for any conduct or action, or lack thereof, which has taken place during the adjudication of the Dispute and are indemnified by both Parties, unless it is a case of gross misconduct by the Arbitrator.

4.2 The Centre retains all rights to, and may at any time, withdraw from the Arbitration of any claim or Dispute, without supplying any reasons for this. The Arbitrator will merely inform the Parties if this has happened, via SMS and email and shall the Centre not be entitled to any fee whatsoever. The Arbitrator may also, based solely on his or her discretion, refer the Dispute to an outside Party to arbitrate, subject to the written consent of the Centre.