

AGREEMENT and RULES FOR BINDING EXPERT DETERMINATION

JOHN LIVERMORE ENTERPRISES

ABN 32 591 320 219

The Parties to this Agreement to appoint an Expert to determine their dispute/s are:

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of.....post code.....

Phone..... fax (“The Claimants”)

And

.....

of.....post code.....

Phone..... fax (“The Respondents”)

And

The parties entered into a contract for

At..... (“the building”)

Disputes having arisen between the parties, it is agreed that all matters in dispute be put before the Expert by the parties for a **binding determination**. It is agreed that the dispute shall be resolved pursuant to the following terms and conditions (“the Rules”).

1. APPOINTMENT OF THE EXPERT

The Process and the determination shall be conducted by John Livermore, registered and graded Arbitrator with the Resolution Institute (“The Expert”).

2. AGREEMENT TO BE BOUND

- (i) The parties agree that the Expert is an expert in the subject matter of the Dispute.
- (ii) **Unless otherwise agreed in writing by the parties, the determination of the Dispute by the Expert shall be final and binding between the parties.**

3. THE PROCEDURE (“the PROCESS”)

Role of the Expert

- (i) The Expert shall determine the Dispute in accordance with procedural fairness and according to general justice and fairness.
- (ii) The Expert shall determine the Dispute as an Expert in accordance to law and the rules of the Chartered Institute of Arbitrators Australia.
- (iii) The Expert is not acting as an arbitrator and is deemed not to be acting in an arbitral capacity; and that the Process is not an arbitration within the meaning of any statute.
- (iv) The Expert 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 Dispute.
- (v) The Expert shall be independent and act fairly and impartially, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

- (vi) Any dispute arising between the parties in respect of any matter concerning these Rules or the Process, (including the Expert's jurisdiction) shall be submitted to and determined by the Expert.
- (vii) The Expert will not rely on any information either written or oral, from one or other party or from his own enquiries unless he is confident that both parties are aware of such information and that both have had a reasonable opportunity to respond to it.
- (viii) The Expert is entitled to use his own expertise and inform himself he sees fit.

Initials <div style="text-align: center;">Claimants</div> <div style="text-align: center;">Respondent</div>

General Duty of Parties

- (i) The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the Process.
- (ii) The parties shall be represented at any Preliminary Conference or meeting convened by the Expert in person or by person/s with written authority to agree on procedural matters.
- (iii) The parties shall comply without delay with any direction or ruling by the Expert as to procedural or evidentiary matters.

Confidentiality

The Expert, the parties and all advisers and representatives of the parties shall keep all information disclosed during the Process confidential, except if disclosure is compelled by law; or to the extent necessary to give effect to the Agreement or to enforce any determination of the Expert.

Preliminary Meeting

The Expert shall meet with the parties in person as soon as practicable after reference of the Dispute to the Process to:

- (i) discuss and agree on the issues in dispute and to formulate a procedure by which those issues can be clarified and agreed;
- (ii) plan and agree on how the Process should proceed, including a timetable for inspections of the works, provision of submissions, documents and any other evidentiary material;
- (iii) make such other planning and administrative arrangements as may be required.

Conduct of the Process

The Expert shall make such directions or rulings in relation to the Process as he sees fit. This may include directions or rulings and/or setting down time tables in relation to:

- (i) identifying or clarifying the issues in dispute,
- (ii) provision of submissions, documents and any other evidentiary material relied upon by the parties;
- (iii) provision of any further submissions and evidentiary material which the Expert considers appropriate;
- (iv) meetings between the parties, their representatives and/or experts engaged by the parties, whether or not such meetings are attended by the Expert, including the times by which any such steps shall be taken.

4. THE EXPERT'S DETERMINATION

- (i) As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties, the Expert shall determine the Dispute between the parties and notify such determination in writing to the parties.
- (ii) Unless otherwise agreed between the parties, the Expert's determination shall contain a brief statement of reasons in such form as the Expert considers reasonably appropriate, having regard to the amount and complexity of the Dispute.
- (iii) If agreed between the parties, the Expert's determination may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable.
- (iv) The Expert's may correct the determination if it contains:
 - a clerical mistake;
 - an error arising from an accidental slip or omission;
 - a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - a defect of form.

Initials
.....
Claimant/s
.....
Respondent/s

5. COSTS

- (i) The parties agree to the costs of Expert at the rate of \$200+GST per hour for all time expended on and in connection with the reference, including travelling time.
- (ii) The parties agree to pay accomodation at \$300 per night, travel at \$5 per kilometre, taxis as per rate and interstate air travel (business class).
- (iii) The parties shall be jointly and severally liable for the costs of the Process, and shall pay those costs in equal shares.
- (iv) The costs of the Process include the fees and expenses of the Expert and costs for such things as room hire (other than at the Expert's office).
- (v) Any other costs will be advised to the parties in advance of their expenditure and treated as disbursements.
- (vi) The parties shall contribute in equal amounts towards the security fund for costs of the Process as and when directed by the Expert which shall be drawn down at the Expert's sole discretion. Tax invoices will be provided to the parties.
- (vii) Each party shall pay its own costs of or incidental to the Process.

6. SUBSEQUENT PROCEEDINGS

- (i) The Expert shall not, without the written consent of the parties, accept an appointment to act as arbitrator, or act as advocate or adviser to any party, in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.
- (ii) The Expert will not be called upon to give evidence or produce documents in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute, by subpoena or otherwise;
- (iii) With the exception of the Expert's determination, the Expert's papers will not be the subject of a subpoena to give evidence or produce documents in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

7. LIABILITY FOR ACTS OR OMISSIONS

The parties agree that the Expert or any nominating body or person are not liable to any party for, or in respect of, any act or omission in the discharge or purported discharge of their respective functions under these Rules unless such act or omission is shown to have been fraudulent.

The foregoing is agreed:

Claimant/s.....Name: Date

Claimant/s.....Name: Date

Respondent/s.....Name: Date

Respondent/s.....Name: Date

Expert..... Date

**When completed each party to return this document to
John Livermore 28 Petty Street, West Hobart, Hobart 7000 or
email to johnlivermo@bigpond.com**