



ADJUDICATION GENERAL CONDITIONS & PROCEDURAL RULES

2021 EDITION

ADJUDICATION

Preamble

The Tanzania Institute of Arbitrators (TIArb) was registered in July 1997 by the Registrar of Societies with Certificate of Registration No. 8833. The principal objective of Tanzania Institute of Arbitrators (“TIArb”) as per Article 2.1 of the Constitution is *“to promote, encourage and facilitate the practice of settlement of disputes through arbitration and alternative dispute resolution mechanisms”*.

The Adjudication of disputes is the most recent and very successful form of alternative dispute resolution. The decision of the Adjudicator is based on the merits of the case and principle of “value for money” approach: to achieve fair determination of disputes arising under the Contract in the shortest time with the minimum cost. Due to its success dispute adjudication is a globally accepted dispute resolution method and a common practice in construction industry.

TIArb compiled the following General Conditions of Dispute Adjudication and Procedural Rules to support effective and comprehensive implementation of Adjudication as a method of dispute resolution for domestic and international contracts.

These Rules shall become pertinent when:

- i) The Parties signed the Contract with an Adjudication Clause which TIArb is a designated Appointing Authority;
- ii) Post Contract Dispute, the Parties agree to enter into Adjudication Agreement, adopting TIArb Adjudication Procedural Rules and have agreed TIArb to be an Appointing Authority.

A. GENERAL CONDITIONS

1. Definitions

Adjudicator – an impartial, suitably qualified person, jointly appointed by the Parties to the Contract or an agreed appointing entity (TI Arb).

Dispute Adjudication Panel – (DAP) three impartial, suitably qualified persons (“the members”), jointly appointed by the Parties to the Contract or an agreed appointing entity (TI Arb).

Permanent/Standing Adjudication– adjudication process initiated at the Contract commencement for the Contract duration.

Ad Hoc Adjudication: Disputes Resolution – adjudication process initiated after one Party gives notice to the other Party of its intention to refer a dispute for adjudication.

Adjudication Agreement – tripartite agreement by and between the Parties to the Contract and a sole adjudicator or each member of DAP – Appendix I.

Appointing Authority – institution named in the Contract or as agreed by the Parties to the Contract (TI Arb).

Contract – the Agreement between the Parties which contains the provision for Adjudication.

Adjudication Activities – all undertakings, carried out by the sole adjudicator or adjudication panel such as informal assistance, site visits, hearings & decisions.

Notice of Adjudication - a written notification given by a party to another party requesting for adjudication and identifying the dispute in respect of which the adjudication is sought.

2. General Provisions

2.1. **Effective Date** - Adjudication Agreement becomes effective on the date when the tripartite agreement by and between the Parties to the Contract and a sole adjudicator or each member of DAP is signed.

2.2. **Assignment or Subcontracting** – adjudication employment is a personal appointment. No assignment or subcontracting is allowed.

2.3. **Notification** – notice in writing:

2.3.1 – a paper-original, signed by the Parties or the Sole Adjudicator/ DAP Member

2.3.2 – an electronic original, as agreed between by the Parties and the Sole Adjudicator/Members of DAP.

3. Warranties

- 3.1. The Sole Adjudicator or Member of DAP warrants independence and impartiality of the Parties and their personnel.
- 3.2. The Sole Adjudicator or Member of DAP is knowledgeable in interpretation of contract documents, experienced in the works under the contract and fluent in the contract's language of communication.

4. Independence & Impartiality

- 4.1. The Sole Adjudicator or Member of DAP shall;
 - 4.1.1. – have no financial interest in the Contract, except for payment as per Adjudication Agreement;
 - 4.1.2. – have no financial or otherwise interest in Parties or Parties personnel;
 - 4.1.3. – have not been in employment by the Parties or Parties personnel in 5 years prior to signing adjudication agreement

5. Adjudicators - General Obligations

- 5.1. The Sole Adjudicator/Member of DAP shall:
 - 5.1.1 – comply with Contract General/Particular Conditions and Adjudication Rules;
 - 5.1.2 – to be available as per terms of the adjudication agreement;
 - 5.1.3 – to be conversant with the Contract and be informed on the Parties performance; site and progress of works, as per terms of the adjudication agreement;

6. Parties – General Obligations

- 6.1. The Parties shall comply with Contract General Conditions, any Particular Conditions and the Adjudication Rules relevant to adjudication process.

7. Confidentiality

- 7.1. The Sole Adjudicator or DAP Member shall treat the subject-matter Contract and all adjudication proceedings as private and confidential and shall not disclose them without Parties prior consent.
- 7.2. The Parties and their representatives shall treat the Contract and all adjudication activities as private and confidential.

8. The Parties' undertaking and indemnity

- 8.1. The Parties undertake that the Sole Adjudicator/Member of DAP
 - 8.1.1 - shall not be appointed as an arbitrator/ called as a witness in any dispute under the Contract;
 - 8.1.2 - shall not be liable for any claims in the discharge of adjudication duties, except in cases of fraud, negligence and misconduct.
- 8.2. The Parties indemnify the Sole Adjudicator/Member of DAP from losses, damages

and expenses, resulting from the above Sub-Clause 8.1.

9. Payment

9.1. General Requirements

9.1.1. The Parties are jointly and severally responsible for adjudication costs and liable to pay all fees and expenses in equal shares.

9.1.2. Adjudication costs and administration expenses as per Appendix II of this General Conditions & Procedural Rules.

9.2. Permanent/Standing Adjudication procedure

9.2.1. Retainer Fee per calendar month for: - being available on 28-day notice; - being conversant with project developments and maintaining files; - all office & overhead expenses; - secretarial services.

9.2.2. Daily Fee for: -

- travel time, up to max 2 days in each direction; - each working day on Site visits,
- hearings and preparing decisions; - each day for reading submissions.

9.2.3. All reasonable expenses.

9.2.4. All taxes levied under the Applicable Laws.

9.3. Ad Hoc Adjudication procedure

9.3.1. Daily Fee/Lump Sum Fee for: - each working day for on Site visits, reading submissions, attending hearings and preparing decisions; travel time, up to max 2 days in each direction.

9.3.2. All reasonable expenses.

9.3.3. All taxes levied in the Country.

10. Adjudicator's Resignation & Termination

10.1. Adjudicator's Resignation

10.1.1. At any time, Adjudicator may give 28-day notice of resignation to the Parties. Dispute Adjudication Agreement shall terminate upon expiry of this period.

10.2. Termination

10.2.1. At any time, the Parties jointly may give 28-day notice of termination to the Adjudicator. Dispute Adjudication Agreement shall terminate upon expiry of this Period.

11. Default of Adjudicator

11.1. If Adjudicator fails to comply with the obligations under these General Conditions & Procedural Rules, he shall not be entitled to fees or expenses and shall remit the Parties any fees and expenses received.

12. Arbitration

12.1. Any dispute arising out of Dispute Adjudication Agreement shall be settled by institutional arbitration.

12.2. In case arbitration institute is not agreed, arbitration shall be conducted under Arbitration Act, 2020 or any other arbitration law for the time being in force.

B. PROCEDURAL RULES

1. Appointment of Adjudicator

- 1.1. The Appointing Authority shall be the Tanzania Institute of Arbitrators (TIArb).
- 1.2. The Parties shall jointly appoint the Sole Adjudicator or the Members of the Dispute Adjudication Panel, as stipulated in the Contract and within the time stated in the Contract. If time is not stated, the appointment shall be made within 14 days of the signing the Contract Agreement.
- 1.2. The Sole Adjudicator or the Members of the Dispute Adjudication Panel (DAP) shall be selected from the Panel of Adjudicator's List provided by the Tanzania Institute of Arbitrators.
- 1.4. For a 3 Member Dispute Adjudication Panel, each Party shall select one DAP Member and the two appointed Members shall select the third Member, to act as a chairperson.
- 1.5. If the Parties fail to agree to the appointment of the Sole Adjudicator or the Members of the Dispute Adjudication Panel, within 14 days after one Party requests so, in the case of a sole adjudicator, the appointment shall be made by the Appointing Authority and in the case of a 3 -Member DAP, in the case one party fails to elect member, the Appointing Authority shall appoint such Member and the Members so appointed shall appoint their chairperson from the Panel of Adjudicators list maintained by TIArb within 7 days of them being appointed by the Appointing Authority. This appointment shall be final and irrefutable. Thereafter, the Parties and the Sole Adjudicator or the Members of the Dispute Adjudication Panel shall be deemed to have signed Adjudication Agreement.
- 1.6. When appointing Adjudicator, the appointing authority shall consider the nature and circumstances of the dispute, the applicable law, language of the Contract and the nationality of the Parties.

2. Avoidance of Disputes

- 2.1. The Parties may jointly request the Sole Adjudicator/Dispute Adjudication Panel to provide assistance informally in order to resolve any arisen disagreement related to the Contract performance.
- 2.2. The informal assistance can take place at any meeting/site visit with both Parties present at such discussions.
- 2.3. The Parties are not bound to act on the informal discussion advice and the Sole Adjudicator/Dispute Adjudication Panel shall not be bound in any future dispute resolution process by the advice, given during informal assistance process.

3. Disputes Adjudication

- 3.1. In case of a dispute, related to the Contact, arises between the Parties, either Party can refer the dispute in writing to the Sole Adjudicator/Dispute Adjudication Panel with

the copy to the other Party.

- 3.2. Within 56 days or other period, as proposed by the Sole Adjudicator/Dispute Adjudication Panel and agreed by the Parties, the reasoned decision shall be given by Sole Adjudicator/Dispute Adjudication Panel.
- 3.3. The decision shall be binding on both Parties, unless revised by the amicable settlement or arbitral award.
- 3.4. If either Party is dissatisfied with Sole Adjudicator/Dispute Adjudication Panel decision, notice of dissatisfaction shall be given within 28 days to the other Party and commence arbitration procedure.
- 3.5. If no notice of dissatisfaction is given by either Party within 28 days after the Sole Adjudicator/Dispute Adjudication Panel has given the decision, then the decision becomes final and binding.

4. Meetings & Site Visits

- 4.1. Unless otherwise agreed by the Parties site visits shall be at intervals not more than 120 days and period between two consecutive visits shall not be less than 60 days, except to convene a hearing.
- 4.2. The agenda and timing for each site visit shall be agreed by the Sole Adjudicator/DAP and the Parties. In absence of agreement, shall be decided by the Sole Adjudicator/DAP.
- 4.3. Site visits shall be attended by the Parties and their representatives. The Employer shall provide conference facilities and secretarial services.
- 4.4. Site visit report shall be prepared by the Sole Adjudicator/DAP at the end of the site visit and distributed to the Parties, 7 working days after leaving the site.

5. Communications & Documentation

- 5.1. The Parties shall provide to the Sole Adjudicator/DAP copies of all documents, as requested: Contract documents, progress reports, variation instruction and other documents relevant to the Contract.
- 5.2. All communication between one Party and the Sole Adjudicator/DAP shall be copied to the other Party.

6. Notice of Adjudication

- 6.1. Either Party may give notice at any time of its intention to refer a dispute arising under the Contract to adjudication by giving a written Notice of Adjudication to the other Party.
- 6.2. The Notice of Adjudication shall include:
 - 6.2.1. Name and address and contact details of the parties
 - 6.2.2. Date of issue of the Notice of Adjudication
 - 6.2.3. The details and date of the Contract between the Parties
 - 6.2.4. The issues which the Adjudicator is being asked to decide
 - 6.2.5. Details of the nature and extent of the redress sought.

7. Conduct of the Adjudication

- 7.1. The Adjudicator shall reach his decision within 28 days of the date of referral, or such

longer period as agreed by the Parties after the dispute has been referred. The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the referring Party.

- 7.2. The Adjudicator shall determine the matters set out in the Notice of Adjudication, together with any other matters which the Parties and the Adjudicator agree should be within the scope of the adjudication. The Parties and the Adjudicator agree that any question regarding the jurisdiction of the Adjudicator shall be determined by the Adjudicator.
- 7.3. The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable, subject to any limitation that there may be in the Contract.

Without prejudice to the generality of these powers, he may:

- 7.3.1. Direct the means of communication
- 7.3.2. Ask for further written information
- 7.3.3. Meet and question the Parties and their representatives
- 7.3.4. Visit the site
- 7.3.5. Request the production of documents or the attendance of people who could
- 7.3.6. Set times for 7.3.1. – 7.3.5. and similar activities
- 7.3.7. Proceed with the adjudication and reach a decision even if a Party fails:
 - i) To provide information
 - ii) To attend a meeting
 - iii) To take any other action requested by the Adjudicator
- 7.3.8. Issue such further directions as he considers to be appropriate.
- 7.4. The Adjudicator may obtain legal or technical advice having first notified the Parties of his intention.
- 7.5. The Parties shall be entitled to the relief and remedies set out in the decision and to seek summary enforcement thereof, regardless of whether the dispute is to be referred to legal proceedings or arbitration. No issue decided by the Adjudicator may subsequently be laid before another adjudicator unless so agreed by the Parties.
- 7.6. The Adjudicator may on his own initiative, or at the request of either Party, correct a decision so as to remove any clerical or typographical error or ambiguity arising by accident or omission provided that the initiative is taken, or the request is made within 7 days of the notification of the decision to the Parties. The Adjudicator shall make his corrections within 7 days of any request by a Party.

8. Miscellaneous Provisions

- 8.1 Neither Tanzania Institute of Arbitrators nor its employees shall be liable to any Party for any act, omission or misconduct in connection with any appointment made or any adjudication conducted under this Procedure.

APPENDIX I

ADJUDICATION AGREEMENT

ADJUDICATION AGREEMENT

This agreement is made on the day of 20__

Between

[Party 1]
(Referring Party/Claimant)

[Party 2]
(Responding Party/Respondent)

Hereinafter called ‘**the Parties**’ of the one part;

AND

..... hereinafter called ‘**the Adjudicator**’ of the other part.

WHEREAS disputes or differences have arisen between the Parties under a contract dated and known asand these disputes or differences have been referred to adjudication in accordance with the aforementioned Contract.

IT IS NOW AGREED AS FOLLOWS:

1. The Adjudication shall be governed by Tanzania Institute of Arbitrators TI Arb Adjudication General Conditions & Procedural Rules 2021 (hereinafter called ‘the Rules’).
 - i. The rights and obligations of the Adjudicator and the Parties shall be as set out in the Rules.
 - ii. The Adjudicator hereby accepts the appointment and agrees to conduct the adjudication in accordance with the Rules.
 - iii. The Parties bind themselves jointly and severally to pay the adjudicator’s fees and expenses, in consideration of the carrying out of the adjudication in accordance with Tanzania Institute of Arbitrators TI Arb Adjudication General Conditions & Procedural Rules 2021.

- iv. In consideration of the fees and other payments to be made by the Parties herein, and on deposit of 80% agreed fees to the Tanzania Institute of Arbitrator's **CRDB Bank**, Account **0250291817400 US / 0150291817400 TZ Shs** , an Adjudicator undertakes to act in accordance with the Rules.

Signed on behalf of:

Referring Party:

Name:

Signature:

Date:

Responding Party:

Name:

Signature:

Date:

Adjudicator:

Name:

Signature:

Date:

APPENDIX II

ADJUDICATION FEES & ADMINISTRATION COSTS

S/N	SPECIFICATION	LOCAL ADJUDICATION	INTERNATIONAL ADJUDICATION
1	A non-refundable registration fee	TZS 500,000/=	USD 218
2	Adjudicator's hourly rate fees	TZS 230,000/=	USD 100
3	TI Arb's administrative cost	Add 20% charged from the Adjudicator's fee	Add 20% charged from the Adjudicator's fee

The Adjudication Rules shall come into effect on April 2021

Madeline Kimei
President, Tanzania Institute of Arbitrators