

DOMESTIC ARBITRATION AGREEMENT

PARTIES

CLAIMANT

and

DEFENDANT

and

Martin J. Bauwens

Arbitrator

50 Buitenkant Street

The Square, Unit 7

Cape Town

1. INTRODUCTION

- 1.1 The parties agree to refer to arbitration any existing or future dispute or difference between them relating to, arising out of, or in connection with, a contract between them dated _____.
- 1.2 The parties further agree that the arbitration will be administered by the Arbitration Foundation of Southern Africa ("AFSA").

2. SUPERVISION AND ADMINISTRATION OF THE AFSA SECRETARIAT

- 2.1 The address of the AFSA Secretariat in Cape Town is:

Office 1 Ground Floor
The Chambers
50 Keerom Street
Cape Town, 8001
021 426 5006
info-ct@arbitration.co.za

- 2.2 The Parties undertake to cooperate with the AFSA Secretariat in order to assist it in its functions. Parties further undertake to deal with any requests made to them by the Secretariat, or the arbitrator, quickly and constructively.

- 2.3 Any communications between the parties and the arbitrator must take place through the AFSA Secretariat, which is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues arising out of this agreement.

3. PLACE AND TIME

- 3.1 The arbitration will commence at a time and date to be determined by the arbitrator after consultation with the parties
- 3.2 The venue for the Arbitration will be 50 Buitenkant Street, The Square, Unit 7, Cape Town.

4. ARBITRATOR

- 4.1 The Arbitrator will be:

Martin J. Bauwens
Arbitrator
50 Buitenkant Street
The Square, Unit 7
Cape Town
martin@bauwens.com

- 4.2 The Arbitrator accepts the Code of Conduct for ARBITRATORS, a copy of which is available from the AFSA Secretariat

5. ADMINISTRATION FEE

- 5.1 Upon AFSA's request, the parties will pay the prescribed administration fee and, from time to time, as the proceedings progress, such other fees and costs as may be payable, including the arbitration and venue fees.
- 5.2 Should any party fail to pay its share of any administration fee or cost when requested by the AFSA Secretariat, that party risks losing the right to participate in the arbitration process so long as that party is in default of payment. The defaulting party may, in the discretion of the arbitrator, be excluded from further proceedings depending upon the circumstances of the case. Where one party is excluded by reason of default, the Secretariat will revise the fees payable by the remaining party to cover all costs and expenses, subject to the right of the paying party to recover if so ordered by the arbitrator.

6. ARBITRATION FEE

6.1 The parties agree that the Arbitrator shall raise his fee on the following basis:

6.1.1 R950 per hour for preliminary meetings, discussions with the parties' representatives and preparation for the Arbitration.

6.1.2 R1,200 per hour for the Arbitration proceedings.

6.1.3 R8,000 collapse fee should the matter be settled after the Arbitrator has reserved hearing dates at the request of the parties.

6.2 The venue fee is R1,900 per day.

7. LAW

This agreement shall be governed by South African law.

8. RULES FOR ARBITRATION PROCEEDINGS

8.1 The claimant will initiate the dispute resolution procedure by declaring the nature of the dispute to the AFSA Secretariat, which, in turn, will notify the defendant of the dispute resolution procedure, once the claimant has complied with all requirements.

8.2 The arbitrator will notify the parties of a date to meet with the arbitrator in order to determine the procedure to be followed to finalise the dispute.

8.3 The arbitrator may require the parties to set out their respective claims and answers in writing, or in greater detail, on such terms as he or she may require.

8.4 It shall be entirely within the power and competence of the arbitrator to decide upon any matters related to the proper preparation of the dispute for hearing and, in that regard, the arbitrator will direct the parties accordingly.

8.5 The arbitrator will set the date for hearing and choose the venue for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the arbitrator may decide whether at the hearing the parties are to be given leave to adduce oral evidence or whether they will be confined to presenting their cases in writing or by some other appropriate procedure. In this regard, the arbitrator will be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.

- 8.6 The arbitrator has the widest discretion and powers allowed by law to ensure that the just, expeditious, economical and final determination of all the disputes raised in the proceedings including the matter of costs and, if needs be, he or she shall have all the powers accorded to an arbitrator acting under the AFSA Rules for Administered Arbitrations. All powers and functions exercised by the arbitrator shall be in accordance with the provisions of the Arbitration Act of 1965.
- 8.7 Any dispute between the parties in connection with or arising out of the formation, implementation, validity, enforceability and rectification of this agreement, will be referred to and determined by the arbitrator.

9. INTERLOCUTORY MATTERS AND TEMPORARY ORDERS

Should the need arise for any party to seek interim or temporary relief before the arbitration is finalised, that party may apply to the arbitrator to grant such interlocutory order or give the required temporary relief and the arbitrator shall have the same power to do so as if the matter were one heard by a Judge of the High Court save that if by law such power or order cannot be exercised or given by an arbitrator then, and then only, should the parties refer such matter to an appropriate Court.

10. CONFIDENTIALITY

The proceedings shall be confidential. Neither the parties nor the arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.

11. DEFAULT

Should any party fail to co-operate either way with the Secretariat or with the arbitrator with the result that in the view of the arbitrator such default or omission prejudices the arbitration process then the arbitrator can either –

- 11.1 give that party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the arbitration with the same consequences as set out in 5.2 above,
- 11.2 or warn the party in writing that its default or omission may make it liable to a punitive order of costs irrespective whether it succeeds in the arbitration or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.

12. THE AWARD

- 12.1 The arbitrator must give his or her award within 30 (thirty) days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariat permits an extension of that time.
- 12.2 The award must be published to the parties in an appropriate fashion as determined by the AFSA Secretariat.
- 12.3 Unless the parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award. In cases where the AFSA Secretariat has been instructed otherwise, the appeal provisions contained in Article 22 of the AFSA Rules for Commercial Arbitrations will apply.

13. TAXATION OF COSTS

- 13.1 At the request of any party the arbitrator may direct the AFSA Secretariat to appoint a person from its Legal Costs Panel to tax any bill of costs relating to any costs order given in the arbitration and any such person shall proceed to tax the bill upon the same basis and tariff as though he or she were a taxing master acting under Rule 70 of the High Court.
- 13.2 The arbitrator shall direct which party shall pay the fee of the person appointed to tax and shall thereafter incorporate in his or her award the amount so taxed which shall then become part of the award.

SIGNED AT _____ ON THE ____ DAY OF _____ 20____

For and on behalf of:

PARTY A

SIGNED AT _____ ON THE ____ DAY OF _____ 20____

For and on behalf of:
PARTY B

SIGNED AT _____ ON THE ____ DAY OF _____ 20____

THE ARBITRATOR

Arbitration Agreement