



Singapore Institute of Architects

EXPERT DETERMINATION RULES

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THE SINGAPORE INSTITUTE OF ARCHITECTS EXPERT DETERMINATION RULES

(S.I.A. Expert Determination Rules)

1. **Expert Determination**

Where the parties have agreed to refer any dispute to Expert Determination under these Rules, such dispute will be fully and finally resolved by Expert Determination and Decision of a Sole Expert (“Expert Determinator”) appointed in accordance with the procedures set out herein.

2. **Disputes**

2.1 Disputes between the parties which are appropriate for reference to and resolution by Expert Determination under these Rules are disputes which relate to the technical matters in relation to the works under the Contract (“technical disputes”), as opposed to disputes which involve legal issues and interpretation of the S.I.A. Conditions of Building Contract (“Conditions”). By way of illustration (but without limitation), technical matters relate to matters such as defects and making good of defects, technical specifications and drawings, and compliance or non-compliance thereof.

2.2 Notwithstanding Rule 2.1, where the parties agree to refer any technical disputes to Expert Determination under these Rules, the Decision of the Expert Determinator may not be challenged on the ground that the determination of the technical dispute involves interpretation by the Expert Determinator of any provisions, terms, specifications and documents under or in relation to the Contract between them in order to make a Decision on the matter/s referred to him for determination.

3. **Same Expert Determinator**

Where any disputes are referred to Expert Determination under the S.I.A Expert Determination Procedure by the parties to the Main Contract (i.e. between the Employer and the Contractor) as well as the parties to the Sub-Contract under the Main Contract (i.e. between the Contractor and Sub-contractor) and both the disputes under the Main Contract and the Sub-Contract relate to the same technical issues or same technical disputes, then all the parties shall endeavour to appoint the same Expert Determinator under these Rules.

4. **Not a Condition Precedent to Other Dispute Resolution Mechanisms**

Prior reference of a dispute to Expert Determination shall not be a condition precedent for its reference to arbitration, mediation or other form of mechanism of dispute resolution by either party, nor shall any of their rights to refer the dispute to arbitration, mediation or other form of mechanism of dispute resolution be in any way prejudiced or affected these Rules or by the Expert Determination.

5. **Decision of Expert Determinator**

In submitting any disputes for Expert Determination, the parties agree that the Decision of the Expert Determinator in relation to the dispute submitted to him will be final and binding on the parties and enforceable by the parties and that they will comply with and implement and give full effect to the Decision, save that in any subsequent arbitration or other proceedings between the parties, such Decision of the Expert Determinator may be confirmed, revised or replaced by that of the arbitrator or tribunal concerned.

6. **Request for Expert Determination**

Expert Determination under these Rules is initiated by any party issuing a request for Expert Determination to the other party, specifying and summarizing the nature of the technical dispute and requesting for submission of the dispute/s to an independent expert under the S.I.A. Expert Determination Rules (“Request for Expert Determination”).

7. **Response to the Request for Expert Determination**

Within 14 days after the Request for Expert Determination, the other party is to respond as to whether the other party agrees or does not agree to submit the dispute/s or any of the disputes to expert determination (“Response to the Request for Expert Determination”).

8. **S.I.A. Expert Determination Rules**

If the other party agrees to submit the specified dispute/s to Expert Determination in his Response, then the Expert Determination is to proceed in accordance with the S.I.A. Expert Determination Rules.

9. **Resolution by Other Dispute Resolution Mechanisms**

For the avoidance of doubt, if there is no response to the Request for Expert Determination, or if the parties do not mutually agree to submit the dispute/s to Expert Determination, the dispute/s may be resolved by other dispute resolution mechanisms agreed by the parties under the Conditions or as provided by law.

10. **Appointment of Expert Determinator**

If the parties have agreed to resolve any dispute by Expert Determination under these Rules, the Expert Determinator is to be appointed by the following procedure.

- 10.1 Within 14 days after the issuance of the Response to Request for Expert Determination, the parties are to agree to the identity of the Expert Determinator and inform the Secretariat of the S.I.A. in writing accordingly.
- 10.2 In their communications with any nominated expert inviting him to conduct the Expert Determination, the parties are to submit brief outlines of the nature of the disputes containing only enough information on the technical issues (including the specific work or equipment or material on which there is a dispute, the parties' respective positions and technical contentions in relation to the disputes) to enable the nominated expert to identify any possible conflicts of interest and to decide whether to accept the appointment.
- 10.3 If the parties do not within the said 14 days (or any extended period agreed by the parties) agree to the identity and appointment of the Expert Determinator, either party may submit a request in writing to the President or Vice-President of the S.I.A. to appoint the Expert Determinator ("Appointment Request"), attaching copies of their respective requests and responses for submission of the dispute/s to expert determination, providing a brief summary or their respective summaries of the nature of the dispute and the names of the experts already nominated but not agreed by the parties.
- 10.4 Within 28 days of receiving such Appointment Request, and upon receipt of the requisite non-refundable appointment fee currently in force, the President or Vice-President of the S.I.A. is to appoint the Expert Determinator and to fix the terms of the appointment of the Expert Determinator, after obtaining the consent of the expert to be appointed and obtaining a declaration from the Expert Determinator so appointed as to his impartiality and independence.
- 10.5 Upon appointment of the Expert Determinator, the S.I.A. is to inform the parties as to the identity of the appointed Expert Determinator and his terms.

10.6 Notwithstanding the above, if the President or Vice-President of the S.I.A. considers that the Appointment Request relates to a dispute which is not a dispute which is appropriate for Expert Determination but by other dispute resolution mechanisms available to the parties, the S.I.A. may decline to appoint an Expert Determinator.

11. Application of S.I.A. Expert Determination Rules

For the avoidance of doubt, the following provisions and all other provisions and procedures in these Rules apply to the Expert Determination irrespective of whether the Expert Determinator is appointed by the parties or by the S.I.A.

12. Fees, Expenses and Costs of Expert Determination

12.1 Unless the parties agree otherwise, the fees, expenses and costs of the Expert Determination (including those of the Expert Determinator and the S.I.A. appointment fees) and deposits paid to the Expert Determinator and the S.I.A. will be borne by the Parties in equal shares.

12.2 The deposit for the fees, expenses and costs will be estimated by the Expert Determinator and this deposit ("Deposit to Account") must be paid to the Expert Determinator as a condition precedent for the Expert Determination to commence.

12.3 Thereafter, the Expert Determinator is entitled to require further deposits from the parties to cover the fees, expenses and costs of the Expert Determination.

12.4 If the parties agree not to proceed with Expert Determination, or if the Expert Determination is discontinued or terminated, the Expert Determinator will refund a proportionate amount of the Deposit to Account advanced, depending on the amount of work done by the Expert Determinator.

12.5 For the avoidance of doubt, each party shall bear their respective other costs and expenses.

13. Proceeding with Expert Determination

Upon the appointment of the Expert Determinator, and after receipt by the Expert Determinator of the Deposit to Account from the parties, the Expert Determinator is to correspond with the parties directly and proceed with the Expert Determination.

14. **No Invalidation of Expert Determinator’s Appointment or Decision**
No appointment of an Expert Determinator or his Decision under these Rules shall be invalidated merely because the prescriptive time limits set out herein (including the appointment by the S.I.A. of the Expert Determinator) have not been strictly complied with.
15. **Substitute Expert Determinator**
If at any stage of the Expert Determination process, the Expert Determinator resigns or is removed by mutual agreement of the parties or dies or otherwise becomes incapable of acting, or is unable to complete the Determination for any reasons, then the parties may either appoint a substitute Expert Determinator or if they are unable to agree, either party may request the S.I.A. (upon payment of the requisite non-refundable appointment fee currently in force) to appoint a substitute Expert Determinator in accordance with the procedures for appointment stated in these Rules. The substitute Expert Determinator is to complete the Expert Determination in accordance with the agreed or directed procedures and/or any other procedures as he deems fit for a just and expeditious resolution of the dispute/s concerned.
- 16 **Decision of S.I.A.**
If at any stage of the Expert Determination there is any disagreement between the parties with each other or with the Expert Determinator as to the terms of his appointment, then such dispute may be referred to the President or Vice-President of the S.I.A., and the parties and the Expert Determinator are to be bound by the decision of the S.I.A on such dispute thereby.
17. **Procedures for Expert Determination**
- 17.1 At the commencement of the Expert Determination, the Expert Determinator and the parties are to complete and sign the:
- (a) “Terms of Engagement of the Expert Determinator” (or “Terms of Engagement” in the sample form issued by the S.I.A., or any other form jointly agreed by the parties and the Expert Determinator).

- (b) “Memorandum of Issues for Decision in the Expert Determination” (or “Memorandum of Issues” in the sample form issued by the S.I.A, or any other form jointly agreed by the parties and the Expert Determinator) setting out a list of specific items on which the Expert Determinator is to make his Decision. This list and the Expert Determinator’s decisions thereon are binding on the parties until the conclusion of the Expert Determination (subject to any changes mutually agreed by both parties prior to his Decision in the Expert Determination), and the parties waive any right to object to his jurisdiction to decide those dispute/s and issues listed in the Memorandum of Issues.
- 17.2 If the parties refuse to sign the Terms of Engagement and/or the Memorandum of Issues, the Expert Determinator shall terminate the Expert Determination, and Rule 12.4 shall apply in relation to the fees, expenses and costs of the Expert Determination.
- 18. Powers of Expert Determinator**
- 18.1 The Expert Determinator shall have the power to issue directions for the procedures for the Expert Determination (including, without limitation, calling for meetings or hearings, dates and formats of submissions, documents or witnesses required; the necessity or otherwise of site visits and procedures for such site visits; and expected dates of the Decision and conclusion of the Expert Determination).
- 18.2 Notwithstanding the generality of Rule 18.1, the Expert Determinator will conduct the Expert Determination in accordance with the procedural directions which he will seek to agree with the parties. If the parties do not agree to the procedures to be used for the Expert Determination or any part thereof, then the directions of the Expert Determinator as to the procedures to be adopted shall prevail and the parties are to be bound thereby.
- 18.3 The procedures directed by the Expert Determinator should be such as to enable a Decision to be arrived at as quickly and cost-effectively as possible, and the Expert Determinator shall have the power to act inquisitorially in determining the disputes and full discretion to exercise the following powers for a expeditious and efficient Expert Determination:
- (a) to inform himself independently as to facts on technical matters to which the dispute relates;

- (b) to receive written submissions, sworn and unsworn written statements and photocopied documents and to act upon the same;
 - (c) to consult with such other professionally qualified persons or other specialists; and,
 - (d) to take such measures as he thinks fit to expedite the completion of the dispute resolution.
- 18.4 The parties will not be liable to pay fees of any professional qualified persons or specialists consulted by the Expert Determinator unless the Expert Determinator obtains the prior consent of the parties for consultation with such specific and identified third party and for incurring such fees, which shall (unless otherwise agreed) be borne in equal shares by the parties.

19. Documents Submitted by Parties

The Parties shall ensure that copies of all documents sent or given to the Expert Determinator by any party are at the same at the time sent or given to the other party (unless otherwise agreed).

20. Issuance of Decision

- 20.1 Subject to any mutual agreement otherwise by the parties, the Expert Determinator shall deliver his Decision within 14 days after the close of submissions from all parties, and in any case, after the parties have paid all deposits and payments required by the Expert Determinator for the Expert Determination. If any party has not paid the deposit and costs, the other party may do so on behalf of the defaulting party and claim such amounts as a debt from the other party.
- 20.2 The Decision of the Expert Determinator shall be in writing and provide reasons for his Decision (unless it is a “Consent Decision”).
- 20.3 The Expert Determinator may make separate Decisions as to separate specific dispute/s referred to him for his determination if so mutually agreed by the parties.

20.4 The Expert Determinator may in writing, within 14 days after issue of his Decision, correct his Decision for any clerical mistake, error arising from accidental slip or omission, pure mathematical miscalculation of figures, or clerical mistake in description of an item or matter, and such correction will not be deemed to affect the finality of his Decision as provided by these Rules.

21. Consent Decision

If the parties agree to settle the dispute/s or any part thereof, they may request the Expert Determinator to record the settlement in a "Consent Decision"

22. Duration and Termination of Expert Determination

The parties agree that the Expert Determination terminates only upon the following events:

- (a) Upon the issue of the Decision of the Expert Determinator and any decisions to clarify or correct typographical or mathematical errors in his Decision.
- (b) At any time before the issue of the Expert Determinator's Decision, if the parties have reached agreement on the matter in dispute and/or mutually agree to terminate the Expert Determination.

23. Suspension of Expert Determination

23.1 At any time before the issue of the Expert Determinator's Decision, the parties may mutually agree to suspend the Expert Determination in order to resolve the specific dispute or any part thereof by any other means of dispute resolution.

23.2 If the dispute or any part thereof is settled or resolved, then the parties are to inform the Expert Determinator.

23.3 If the dispute is not settled or resolved, then either party may inform the Expert Determinator and the Expert Determination is to resume in accordance with the Expert Determinator's directions.

24. **Confidentiality**

The Parties, the Expert Determinator and the S.I.A. will keep the Expert Determination process private and confidential amongst themselves, except to the extent that it is necessary in order to implement the Decision or is required by law.

25. **Subsequent and Other Proceedings**

25.1 The Expert Determinator shall not, without the prior written consent of the parties, accept an appointment as arbitrator or any other tribunal, or act as a consultant, advocate, advisor or expert for any party, in any subsequent arbitration or other proceedings arising out of or in connection with the dispute referred to him for determination.

25.2 The parties agree that:

- (a) The Expert Determinator and the S.I.A. (or any employee, officer or representative of S.I.A.) will not be called upon to give evidence or produce documents in any subsequent arbitration or other proceedings arising out of or in connection with the dispute, by subpoena or otherwise.
- (b) With the exception of the Expert Determinator's Decision, his working papers relating to the Expert Determination will not be the subject of a subpoena to give evidence or produce documents in any subsequent arbitration or other proceedings arising out of or in connection with the dispute.
- (c) They will not call the Expert Determinator as a witness or appoint him as a arbitrator or any other tribunal, as a consultant, advocate, advisor or expert in any arbitration or other proceedings in relation to the dispute.

26. **Immunity for Acts or Omissions**

The parties expressly acknowledge and agree that the Expert Determinator, the S.I.A. and its officers and employees 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.