

# Arbitration Procedure 2000

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*In this Procedure, any reference to the masculine gender shall include reference to the feminine gender and any reference to the neuter shall include the masculine and feminine genders and any reference to the singular shall include the reference to the plural.*

**Preamble**

This Arbitration Procedure has been prepared by Engineers Ireland principally for use with the Engineers Ireland Conditions of Contract for arbitrations conducted under the Arbitration Acts 1954 to 1998. It may be suitable for use with other contracts. For the purpose of the Engineers Ireland Conditions of Contract, this Procedure shall be deemed to be an amendment or modification to the Engineers Ireland Arbitration Procedure (1987).

In formulating this Procedure Engineers Ireland acknowledges the use of the Institution of Civil Engineers Arbitration Procedure (1997) as a basis for the Engineers Ireland Procedure.

Dr. Nael Bunni,  
Chairman, Dispute Resolution Panel,  
Engineers Ireland,  
22 Clyde Road,  
Ballsbridge,  
Dublin 4.

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## PART A. DEFINITIONS, OBJECTIVES, REFERENCE AND APPOINTMENT

### Definitions

In these Rules the following definitions shall apply:

- a) 'Arbitrator' includes a tribunal of two or more Arbitrators, an Umpire or Chairman;
- b) 'Institution' means The Institution of Engineers of Ireland operating as Engineers Ireland;
- c) 'President' means the President for the time being of Engineers Ireland or any Vice-President acting on his behalf or such other person as may have been nominated in the agreement to appoint the Arbitrator in default of agreement between the Parties;
- d) 'Procedure' means Engineers Ireland Arbitration Procedure 2000 unless the context otherwise requires;
- e) 'Contract' means the Contract between the parties which incorporates the arbitration agreement under which the dispute arises;
- f) 'Expert' means an expert witness or person called to give expert opinion evidence;
- g) The 'Acts' means the Arbitration Acts 1954 to 1998 and when the Acts apply words defined therein shall have the same meanings in this procedure.
- h) 'Court' means court of competent jurisdiction pursuant to the provisions of the Acts.
- i) 'Costs of the Arbitration' shall include
  - (i) the arbitrator's fees and expenses;
  - (ii) the fees and expenses of any arbitral institution concerned;
  - (iii) fees and expenses of any person appointed or consulted by the Arbitrator pursuant to Rule 1 1.1 herein;
  - (iv) the legal or other costs of the parties and the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration.

## **Rule 1. Objectives**

- 1.1 The objective of arbitration is to obtain the fair resolution of disputes and differences by an impartial and independent arbitrator without unnecessary delay or expense. The Parties and the Arbitrator shall do all things necessary to achieve this objective. The Arbitrator shall give each party a reasonable opportunity of putting its case and dealing with that of its opponent. This Procedure shall be interpreted and the proceedings shall be conducted in a manner most conducive to achieving these objectives.
- 1.2 Once the Arbitrator's appointment is completed, no alterations shall be made to this Procedure without the consent of the Arbitrator.

## **Rule 2. Commencement of arbitration**

- 2.1 Unless otherwise provided in the Contract a dispute or difference shall be deemed to arise when a claim or assertion made by one party is rejected by the other party and that rejection is not accepted, or no response is received within a period of 28 days. Subject only to the due observance of any condition precedent in the Contract or the arbitration agreement, either party may then invoke arbitration by serving a Notice to Refer on the other party.
- 2.2 The date upon which the Notice to Refer is served shall be regarded as the date upon which the arbitral proceedings are commenced.
- 2.3 The Notice to Refer shall list the matters which the Party serving the Notice to Refer wishes to be referred to arbitration. Nothing stated in the Notice to Refer shall restrict that party as to the manner in which it subsequently presents its case.

### **Rule 3. Appointment of sole Arbitrator by agreement**

- 3.1 At the same time as or following the service of the Notice to Refer, and subject only to the due observance of any condition precedent in the Contract or the arbitration agreement, either party may serve a Notice to Concur in the appointment of an Arbitrator listing therein the name(s) and address(es) of one or more persons it proposes as Arbitrator.
- 3.2 Within 14 days thereafter the other party shall:
- (a) agree in writing to the appointment of one of the persons listed in the Notice to Concur or
  - (b) propose, in like manner, an alternative person or persons.
- 3.3 Once agreement has been reached, either party may write to the person so selected inviting him to accept the appointment and at the same time furnishing to him a copy of the Notice to Refer and documentary evidence of the other party's agreement to his appointment.
- 3.4 If the person so invited accepts the appointment he shall notify both parties simultaneously in writing. The date of posting or service (as the case may be) of this notification shall be deemed to be the date on which the Arbitrator' appointment is completed.

#### **Rule 4. Appointment of sole Arbitrator by the President**

4.1 If, within one calendar month from the service of the Notice to Concur, the parties fail to appoint an Arbitrator in accordance with Rule 3, either party may apply to the President to appoint an Arbitrator. Alternatively, the parties may agree in writing to apply to the President without the necessity for the prior service of a Notice to Concur.

4.2 The application shall be in writing and shall include:

- a) a copy of the Notice to Refer;
- b) a copy of the Notice to Concur or the agreement to dispense with same;
- c) the names and addresses of all parties to the arbitration;
- d) a brief statement of the nature and circumstances of the dispute;
- e) a copy of the arbitration clause in the Contract or of the arbitration agreement;
- f) the appropriate fee as prescribed by Engineers Ireland from time to time;
- g) confirmation that any conditions precedent to arbitration contained in the Contractor arbitration agreement have been complied with; and
- h) any other relevant document.

A copy of the application including the documents in (a) to (h) above, but not supporting documentation, shall be sent at the same time to the other party. Nothing stated in or omitted from the application shall restrict in any way the issues to be determined in the arbitration.

4.3 The President will within 28 days of receiving the application or within such further time as may be necessary make the appointment and the Arbitrator's appointment shall thereby be completed. Engineers Ireland will notify both parties and the Arbitrator in writing as soon as possible thereafter.

Provided always that no such appointment shall be invalidated merely because the time limits set out herein have not been observed.

## **Rule 5. Notice of further disputes or differences**

- 5.1 At any time before the Arbitrator's appointment is completed either party may put forward further disputes or differences to be referred to him. This shall be done by serving upon the other party an additional Notice to Refer in accordance with Rule 2.
- 5.2 Once his appointment is completed the Arbitrator shall have jurisdiction over any issue connected with and necessary to the determination of any dispute or difference already referred to him whether or not any condition precedent to referring the matter to arbitration had been complied with.

## **PART B. ARRANGEMENTS FOR THE ARBITRATION**

### **Rule 6. The preliminary meeting**

- 6.1 As soon as possible after his appointment the Arbitrator may summon the parties to a preliminary meeting for the purpose of giving such directions about the procedure to be adopted in the arbitration as he considers necessary and to deal with the matters referred to in Rule 6.4.
- 6.2 The Arbitrator may require the parties to submit to him short statements expressing their position regarding the disputes or differences. Such statements shall give sufficient detail of the nature of the issues to enable the Arbitrator and the parties to discuss procedures appropriate for their settlement at the preliminary meeting.
- 6.3 Where the Contract or the arbitration agreement is silent as to the seat of the arbitration, the seat shall be designated by the Arbitrator.

- 6.4 The parties and the Arbitrator shall consider whether and to what extent:
- a) Part F (Short Procedure) or Part G (Special Procedure for Experts) of these Rules should apply;
  - b) the arbitration should proceed on documents only;
  - c) progress may be facilitated and costs saved by determining some of the issues before others;
  - d) evidence of Experts may be necessary, or desirable;
  - e) disclosure of documents should be ordered;
  - f) there should be a limit put on recoverable costs;
  - g) the proceedings should be recorded and the method of such recording, if any; and in general shall consider such other steps as may achieve the speedy and cost effective resolution of the disputes.

## **PART C. POWERS OF THE ARBITRATOR**

### **Rule 7. Power to rule on his own jurisdiction**

- 7.1 The Arbitrator shall have power to rule on his own substantive jurisdiction as to:
- a) whether there is a valid arbitration agreement;
  - b) whether he is properly appointed;
  - c) whether there is a dispute or difference capable of being referred to arbitration,
  - d) and whether it has been validly referred;
  - e) whether and to what extent the Procedure applies to the conduct of the arbitration;
  - f) what matters have been submitted to him in accordance with the Contract or the arbitration agreement and in accordance with this Procedure.
- 7.2 Should any party refer a ruling under Rule 7.1 to Court, the Arbitrator shall direct whether or not the arbitral proceedings shall continue pending a decision by Court.

## Procedural and evidential matters

- 7.3 The Arbitrator shall have power to decide all procedural and evidential matters including, but not limited to:
- a) whether any, and if so what, form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;
  - b) whether any, and if so which, documents or classes of document should be disclosed between and produced by the parties and at what stage;
  - c) whether any, and if so what, questions should be put to and answered by the respective parties in advance of a hearing and when, and in what form, this should be done;
  - d) whether to apply the strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;
  - e) whether, and to what extent, the Arbitrator should himself take the initiative in ascertaining the facts and the law;
  - f) whether, and to what extent, he should rely upon his own knowledge and expertise;
  - g) whether, and to what extent, there should be oral or written evidence or submissions;
  - h) whether, and to what extent, expert evidence should be adduced;
  - i) whether, and to what extent, evidence should be given under oath or affirmation; the manner in which the evidence of witnesses shall be taken;
  - j) whether translations of any relevant documents are to be supplied;
  - k) whether, and to what extent, enquiries, tests or investigations should be conducted;
  - l) when and where any part of the proceedings is to be held;
  - m) the language or languages to be used in the proceedings.

The Arbitrator may fix the time within which any directions given by him are to be complied with and may, if he thinks fit, extend the time so fixed whether or not it has expired.

### **Powers to limit recoverable costs**

- 7.4 If the Parties so agree, the Arbitrator may direct that the recoverable Costs of the Arbitration, or any part of the arbitral proceedings, shall be limited to a specific amount. Any such direction shall be given in advance of incurring the costs to which it relates.

### **Power to order security**

- 7.5 The Arbitrator shall have power to:
- a) make an award ordering security for costs in favour of one or more of the parties
  - b) order his own costs to be secured.

Money ordered to be paid under this Rule shall be paid as directed by the Arbitrator.

### **Power to order protective measures**

- 7.6 The Arbitrator (and in the case of urgency the courts also) shall have power to:
- a) order the preservation of evidence;
  - b) make orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings:
    - (i) for the inspection, photographing, preservation, custody or detention of the property, or
    - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property;
  - c) give directions for the detention, storage, sale or disposal of the whole or any part of the subject matter of the dispute at the expense of one or both of the parties.

## **PART D. PROCEDURES BEFORE THE HEARING**

### **Rule 8. Statements of case and disclosure of documents**

- 8.1 To the extent that the Arbitrator directs, each party shall prepare in writing and shall serve upon the other party or parties and the Arbitrator a statement of its case comprising:
- a) a summary of that party's case;
  - b) a summary of that party's evidence;
  - c) a statement or summary of the issues between the parties;
  - d) a list/a summary of the documents relied upon;
  - e) any points of law, with references to any authorities relied upon;
  - f) a statement or summary of any other matters likely to assist the resolution of the
  - g) disputes or differences between the parties;
  - h) any other document or statement that the Arbitrator considers necessary.

The Arbitrator may order any party to answer the other party's case and to give reasons for any disagreement therewith.

- 8.2 The Arbitrator shall determine which documents or classes of documents, within the possession, power or control of a party, should be disclosed between the parties and produced by them and at what stage.
- 8.3 Statements or answers shall contain sufficient detail for the other party to know the case it has to answer. If sufficient detail is not provided the Arbitrator may of his own motion or at the request of the other party order the provision of such further information, clarification or elaboration as the Arbitrator may think fit.
- 8.4 (a) If a party fails to comply with any order made under this Rule the Arbitrator may make a peremptory order to the same effect providing such time for compliance with it as the Arbitrator considers appropriate.
- (b) If the defaulting party fails to comply with a peremptory order the Arbitrator shall have power to:

- (i) debar that party from relying on the matters in respect of which it is in default;
- (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify;
- (iii) proceed to an award on the basis of such materials as have been properly provided to him.

Provided that the Arbitrator shall first give notice to the party in default that he intends to proceed under this Rule.

- 8.5 If the Arbitrator is satisfied that there has been inordinate and inexcusable delay by either party in pursuing its claim and that delay:
- a) gives rise, or is likely to give rise, to substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
  - b) has caused, or is likely to cause, serious prejudice to the other party, the Arbitrator may make an award dismissing the claim.

## **Rule 9. Power to order concurrent hearings**

- 9.1 Where disputes or differences have arisen under two or more contracts each concerned wholly or mainly with the same subject matter and the resulting arbitrations have been referred to the same Arbitrator he may, with the agreement of all the parties concerned or upon the application of one of the parties being a party to all the contracts involved order that the whole or any part of the matters at issue shall be heard together upon such terms or conditions as the Arbitrator thinks fit.
- 9.2 Where an order for concurrent hearings has been made under Rule 9.1, the Arbitrator shall nevertheless make separate awards unless all the parties otherwise agree. However, where reasons are to be given in the awards, or in a separate document, the Arbitrator may, if he thinks fit, prepare one combined set of reasons to cover all the awards.

## **Rule 10. Procedural meetings**

- 10.1 The Arbitrator may at any time call such procedural meetings as he deems necessary to identify or clarify the issues to be decided and the procedures to be adopted. For this purpose the Arbitrator may request specified persons to attend on behalf of the parties.
- 10.2 Either party may at any time apply to the Arbitrator for leave to appear before him on any interlocutory matter. The Arbitrator may call a procedural meeting for the purpose or deal with the application in correspondence or otherwise as he thinks fit.
- 10.3 At any procedural meeting or otherwise the Arbitrator may give such directions as he thinks fit for the proper conduct of the arbitration.

## **Rule 11. Power to appoint assessors or to seek outside advice**

- 11.1 The Arbitrator may:
- a) appoint a legal technical or other assessor to assist him in the conduct of the arbitration. The Arbitrator shall direct when such assessor is to attend hearings of the arbitration;
  - b) seek legal technical or other advice on any matter arising out of or in connection with the proceedings.
- 11.2 The parties shall be given reasonable opportunity to comment on any information, opinion or advice offered by any such person.

## **Preparation for the Hearing**

- 12.1 In addition to his other powers the Arbitrator shall also have power to:
- a) order that the parties shall agree facts as facts and figures as figures, where possible;
  - b) order the parties to prepare an agreed and paginated bundle of all documents relied upon by the parties. The agreed bundle shall thereby be deemed to have been entered in evidence without further proof and without being read out at the hearing; provided always that the inclusion of any document within the agreed bundle shall not imply its genuineness or admissibility;
  - c) order that any Experts whose reports have been exchanged should meet and prepare a joint report identifying the points in issue and any other matters covered by their reports upon which they are in agreement and those upon which they disagree, stating the reasons for any disagreement.
- 12.2 Before the hearing the Arbitrator shall read such documents as he considers relevant together with such other documents as any party may specifically request. For this or any other purpose the Arbitrator may require all such documents to be delivered to him at such time and place as he may specify.

## **PART E. PROCEDURE AT THE HEARING**

### **Rule 13. Powers at the Hearing**

- 13.1 The Arbitrator may hear the parties, their representatives and/or witnesses at any time or place and may adjourn the arbitration for any period on the application of any party as he thinks fit.
- 13.2 Any party may be represented by any person including, in the case of a company or other legal entity, a director, officer, employee or beneficiary of such company or entity. In particular, a person shall not be prevented from representing a party because he is or may also be a witness in the proceedings. Nothing shall prevent a party from being represented by different persons at different times.

- 13.3 Nothing in these Rules or in any other rule, custom or practice, shall prevent the Arbitrator from starting to hear the arbitration once his appointment is completed or at any time thereafter.
- 13.4 Any meeting with, or summons before, the Arbitrator at which both parties are represented may, if the Arbitrator so directs, be treated as part of the hearing.
- 13.5 At or before the hearing, and after hearing representations on behalf of each party, the Arbitrator may determine the order in which:
- a) the parties will present their cases;
  - b) the order in which the issues will be heard and determined.
- 13.6 The Arbitrator may order any submission or speech by or on behalf of any party to be put into writing and delivered to him and to the other party. A party so ordered shall be entitled, if it so wishes, to enlarge upon or vary any such submission orally.
- 13.7 The Arbitrator may at any time (whether before or after the hearing has commenced) allocate the time available for the hearing between the parties and those representing the parties shall then adhere strictly to that allocation. Should a party's representative fail to complete the presentation of that party's case within the time so allowed further time shall only be afforded at the sole discretion of the Arbitrator and upon such conditions as to costs as the Arbitrator may see fit to impose.
- 13.8 The Arbitrator may, on the application of either party or of his own motion, hear and determine any issue or issues separately.
- 13.9 If a party (or its representatives) fails to appear at the hearing, and provided that the absent party has had notice of the hearing or the Arbitrator is satisfied that all reasonable steps have been taken to notify it of the hearing, the Arbitrator may proceed with the hearing in its absence. The Arbitrator shall nevertheless take all reasonable steps to ensure that the disputes between the parties are determined justly and fairly.

## Rule 14. Evidence

- 14.1 The Arbitrator may order a party to submit in advance of the hearing a list of the witnesses it intends to call. That party shall not hereby be bound to call any witnesses so listed and may add to the list so submitted at any time.
- 14.2 No expert evidence shall be admissible except by leave of the Arbitrator. Leave may be given on such terms and conditions as the Arbitrator thinks fit. Unless the Arbitrator otherwise orders such terms shall be deemed to include a requirement that a report from each Expert containing the substance of the evidence to be given shall be served upon the other party within a reasonable time before the hearing.
- 14.3 The Arbitrator may order that Experts appear before him separately or concurrently at the hearing or otherwise so that he may examine them inquisitorially provided always that at the conclusion of the questioning by the Arbitrator the parties or their representatives shall have the opportunity to put such further questions to any Expert as they may reasonably require.
- 14.4 The Arbitrator may order disclosure or exchange of proofs of evidence relating to factual issues. The Arbitrator may also order any party to prepare and disclose in writing in advance a list of points or questions to be put in cross-examination of any witness.
- 14.5 Where a list of questions is disclosed, whether pursuant to an order of the Arbitrator or otherwise, the party making disclosure shall not be bound to put any question therein to the witness unless the Arbitrator so orders. Where the party making disclosure puts a question not so listed in cross-examination the Arbitrator may disallow the costs thereby occasioned.
- 14.6 The Arbitrator may order that any witness statement or Expert's report which has been disclosed shall stand as the evidence in chief of that witness or Expert. The Arbitrator may also, at any time before cross-examination, order the witness or Expert to deliver written answers to questions arising out of any statement or report.

## PART F. SHORT PROCEDURE

### Rule 15. Short Procedure

- 15.1 Where the parties so agree (either of their own motion or at the invitation of the Arbitrator) the arbitration shall be conducted in accordance with the following Short Procedure or any variations thereto which the parties and the Arbitrator so agree.
- 15.2 Within 30 days after the preliminary meeting held under Rule 6.1 the claiming party shall set out its case in the form of a file containing:
- a) a statement as to the orders or awards it seeks;
  - b) a statement of its reasons for being entitled to such orders or awards;
  - c) copies of any documents on which it relies (including statements) identifying the origin and date of each document and shall deliver copies of the said file to the other party and to the Arbitrator in such manner and within such time as the Arbitrator may direct.
- 15.3 The other party shall, either at the same time or within 30 days of receipt of the claiming party's statement as the Arbitrator may direct, deliver to the claiming party and the Arbitrator its statement in the same form as in Rule 15.2.
- 15.4 The Arbitrator may view the site or the works and may in his sole discretion order, permit or require either or both parties to:
- a) submit further documents or information in writing;
  - b) prepare or deliver further files by way of reply or response. Such files may
  - c) include witness statements or expert reports.
- Provided always that such further files shall not raise any issue not already included expressly or by necessary inference unless ordered by the Arbitrator in the files delivered in accordance with Rules 15.2 & 15.3
- 15.5 Within 30 days of completing the foregoing steps the Arbitrator shall fix a day to meet the parties for the purpose of:
- a) receiving any oral submissions which either party may wish to make;
  - b) the Arbitrator putting questions to the parties their representatives or witnesses.

For this purpose the Arbitrator shall give notice of any particular person he wishes to question but no person shall be bound to appear before him.

- 15.6 The time periods in Rules 15.2, 15.3 and 15.5 may be varied as the Arbitrator may think fit.

### **Documents Only**

- 15.7 Alternatively, with the agreement of the parties, the Arbitrator may dispense with the meeting and, upon receipt of any further files or information under Rule 15.4, proceed directly to the award in accordance with Rule 15.8.
- 15.8 Within 30 days following the conclusion of the meeting under Rule 15.5, or in the absence of a meeting 30 days following receipt of the further files or information under Rule 15.4, or such further period as the Arbitrator may reasonably require, the Arbitrator shall make his award.

### **Rule 16. Other Matters**

- 16.1 Unless the parties otherwise agree, the Arbitrator shall have no power to award costs to either party and the Arbitrator's own fees and expenses shall be paid in equal shares by the parties. Where one party has agreed to the Arbitrator's fees and expenses, the other party, by agreeing to this Short Procedure, shall be deemed to have agreed likewise to the Arbitrator's fees and expenses.  
Provided always that this Rule shall not apply to any dispute which arises after the Short Procedure has been adopted or imposed by the Contract.
- 16.2 Either party may at any time before the Arbitrator has made his award under this Short Procedure require, by written notice served on the Arbitrator and the other party, that the arbitration shall cease to be conducted in accordance with this Short Procedure. Save only for Rule 16.3, the Short Procedure shall thereupon no longer apply or bind the parties but any evidence already laid before the Arbitrator shall be admissible in further proceedings under this Procedure as if it had been submitted as part of those proceedings and without further proof.

- 16.3 The party giving written notice under Rule 16.2 shall therefore in any event become liable to pay:
- a) the whole of the Arbitrator's fees and expenses incurred up to the date of such notice and
  - b) a sum to be assessed by the Arbitrator as reasonable compensation for the costs (including any legal costs) incurred by the other party up to the date of such notice.

Payment in full of such expenses shall be a condition precedent to that party's proceeding further in the arbitration unless the Arbitrator otherwise directs. Provided that non-payment of the said expenses shall not prevent the other party from proceeding in the arbitration.

## **PART G. SPECIAL PROCEDURE FOR EXPERTS**

### **Rule 17. Special Procedure for Experts**

- 17.1 Where the parties so agree (either of their own motion or at the invitation of the Arbitrator) the hearing and determination of any issues of fact which depend upon the evidence of Experts shall be conducted in accordance with the following Special Procedure.
- 17.2 Each party shall set out its case on such issues in the form of a file containing:
- a) a statement of the factual findings it seeks;
  - b) a report or statement from and signed by each Expert upon whom that party relies;
  - c) copies of any other documents referred to in each Expert's report or statement or on which the party relies identifying the origin and date of each document and shall deliver copies of the said file to the other party and to the Arbitrator in such manner and within such time as the Arbitrator may direct.
- 17.3 After reading the parties' cases, the Arbitrator may view the site or the works and may require either or both parties to submit further documents or information in writing,

- 17.4 Thereafter the Arbitrator shall fix a day when he shall meet the Experts whose reports or statements have been submitted. At the meeting each Expert may address the Arbitrator and put questions to any other Expert representing the other party. The Arbitrator shall direct the meeting so as to ensure that each Expert has an adequate opportunity to explain his opinion and to comment upon any opposing opinion. No other person shall be entitled to address the Arbitrator or question any Expert unless the parties and the Arbitrator so agree.
- 17.5 Thereafter the Arbitrator may make an award, setting out with such details or particulars as may be necessary, his decision upon the issues dealt with.

#### **Rule 18. Costs**

- 18.1 The Arbitrator may, in his award, make orders as to the payment of any costs relating to the foregoing matters including his own fees and expenses in connection therewith.
- 18.2 Unless the parties otherwise agree and so notify the Arbitrator neither party shall be entitled to any costs in respect of legal representation assistance or other legal work relating to the hearing and determination of factual issues by this Special Procedure

## **PART H. AWARDS**

### **Rule 19. Awards**

- 19.1 The Arbitrator may at any time make an award, and may make more than one award at different times on different aspects of the matters to be determined.
- 19.2 An award may:
- a) order the payment of money to one or more of the parties;
  - b) order a party to do or refrain from doing anything;
  - c) order specific performance;
  - d) make a declaration as to any matter to be determined;
  - e) order rectification, setting aside or cancellation of a deed or other document;
  - f) be a consent award in the event of a settlement, which may include an allocation of the Costs of the Arbitration.

### **Provisional relief**

- 19.3 The Arbitrator may also make a summary award and for this purpose the Arbitrator shall have power to award payment by one party to another of a sum representing a reasonable proportion of the final net amount which, in his opinion, that party is likely to pay after determination of all the issues in the arbitration and after taking into account any defence or counterclaim upon which the other party may be entitled to rely.
- 19.4 The Arbitrator shall have power to order the party against whom a summary award is made to pay part or all of the sum awarded to a stakeholder. In default of compliance with such an order, the Arbitrator may order payment of the whole sum in the provisional order to the other party.
- 19.5 A summary award shall be final and binding upon the parties unless and until it is varied by any subsequent award made by the same Arbitrator or by any other Arbitrator having jurisdiction over the matters in dispute. Any such subsequent award may order repayment of monies paid in accordance with the provisional order.

## **Interest**

- 19.6 In any award the Arbitrator shall have power to award interest either simple or compound at such rate and between such dates or such events as he thinks fit.

## **Costs**

- 19.7 Unless otherwise provided in this Procedure, the Arbitrator shall have power to:
- a) make an award allocating the Costs of the Arbitration between the parties in such manner as he considers appropriate;
  - b) order the basis upon which the costs are to be determined;
  - c) in default of agreement by the parties, determine the amount of the recoverable costs;
  - d) order payment of costs in relation to a summary award including power to order that such costs shall be paid forthwith.

## **Rule 20. Reasons**

- 20.1 The Arbitrator shall not provide reasons for the award unless requested to do so by at least one of the parties. If so requested and unless both parties request that reasons form part of the award, the Arbitrator shall have discretion as to whether such reasons form part of the award or are provided in a separate document not forming part of the award.
- 20.2 The Arbitrator shall not be required to provide reasons for a summary award.

## **Rule 21. Making the award**

- 21.1 Upon the closing of the hearing (if any) and after having considered all the evidence and submissions the Arbitrator shall prepare and make his award.
- 21.2 When the Arbitrator has made his award (including a provisional order under Rule 19.3) he shall so inform the parties in writing and shall specify how and where it may be taken up upon full payment of his fees and expenses

### **Power to correct an award**

- 21.3 The Arbitrator may, within 28 days of the date of the award, correct an award so as to remove any clerical mistake, error or ambiguity, and may also make an additional award in respect of any matter which was not dealt with in the award.

### **Rule 22. Applications to Court**

- 22.1 If any party applies to Court for any relief in relation to or connected with the arbitration proceedings or an award issued by the Arbitrator (whether in connection with a case to be stated to Court or to set aside an award) or for the removal of the Arbitrator or otherwise, that party shall forthwith notify the Arbitrator of the application. The Arbitrator may continue the arbitral proceedings, including making further awards, pending a decision by Court.
- 22.2 Once any award or decision has been made and taken up, the Arbitrator shall be under no obligation to make any statement in connection therewith other than in compliance with an order of Court.

## **PART J. MISCELLANEOUS**

### **Rule 23. Application of the Engineers Ireland Procedure**

- 23.1 This Procedure shall apply to the conduct of the arbitration if:
- a) the Contract so provides;
  - b) the parties at any time so agree or
  - c) the Arbitrator so stipulates at the time of his appointment.

Provided that where this Procedure applies by virtue of the Arbitrator's stipulation under (c) above the parties may, within 14 days of that appointment, agree otherwise, in which event the arbitrator's appointment shall be terminated.

- 23.2 If, after the appointment of the Arbitrator, any agreement is reached between the parties which is inconsistent with this Procedure the Arbitrator shall be entitled upon giving reasonable notice to terminate his appointment, and shall be entitled to payment of his reasonable fees and expenses incurred up to the date of the termination.

#### **Rule 24. Exclusion of liability**

- 24.1 Neither Engineers Ireland nor its servants or agents nor the President shall be liable to any party for any act or omission in connection with any appointment made or any arbitration conducted under this Procedure.