

# **PAM Adjudication Rules** **(2010 Edition)**

# **PAM ADJUDICATION RULES (2010 EDITION)**

## **Definitions**

In these Rules:

- (a) Adjudicator means a person mutually agreed and appointed by the parties or the Adjudicator appointed by the Appointment Body pursuant to the adjudication clause in the Contract.
- (b) Appointment Body means the President of Pertubuhan Akitek Malaysia or any other party named as the Appointment Body in the contract.
- (c) Article means the Articles in the PAM Adjudication Rules.
- (d) "Contract" means any of the contracts comprising the PAM 2006 suite of Contracts.
- (e) "Days" means calendar day including the weekly day of rest but excluding gazetted holidays in the location where the Works is carried out.
- (f) Practical Completion is as defined in the PAM 2006 Contracts.
- (g) "Rules" means the PAM Adjudication Rules (2010 Edition).

## **Article 1 – General Provisions**

- 1.1 The Contract has provisions to refer disputes on set-off to adjudication. Before any disputes can be referred to adjudication, the parties must comply with the provisions stated in the Contract, namely:
  - (a) that the party making the claim must submit his grounds and complete details of his claim to the other party;
  - (b) the party disputing any part or the whole of the claim shall set out the reasons and particulars of the disputed areas of claim; and
  - (c) only after the parties have failed to agree on the claim, either party may then refer the dispute to adjudication.
- 1.2 The parties may refer any other disputes besides disputes on set-off to adjudication by entering into a separate written agreement to refer the specific disputes to adjudication. In order to ensure that the Adjudicator has jurisdiction to decide such disputes, the written agreement must be submitted and acceptable to the Adjudicator, or if the Appointment Body is asked to appoint an Adjudicator, the written agreement must be acceptable to the Appointment Body.

## **Article 2 – Adjudication Application**

- 2.1 An adjudication application shall not be made unless the parties have complied with Article 1.1.
- 2.2 Where an application is made to the Appointment Body to appoint an Adjudicator, the party making the application must furnish the following:
  - (a) certified true copies of the adjudication clause in the Contract;
  - (b) details of the dispute as set out in Article 1.1;
  - (c) documents detailing the party's failure to agree a settlement on the dispute; and
  - (d) correspondence to show that the parties have failed to agree on the appointment of an Adjudicator.
- 2.3 The party making the application must also furnish to the other party at the same time a copy of the application and a copy of the documents referred to in Article 2.2 (b), (c) and (d).

## **Article 3 – Appointment of the Adjudicator**

- 3.1 Upon a dispute arising, and upon failure of the parties to agree to the appointment of an Adjudicator, any party may submit an application to the Appointment Body to appoint an Adjudicator. Such Adjudicator so appointed shall be deemed to be appointed with the agreement and consent of the parties to the Contract and both parties agree to be bound by the Adjudicator's Decision.

## **Article 4 – PAM Adjudication Rules ('Rules')**

- 4.1 The adjudication shall be carried out in accordance with these Rules and/or any modified, amended or substituted Rules which PAM may have adopted and which have come into effect before the commencement of the adjudication. The parties may, by written agreement, vary, modify or substitute the Rules or any part of them.
- 4.2 If the Adjudicator is appointed to decide on disputes not involving set-off, the Adjudicator shall inform the parties of any new rules or variations to the rules that he may require within seven (7) days of acceptance by him of the Adjudicator's appointment. If there is any disagreement by the parties to any of the Adjudicator's proposal within the time specified by the Adjudicator, the Adjudicator shall be empowered to decide the final rules by informing the parties of his decision and proceed with the adjudication accordingly.

## **Article 5 – Commencement of adjudication**

- 5.1 An adjudication shall be deemed to have commenced before Practical Completion under the PAM 2006 Contracts, as long as the party initiating the adjudication gives a written notice to the other party to concur on the appointment of an Adjudicator before the date of Practical Completion. For the avoidance of doubt, any Adjudicator's Decision arising out of such adjudication whether delivered before or after the date of Practical Completion shall be deemed to be an adjudication conducted before the date of Practical Completion and the parties shall be bound by the Adjudicator's Decision. Any dispute on the Adjudicator's Decision may be referred to arbitration in accordance with the provisions of the Contract.
- 5.2 If an appointed Adjudicator fails to deliver a Decision within the time provision provided under Article 10.1, and a new Adjudicator is appointed for the same dispute, the Adjudication shall be deemed to be an adjudication commenced before Practical Completion.

## **Article 6 – Adjudication Procedures**

- 6.1 The Adjudicator shall:
- (a) act independently and impartially;
  - (b) proceed expeditiously and avoid incurring unnecessary expense; and
  - (c) comply with the principles of natural justice.
- 6.2 An Adjudicator may do all or any of the following in relation to an adjudication:
- (a) conduct the adjudication in such manner as he think fit;
  - (b) require further submission of documents from any party in addition to the documents submitted in Article 2.2;
  - (c) set deadlines for the submission or documents to be provided by any party and provide an opportunity for the other party for submission of any responses;
  - (d) appoint, if necessary and after notifying the parties, an independent expert to inquire and report on specific issues relevant to the adjudication;
  - (e) call a conference of the parties;
  - (f) carry out an inspection of any work relevant to the issues;
  - (g) issue such directions as may be necessary or expedient for the conduct of the adjudication.
- 6.3 The parties to an adjudication shall comply expeditiously, with any requirement made or direction issued by the Adjudicator in accordance with this Article.
- 6.4 An Adjudicator's power to determine an adjudication is not affected by the failure of any party to comply with any Adjudicator's direction. In the event of any failure by a party to comply with any Adjudicator's direction, the Adjudicator may determine his Decision on the basis of the information and documents available to him.

## **Article 7 – Party conference**

- 7.1 Where an adjudicator has called for a conference of the parties, no party shall be represented by any legal representative in such a conference.

## **Article 8 - Adjudicator's Decision**

- 8.1 The Adjudicator's Decision shall be binding on the parties and the parties shall implement the Adjudicator's Decision without delay whether or not the dispute is to be further referred to arbitration later. In the event any or both of the parties are dissatisfied with the Adjudicator's Decision, written notice must be given to the other party within six (6) weeks of the date of the Adjudicator's Decision to refer the dispute to arbitration in accordance with the Contract.
- 8.2 The Adjudicator Decision shall be in writing and shall include:
- (a) the reasons for the Adjudicator's Decision;
  - (b) the amount to be paid by a party;
  - (c) the date of which the amount is payable;
  - (d) the interest payable on the amount;
  - (e) the proportion of the costs of the adjudication payable by each party to the Adjudication;  
and
  - (f) any other relevant matter that the Adjudicator reasonably considers to be relevant to the adjudication.
- 8.3 Any amount decided by the Adjudicator shall be paid by the paying party within twenty-one (21) days of the Adjudicator's Decision.

## **Article 9 –Correction of the Adjudicator's Decision**

- 9.1 If the Adjudicator's Decision contains:
- (a) any computation, clerical or typographical errors or errors of a similar nature;
  - (b) an error arising from an accidental slip or omission;

the Adjudicator may, on the Adjudicator's own initiative or on the application of any of the party, correct the mistake or error, as the case may be.

## **Article 10 – Time frame for Adjudicator’s Decision**

10.1 The Adjudicator shall deliver his written reasoned Decision within twenty-one (21) Days from the date of acceptance by him of his appointment as adjudicator. If he is unable to deliver his written reasoned Decision within the twenty-one (21) Days, the Adjudicator may extend the time by informing the parties, but the extension shall not exceed another seven (7) Days from the expiration of the twenty-one (21) Days. The parties by written agreement may agree to extend further time for the Adjudicator to arrive at his Decision. If the Adjudicator fails to deliver his Decision within the time limit, or within the extended time agreed by the parties, the Adjudicator will have no jurisdiction to deliver the Decision beyond the date or agreed date. In that event, the Adjudicator shall not be entitled to any fees.

## **Article 11 - Interest**

11.1 The Adjudicator shall award interest from such dates as he thinks fit on the amount awarded based on the interest rate provided in the Contract, and if no such rates are provided in the Contract, then at such rate as the Adjudicator considers appropriate.

## **Article 12 - Exclusion of Liability**

12.1 The Appointment Body, the Adjudicator and any expert appointed by the Adjudicator, shall not be liable to any party in the adjudication for any act or omission in the discharge or purported discharge of the adjudication, unless the act or omission is fraudulent.

12.2 The parties and the Adjudicator agree that statements or comments whether written or oral made in the course of the adjudication shall not be relied upon to found or maintain an action for defamation, libel, slander or other related complaints.

## **Article 13 - Confidentiality**

13.1 The parties and the Adjudicator must at all times treat all matters relating to the adjudication (including the existence of the adjudication) and the Decision confidential.

## **Article 14 – Enforcement of an Adjudicator’s Decision**

14.1 The parties agree that the Adjudicator’s Decision can be summarily registered and entered as a court judgment and thereafter be enforceable in the same manner as a judgment debt.

## **GUIDELINES OF GOOD PRACTICE FOR ADJUDICATORS**

### **1. Appointment**

An Adjudicator shall, before accepting an appointment ensure that he must have the time to discharge his duties as an Adjudicator to deliver his Decision to the parties, within twenty (21) Days from the date of the acceptance of his appointment or within the extended time as provided in Article 10.

### **2. Professional Standard**

An prospective Adjudicator shall not solicit appointment and shall accept appointment if offered only if he is fully satisfied that he is able to discharge his duties without bias or the appearance of bias; that he is competent to determine the issues in dispute and that he is able to give to the adjudication the time and attention which the parties are reasonably entitled to expect. For more detailed information on the subject of bias, the adjudicator is referred to the information contained in the PAM Arbitration Rules [2010 Edition].

### **3. Due Diligence**

An Adjudicator should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case and shall do his best to conduct the adjudication in such manner that costs do not rise to an unreasonable proportion of the amount in dispute.

## **1.0 Adjudicator's fees**

- 1.1 The Adjudicator's fees are charged at the rate of RM450.00 per hour for PAM Standard Forms of Building Contract or RM600 per hour for other forms of contract, computed on the basis of time spent in studying the issues, submissions, in conducting meetings and the hearings, on the issuance of Orders for Directions, in the deliberation and the publication of the Decision.
- 1.2 Cost of the issuance of Orders for Directions are computed at RM450.00 per hour (or part thereof) for PAM Standard Forms of Building Contract and RM600 per hour (or part thereof) for other forms of contract and the costs for the issuance of Orders for Directions are deemed to be inclusive of secretarial costs which may be required.
- 1.3 Cost of meetings are charged on a half-day basis (if less than 4 hours) and for hearing day/date are charged on a full-day (8 hour) basis.
- 1.4 The rates include the Appointment Body's charges (if any) but excludes service tax if payable by the Adjudicator.
- 1.5 The Appointment Body's administrative charge shall be 7.5% of the Adjudicator's fees, if the appointment is made by the Appointment Body.

## **2.0 Cost – Vacating Set Dates**

- 2.1 Cost for vacating set dates for meeting(s)/hearings are chargeable at the rate of 50% of the number of hours set aside by the Adjudicator.

## **3.0 Other Costs – Venues/Refreshment and Reimbursable Cost etc.,**

- 3.1 If proceedings are conducted in the Klang Valley or within town/city of the Adjudicator's home/office location, no mileage claim shall be charged.
- 3.2 If proceedings are conducted away from the Klang Valley or away from the town/city of the Adjudicator's home/office location, actual traveling and hotel accommodation and meals expenses as incurred are chargeable. The Adjudicator is allowed travel by airline in business class. Costs, if any, which may be incurred for the transportation/delivery of document to the venue of the proceedings are chargeable.
- 3.3 In the event the Adjudicator uses his own vehicle for traveling, mileage claim (at current rate according to PAM's Guidelines) and toll charges incurred are reimbursable.
- 3.4 If proceedings are conducted away from the Klang Valley or away from the town/city of the Adjudicator's home/office location, the Adjudicator is entitled to charge a day's cost in respect of each return trip made.
- 3.5 Cost of hiring venue (and light refreshment, if any) telephone, facsimile charges, postages, as may be incurred in respect of the proceedings are reimbursable.

#### **4.0 Security towards Adjudicator's Fees and Cost**

- 4.1 Each party is to provide an initial deposit of RM10,000.00 to the Appointment Body (or to the Adjudicator, if the appointment is not made by the Appointment Body).
- 4.2 The parties to the adjudication shall be jointly and severally responsible for the Costs of the Adjudication.

#### **5.0 Adjudicator's Statement of Cost**

- 5.1 Upon the conclusion of the proceedings by the publication of the Adjudicator's Decision, the Adjudicator's claim for the Cost of the Adjudication is to be accompanied by a Statement of Adjudicator's Cost.
- 5.2 The statement of Adjudicator's Cost shall be an itemized statement detailing the costs charged with regard to the heads of claims as set out in these Rules.
- 5.3 The parties shall bear the proportion of the Cost of the Adjudication to be decided by the Adjudicator and shall settle the cost upon collection of the Adjudicator's Decision.

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