

THE SOCIETY OF CONSTRUCTION ARBITRATORS

MODEL TERMS OF APPOINTMENT

(These Terms may be referred to as The SCA Terms (2000))

1. DEFINITIONS

- 1.1 The Tribunal means a sole Arbitrator, a panel of two or more Arbitrators or an Umpire.
- 1.2 The Terms means **The SCA Terms (2000)**.

2. PURPOSE

- 2.1 The over-riding duty of the Tribunal is to obtain the fair resolution of a dispute without unnecessary delay or expense.

3. AWARD

- 3.1 The time required by the Tribunal to prepare and publish an Award will vary depending on the nature and complexity of the dispute but normally the Tribunal shall endeavour to notify the parties that the Award is available within 6 weeks of receipt by the Tribunal of the last of the submissions of the parties or within such other time as the Tribunal may advise.
- 3.2 Unless the parties have agreed in writing to the contrary, every Award shall contain the reasons for the Award.
- 3.3 If, during the proceedings, the parties settle the dispute they shall immediately notify the Tribunal and, if either party requires an Award, advise the Tribunal of the terms of settlement.

4. FEES

- 4.1 The parties are and remain jointly and severally liable for the due and timely payment of the fees, costs and expenses of the Tribunal in accordance with these Terms.
- 4.2 The Tribunal's fees shall comprise the following:
 - 4.2.1 An **APPOINTMENT FEE** of £[] which shall include for devoting up to [X] hours to the arbitration.
 - 4.2.2 An **HOURLY FEE** of £[] for each hour in excess of [X] devoted to the arbitration including, but not limited to, time spent in general administration, correspondence, reading papers, travelling,

preparing orders and directions and preparing Awards. If no DAILY FEE is stipulated in 4.2.3 all time spent on each day of any hearing (including any time spent in adjournments) shall be chargeable at the Hourly Fee with a minimum of 6 hours chargeable in any event.

- 4.2.3 A **DAILY FEE** of £[] for each day spent in hearings. A day, for this purpose, shall be deemed to consist of 6 hours and any time in excess of 6 hours shall be chargeable at the Hourly Fee stipulated in 5.2.2.
- 4.2.4 Where appropriate an **ALTERNATIVE DAILY FEE** of for each day which is necessarily spent away from the Tribunal's normal place of business but is not occupied in dealing with the arbitration.
- 4.2.5 A **BOOKING FEE** of £[] for each day reserved for a hearing or meeting, payable by the party or parties requesting the hearing or meeting at the time when a firm reservation is made. The Tribunal shall give credit for any Booking Fee received against any other fees which may become due in respect of the days so reserved.
- 4.2.6 A **CANCELLATION FEE** for each day reserved for a hearing or meeting which is cancelled or postponed at the request of any party according to the following scale:
- 4.2.6.1 Where the reserved day is vacated at 12 or more weeks before the reserved day: NIL
- 4.2.6.2 Where the reserved day is vacated at less than 12 but at 6 or more weeks before the reserved day: 30% of the Daily Fee.
- 4.2.6.3 Where the reserved day is vacated at less than 6 but at 3 or more weeks before the reserved day: 60% of the Daily Fee.
- 4.2.6.4 Where the reserved day is vacated at less than 3 but at 1 or more weeks before the reserved day: 75% of the Daily Fee.
- 4.2.6.5 Where the reserved day is vacated at less than 1 week before the reserved day: 100% of the Daily Fee.
- 4.2.7 If no Daily Fee is stipulated in 5.2.3 then, for the purposes of 5.2.6, the equivalent Daily Fee shall be deemed to be 6 times the Hourly Fee stipulated in 5.2.2.

- 4.3 If the arbitration continues for more than 12 months after the date of the Tribunal's appointment then the Tribunal may review and revalue any or all of the fees and charges.
- 4.4 The Tribunal may submit and the parties shall pay such interim accounts as the Tribunal considers appropriate.
- 4.5 The Tribunal may require any or all of the parties to pay such amounts as it shall from time to time determine to be held by the Tribunal as security for the due payment of the Tribunal's fees, costs and expenses.

5. DISBURSEMENTS

- 5.1 The Tribunal's costs and expenses shall be recoverable from the parties at cost.
- 5.2 Travelling costs which are necessarily incurred in the course of the arbitration shall generally be chargeable as follows:
 - 5.2.1 By club, business or equivalent class air; or
 - 5.2.2 By first class rail; or
 - 5.2.3 By taxi; or
 - 5.2.4 By car at a rate of [] per mile

6. VAT

- 6.1 ValueAdded Tax shall where applicable, be chargeable in addition to the foregoing charges in accordance with any relevant law or regulation in force at the date of the relevant invoice or fee note.

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MODEL TERMS OF APPOINTMENT EXPLANATORY NOTES

1. Introduction

- 1.1** In 1987 the Society published Model Terms of Appointment. At the Annual Conference in Norfolk in 1998 the members present agreed that these should be reviewed and redrafted in the light of arbitral developments since 1987. At the Annual conference in Dorset in 1999 the members present considered a draft of a revised document and various amendments were agreed. A revised draft was circulated to members for comment and The SCA Terms (2000) represent a synthesis of the views expressed.
- 1.2** The bulk of the work in preparing these Terms was done by the late Ian Menzies who completed the final draft a few weeks before his untimely death. The Society acknowledges the debt it owes to Ian for the hard work he put into this document.
- 1.3** It is emphasised that The SCA Terms (2000) are a model and that individual Tribunals should modify them to suit their own particular circumstances and the nature of the appointment in question.
- 1.4** The following notes are by way of background information and guidance.

2. Article 1

- 2.1 This is self-explanatory.

3. Article 2

- 3.1 This emphasises the Tribunal's duty pursuant to Sections 1 and 33 of the Arbitration Act 1996.

4. Article 3

- 4.1 This emphasises the need, in the interests of justice and in order to minimise opportunities for applications to the court under Section 24(1)(d)(ii), for an award to be produced expeditiously and with "reasonable despatch". It also highlights that the parties to a dispute are free to agree to dispense with reasons in an award and that a settlement may be recorded by way of an agreed award.

5. Article 4.

- 5.1 Article 4.1 reminds the parties of their joint and several liability under Section 28 of the Arbitration Act 1996 and ensures that the same principle applies if that Act does not govern the arbitration.
- 5.2. Article 4.2.1: The Appointment Fee is intended to cover the necessary preliminary administrative work involved in correspondence with the parties or an appointing body and with convening a preliminary meeting. Although it includes a specified number of hours devoted to the arbitration it is intended to be non-returnable even if the specified number of hours is not actually spent. It is for the Tribunal to stipulate the sum and the number of hours.
- 5.3. Article 4.2.2: The Hourly Fee is intended to be the normal basis for the calculation of fees. Only hours in excess of those included in the Appointment Fee are chargeable. Some Tribunals may prefer to use a figure other than 6 as the minimum number of hours included in a day.
- 5.4. Article 4.2.3 is self-explanatory but here again some Tribunals may prefer to use a figure other than 6 as the base figure.
- 5.5. Article 4.2.4: This is intended to cover the situation where the distance from the Tribunal's normal place of business to the venue of a meeting or site visit necessitates or justifies travelling or residential time in addition to that actually spent actively engaged in the arbitration. For example, it may be cheaper, where a hearing lasts for more than a week, to stay at the venue for the intervening weekend rather than to return home. Obviously, if the Tribunal is able to devote all or part of this time to other productive work it should not be charged against the arbitration.
- 5.6. Article 4.2.5 The purpose of the Booking Fee is to stress to the parties that by formally reserving time for a hearing the Tribunal is precluded from booking any other fee-earning activity in the same period. The requirement that the parties should pay a Booking Fee when asking The Tribunal to reserve time for a hearing recognises this fact and encourages the parties to be neither over-optimistic in setting early hearing dates nor over-generous in forecasting the probable duration of the hearing. It is not intended that the Booking Fee should be equivalent to the full amount which will become chargeable if the arbitration proceeds to a hearing and a reasoned award but credit will be given for any Booking Fee when the appropriate fees are invoiced.
- 5.7. Article 4.2.6: The Society devoted considerable time to the question of cancellation fees. The consensus is that, having set aside time for a meeting or hearing which is later cancelled or postponed for reasons outside The Tribunal's control, The Tribunal is entitled to be recompensed for any time which he is unable to occupy gainfully. It is accepted that the nearer to the relevant date the cancellation occurs the less likelihood there is of the time being productively filled and, therefore, the greater should be the sum payable. The graduation payment by weeks is the most

direct approach and individual Tribunals may wish to insert periods of time and percentages other than those suggested in the model form.

- 5.8. Article 4.2.7: A Tribunal may wish to use a multiplier other than 6 to calculate the equivalent Daily Fee.
- 5.9. Article 4.3: A Tribunal may wish to specify some published index as the basis of any revaluation of rates.
- 5.10. Article 4.4: This is intended to cover the situation where the Tribunal is paid in arrears and the interim accounts are based on time actually spent or disbursements actually incurred.
- 5.11. Article 4.5: This is intended to cover the situation where it is foreseeable that fees will accrue in the relatively near future, e.g. for a hearing and for writing the award, but will not be finally quantifiable until the activity has been completed.

6. Article 5:

- 6.1. The classes of air and rail travel are indicative of those which may be considered as normal. For very long air journeys, e.g. London/Hong Kong or London/Sydney, it may be justifiable to stipulate for first class air travel. Where overnight accommodation will be required The Tribunal may wish to specify the grade of hotel to be used