
Appendix 7

JCT Standard Form of Building Contract 1998

Article 5

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 41A.

Dispute or difference - adjudication

The Conditions

1.3 Unless the context otherwise requires or the Articles or the Conditions or an item in or entry in the Appendix specifically otherwise provides, the following words and phrases in the Articles of Agreement, the Conditions and the Appendix shall have the meanings given below or as ascribed in the article, clause or Appendix item to which reference is made:

Definitions

Part 4: Settlement of disputes - adjudication - arbitration - legal proceedings [uu]

41A Adjudication [uu.1]

41A.1 Clause 41A applies where, pursuant to article 5, either Party refers any dispute or difference arising under this Contract to adjudication.

Application of clause 41A

41A.2 The Adjudicator to decide the dispute or differences shall be either an individual agreed by the Parties or, on the application of either Party, an individual to be nominated as the Adjudicator by the person named in the Appendix ('the nominator'). Provided that [vv]

Identity of Adjudicator

41A.2 ·1 no Adjudicator shall be agreed or nominated under clause 41A.2 or clause 41A.3 who will not execute the Standard Agreement for the appointment of an Adjudicator issued by the JCT (the 'JCT Adjudication Agreement' [ww]) with the Parties, [vv] and

41A.2 ·2 where either Party has given notice of his intention to refer a dispute or difference to adjudication then

- any agreement by the Parties on the appointment of an adjudicator must be reached with the object of securing the appointment of, and the referral of the dispute or difference to, the Adjudicator within 7 days of the date of the notice of intention to refer (*see clause 41A.4.1*);
- any application to the nominator must be made with the object of securing the appointment of, and the referral of the dispute or difference to, the Adjudicator within 7 days of the date of the notice of intention to refer.

Upon agreement by the Parties on the appointment of the Adjudicator or upon receipt by the Parties from the nominator of the name of the nominated

Adjudicator the Parties shall thereupon execute with the Adjudicator the JCT Adjudication Agreement.

Death of Adjudicator – inability to adjudicate

41A.3 If the Adjudicator dies or becomes ill or is unavailable for some other cause and is thus unable to adjudicate on a dispute or difference referred to him, then either the Parties may agree upon an individual to replace the Adjudicator or either Party may apply to the nominator for the nomination of an adjudicator to adjudicate that dispute or difference; and the Parties shall execute the JCT Adjudication Agreement with the agreed or nominated Adjudicator.

Dispute or difference – notice of intention to refer to adjudication – referral

41A.4 .1 When pursuant to article 5 a Party requires a dispute or difference to be referred to adjudication then that Party shall give notice to the other Party of his intention to refer the dispute or difference, briefly identified in the notice, to adjudication. If an Adjudicator is agreed or appointed within 7 days of the notice then the Party giving the notice shall refer the dispute or difference to the Adjudicator ('the referral') within 7 days of the notice. If an Adjudicator is not agreed or appointed within 7 days of the notice the referral shall be made immediately on such agreement or appointment. The said Party shall include with that referral particulars of the dispute or difference together with a summary of the contentions on which he relies, a statement of the relief or remedy which is sought and any material he wishes the Adjudicator to consider. The referral and its accompanying documentation shall be copied simultaneously to the other Party.

41A.4 .2 The referral by a Party with its accompanying documentation to the Adjudicator and the copies thereof to be provided to the other Party shall be given by actual delivery or by FAX or by special delivery or recorded delivery. If given by FAX then, for record purposes, the referral and its accompanying documentation must forthwith be sent by first class post or given by actual delivery. If sent by special delivery or recorded delivery the referral and its accompanying documentation shall, subject to proof to the contrary, be deemed to have been received 48 hours after the date of posting subject to the exclusion of Sundays and any Public Holiday.

Footnotes

[uu] It is open to the Employer and the Contractor to resolve disputes by the process of Mediation: see Practice Note 28 'Mediation on a Building Contractor or Sub-Contract Dispute'.

[uu-1] The time periods generally specified in this clause are those defined by statute. Where the nature of the dispute or the work concerned may have any significant effect upon the progress or cost of the Works such as works relating to the primary structural elements the Adjudicator should consider an accelerated time table for the adjudication procedures: see JCT Practice Note 2 (Series 2): Adjudication under JCT Forms.

[vv] The nominators named in the Appendix have agreed with the JCT that they will comply with the requirements of clause 41A on the nomination of an adjudicator including the requirement in clause **41A.2.2** for the nomination to be made with the object of securing the appointment of, and the referral of the dispute or difference to, the Adjudicator within 7 days of the date of the notice of intention to refer; and will only nominate adjudicators who will enter into the 'JCT Adjudication Agreement'.

[ww] The JCT Adjudication Agreement is available from the retailers of JCT Forms. A version of this Agreement is also available for use if the Parties have named an Adjudicator in their contract.

- 41A.5** .1 The Adjudicator shall immediately upon receipt of the referral and its accompanying documentation confirm the date of that receipt to the Parties. **Conduct of the adjudication**
- 41A.5** .2 The Party not making the referral may, by the same means stated in clause 41A.4.2, send to the Adjudicator within 7 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which he relies and any material he wishes the Adjudicator to consider.
- 41A.5** .3 The Adjudicator shall within 28 days of the referral under clause 41A.4.1 and acting as an Adjudicator for the purposes of S.108 of the Housing Grants, Construction and Regeneration Act 1996 and not as an expert or an arbitrator reach his decision and forthwith send that decision in writing to the Parties. Provided that the Party who has made the referral may consent to allowing the Adjudicator to extend the period of 28 days by up to 14 days; and that by agreement between the Parties after the referral has been made a longer period than 28 days may be notified jointly by the Parties to the Adjudicator within which to reach his decision.
- 41A.5** .4 The Adjudicator shall not be obliged to give reasons for his decision.
- 41A.5** .5 In reaching his decision the Adjudicator shall act impartially and set his own procedure; and at his absolute discretion may take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral which may include the following:
- .5 .1 using his own knowledge and/or experience;
 - .5 .2 subject to clause 30.9, opening up, reviewing and revising any certificate, opinion, decision, requirement or notice issued, given or made under this Contract as if no such certificate, opinion, decision, requirement or notice had been issued, given or made;
 - .5 .3 requiring from the Parties further information than that contained in the notice of referral and its accompanying documentation or in any written statement provided by the Parties including the results of any tests that have been made or of any opening up;
 - .5 .4 requiring the Parties to carry out tests or additional tests or to open up work or further open up work;
 - .5 .5 visiting the site of the Works or any workshop where work is being or has been prepared for this Contract;
 - .5 .6 obtaining such information as he considers necessary from any employee or representative of the Parties provided that before obtaining information from an employee of a Party he has given prior notice to that Party;
 - .5 .7 obtaining from others such information and advice as he considers necessary on technical and on legal matters subject to giving prior notice to the Parties together with a statement or estimate of the cost involved;

Construction Adjudication

- 5 ·8 having regard to any term of this Contract relating to the payment of interest, deciding the circumstances in which or the period for which a simple rate of interest shall be paid.
- 41A·5** ·6 Any failure by either Party to enter into the JCT Adjudication Agreement or to comply with any requirement of the Adjudicator under clause 41A·5·5 or with any provision in or requirement under clause 41A shall not invalidate the decision of the Adjudicator.
- 41A·5** ·7 The Parties shall meet their own costs of the adjudication except that the Adjudicator may direct as to who should pay the cost of any test or opening up if required pursuant to clause 41A·5·5·4.
- 41A·5** ·8 Where any dispute or difference arises under clause 8·4·4 as to whether an instruction issued thereunder is reasonable in all the circumstances the following provisions shall apply:
 - 8 ·1 The Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute.
 - 8 ·2 Where the Adjudicator does not have the appropriate expertise and experience referred to in clause 41A·5·8·1 above the Adjudicator shall appoint an independent expert with such relevant expertise and experience to advise and report in writing on whether or not any instruction issued under clause 8·4·4 is reasonable in all the circumstances.
 - 8 ·3 Where an expert has been appointed by the Adjudicator pursuant to clause 41A·5·8·2 above the Parties shall be jointly and severally responsible for the expert's fees and expenses but, in his decision, the Adjudicator shall direct as to who should pay the fees and expenses of such expert or the proportion in which such fees and expenses are to be shared between the Parties.
 - 8 ·4 Notwithstanding the provisions of clause 41A·5·4 above, where an independent expert has been appointed by the Adjudicator pursuant to clause 41A·5·8·2 above, copies of the Adjudicator's instructions to the expert and any written advice or reports received from such expert shall be supplied to the Parties as soon as practicable.
- Adjudicator's fee and reasonable expenses – payment**
 - 41A·6** ·1 The Adjudicator in his decision shall state how payment of his fee and reasonable expenses is to be apportioned as between the Parties. In default of such statement the Parties shall bear the cost of the Adjudicator's fee and reasonable expenses in equal proportions.
 - 41A·6** ·2 The Parties shall be jointly and severally liable to the Adjudicator for his fee and for all expenses reasonably incurred by the Adjudicator pursuant to the adjudication.
- Effect of Adjudicator's decision**
 - 41A·7** ·1 The decision of the Adjudicator shall be binding on the Parties until the dispute or difference is finally determined by arbitration or by legal proceedings [xx] or by an agreement in writing between the Parties made after the decision of the Adjudicator has been given.

- 41A·7 ·2 The Parties shall, without prejudice to their other rights under this Contract, comply with the decision of the Adjudicator; and the Employer and the Contractor shall ensure that the decision of the Adjudicator is given effect.
- 41A·7 ·3 If either Party does not comply with the decision of the Adjudicator the other Party shall be entitled to take legal proceedings to secure such compliance pending any final determination of the referred dispute or difference pursuant to clause 41A·7·1.
- 41A·8 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith and this protection from liability shall similarly extend to any employee or agent of the Adjudicator.

Immunity

Footnote [xx] The arbitration or legal proceedings are *not* an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.



JCT Adjudication Agreement

This Agreement

is made on the _____ day of _____ 19 _____

BETWEEN ('the Contracting Parties')

Insert names and addresses of the Contracting Parties

(1)

(2)

and ('the Adjudicator')

Insert name and address of Adjudicator

JCT Adjudication Agreement

Whereas

the Contracting Parties have entered into a *Contract/Sub-Contract/Agreement (the 'contract') for

Brief description of the works/the sub-contract works

Four horizontal lines for text entry.

on the terms of

Insert the title of the JCT Contract/Sub-Contract/Agreement and any amendments thereto incorporated therein

Three horizontal lines for text entry.

in which the provisions on adjudication ('the Adjudication Provisions') are set out in

clause _____

And Whereas

a dispute or difference has arisen under the contract which the Contracting Parties wish to be referred to adjudication in accordance with the said Adjudication Provisions.

*Delete as appropriate.

JCT Adjudication Agreement

Now it is agreed that**Appointment and acceptance**

- 1 The Contracting Parties hereby appoint the Adjudicator and the Adjudicator hereby accepts such appointment in respect of the dispute briefly identified in the attached notice.

Adjudication Provisions

- 2 The Adjudicator shall observe the Adjudication Provisions as if they were set out in full in this Agreement.

Adjudicator's fee and reasonable expenses

- 3 The Contracting Parties will be jointly and severally liable to the Adjudicator for his fee as stated in the Schedule hereto for conducting the adjudication and for all expenses reasonably incurred by the Adjudicator as referred to in the Adjudication Provisions.

Unavailability of Adjudicator to act on the referral

- 4 If the Adjudicator becomes ill or becomes unavailable for some other cause and is thus unable to complete the adjudication he shall immediately give notice to the Contracting Parties to such effect.

Termination

- 5
 - .1 The Contracting Parties jointly may terminate the Adjudication Agreement at any time on written notice to the Adjudicator. Following such termination the Contracting Parties shall, subject to clause 5-2, pay the Adjudicator his fee or any balance thereof and his expenses reasonably incurred prior to the termination.
 - .2 Where the decision of the Contracting Parties to terminate the Adjudication Agreement under clause 5-1 is because of a failure by the Adjudicator to give his decision on the dispute or difference within the time-scales in the Adjudication Provisions or at all, the Adjudicator shall not be entitled to recover from the Contracting Parties his fee and expenses.

JCT Adjudication Agreement

As Witness

the hands of the Contracting Parties and the Adjudicator

Signed by or on behalf of:

the Contracting Parties

(1)

in the presence of

(2)

in the presence of

Signed by:

the Adjudicator

in the presence of

Schedule

Fee

The lump sum fee is £ _____

or

The hourly rate is £ _____