

13 DISPUTES

13.1 Dispute Management Procedure

13.1.1 If a dispute arises under sub-clause 10.5.4 or 10.5.5 of the Contract, either Party may, by notice to the other, refer the dispute for resolution under this sub-clause 13.1. The notice shall state that the dispute is given under sub-clause 13.1 of the Contract.

13.1.2 The dispute management procedure for resolution of disputes arising under sub-clause 10.5.4 or 10.5.5 of the Contract consists of meetings of the Project Board as detailed in this Clause.

The Project Board:

(1) shall meet at least every 60 days to review disputes referred under clause 13.1 and may, by agreement of the Project Board, call an interim Project Board Meeting sooner than the next scheduled date for a Project Board Meeting, to review disputes referred. Where no disputes are referred the Project Board may, by agreement of the Project Board, defer scheduled Project Board meetings until a dispute arises under clause 13.1. There shall be a minimum of 1 member from each Party and a maximum of 3 members from each Party, as named in Schedule Part 3A, at all Project Board meetings;

(2) shall ensure that all unresolved disputes at the end of a scheduled Project Board Meeting or interim Project Board Meeting are so notified to the Parties on the next Working Day after the Project Board meeting ("date of notification"). Either Party may refer such unresolved disputes to conciliation [in accordance with sub-clause 13.2] within 14 days of the date of notification to the Parties by the Project Board, otherwise the Employer's Representative's determination issued under sub-clause 10.5 shall be binding;

(3) shall communicate orally or in writing on a "without prejudice" basis, including all communications between the Project Board members and to the Standing Conciliator, [where appointed], and such communications may not be relied upon by either Party in subsequent dispute resolution proceedings under this Contract, other than the signed agreement as set out in sub-clause 13.1.2.(4);

(4) shall ensure all agreements to resolve a dispute between the Parties are in writing and signed by the Parties. This agreement is binding on the Parties;

(5) may, where the relevant appointment has been made, agree to have the Standing Conciliator or conciliator draft the binding agreement to be signed by the Parties. If the agreement is not signed by both Parties within 14 days of the date of issue of the agreement by the Standing Conciliator or conciliator, either Party may refer the dispute to conciliation as per 13.1.2(2) above within a further 14 days. If the dispute is not referred to Conciliation within this further 14 day period the Employer's Representative determination issued under sub-clause 10.5 shall be binding;

(6) may agree to have the Standing Conciliator, where one has been appointed, attend or chair the Project Board meetings;

(7) may agree to seek advice or opinion from the Standing Conciliator at the Project Board meeting, where one is appointed, either orally or in writing, in an effort to resolve disputes referred.

13.2 Conciliation

[Where Schedule Part 1N so states that a Standing Conciliator shall be appointed, the Standing Conciliator shall take the place of the conciliator under sub-clause 13.2 for all disputes referred to conciliation under sub-clause 13.2]

13.2.1 If a dispute arises under the Contract, [or where a dispute referred to the dispute management procedure has not been resolved], either Party may, by notice to the other, refer the dispute for conciliation under this sub-clause 13.2. The notice shall state that it is given under sub-clause 13.2 of the Contract. [No dispute referred to the dispute management procedure may be referred to conciliation without first completing the dispute management procedure.]

13.2.2 Except in the case where a Standing Conciliator has been appointed, [and in such cases the Standing Conciliator shall be the conciliator], within 10 working days of the referral of a dispute to conciliation, the Parties shall jointly appoint a conciliator who is competent to adjudicate upon the dispute and independent of the Parties. If the Parties fail to appoint a conciliator within 10 working days of the referral, or if a person appointed refuses to act or becomes unable to act, the conciliator shall be appointed by the appointing body or person named in the Schedule, part 1N, on the application of either Party. If there is a fee for making the appointment, the Parties shall share it equally. If one Party pays the entire fee, it shall be

entitled to reimbursement of the other Party's share from the other Party on demand.

- 13.2.3 Each Party shall, within the period set by the conciliator, send to the conciliator and the other Party brief details of the dispute stating its contentions as to the facts and the Parties' rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance.
- 13.2.4 The Parties shall promptly make available to the conciliator all information, documents, access to the Site and appropriate facilities that the conciliator requires to resolve the dispute.
- 13.2.5 The conciliator shall consult with the Parties in an attempt to resolve the dispute by agreement. The conciliator may do any of the following, or any combination of them:
- (1) meet the Parties separately from each other or together and consider documents from one Party not sent or shown to the other
 - (2) conduct investigations in the absence of the Parties
 - (3) make use of specialist knowledge
 - (4) obtain technical or legal advice
 - (5) establish the procedures to be followed in the conciliation

Where the dispute has been referred to the dispute management procedure and Sub-clause 13.1.2(5) and 13.1.2(6) of the Contract applies, the conciliator, with the agreement of the Parties, may forgo the requirements of 13.2.5(1) to 13.2.5(5) inclusive and give the Parties a written recommendation in accordance with 13.2.8.

- 13.2.6 The conciliator shall not be an arbitrator and the Arbitration Act 2010 and the law relating to arbitration shall not apply to the conciliation.
- 13.2.7 The conciliator's terms of appointment shall be those in the Works Requirements or, if there are none, those agreed by the Employer and the Contractor with the conciliator.
- 13.2.8 If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, [or after referral of the dispute to conciliation where a Standing Conciliator has been appointed], or a longer period proposed by the conciliator and agreed by the Parties, the conciliator shall give both Parties a written recommendation. The conciliator shall base the recommendation on the Parties' rights and obligations under the Contract.
- 13.2.9 If either Party is dissatisfied with the conciliator's recommendation, it may, within 42 days after receiving the conciliator's recommendation, so notify the other Party. The notice shall state that it is given under sub-clause 13.2 of the Contract, and shall state the matters in dispute and the reasons for dissatisfaction. If the conciliator has failed to give a recommendation within 42 days after appointment, either Party may give a notice of dissatisfaction. If notice of dissatisfaction has been given in accordance with this clause, either Party may refer the dispute to arbitration under sub-clause 13.4.
- 13.2.10 If neither Party gives notice of dissatisfaction within 42 days after receiving the conciliator's recommendation, the recommendation shall be conclusive and binding on the Parties, and the Parties agree to comply with it. If, in such circumstances, a Party fails to comply with the conciliator's recommendation, the other Party may [without limiting its other rights] refer the failure itself to Adjudication, [where the dispute is a dispute relating to payment], or to arbitration under sub-clause 13.4, and need not invoke this sub-clause 13.2 for this reference.

- 13.2.11 If the conciliator has recommended the payment of money and a notice of dissatisfaction is given, the following shall apply:
- (1) The Party concerned shall make the payment recommended by the conciliator, provided that the other Party first
 - (a) gave a notice, complying with the arbitration rules referred to in sub-clause 13.4, referring the same dispute to arbitration and
 - (b) gave the paying Party a bond executed by a surety approved by the paying Party, acting reasonably, in the form included in the Works Requirements, or if there is none, a form approved by the paying Party, acting reasonably, for the amount of the payment.
 - (2) If, when the dispute is finally resolved, it is found that the Party receiving payment on the conciliator's recommendation was not entitled to some or all of the amount paid, then that Party shall repay the amount it was paid and found not to be entitled to, together with interest.
 - (3) When the dispute is finally resolved, interest will be deducted from final payment under the award or judgment.
 - (4) Interest under this sub-clause is calculated at the reference rate referred to in the European Communities (Late Payment in Commercial Transactions) Regulations 2012 plus 2% per year and runs from the date of the original payment to the date of the repayment or final payment.
 - (5) [This provision for interest is confidential under sub-clause 13.2.12, and in particular shall not be taken into account or referred to in arbitration until all other matters are resolved.]
- 13.2.12 The conciliation shall be confidential, and the Parties shall respect its confidentiality, except when any of the exceptions in sub-clause 4.16 apply, or to the extent necessary to enforce a recommendation that has become conclusive and binding. All documents provided by a Party in connection with a conciliation shall be returned when the conciliation is concluded.

13.3 **Adjudication**

- 13.3.1 The parties have recourse to Adjudication in accordance with the Construction Contracts Act 2013
- 13.3.2 Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute shall not be referred to the dispute management procedure or conciliation under the Contract.
- 13.3.3 If a dispute between the Parties is referred to Adjudication, any dispute management procedure or conciliation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the dispute management procedure or conciliation from the date the dispute was referred to Adjudication. In the event that a decision is reached by the adjudicator, the dispute management procedure or conciliation for that dispute shall be terminated.

13.4 **Arbitration**

Any dispute that, under sub-clause 13.2, may be referred to conciliation shall, subject to sub-clause 13.2 be finally settled by arbitration in accordance with the arbitration rules identified in the Schedule, part 1N. For purposes of those rules, the person or body to appoint the arbitrator, if not agreed by the Parties, is named in the Schedule, part 1N.

13.5 **Jurisdiction**

Subject to the above provisions of this clause, the Parties submit to the jurisdiction of the Irish courts to settle any dispute that may arise out of or in connection with the Contract or the Works.

13.6 Agent for Service

If an agent for service of legal proceedings on the Contractor is named in part 2A of the Schedule, the Contractor confirms to the Employer that it has irrevocably appointed the named person as its agent for the service of all documents relating to legal proceedings, and that failure of the agent to notify the Contractor of receipt of a document will not invalidate any proceedings or the service of the document.

13.7 Continuing Obligations

[Despite the existence of a dispute, the Parties shall continue to perform their obligations under the Contract.]

End of Conditions.