

# THE LAW SOCIETY CONVEYANCING ARBITRATION RULES

(For disputes arising under the Contract for Sale of Land - 2005 Edition, Contract for the Sale and Purchase of Land - 2014 Edition or any subsequent edition)

## Preamble

The Council of the Law Society of New South Wales has resolved that, where parties have entered into a Contract for Sale of Land – 2005 edition, Contract for the Sale and Purchase of Land – 2014 edition or any subsequent edition of the Contract and a dispute has arisen between them and pursuant to the terms of that Contract the parties have agreed to submit the dispute to arbitration then the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with these Rules, namely:

## RULES<sup>1</sup>

### PART I PRELIMINARY

#### RULE 1 Appointment of an Arbitrator

In the event that the parties to the dispute are unable to agree on an Arbitrator within one (1) month of completion of the Contract, the Law Society President for the time being will at the request of either party in his or her absolute discretion appoint an Arbitrator.

#### RULE 2 Notice of Dispute

The Statement of the amount claimed pursuant to the Contract shall be deemed to be the Notice of Dispute for the purposes of the Arbitration.

#### RULE 3 Appointment Fee

- 3.1 The parties shall deposit with the Law Society the prescribed Appointment Fee (to be shared equally between the parties).
- 3.2 The Appointment Fee shall be such sum as is prescribed by the Law Society at the relevant time and from time to time.
- 3.3 Lodgement of the prescribed Appointment Fee shall be a pre-requisite to the appointment of an Arbitrator under Rule 4.

#### RULE 4 Call for Appointment

- 4.1 Where a Statement of amount claimed has been served pursuant to the terms of the Contract and the dispute has not settled within one (1) month of completion either party may thereafter request the Law Society President in writing to appoint an arbitrator and, in so doing, shall submit the following to the Law Society:
  - a. a copy of the Statement of the amount claimed;
  - b. a copy of the relevant Contract ;
  - c. the names and addresses of the parties to the dispute and their respective

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<sup>1</sup> These rules are intended to bind the parties to the Arbitration and are not Legal Professional Rules made pursuant to the *Legal Profession Act 2014*.

solicitors;

- d. a brief description of the nature of the dispute containing such particulars of the dispute as will permit the Law Society President to appoint an appropriate arbitrator.
- e. a cheque for half of the prescribed Appointment Fee made payable to The Law Society of New South Wales.

4.2 Within ten (10) days after receipt of the material submitted pursuant to paragraph 1 of this Rule and receipt of payment of the prescribed Appointment Fee, or such further information as to the nature of the dispute as the Law Society may reasonably require for the purposes of appointment, the Law Society President shall appoint an arbitrator and advise the parties and the Arbitrator accordingly.

#### **RULE 5 Entry on Reference to Arbitration**

- 5.1. The Arbitrator shall, within seven (7) days of receiving advice of his or her appointment or agreed appointment, give written notice to the parties of the time and place of a Preliminary Conference which the parties or their duly authorized representatives shall attend. At or prior to that Preliminary Conference, the Appointed Arbitrator may advise any conditions he or she wishes to impose (including provision of security for the fees and expenses of the Appointed Arbitrator) and request the agreement of the parties to such conditions. Failure to respond to the Arbitrator's request not later than the holding of the Preliminary Conference shall be deemed to be a failure to agree to the conditions.
- 5.2 On the parties agreeing to any such conditions, the Arbitrator shall accept appointment and shall then be deemed to have entered on the reference as Arbitrator.
- 5.3 If any party fails to attend the Preliminary Conference or does not agree with the conditions of the Appointed Arbitrator, then the Appointed Arbitrator shall notify the parties and the Law Society in writing within three (3) working days as to whether he or she accepts appointment as Arbitrator notwithstanding that non-appearance or disagreement. On acceptance of appointment, the Appointed Arbitrator shall be deemed to have entered on the reference as Arbitrator. If appointment is declined by the Appointed Arbitrator, then the Law Society President shall within ten (10) days appoint a replacement Appointed Arbitrator.
- 5.4 Where the Arbitrator has entered on the reference as Arbitrator, the arbitration shall be fixed for a time, date, place and timetable agreeable to the parties and the Arbitrator. If the parties are unable to agree on a time, date and place or upon a timetable, the Arbitrator may give directions stipulating these. These directions are binding upon the parties.

#### **RULE 6 Appointed Arbitrator Failing to Act / Loss of Arbitrator**

The Law Society President shall appoint a replacement arbitrator, within ten (10) days of being called on to do so by a party, if:

- 6.1. an Appointed Arbitrator does not enter upon the reference to arbitration within one (1) month of the date of his or her appointment; or,
- 6.2. after entering on the reference to arbitration, an Appointed Arbitrator shall die or shall otherwise become incapable by reason of ill health, or no longer be the holder of a current practising certificate, or otherwise, from continuing on the reference to arbitration.

## **RULE 7 Liability of Law Society for acts or omissions**

The parties agree that the Law Society, its officers and employees are not liable to any party for, or in respect of, any act or omission in the discharge or purported discharge of the Law Society's functions under these Rules.

## **RULE 8 Provision of Security**

The Arbitrator may direct that the parties provide security for the costs of the reference in such form, such amount or amounts and at such time or times as directed by the Arbitrator. Any such security shall be deposited and applied as directed by the Arbitrator. If there is any default in provision of security as directed by the Arbitrator, then the Arbitrator may make such directions for the further conduct of the arbitration as the Arbitrator then considers appropriate.

# **PART II THE ARBITRAL PROCEDURE**

## **RULE 9 Preliminaries not to Prejudice Scope of Arbitration**

Unless otherwise agreed in writing by the parties:

- 9.1 Any description identifying a claim given in the Statement of amount claimed shall not be taken as defining or limiting the scope of the arbitration.
- 9.2 Any party may raise in its claim, defence, cross claim or defence to cross claim, any other dispute or difference which has arisen under the Agreement.
- 9.3 Thereafter any amendment or addition to claims will be in the discretion of the Arbitrator, and shall be subject to any conditions as to costs or otherwise that the Arbitrator may consider appropriate.

## **RULE 10 General Duty of Arbitrator**

- 10.1 The Arbitrator shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the matters in dispute.
- 10.2 The Arbitrator may make such directions or rulings as he or she considers to be reasonably appropriate, including in respect of the following:
  - a. The form and extent of any pleadings or other documents defining the issues in dispute, including the extent to which particularisation should be provided by a party in respect of its contentions on all or some of the issues in dispute.
  - b. The preparation of any joint statement of issues, in such manner and at such time as the Arbitrator considers appropriate, to define and narrow the issues in dispute.
  - c. The holding of further Preliminary Conferences, meetings between experts and/or representatives of the parties, so as to narrow issues in dispute, including the time at which and manner in which they are conducted and who may attend, and preparation of any written document recording the results thereof.
  - d. The preparation of joint reports by experts engaged by the parties following any meetings between such experts, recording the matters on which they agree, the matters on which they disagree, and identifying the reasons for any such disagreement and their respective contentions in relation to same.
  - e. The preparation of joint bundles of documents for use in the arbitration, including at any meetings between experts and/or representatives of the parties or preparation of any joint report of experts.

- f. The provision of factual information to experts for the parties for use in their joint deliberations or preparation of any joint report.
  - g. The manner in which and the extent to which the parties shall produce documents for inspection by any opposing party.
  - h. The form of any evidence in chief, by witness statement or otherwise, and the time or times at which it is to be provided to the Arbitrator and any other party.
  - i. The extent to which an oral hearing is required and any limitations in relation to same, including reasonable time limits on oral evidence and the provision of written opening addresses and final submissions.
  - j. The service of offers of settlement without prejudice except as to costs.
- 10.3 The Arbitrator shall be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to be heard on the procedure adopted by the Arbitrator.

### **RULE 11 General Duty of Parties**

- 11.1 The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the arbitral proceedings.
- 11.2 Without limiting the generality of the foregoing, the parties shall comply without delay with any direction or ruling by the Arbitrator as to procedural or evidentiary matters.
- 11.3 The parties agree that as a condition of being present or participating in the arbitration, they will, unless compelled by law, preserve total confidentiality in relation to the course of proceedings within the arbitration and in relation to any exchanges that may come into their knowledge, whether oral or documentary, concerning the dispute, passing between any of the parties and the arbitrator or between any two or more of the parties within the arbitration. This agreement does not restrict the parties' freedom to disclose and discuss the course of proceedings and exchanges within the arbitration with advisers and insurers of a party to the dispute PROVIDED ALWAYS that any such disclosure and discussions will only be on the same basis of confidentiality.

### **RULE 12 Waiver of Right to Object**

- 12.1 Subject to any Statute Law or principle of common law or equity, or prior written agreement of the parties, if a party to arbitral proceedings takes part, or continues to take part, in those proceedings without making forthwith or within a reasonable time thereafter any objection:
- a. that the Arbitrator lacks substantive jurisdiction;
  - b. that the proceedings have been improperly conducted;
  - c. that there has been a failure to comply with the Rules; or
  - d. that there has been any other irregularity affecting the Arbitrator or the proceedings,

then that party shall be deemed to have waived its right to make such objection later, before the Arbitrator or a Court, unless it shows that, at the time it took part of continued to take part in the proceedings, it did not know and could not with reasonable diligence have discovered the grounds for the objection.

- 12.2 Subject to any Statute Law or prior written agreement of the parties, where the Arbitrator rules that he or she has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling in a Court does not do so within any time fixed by the Arbitrator (or if no time is fixed, within a reasonable time and not

later than the conclusion of any hearing), then that party shall be deemed to have waived any right it may otherwise have had to later object to the Arbitrator's substantive jurisdiction on any ground which was the subject of that ruling, and shall be deemed to have submitted to the Arbitrator's jurisdiction.

### **RULE 13 Procedural Directions**

Subject to any Statute Law or prior written agreement of the parties, and the requirements of Rule 10, the Arbitrator may make such directions or rulings in respect of procedural and evidentiary matters as he or she sees fit.

### **RULE 14 Views and Other Material**

- 14.1 The Arbitrator may, in his or her discretion, view the subject matter or site of any dispute, the view of which might assist the Arbitrator in determining the issues in dispute. The Arbitrator may use his or her own observation not merely to assist in understanding the evidence but also as material which he or she may use in determining the issues in dispute provided that, in so doing, the Arbitrator puts the parties on notice of any preliminary adverse conclusion which is based solely on the Arbitrator's observations on the view and then affords such parties a reasonable opportunity to meet it.
- 14.2 Subject to any Statute Law or contrary agreement of the parties, the Arbitrator shall be at liberty to obtain such technical and/or legal assistance or advice as the Arbitrator may, in his or her discretion, reasonably require provided that, in so doing, the Arbitrator complies with the rules of natural justice. The costs or expenses of so doing shall form part of the Arbitrator's fees and expenses of the arbitration.

### **RULE 15 Awards**

- 15.1 Subject to any Statute Law or the Agreement, the Arbitrator shall within a reasonable time deliver one or more interim awards so as to deal with all issues in the arbitration except for the costs of the arbitration.
- 15.2 The Award of the arbitrator is binding upon the parties. Unless otherwise agreed, the parties have no right of appeal other than that provided in the *Commercial Arbitration Act 2010* or any other legislation which governs the conduct of the arbitration.
- 15.3 Thereafter, at the time and in the manner directed by the Arbitrator, the parties shall place before the Arbitrator such evidence and submissions on which they respectively rely on the question of costs, and the Arbitrator shall as soon as reasonably practicable thereafter deliver a final award which includes the Arbitrator's determination on costs, including by whom and in what manner the whole or any part of the costs of the arbitration are to be paid.
- 15.4 Awards of the Arbitrator shall be made in writing, and either forwarded by mail to the successful party (and a signed copy thereof shall be forwarded to the other party or parties) or the Arbitrator may advise the parties that the award may be collected at some place nominated by the Arbitrator.
- 15.5 In the event that security moneys lodged are less than that which the Arbitrator determines as the Arbitrator's fees and expenses and any other amounts to be paid from that security, then the Arbitrator may withhold the award until a party pays the outstanding balance so determined by the Arbitrator, whereupon such party may collect the award.

## PART III GENERAL

### RULE 16 Definitions

In these Rules:

The '**Law Society**' means The Law Society of New South Wales.

'**Appointed Arbitrator**' means an arbitrator who has been appointed by the Law Society or agreed by the parties but who has not entered on the reference to arbitration.

'**Arbitrator**' means an arbitrator who has entered on the reference to arbitration.

'**the costs of the arbitration**' includes the costs of the reference and the costs and disbursements of the parties.

'**the costs of the reference**' includes the fees and expenses of an Arbitrator or Appointed Arbitrator, any Appointment Fee or other fee payable to the Law Society, the costs of room hire or transcript, and any fees or expenses incurred pursuant to Rule 14.2.

'**Contract**' means Contract for Sale of Land – 2005 edition, Contract for Sale and Purchase of Land – 2014 edition or any subsequent edition.

'**Court**' means any Court which has jurisdiction under the Statute Law which governs arbitration in the place where the arbitration is held.

'**days**' means normal working days and shall exclude Saturdays, Sundays and public holidays.

'**dispute**' includes, but is not limited to, a claim made by the purchaser under Clause 7 of the Contract in NSW.

### RULE 17 Application of Rules

These Rules are subject to the Statute Law which governs arbitration in the place where the arbitration is held and to any agreement between the parties in relation to the arbitration process. Otherwise where the parties to a dispute have agreed to arbitration in accordance with these Rules, they are thereby bound to comply with these Rules.

### RULE 18 Counting of Days

18.1 For the purpose of counting days under these Rules, such period shall begin to run on the day following the day when notice, notification, communication or proposal is actually received or deemed to be received under paragraph 2 of this Rule, whichever is earlier. If the last day of such period is a public or official holiday or a non-business day at the residence or place of business of the addressee, then the period is extended until the first business day which follows.

18.2 Any such notice, notification, communication or proposal which is posted is deemed to have been received on the second day following the day of posting. Any such notice, notification, communication or proposal which is sent by facsimile or other means of telecommunication or electronic transmission is deemed to have been received on the day of transmission.

### RULE 19 Termination of the Arbitration

The arbitration is terminated after the handing down of a final award and an award to costs if any, by the Arbitrator or by the execution of a settlement agreement prior to the handing down of an award by the Arbitrator