



# DISPUTE REVIEW BOARD

SOUTH AFRICA

DISPUTE PREVENTION SOLUTIONS  
FOR THE CONSTRUCTION, BUILDING  
AND ENGINEERING INDUSTRY

DISPUTE REVIEW BOARD RULES  
1ST EDITION

1. The Dispute Review Board (“DRB”) shall be established in accordance with the provisions of the Professional, Building, Engineering or Construction Contract or, where the Contract is silent, in accordance with the Rules.
2. The objective of the Dispute Review Board is to assist the Parties in avoiding a formal dispute process, in resolving them through informal assistance, and by issuing an Opinion and Recommendation with respect to a Disagreement or Dispute upon formal referral to the DRB.
3. The DRB shall remain impartial and independent of the Parties.
4. The DRB shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties, any facts or circumstances which might be of such a nature as to call into question the DRB’s independence in the eyes of the Parties, as well as any circumstances that could give rise to reasonable doubts as to the DRB’s impartiality.
5. Should any Party wish to challenge the DRB on the basis of an alleged lack of impartiality, independence or otherwise, it may, within 10 working days of becoming aware of the facts upon which the challenge is based, submit to the DRB a request for a decision upon the challenge including a written statement of such facts. The DRB will finally decide the challenge after having given the other Party an opportunity to comment on the challenge.
6. If the DRB Member is successfully challenged, the DRB shall recuse itself forthwith.
7. By accepting to serve, the DRB undertakes to carry out their responsibilities in accordance with the Rules.
8. Unless otherwise agreed by the Parties or otherwise required by applicable law, any information obtained by the DRB during the course of the DRB’s activities shall be used by the DRB only for the purposes of the DRB’s activities and shall be treated by the DRB confidential.
9. Before commencing DRB activities, the DRB shall sign with all of the Parties a DRB Agreement.
10. The Parties may at any time, without cause and with immediate effect, jointly terminate the DRB Agreement but shall pay the fees incurred up to the date of the termination, unless otherwise agreed by the Parties and the DRB.
11. The Parties shall fully cooperate with the DRB and communicate information to it in a timely manner. In particular, the Parties and the DRB shall cooperate to ensure that, as soon as possible after the DRB has been constituted, the DRB becomes fully informed about the Contract and its performance by the Parties.
12. The Parties shall ensure that the DRB is kept informed of the performance of the Contract and of any Disagreements arising in the course thereof by such means as progress reports, meetings and, if relevant to the Contract, site visits.
13. The DB shall, after consultation with the Parties, inform them in writing of the nature, format and frequency of any progress reports that the Parties shall send to the DRB.
14. If requested by the DRB, the Parties shall provide the DRB, during meetings and site visits, with adequate working space, accommodation, means of communication, typing facilities and all necessary office and information technology equipment allowing the DRB to fulfil its functions.
15. The proceedings before the DRB shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties or, failing them, the DRB may settle on. In particular, in the absence of an agreement of the Parties with respect thereto, the DRB shall have the power, inter alia, to:
  - determine the language or languages of the proceedings before the DRB, due regard being given to all relevant circumstances, including the language of the Contract;
  - require the Parties to produce any documents that the DRB deems necessary in order to fulfil its function;
  - call meetings, site visits and hearings;
  - decide on all procedural matters arising during any meeting, site visit or hearing;
  - question the Parties, their representatives and any witnesses they may call, in the sequence it chooses;
  - appoint one or more experts, with the agreement of the parties;
  - issue a Conclusion even if a Party fails to comply with a request of the DRB;
  - decide upon any provisional relief such as interim or conservatory measures; and
  - take any measures necessary for it to fulfil its function as a DRB.
16. Decisions of the DRB regarding the rules governing the proceedings shall be taken by the DRB.

17. The DRB may take measures for protecting trade secrets and confidential information.
18. If there are more than two Parties to the Contract, the application of the Rules may be adapted, as appropriate, to the multiparty situation by agreement of all of the Parties or, failing such agreement, by the DRB.
19. If at any time, in particular during meetings or site visits, the DRB considers that there may be a potential Disagreement between the parties, the DRB may raise this with the Parties with a view to encouraging them to avoid the Disagreement on their own without any further involvement of the DRB. In so doing, the DRB may assist the Parties in defining the potential Disagreement. The DRB may suggest a specific process that the Parties could follow to avoid the Disagreement, while making it clear to the Parties that it stands ready to provide informal assistance or to issue an Opinion and Recommendation in the event that the Parties are unable to avoid the Disagreement on their own.
20. Any Party may at any time formally refer a Disagreement to the DRB for an Opinion and Recommendation, at which point the Disagreement becomes a Dispute.
21. Any Party shall refer a Dispute to the DRB by submitting a concise written statement of its case (the "Statement of Case") to the other Party and the DRB. The Statement of Case shall include:
  - a clear and concise description of the nature and circumstances of the Dispute;
  - a list of the issues submitted to the DRB for an Opinion and Recommendation and a statement of the referring Party's position thereon, including any relevant facts and law;
  - relevant support for the referring Party's position such as documents, drawings, schedules and correspondence;
  - a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims; and
  - any request for interim or conservatory measures.
22. The date on which the Statement of Case is received by the DRB shall, for all purposes, be deemed to be the date of the commencement of the referral (the "Date of Commencement").
23. The Parties remain free to settle the Dispute at any time, with or without the assistance of the DRB.
24. Unless the Parties agree otherwise or the DRB orders otherwise, within 10 working days of receiving the Statement of Case the responding Party shall respond in writing (the "Response"). The Response shall include:
  - a clear and concise statement of the responding Party's position with respect to the Dispute;
  - relevant support for its position such as documents, drawings, schedules and correspondence; and
  - a statement of the issues on which the responding Party requests the DRB's Opinion and Recommendation, including any request for interim or conservatory measures.
25. The DRB may at any time request a Party to submit additional written statements or documentation, or request a Hearing, to assist the DRB in preparing its Opinion and Recommendation. Each such request shall be communicated in writing by the DRB to the Parties.
26. All fees and expenses of the DRB shall be shared equally by the Parties, unless otherwise agreed by the Parties.
27. Upon receipt of an Opinion and Recommendation, the Parties may comply with it voluntarily but are not required to do so. The Agreement between the Parties may allow that the DRB's Opinion and Recommendation is binding until such time it is overturned by a formal dispute procedure such as Adjudication or Arbitration.
28. The Parties agree that if no Party has given a written notice to the other Party and the DRB expressing its dissatisfaction with an Opinion and Recommendation within 10 working days of receiving it, the Opinion and Recommendation shall become final and binding on the Parties. The Parties shall comply without delay with an Opinion and Recommendation and agree not to contest the Opinion and Recommendation, unless such agreement is prohibited by applicable law.
29. If any Party fails to comply with an Opinion and Recommendation when required to do, the other Party may refer the failure itself, without having to refer it to the DRB first, either to arbitration, if the Parties have so agreed, or, if not, to any court of competent jurisdiction. A Party that has failed to comply with an Opinion and Recommendation, when required to do so, shall not raise any issue as to the merits of the Opinion and Recommendation as a defence to its failure to comply without delay with the Recommendation.

30. Any Party that is dissatisfied with an Opinion and Recommendation shall, within 10 working days of receiving it, give written notice expressing its dissatisfaction to the other Party and the DRB. Such notice may specify the reasons for the Party's dissatisfaction, in the absence of which the DRB may request the Party to provide the DRB and the other Party with brief reasons for its dissatisfaction.
31. If any Party gives such a written notice expressing its dissatisfaction with an Opinion and Recommendation, or if the DRB does not render its Opinion and Recommendation within the time limit prescribed, or if the DRB is disbanded pursuant to the Rules before an Opinion and Recommendation regarding a Dispute has been rendered, the Dispute in question shall be finally settled by arbitration, if the parties have so agreed, or, if not, by any court of competent jurisdiction.
32. The DRB shall not be liable for any claims in respect of any act or omission in discharging their duties unless such act or omission can be proven to have been made in violation of the DRB rules, out of negligence, illegally or in bad faith



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Contact the DRB for assistance today  
Email: [chairman@drbsa.co.za](mailto:chairman@drbsa.co.za) | Visit: [www.drbsa.co.za](http://www.drbsa.co.za)