

This is a translation into English of the original rules in Danish. In the event of discrepancies between the two texts, the Danish original text shall be considered final and conclusive.

Rules of arbitration procedure for disputes relating to building and construction (VBA' arbitration rules 2010)

Part 1 Arbitration Agreement

Article 1. The arbitral tribunal for building and construction decides disputes between parties who have agreed to submit to the arbitral tribunal disputes that have arisen or may arise between them in respect of activities within building and construction. Such agreement shall be deemed to exist once the parties have adopted 'General Conditions for the Provision of Works and Supplies within Building and Construction' of 10 December 1992 (AB 92), 'General Conditions for the Provision of Technical Consultancy and Assistance' of October 1989 (ABR 89) or 'General Conditions for Design and Build Contracts' of December 2003 (ABT 93).

Paragraph 2. In cases involving consumer-related disputes, an arbitration agreement concluded before the dispute arose shall not be binding upon the consumer.

Part 2 Composition of the arbitral tribunal

Article 2. An arbitral tribunal shall consist of a professional arbitrator to be appointed by the chairman of the Presidency of the arbitral tribunals as well as of two expert arbitrators to be appointed by the Arbitration Board depending on the nature of the individual case, however see the provisions of articles 3-5 below.

Paragraph 2. When warranted by the nature of the case or the issues involved in it, the Arbitration Board may propose to the parties that the arbitral tribunal subsequently be set up in accordance with the provisions of articles 4-6 below or be dealt with under the rules of simplified arbitration procedure.

Article 3. At the request of any party the arbitral tribunal shall be expanded by two additional professional arbitrators to be appointed by the chairman of the Presidency of the arbitral tribunals.

Paragraph 2. The additional cost of such expansion shall be taken into account when deciding the apportionment of costs. If the tribunal finds that the request for an expansion of the arbitral tribunal was not sufficiently justified, it may decide that the costs resulting from the expansion shall be defrayed by the party filing the request.

¹ VBA is the acronym for the Danish Arbitration Board for Building and Construction

Article 4. At the request of the parties the Arbitration Board may decide that the arbitral tribunal shall consist of a sole expert arbitrator. Such request may be made in the statement of claim. **Paragraph 2.** The Arbitration Board may of its own account propose to the parties that a case be decided by an arbitral tribunal consisting of a sole expert arbitrator, if this is deemed appropriate. **Paragraph 3.** If warranted by the nature of the case or the issues involved in it, the Arbitration Board may subsequently decide to compose the arbitral tribunal in accordance with the provisions of article 2 above.

Article 5. At the request of the parties the chairman of the Presidency of the arbitral tribunals may decide that a tribunal shall consist of a sole professional arbitrator.

Paragraph 2. The Arbitration Board may of its own account propose to the parties that a case be decided by a tribunal consisting of a sole professional arbitrator, if this is deemed appropriate. **Paragraph 3.** If warranted by the nature of the case or the issues involved in it, the Arbitration Board may subsequently decide to compose the arbitral tribunal in accordance with the provisions of article 2 above.

Article 6. When a person is approached in connection with the possible appointment as arbitrator, he shall disclose any and all circumstances that may give rise to justifiable doubt as to his impartiality or independence. From the time of the appointment and throughout the arbitral proceedings, an arbitrator shall without delay disclose any such circumstances unless they have already been disclosed by him.

Paragraph 2. When the members of the arbitral tribunal have been appointed, the parties shall be informed of the appointment.

Paragraph 3. The appointment of an arbitrator may be challenged only if circumstances exist which give rise to justifiable doubts as to the impartiality or independence of the arbitrator or as to the qualifications of an expert arbitrator.

Paragraph 4. A party wishing to challenge an arbitrator shall, within 15 calendar days of becoming aware of the appointment of the arbitrator and the circumstances upon which the challenge relies, submit a written statement to the Arbitration Board setting out the reasons for the challenge. **Paragraph 5.** Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge

Paragraph 6. If a challenge to an arbitrator is not successful, the challenging party may request, within 30 calendar days of receipt of notice of the decision to reject the challenge, that the challenge be decided by the courts of law.

Part 3

Conduct of the arbitral proceedings

Article 7. The parties shall be treated with equality and each party shall be given full opportunity to present its case.

Article 8. The arbitral tribunal may conduct the arbitral proceedings in such manner as it considers appropriate.

Paragraph 2. The powers conferred upon the arbitral tribunal include the power to determine the admissibility of evidence and the actual circumstances upon which the case will be decided.

Article 9. As a general rule, the oral hearing shall take place at the registered address of the Arbitration Board. However, when deemed practical under the circumstances, the arbitral tribunal may decide to hear the case elsewhere.

Article 10. The arbitral proceedings in a case shall be deemed to have commenced once a statement of claim has been submitted to the Arbitration Board for Building and Construction.

Paragraph 2. A statement of claim submitted by fax or email shall be deemed to have been received on the date it was stamped by the Arbitration Board as being received. This shall also apply to other written pleadings in the case.

Article 11. The statement of claim shall contain the following information:

- (1) the identity of the parties involved as well as their addresses and phone numbers,
- (2) the claim of the claimant and a brief description of the facts upon which it is relied, and
- (3) a list of the documents which the claimant intends to invoke. The documents must be enclosed and must be serially numbered (**1, 2**, a.s.o.).

Paragraph 2. The statement of claim must be submitted in 4 copies. In cases considered by a sole arbitrator the number of copies shall be reduced to 2, and in cases heard by a 5-member tribunal it shall be increased to 6. A copy of the statement of claim shall also be forwarded directly to the respondent.

Paragraph 3. Any documents (exhibits) shall be submitted in 2 copies, and in cases heard by a 5-member tribunal this number shall be increased to 4.

Article 12. Within a period of time to be determined by the Arbitration Board, the respondent shall produce a statement of defence to be submitted to the Arbitration Board for Building and Construction.

Paragraph 2. The statement of defence shall contain:

- (1) the respondent's defence,
- (2) an indication of any counterclaims,
- (3) a presentation of the actual and legal circumstances upon which the defence and the counterclaims are relied, and
- (4) a specification of the documents and other evidence upon which the respondent intends to rely. The documents must be enclosed and must be serially lettered (**A, B**, a.s.o.).

Paragraph 3. The provisions of par. 2 and 3 of article 11 above shall apply mutatis mutandis.

Article 13. The parties may also exchange reply and rejoinder and further pleadings subject to a deadline to be fixed by the arbitral tribunal.

Article 14. Once it has received the statement of claim, and not later than when it has received the statement of defence, the arbitral tribunal or, if the arbitral tribunal so decides, the Arbitration Board, shall convene the parties to a preliminary meeting, unless the arbitral tribunal does not find it appropriate. The notice convening the meeting shall set out the issues to be addressed at the meeting.

Paragraph 2. At the preliminary meeting the parties shall clarify their position in relation to actual and legal circumstances, and an attempt shall be made to identify which circumstances that are not in dispute, and which circumstances that must be subjected to the presentation of evidence. It shall further be clarified if any objections on a point of law will be made, and whether there are any invitations to a party to produce factual information, including the submission of documents or other evidence.

Paragraph 3. At the preliminary meeting the arbitral tribunal or, if the arbitral tribunal so decides, the Arbitration Board, shall also try to determine the further proceedings in the case, if possible, subject to prior discussions with the parties, including:

- (1) the timetable for the submission of statement of defence, reply and rejoinder and any additional preparatory activities,
- (2) the timetable for the production and presentation of a report by an expert,
- (3) a time when the preparatory activities end,
- (4) a time and place for the oral hearing, and
- (5) the procedure to follow for the oral hearing, including a deadline for the submission of claim documents and possibly a case bundle.

Paragraph 4. The preliminary meeting shall be held at the address of the Arbitration Board, or at another venue decided by the arbitral tribunal, or in the form of a conference call, video conference, or the like.

Paragraph 5. If no preliminary meeting is held as set out in par. 1 of this article, upon receipt of the statement of claim, and not later than upon receipt of the statement of defence, the Arbitration Board shall prepare a timetable for the proceedings in the case, including, if possible, a date for the oral hearing.

Article 15. Any party may supplement its claim or defence, make new submissions or present new evidence (nova).

Paragraph 2. Nova presented later than 8 calendar days before the oral hearing shall not be considered in the case unless very special circumstances apply.

Article 16. If a party is unable to meet a deadline fixed pursuant to articles 13 -14 above, it shall submit a reasoned request for an extension of the deadline to a specific later date well in time before the deadline.

Paragraph 2. The arbitral tribunal shall decide whether to grant such extension in full or in part, possibly after having heard the opponent.

Paragraph 3. Failure by a party to submit a pleading by the set deadline may cause the arbitral tribunal to decide that it will disallow the pleading; that it will decide the case on the evidence before it, and that documents not already produced in evidence will not be allowed.

Article 17. The arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. The arbitral tribunal may order a party to give the expert any and all relevant information and grant him access to inspect documents and other evidence. **Paragraph 2.** The party requesting the production of an expert report shall be obliged to provide security for all costs related to the production of the report by the expert, including a fee to the Arbitration Board in cover of its costs of handling the case. The Arbitration Board shall decide the size and nature of the security, which must be lodged immediately. If no security is lodged, the arbitral tribunal shall disallow the involvement of the expert, and the case shall be heard and decided without the expert report. The expert shall be notified of the size of the security lodged. If the scope of the case turns out to be wider than originally anticipated, the Arbitration Board may demand that the security be increased. The expert must notify the Arbitration Board if it turns out that the security lodged is not sufficient. The expert must make sure throughout the case that the security lodged is sufficient to cover all costs incurred in the case.

Paragraph 3. The Arbitration Board shall contact the expert to determine a timetable for the production of the report and shall monitor compliance with the deadline. The timetable for the expert report shall be determined on the basis of the overall timetable for the preparation of the case, see par. 3 of article 14 above.

Paragraph 4. When the expert has been appointed and has acquainted himself with the request as well as the information enclosed with the request, he shall give the parties an opportunity to voice their opinion in the case and produce further information. The expert may choose to conduct the process by oral or written procedure, or a combination of the two.

Paragraph 5. All parties shall be summoned to meetings with the expert in the case. The parties will be given a choice between five possible times for meetings and must respond by a deadline fixed by the expert. Upon the expiry of the deadline the expert chooses one of the five possible times for the meeting. If a party is unable to attend the meeting, an alternate may attend in its place. All parties will be informed of the statements made by the opponent at the meeting as well as the documents submitted to the expert. During the expert's inspection, any party may change the original terms of reference and put additional questions to the expert.

Paragraph 6. If case of disagreement between the parties on the terms of reference of the expert, or on the presentation of exhibits, the dispute shall be brought before the presiding arbitrator of the arbitral tribunal or, if he so decides, before the Arbitration Board. The parties may file written pleadings in the case for a period of two weeks after discovery of the disagreement. The presiding arbitrator or, if he so decides, the Arbitration Board, shall decide the dispute in writing, unless it is deemed more appropriate to decide the dispute at a meeting. Immediately after the dispute has been decided, the presiding arbitrator or, if he so decides, the Arbitration Board, shall decide how to settle the issue of costs incurred in connection with the dispute. If no arbitral tribunal has been appointed, the Arbitration Board shall decide the dispute.

Paragraph 7. At the request of any party, or if deemed necessary by the arbitral tribunal, after delivery of his oral or written report the expert may be asked to attend the oral hearing in the main case, where the parties and the members of the arbitral tribunal shall have an opportunity to put questions to him.

Article 18. Acting on its own initiative or upon request, the arbitral tribunal, or possibly only the

expert arbitrators, may conduct a site inspection of the building or civil engineering works out of which the case has arisen.

Article 19. The arbitral tribunal may on its own initiative decide to procure information and initiate investigations for use in its resolution of the case. The parties shall be notified of such a decision and shall be informed of the information obtained thereby, and they shall be allowed to voice their opinion.

Article 20. Questions on points of procedure may be decided by the presiding arbitrator alone.

Article 21. At any time during the case the arbitral tribunal may attempt to mediate a settlement between the parties.

Article 22. Once it finds that the parties have been given opportunity to state their opinions and produce the necessary information, the arbitral tribunal shall fix a time for the oral hearing of the case.

Paragraph 2. Before the exchange of pleadings has ended, the arbitral tribunal may decide that a date be set for the oral hearing, see par. 3 of article 14 above.

Paragraph 3. However, if deemed appropriate and after having heard the parties, the arbitral tribunal may determine to decide the case on the basis of written submissions only.

Article 23. The parties should make sure that all persons capable of elucidating the case appear before the arbitral tribunal at the oral hearing. Not later than 8 calendar days before the oral hearing the parties shall notify the arbitral tribunal and the opponent of the identity of anyone appearing as their representative and of the witnesses they intend to bring forward.

Paragraph 2. The arbitral tribunal may direct the parties to appear in person and to make sure that anyone having been involved in the case at hand be brought before the arbitral tribunal as a witness.

Article 24. Records shall be kept of the proceedings in the case.

Paragraph 2. The records shall contain information on the negotiation meetings held in each individual case, stating time and place, the participants and the outcome of the negotiation.

Paragraph 3. The parties may demand transcripts of the entries recorded.

Article 25. The oral hearing in the case shall be conducted in such manner as the arbitral tribunal sees fit.

Paragraph 2. Prior to the oral hearing the parties shall submit their final claim document to the other parties and to the Arbitration Board.

Paragraph 3. Not later than 4 weeks before the oral hearing, the claimant shall submit a compilation of exhibits, provided with a list of contents and paginated, unless the arbitral tribunal has decided that the parties are to produce a case bundle, see par. 4 of article 25 below. Prior to the

submission, the contents of the compilation of exhibits must have been reconciled with the other parties to the case. The compilation of exhibits shall be submitted to the Arbitration Board in 4 copies. In cases where the arbitral tribunal consists of a sole arbitrator, the number of copies is reduced to 2, and in cases where the arbitral tribunal consists of 5 arbitrators, the number is increased to 6. The compilation of exhibits shall also be sent directly to the respondent.

Paragraph 4. The presiding arbitrator may decide that, prior to the oral hearing, the claimant acting jointly with the respondent shall produce a case bundle consisting of copies of the documents, or parts of documents, upon which the parties intend to rely during the oral hearing. The case bundle shall be submitted to the other parties and to the Arbitration Board. The parties shall not be barred from relying upon documents that have already been produced in the case, but which are not included in the case bundle.

Paragraph 5. If, after having set down the case for an award, the arbitral tribunal finds that it lacks information that is considered desirable for it to have when making the award, the proceedings shall be reopened. The parties shall be notified thereof and shall be given an opportunity to procure the information lacking. If the arbitral tribunal itself procures further information, the provision stipulated in the second clause of article 19 shall apply.

Article 26. If a party fails to appear at an oral hearing without showing sufficient cause, or if a party fails to participate in the arbitration proceedings with reasonable diligence, see articles 12 and 13 above, the arbitral tribunal may decide the case on the evidence before it, thereby barring the party from producing additional pleadings and exhibits in the case, regardless of the provision of par. 2 of article 15.

Part 4

Termination of the arbitral proceedings

Article 27. If, during the arbitral proceedings, the parties settle the dispute on their own or with the help of the arbitral tribunal, the arbitral tribunal shall terminate the proceedings.

Paragraph 2. The arbitral tribunal may give an oral or written advisory opinion outlining its views on the case.

Article 28. The arbitral award shall be made in writing, and a copy of it, signed by the members of the arbitral tribunal, shall be kept in the files of the Arbitration Board.

Paragraph 2. The arbitral award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given.

Paragraph 3. The arbitral award shall state its date and the place of arbitration. The arbitral award shall be deemed to have been made at that place.

Paragraph 4. The arbitral tribunal shall make its award as soon as possible and, if possible, not later than four weeks after the case was set down for an award.

Paragraph 5. Should the members of the arbitral tribunal fail to reach agreement, the case shall be decided in accordance with the majority of votes.

Paragraph 6. The members of the arbitral tribunal may demand that the award contain the different opinions as they were voiced in connection with the vote.

Paragraph 7. After the arbitral award has been made, the parties shall each receive a copy that has been authenticated by the Arbitration Board.

Article 29. The arbitration case shall be terminated by the making of the final arbitral award, or by settlement, see article 27, or by a decision of the arbitral tribunal pursuant to paragraph (2) of this article or par. 4 of article 32.

Paragraph 2. The arbitral tribunal may decide to terminate the case in the event that:

- (1) the claimant withdraws its claim, unless the respondent objects to the termination of the case and the arbitral tribunal recognises that the respondent has a legitimate interest in obtaining a final resolution of the dispute,
- (2) the parties agree to terminate the proceedings, or
- (3) the arbitral tribunal finds that for other reasons a continuation of the proceedings has become unnecessary or impossible.

Paragraph 3. The mandate of the arbitral tribunal shall cease with the termination of the arbitral proceedings, however see article 30.

Article 30. Within thirty calendar days of receipt of the arbitral award, a party may send a request to the arbitral tribunal, with a copy to the other party, asking it to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. If the arbitral tribunal considers the request to be justified, it shall make the correction within thirty calendar days of receipt of the request.

Paragraph 2. The arbitral tribunal may correct any errors of the types referred to in par. 1 of this article on its own account within thirty calendar days of the date of the award.

Paragraph 3. Within thirty days of receipt of the arbitral award a party may send a request to the arbitral tribunal, with a copy to the other party, asking it make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty calendar days of receipt of the request.

Paragraph 4. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction or an additional award pursuant to par. 1 and 3 of this article.

Paragraph 5. The provisions of par. 1-3 and 5-7 of article 28 shall apply mutatis mutandis to corrections or additional awards.

Article 31. Unless objected to by a party, the arbitral tribunal may arrange for awards or advisory opinions to be published in the specialist press without indication of names.

Part 5

Provision of security and costs

Article 32. The parties shall provide security for all costs estimated to arise out of the case, including a fee to the Arbitration Board in cover of its handling costs for the case.

Paragraph 2. Security shall be provided as soon as the Arbitration Board has determined the size and nature of the security to be provided, using as a basis therefor the financial scope of the case. Should it later turn out that such scope is wider than originally anticipated, the Arbitration Board may demand the security to be increased.

Paragraph 3. As a general rule, the two parties shall be required to put up identical security. Failure by a claimant to advance the required security shall cause the case to be dismissed. Failure by a respondent to advance the required security shall result in the claimant having to put up the full security. The same provisions shall apply to counterclaims.

Paragraph 4. Failure to provide the required security may cause the Arbitration Board to terminate the proceedings.

Article 33. The arbitral tribunal may order a party to indemnify the other party in full or in part for the costs incurred by the latter in connection with the arbitration case. When apportioning the costs of the case between the parties, the arbitral tribunal may take account of such circumstances as are set out in par. 2 of article 34.

Article 34. Upon the termination of the arbitration case, the arbitral tribunal shall submit to the Arbitration Board an account of all costs arising out of the arbitral proceedings. The size of the fee payable to the arbitrators shall be subject to the approval of the Arbitration Board, which will then produce a statement of the total costs of the arbitration case, including the fee stipulated in article 32, and settle the costs with the parties.

Paragraph 2. Upon recommendation of the arbitral tribunal, the Arbitration Board may decide that a party having failed to avoid unnecessary delay or not having participated in the arbitration proceedings with reasonable diligence or having generally protracted the proceedings, shall pay a special fee to the Arbitration Board of up to 100 per cent of the fee mentioned in par. 1 of this article, regardless of the general apportionment of costs in the case.

Paragraph 3. Except for the fee mentioned in par. 2 of this article, the parties shall be jointly and severally liable for the payment of the total costs, regardless of the apportionment of costs stipulated in the award and whether or not the amount is higher than the security provided. **If**, as a result, one party has to pay for the other party, the former shall have a right of recourse against the latter.

Article 35. A party may bring the separate issue of the determination of costs payable to the arbitral tribunal before a court of law within 30 calendar days of having received notice of the costs. If the costs of the arbitral proceedings are reduced, the reduction shall also apply to a party not having brought the issue before a court of law.

Article 36. Neither the arbitrators nor the Arbitration Board or its employees shall be responsible for any acts or omissions in connection with a request for arbitration, the proceedings in an arbitration case or an award made by an arbitral tribunal.

Part 6

The impact of the provisions of the Danish Arbitration Act

Article 37. It follows from Act no. 553 of 24 June 2005 on arbitration that the provisions of Parts 12 and 8-10, and the provisions of par. 3 of article 11, the first clause of par. 3 of article 13, the second clause of par. 1 of article 14, the second clause of par. 3 of article 16, article 27, par. 3 of article 34, article 12, the second clause of par. 4 of article 16, article 18, par. 1 and 3 of article 31, and par. 5 of article 33, see par. 1 and 3 of article 31, cannot be waived by agreement. Accordingly, the above provisions shall apply to arbitral proceedings within building and construction to the extent that they are relevant.

Paragraph 2. The provisions of the Danish Arbitration Act not mentioned in par. 1 of this article may be waived by agreement. These provisions shall apply to the extent that they have not been waived by means of the above provisions and are relevant to arbitral proceedings in the building and construction industry.

Part 7

Adoption, approval, publication and entry into force of the rules

Article 38. The above rules were adopted on 15 November 2010 by the Arbitration Board for Building and Construction in accordance with the bye-laws of the Arbitration Board for Building and Construction of 24 February 2010.

Paragraph 2. The rules were approved by the Danish National Agency for Enterprise and Construction on 16 December 2010.

Paragraph 3. The rules are publicly available on Retsinformation (the on-line legal information system of the Danish State) and on the website of the Arbitration Board at www.voldgift.dk. Upon the commencement of arbitral proceedings, a copy of the present rules shall be sent to the parties involved in the case.

Paragraph 4. The rules shall become effective on 1 January 2011 and shall apply to arbitration cases brought before the Arbitration Board for Building and Construction after that date. **Para-**

graph 5. "Rules of arbitration procedure for disputes relating to building and construction" of 25 July 2006 are hereby rescinded, however they remain in force with regard to arbitration cases brought before the Arbitration Board prior to 1 January 2011.

The Arbitration Board for Building and Construction
15. november 2010