
Annexure E

EXPEDITED ARBITRATION RULES

(Clause 11.11(a))

1. Arbitration

1.1 The party referring the Dispute to arbitration (**Claimant**) must within 5 Business Days of giving notice under clause 11.9(a) of the M5 West Widening Deed, give to the other party (**Respondent**) a notice in writing (**Arbitration Notice**). The Arbitration Notice must set out, in brief, the following matters:

- (a) the nature of the Dispute;
- (b) the claims of liability in respect of which the Claimant seeks relief;
- (c) the relief sought; and
- (d) the basis or bases of such claims of liability.

1.2 The Respondent must, within 5 Business Days after receipt of the Arbitration Notice, give to the Claimant a written reply (**Reply**) which sets out the following matters:

- (a) any responses it may have in respect of the matters contained in the Arbitration Notice;
- (b) any counter-contentions and the basis or bases of such counter-contentions; and
- (c) the relief sought (if any).

2. Pleadings

2.1 Within 15 Business Days of the Reply, the Claimant must deliver to the Respondent its statement of contentions.

2.2 Within 15 Business Days of the date for delivery of the Claimant's contentions, the Respondent must deliver to the Claimant a response to such contentions and any counter-contentions it wishes to make.

2.3 Within 10 Business Days of the date for delivery of the response and any counter-contentions, the Claimant must deliver to the Respondent any response to the counter-contentions and any reply to the response to the contentions.

3. Evidence

3.1 Within 40 Business Days of close of pleadings each party must deliver all evidence-in-chief (including sworn witness statements and documents) in support of its contentions or counter-contentions that it wishes to rely upon.

3.2 Within 40 Business Days of the date for delivery of the evidence-in-chief, each party must deliver all evidence (including sworn witness statements and documents) in response to the evidence-in-chief that it wishes to rely upon.

3.3 Within 20 Business Days of the date for delivery of the response to the evidence-in-chief, each party must deliver all evidence (including sworn witness statements and documents) in reply to the evidence in response that it wishes to rely upon.

3.4 Within 15 Business Days of the date for delivery of the evidence in reply, each party must deliver all expert reports in chief upon in support of its contentions or counter-contentions that it wishes to rely upon.

3.5 Within 30 Business Days of the date for delivery of the expert reports in chief, each Party must deliver all expert reports in response that it wishes to rely upon.

4 Discovery

4.1 Save as set out in this section 4, neither party is entitled to discovery.

4.2 Within 10 Business Days of the close of pleadings, each party must provide to the other parties a list of all documents in its possession, custody or power relevant to the issues in the Dispute.

4.3 Within 10 Business Days of the receipt of the other parties' list of documents each party may make a request for discovery of any specified document or class of documents. Any such request must state why discovery of such document or documents is necessary for the fair and expeditious resolution of the Dispute.

4.4 The party receiving a request for discovery must comply with the request within 10 Business Days.

4.5 If the production of any of the documents requested is objected to, or no documents are produced, the requesting party may make an application to the arbitrator to determine whether, and if necessary how, such documents should be produced.

5. Powers of the Arbitrator

5.1 The arbitrator must act fairly and impartially and give each party a reasonable opportunity to be heard. Subject to clause 11.11(b) of the M5 West Widening Deed, the arbitrator must determine every Dispute according to law.

5.2 Each party must comply with all requirements of this annexure and the orders and directions of the arbitrator within the time-limits prescribed. A party may not rely upon any pleading, evidence or request for discovery delivered or amended after the time-limits prescribed, except with the leave of the arbitrator. The arbitrator may only grant such leave where:

- (a) it is satisfied that there are adequate grounds for the leave;
- (b) it is satisfied that granting leave in such circumstances would not prejudice the rights of the other party; and
- (c) it is satisfied that granting leave in such circumstances would not have a substantial detrimental effect on the expeditious and cost-effective resolution of the Dispute.

5.3 If a party fails, without the leave of the arbitrator, to comply with any requirement of this annexure or any order or direction of the arbitrator, within the time-limits prescribed, the arbitrator:

- (a) may continue the arbitration of the Dispute in spite of such failure;
- (b) may direct that the party in default is not entitled to rely on any matter, including any allegation or material, which was the subject of the requirement, order or direction;
- (c) may draw any adverse inferences from such failure as he or she thinks fit;

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- (d) may make any procedural or other order or direction to ensure that the arbitration of the Dispute is carried out in as fair, cost-efficient and expeditious a manner as is possible in the circumstances; and
- (e) may make any order as to payment of costs of the arbitration of the Dispute in consequence of such failure.
- 5.4 The arbitrator may extend any prescribed time-limit if it is satisfied that this is required for the fair or efficient resolution of the Dispute.
- 6. Conduct of the hearing**
- 6.1 The hearing of the evidence will be for a maximum period of two weeks. The arbitrator will sit for 5 days per week.
- 6.2 Each party must have a maximum of 100 hours to put its case including opening its case, leading evidence, cross-examining and re-examining witnesses. Subject to the other provisions of this annexure each party may utilize the time allocated to it at the hearing in any manner it thinks appropriate for the presentation of its case.
- 6.3 There will be no oral evidence-in-chief without the leave of the arbitrator.
- 6.4 The rules of evidence will not apply to the arbitration.
- 6.5 The weight that will be given to any evidence, of whatever nature and however presented, is wholly a matter for the discretion and decision of the arbitrator. In exercising his or her discretion, the arbitrator must not be in any way limited by any particular evidential or procedural rule (in particular the rule that evidence that is uncontradicted is to be accepted).
- 6.6 Following the close of the hearing of the evidence, the parties and the arbitrator must sit again within 10 Business Days. At that time, each party must make any oral submissions. Each party will be limited to one day for such oral submissions.
- 6.7 The arbitrator may limit the length of any part of the oral evidence or submissions notwithstanding the time limits set out in this annexure.
- 7. Award**
- 7.1 The arbitrator must render an award in respect of the Dispute.
- 7.2 The arbitrator must issue the relevant award within 40 Business Days of the completion of the oral submissions. The award must be reasoned.
- 7.3 The award will be final and binding.
- 7.4 To the extent possible by law, and in particular the *Commercial Arbitration Act 2010* (NSW), the parties agree that there will be no right of appeal from the award of the arbitrator.