

Standard Terms of Appointment

For civil and commercial mediation appointments handled by Steven Bate

1. Definitions

In these Terms:

Agreement means the case-specific Mediation Agreement entered into for the Mediation.

Parties means the parties identified in the Agreement and Party means any one of them.

Mediator means Steven Bate.

Practice means Bee Consulted Limited trading as Construction + Engineering Mediation.

Advisers means the legal or other professional advisers identified in the Agreement or otherwise notified to the Mediator.

Participants means the Parties, their Advisers and any other person permitted to participate in the Mediation.

Dispute means the dispute or differences identified in the Agreement.

Mediation includes the mediation meeting itself and the preparation, communications and meetings undertaken for the purposes of the mediation.

These Terms form part of the Agreement. If there is an inconsistency, the case-specific provisions of the Agreement prevail.

2. Appointment

The Parties jointly appoint Steven Bate to act as mediator of the Dispute and the Mediator accepts that appointment on these Terms.

The Mediator acts as an independent and impartial neutral. He does not act for, advise or represent any Party and does not decide the Dispute.

The Practice provides the administrative and contracting framework for the appointment and will issue invoices for the Mediator's fees and expenses.

An appointment is subject to satisfactory conflict and suitability checks, availability, agreement of these Terms and the Agreement, and confirmation by the Mediator that appropriate professional indemnity insurance is in force.

The Mediator has chosen to commit to the European Code of Conduct for Mediators and will conduct the Mediation consistently with that Code, subject to applicable law and the Agreement.

3. Independence, conflicts and suitability

Before accepting the appointment, the Mediator will consider whether he has the appropriate background and competence to mediate the Dispute and will carry out an appropriate conflict check.

The Mediator will disclose any circumstance of which he becomes aware that may affect, or may reasonably be perceived to affect, his independence or impartiality.

The obligation to disclose is continuing throughout the Mediation.

Following disclosure, the Mediator may act or continue to act only if he considers that he can do so independently and impartially and the Parties agree that he should continue.

The Mediator may decline or terminate an appointment if he considers that the Dispute is unsuitable for mediation by him or that he cannot properly continue to act.

4. Participation and authority

The Parties will participate genuinely in the Mediation with the intention of exploring whether the Dispute can be resolved. Nothing requires a Party to settle or to accept any particular terms.

Each Party must ensure that an individual with sufficient authority to agree settlement terms participates throughout the Mediation or is immediately available in a manner agreed with the Mediator.

Each Party is responsible for ensuring that its Advisers and other Participants understand and comply with the Agreement and these Terms.

No person other than an identified Participant may attend or observe the Mediation without the agreement of the Parties and the Mediator.

5. Role and conduct of the Mediator

The Mediator will conduct the Mediation in the manner he considers appropriate after taking account of the nature of the Dispute and the views of the Parties.

The Mediator may communicate with the Parties jointly or separately and may hold joint meetings, private meetings and pre-mediation discussions.

The Mediator may ask questions, test assumptions, explore risks and alternatives and assist the Parties to develop and evaluate possible settlement terms.

The Mediator:

- does not determine facts or law;
- does not provide legal advice to any Party;
- does not guarantee settlement;
- does not compel a Party to make or accept an offer; and
- does not decide whether any proposed settlement is commercially appropriate for a Party.

Each Party remains responsible for its own decisions and should obtain such independent legal, financial, technical or other advice as it considers appropriate.

6. Preparation and documents

The Mediator may give reasonable directions concerning case summaries, position papers, bundles and other preparatory material.

The Parties should aim to provide proportionate material containing what is reasonably necessary for the Mediator to understand the Dispute.

Unless otherwise agreed, the Parties should exchange any open or shared position material and provide it to the Mediator no later than five working days before the Mediation.

A Party may provide material privately to the Mediator. Material intended to be confidential to the Mediator must be clearly identified as such.

Providing a document for the purposes of the Mediation does not of itself alter any privilege or disclosure status it otherwise has.

7. Confidentiality and without prejudice status

The Mediation is private, confidential and without prejudice.

Subject to applicable law and any express agreement between the Parties, the Parties, Participants, Mediator and Practice will keep confidential information arising from or in connection with the Mediation, including communications made in preparation for it and the fact that the Mediation is proposed, is taking place or has taken place.

Information communicated privately by one Party to the Mediator will not be disclosed to another Party without the first Party's permission.

Confidential information may nevertheless be disclosed where and to the extent reasonably necessary:

- to a Party's professional advisers, insurers, insurance brokers, auditors or accountants who are themselves subject to appropriate confidentiality obligations;
- to implement or enforce a binding settlement;
- where disclosure is required by law, court order or a competent regulatory authority;

- where disclosure is reasonably necessary to prevent a serious risk to life or personal safety; or
- where the Parties otherwise agree in writing.

Nothing in these Terms makes privileged a document that would otherwise be disclosable merely because it has been used in the Mediation.

No Participant may make an audio or video recording, transcript or other automated record of any mediation meeting without the prior agreement of all Parties and the Mediator.

For the avoidance of doubt, an AI transcription, recording, meeting-assistant or note-taking service must not be introduced into a mediation session without that prior agreement.

The confidentiality provisions survive termination of the Mediation.

8. Online and hybrid mediation

The Mediation may take place in person, online or in a hybrid format agreed with the Parties.

For any remote participation, each Party must take reasonable steps to ensure that:

- only authorised Participants can hear or see the session;
- the location used provides reasonable privacy;
- no recording or unauthorised transcription takes place; and
- the technology used does not knowingly compromise the confidentiality of the Mediation.

The Mediator may pause or adjourn a remote session where a technical or confidentiality problem materially affects the process.

9. Fees, VAT and expenses

The Mediator's fee, included preparation time, mediation duration and each Party's agreed share will be stated in the Agreement.

Unless the Agreement states otherwise, all fees quoted by Construction + Engineering Mediation are inclusive of VAT.

For a two-party mediation, the Mediator's fee will normally be divided equally between the Parties, although the Parties may agree another allocation.

Additional preparation or mediation time outside the amount included in the agreed fee will be charged only where agreed with the Parties. Unless otherwise stated in the Agreement, the rate is £180 including VAT for each additional mediator hour in total, normally £90 per Party in a two-party mediation.

Reasonable travel and accommodation outside any travel included within the agreed fee will be charged at cost, agreed in advance.

Venue charges and third-party provider charges are additional unless expressly included in the Agreement.

Each Party is responsible for its own legal, expert and other professional costs.

The agreed Mediator's fee is payable in advance of the Mediation by the date stated on the invoice. The Mediator is not obliged to proceed with the Mediation unless the agreed payments have been received or another arrangement has been expressly agreed.

10. Cancellation and postponement

If the Mediation is cancelled more than 14 days before the agreed mediation date, no cancellation fee will normally be payable, although the Parties remain responsible for any reasonable non-refundable expenses already incurred with their agreement.

If the Mediation is cancelled within 14 days of the agreed date, 50% of the agreed Mediator's fee will be payable.

If, instead of cancellation, the Mediation is postponed and takes place within three months of the original date, any cancellation charge otherwise arising will be credited against the Mediator's fee for the rearranged Mediation.

If the rearranged Mediation does not take place within that period, the applicable cancellation charge remains payable.

Where cancellation or postponement is caused by the Mediator, no cancellation charge is payable and any Mediator's fee paid for a Mediation which does not take place will be refunded or credited against a rearranged date.

11. Settlement

The Parties retain control over whether the Dispute settles and the terms of any settlement.

The Mediator may assist the Parties and their Advisers in clarifying the terms under discussion but is not responsible for providing legal advice or drafting the final settlement documentation.

No agreement reached in principle during the Mediation is binding merely because agreement has been expressed orally.

Settlement becomes binding when its terms are recorded in writing and signed by, or on behalf of, the Parties, or are otherwise expressly concluded in a form which the Parties intend to be legally binding.

Each Party is responsible for obtaining its own advice before entering into settlement terms.

12. Termination and adjournment

A Party may withdraw from the Mediation at any time.

The Mediator may terminate or adjourn the Mediation where he considers that:

- further mediation is unlikely at that time to assist the Parties;
- continuation would be inappropriate or unfair;
- a conflict or other issue prevents him from continuing independently and impartially;
- a proposed settlement appears unlawful or incapable of proper implementation and the issue cannot appropriately be resolved;
- the conduct of a Participant materially undermines the process; or
- another substantial reason makes continuation inappropriate.

The Parties and Mediator may agree to adjourn the Mediation and resume it later.

Unless otherwise agreed, these Terms continue to apply to any post-mediation communication undertaken by the Mediator for the purpose of exploring settlement of the Dispute.

13. Evidence and the Mediator

No Party will seek to call the Mediator or any person acting for the Practice as a witness, expert, arbitrator, adviser or consultant in proceedings arising from or connected with the Dispute or Mediation.

No Party will seek disclosure or production of the Mediator's private notes or records relating to the Mediation except where required by law.

If a Party nevertheless seeks to compel such evidence or production, that Party will reimburse the reasonable legal and other costs incurred by the Mediator or Practice in responding to or resisting that requirement, including the reasonable value of the Mediator's time, except to the extent that the requirement results from wrongdoing by the Mediator or Practice.

14. Liability

To the fullest extent permitted by law, neither the Mediator nor the Practice will be liable to a Party for an act or omission in connection with the Mediation except where liability arises from fraud, bad faith or wilful misconduct.

Nothing in these Terms excludes or limits any liability which cannot lawfully be excluded or limited.

The Mediator does not accept responsibility for the legal, commercial, financial or other consequences of a Party's decision to settle or not to settle the Dispute.

15. Data protection and records

Each Party is responsible for ensuring that personal information which it supplies for the Mediation may lawfully be provided for that purpose.

The Practice and Mediator will process personal information for the purposes of conflict and suitability checks, administering the appointment, conducting the Mediation, billing, record keeping and complying with legal, insurance and professional obligations.

The Parties should avoid providing unnecessary personal or sensitive information and should use any secure document-transfer arrangements agreed for the Mediation.

Personal information and mediation records will be retained only for so long as reasonably necessary having regard to legal, insurance, tax, accounting, conflict-checking and legitimate record-keeping requirements.

16. Complaints

Any concern about the administration or conduct of the Mediation should in the first instance be raised promptly with the Mediator.

A formal complaint should be made in writing to Construction + Engineering Mediation, identifying the Mediation and the nature of the concern.

Any external complaints procedure applicable to the Mediator by reason of a professional registration or membership in force at the time will be notified to the Parties where relevant.

17. Governing law and jurisdiction

The Agreement, these Terms and the Mediation are governed by the law of England and Wales.

The courts of England and Wales have exclusive jurisdiction in relation to any dispute arising from or connected with the Agreement, these Terms or the Mediation.

18. General

Any amendment to these Terms or the Agreement must be agreed in writing by the Parties and the Mediator.

If any provision is found invalid or unenforceable, the remaining provisions continue in effect.

The Agreement may be signed electronically and in counterparts.

No person who is not a Party, the Mediator or the Practice has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce these Terms, except where these Terms expressly provide otherwise.

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