

**EUROPEAN FEDERATION OF FOUNDATION CONTRACTORS**

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**Dispute resolution / Switzerland**

**Disputes**

1. In principle, the same conditions shall be applied as those provided for in the contract between the main contractor and his client.

2. In the case of a dispute between the main contractor and his client which also involves the subcontractor, the subcontractor will be invited by the main contractor to attend all meetings between the main contractor and his client concerning disputes regarding work performed by the subcontractor. Also a copy of all written documents concerning the dispute will be forwarded immediately to the subcontractor.

3. Adjudicator

3.1 The adjudicator shall be named in the contract and the adjudicator's written acceptance must be enclosed.

3.2 If the subcontractor disagrees the amount (or any part thereof) which the contractor intends to set off, the subcontractor may send to the main contractor by registered post or recorded delivery a written statement setting out the amount requested and the reasons for such disagreement and shall at the same time:

* give notice of arbitration to the main contractor; or
* submit the case to judicial court and
* request action by the Adjudicator (and immediately inform the contractor of such request) and send to the Adjudicator a copy of the aforesaid statement.

3.3 Upon receipt of the aforesaid statement the main contractor may within 14 days from the date of such receipt send to the Adjudicator by registered post or recorded delivery a written statement with a copy to the subcontractor setting out brief particulars of his defence to any counterclaim by the subcontractor.

3.4 Within 7 days of receipt of any written statement by the main contractor or on the expiry of the time limit to the main contractor referred to in clause 3.3 whichever is the earlier, the Adjudicator, without requiring any further statements save only such further written statements as may appear to the Adjudicator to be necessary to clarify or explain any ambiguity in the written statements of either the main contractor or the subcontractor and without hearing the contractor or subcontractor in person, shall in his absolute discretion and without giving reasons, decide in respect of the amount claimed by the subcontractor under clause 3.2 whether the whole or any part of such amount shall be dealt with as follows:

* shall be retained by the contractor; or
* shall, pending arbitration or judicial court be deposited by the contractor for security with the Trustee-Stakeholder named in the contract
* shall be paid by the contractor to the subcontractor; or
* any combination of the courses of action set out above

The Adjudicator's decision shall be binding upon the contractor and the subcontractor until the matters upon which he has given his decision have been settled by agreement or determined by an Arbitrator or the court.

The Adjudicator shall reach such decision as he considers to be fair, reasonable and necessary in all the circumstances of the disputes as set out in the statements received from both parties and such decision shall deal with the whole amount set off by the contractor under clause 3.2.

3.5 The Adjudicator shall immediately notify in writing the contractor and the subcontractor of his decision.

Where any decision of the Adjudicator notified under clause 3.4 requires the contractor to pay an amount to the subcontractor or the Trustee-Stakeholder, such amount shall be paid by the contractor within 7 days upon receipt of the decision of the Adjudicator.

3.6 The Trustee-Stakeholder shall hold any sum received in trust for the contractor and subcontractor until such time as:

* the Arbitrator appointed pursuant to the notice or arbitration given by the subcontractor... or
* the judicial court... or
* the contractor and subcontractor in a joint letter signed by each of them or on their behalf...

... shall otherwise direct.

The Trustee-Stakeholder shall deposit the sum received in a deposit account in the name of the Trustee-Stakeholder but shall add the interest to the sum deposited. The Trustee-Stakeholder shall be entitled to deduct his reasonable and proper charges from the sum deposited. The subcontractor shall notify the Trustee-Stakeholder of the name and address of the Adjudicator and Arbitrator.

3.7 Any action taken by the main contractor and by the subcontractor in respect of any counterclaim is without prejudice to similar action by the main contractor or subcontractor as the case may be if and when further sums become due to the subcontractor.

3.8. The fee of the Adjudicator shall be paid by the subcontractor but the Arbitrator appointed pursuant to the notice of arbitration shall in his final award settle the responsibility of the contractor or subcontractor or both for payment of the fee or any part thereof and where relevant for the charges of the Trustee-Stakeholder or any part thereof.