

# ADJUDICATION RESPONSE

## for contracts entered on or after 30 March 2007

### USING THIS SAMPLE FORM

#### Why this is a 'sample' form

The *Building and Construction Industry Security of Payment Act 2002* does not require you to use any particular form.

This form can help you make a complete and valid response to an adjudication application that can be processed quickly. You can use it, adapt it for your purposes or decide not to use it at all.

#### Required information

The Act says that the adjudication response must:

- identify the adjudication application to which it relates
- include the name and address of any relevant principal of the Respondent
- include the name and address of any other person who the Respondent knows has a financial or contractual interest in the matters that are the subject of the adjudication application, and
- identify any amount of the Payment Claim that the Respondent alleges is an excluded amount.

If the adjudication response does not contain these details, it will not be valid.

#### Before you respond

##### Check the date of your contract

**This form can be used only if you and the Claimant entered into a contract on or after 30 March 2007.**

If you entered into a contract with the Claimant before 30 March 2007, your rights to adjudication and the rules that you need to follow are different. A sample form for contracts entered before 30 March 2007 is available on the Building Commission's website.

##### When you can make an adjudication response

You may lodge a response to the Claimant's adjudication application only if you provided a Payment Schedule to the Claimant within the time specified by the Act.

Your adjudication response must be lodged with the adjudicator by the later of:

- 5 business days after receiving a copy of the application, or
- 2 business days after receiving notice of an adjudicator's acceptance of the application.

## NOTES FOR RESPONDENT

### 1 Adjudication Application details

An adjudication response must identify the adjudication application to which it relates. The Act does not specify which details must be provided to achieve this. A combination of details may be used.

### 2 Respondent's details

Provide the address of your ordinary place of business.

### 3 Relevant principal

The adjudication response must provide details of any relevant principal. Otherwise, it will not be valid.

A 'relevant principal' is any person who has engaged you under contract (other than a domestic building contract to which the Act doesn't apply) to provide construction work or goods and services, if the work carried out or goods and services supplied by the Claimant under contract to you are, or are part of or incidental to, the construction work or goods and services that you were engaged to carry out or supply.

### 4 Other relevant persons

The adjudication response must provide details of any company or individual (other than a relevant principal) who you know has a financial or contractual interest in the matters that are the subject of the adjudication application. Otherwise the adjudication response will not be valid.

### 5 Payment Schedule details

If you have not given the Claimant a Payment Schedule within the time required by the Act you may not lodge an adjudication response.

### 6 Reasons for withholding payment

Clearly identify any new reasons for withholding payment. If you identify any new reasons, the adjudicator must inform the Claimant. The Claimant will then have two business days to lodge a response to those reasons with the adjudicator.

### 7 Excluded amounts

Your adjudication response must identify any amount of the Payment Claim that you allege is an excluded amount.

An excluded amount is:

- any amount that relates to a variation of the construction contract that is not a claimable variation
- any amount (other than a claimable variation) claimed under the construction contract for compensation due to the happening of an event, including any amount relating to latent conditions, time related costs and changes in regulatory requirements
- any amount claimed for damages for breach of the construction contract or for any other claim for damages arising under or in connection with the contract
- any amount in relation to a claim arising at law other than under the construction contract.

### 8 Submissions relevant to the response

Provide any relevant information or argument in response to the claim that you want the adjudicator to take into consideration.

If necessary, set out your argument and further information in a separate document and attach it to the application.

### 9 List of attachments

You should provide documents which support your submissions.

|  |
|--|
| Attach copies (not originals) of all relevant documents and list them on the form. |
|--|

### 10 Service of documents on Claimant

A copy of the adjudication response (including attachments) must be served on the Claimant, preferably at the same time as the original is lodged with the adjudicator. The Claimant's copy of the response can be served by delivering it in person, lodging it during normal business hours at the Claimant's ordinary place of business, posting or faxing it to the Claimant's ordinary place of business or in any manner specified in the contract.

The adjudication response is not served until it is received by the Claimant or at the Claimant's ordinary place of business. If it is posted, service is 2 business days after the day in which it was posted. If it is faxed, service is immediate unless the fax is sent after 4pm, in which case service is the next day.

# ADJUDICATION RESPONSE

## for contracts entered on or after 30 March 2007

### 1 Adjudication Application details

|   |
|---|
| Claimant  |
| (ANA)   |
| Adjudicator nominated by ANA  |
| Application number assigned by ANA  |
| Date you received a copy of the application DD / MM / YYYY                            |
| Date you received notice that the adjudicator accepted the application DD / MM / YYYY |

### 2 Respondent's details

|                |
|----------------|
| Company        |
| Contact person |
| Address        |
| Phone          |
| Fax            |

### 3 Relevant principal

|                |
|----------------|
| Company        |
| Contact person |
| Address        |
| Phone          |
| Fax            |

### 4 Other relevant persons

|                |
|----------------|
| Company        |
| Contact person |
| Address        |
| Phone          |
| Fax            |

### 5 Payment Schedule details

|  |                |
|--|----------------|
| Date of Payment Schedule                               | DD / MM / YYYY |
| Date the Payment Schedule was provided to the Claimant | DD / MM / YYYY |
| Amount claimed in Payment Claim (the 'claimed amount') | \$             |
| Amount you propose to pay (the 'scheduled amount')     | \$             |
| Amount withheld  | \$             |

### 6 Reasons for withholding payment

Are there any reasons for withholding payment that you did not include in the Payment Schedule?

**No**

**Yes** Set out the amounts and reasons in your submissions relevant to the response.

### 7 Excluded amounts

Do you allege that any amount of the Payment Claim is an 'excluded amount'?

**No**

**Yes** Total amount \$

Identify all alleged 'excluded amounts' in your submissions relevant to the response.

