

MOTOR VEHICLE ACCIDENT ARBITRATION RULES

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1. DEFINITIONS

For the purposes of these rules, unless the context specifically indicates otherwise:

- 1.1. **“Absolution”** means that each party shall bear their own costs and losses;
- 1.2. **“the Act”** means the Arbitration Act, 42 of 1965 as amended;
- 1.3. **“Appeal”** means a referral to another arbitrator/s on the panel of GDC who was not a party to the initial hearing;
- 1.4. **“Arbitration”** means the process of adjudication by an arbitrator/s in terms of these Rules;
- 1.5. **“Arbitration Agreement”** means the signed agreement between the parties and GDC to arbitrate the disputes specifically identified in the Arbitration Agreement and/or the disputes identified in the Service Level Agreement, which disputes are to be arbitrated in terms of these Rules;
- 1.6. **“Arbitrator/s”** means an independent person appointed in terms of these Rules by GDC to preside and to settle a dispute;
- 1.7. **“Arbitration Firm”** shall mean GDC appointed in terms of the Arbitration Agreement and/or the Service Level Agreement, and includes a person or persons appointed by GDC from time to time to perform the case management services in terms of these Rules;
- 1.8. **“Case Documentation”** shall include, but not limited to the following: the letter of demand that substantially complies with the template in the SLA (“LOD”); a detailed sketch and description as copied from the claim form and/or substantiation of description/version and/or screen print and/or written version; detailed statements of any witnesses and (if applicable) contact details, and SAP report and/or collision report and/or accident report, and photographs of damaged vehicle and quantum documentation as stipulated in the SLA.
- 1.9. **“Claimant”** means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, “Claimant” shall mean the party who first referred the dispute to arbitration;

- 1.10. **“Cost of the arbitration”** means the fees levied by GDC in respect of this arbitration process, in accordance with the Arbitration Agreement and Schedule B;
- 1.11. **“Business Day”** as per this agreement means any day other than a Saturday, Sunday or public holiday, and is calculated excluding the first day and including the last;
- 1.12. **“Day”** as per the SLA agreement means a calendar day including weekends and public holidays;
- 1.13. **“Defendant”/ “Respondent”** means the party or parties to the arbitration other than the Claimant;
- 1.14. **“Deliver or Delivery”** means:
- 1.14.1 Delivery to a party to the dispute or arbitration by way of e-mail at the address or addresses designated by that party and specified in the Service Level Agreement; and
- 1.14.2 Delivery on GDC to an approved email address chosen by GDC;
- 1.15. **“Dispute”** means any insurance claim relating to a motor vehicle accident wherein a conflict of merits exists as determined by the SLA;
- 1.16. **“GDC”** means Gerhard Dreyer Consulting (Pty) Ltd;
- 1.17. **“Information”** means any information on which a party relies in support of his/her version of events;
- 1.18. **“Insurance claim”** means any claim or dispute in respect of an alleged liability in terms of an agreement of insurance;
- 1.19. **“New evidence”** is any evidence submitted for the first time at the arbitration stage. This is not applicable to argument/s.
- 1.20. **“Party”** means either the Claimant or the Defendant, and **“Parties”** shall mean both the Claimant and the Defendant, and may include more than one Defendant;

- 1.21. **“Refer”** means that arbitration proceedings are initiated by completing and sending Schedule “A” via e-mail to the address or addresses designated by that party and specified in the Service Level Agreement;
- 1.22. **“Relevant documents”** means, in relation to each party, any document of whatsoever nature in his/her possession or under his/her control, whether an original or a copy, relating to the dispute which has been referred for adjudication, including all plans, diagrams, photographs and computer-generated documents, but excluding documents which by reason of privilege he/she has a valid objection to producing at the arbitration;
- 1.23. **“Rules”** means the rules set out in this document;
- 1.24. **“Service Level Agreement”** (“SLA”) means the service legal agreement for the handling of subrogation recoveries and liability claims;
- 1.25. **“Submit”** means to deliver;
- 1.26. **“Submissions”** means the case documentation, correspondence and heads of argument filed by parties in an arbitration.
- 1.27. Where appropriate, words importing the singular shall include the plural and words importing the feminine shall include the masculine and the neuter and vice versa.

2. APPLICATION OF THE RULES AND PROCESS

- 2.1. The rules and processes contained in this document shall apply to:
- 2.1.1. All insurance claims that are referred to GDC in terms of the Arbitration Agreement and the SLA; and
- 2.1.2. All other insurance claims referred to GDC by agreement between the parties.
- 2.2. These Rules are supplemented by GDC’s standard terms and conditions as amended from time to time, including but not limited to policies, terms and conditions.

2.3. The parties agree that these Rules shall be applied in a prescriptive manner.

3. REFERRAL TO ARBITRATION

3.1. Any party may commence arbitration proceedings in terms of these Rules if the parties have failed to settle the claim within the agreed prescriptive periods provided for in the SLA between the Parties or if the other party has refuted the claim.

3.2.1 Referral occurs:

3.2.1 When an Arbitration Agreement has been concluded and attached to the SLA as an addendum to the SLA agreement.

3.2.2 By delivering to GDC and copying to the other party the Referral to Arbitration Schedule "A" form.

3.3. The referral must specify whether the claim is made for:

3.3.1. Merit only where the parties cannot agree on the merits of the claim;

3.3.2. Quantum only where the parties cannot agree on the quantum of the claim;

3.3.3. Merits and Quantum where both are in dispute.

3.4. On receipt of a referral, GDC shall within one (1) day from receipt of the referral:

3.4.1. Deliver to the Claimant confirmation of receipt of their referral; and

3.4.2. Deliver to the Defendant a notice of commencement requesting delivery of the Defendant's submissions in response to the Claimant's referral.

3.5. The Defendant shall have five (5) business days from receipt of the notice of commencement to make submissions in response to the Claimant's referral, including:

3.5.1. A counterclaim;

3.5.2. Case Documentation; and/or

3.5.3. Heads of argument.

3.6. Should the Defendant not deliver the information requested in Rule 3.5 within the prescribed time, GDC shall deliver a notice of default to the Defendant. The notice shall:

3.6.1. Inform the Defendant that it is in default of the time period;

3.6.2. That the Defendant must make its submissions within three (3) business days; and

3.6.3. Should the Defendant not make its submissions within three (3) business days, GDC shall proceed with the arbitration in the absence of the Defendant's submissions.

3.7. On receipt of the Defendant's submission, GDC shall deliver to the Claimant within 1 (one) day, a notice informing the Claimant that:

3.7.1. submissions have been received from the Defendant;

3.7.2. the matter will proceed to arbitration in terms of Rule 6.

3.8. The Claimant may withdraw the dispute at any stage of the arbitration prior to the award being issued. The Claimant must specify the reason for the withdrawal of the dispute.

3.9. The withdrawal of a dispute by the Claimant does not preclude the Defendant from referring a dispute against the Claimant concerning the same collision.

4. APPOINTMENT OF THE ARBITRATOR/S

4.1. GDC shall, within 3 (three) days of receipt of the Defendant's submissions, appoint an Arbitrator/s.

4.2. GDC shall appoint an arbitrator/s from its panel of approved Insurance Industry Arbitrator/s, and such appointment of the Arbitrator/s shall be on an objective basis.

4.3. Where a dispute is referred for the determination of merits only, GDC shall appoint 1 (one) arbitrator in terms of 4.2 above. Arbitrators appointed to determine the merits of a dispute shall be suitably qualified and admitted attorneys or advocates with no less than 5 years relevant experience.

- 4.4. Where a dispute is referred for the determination of quantum only, for instance in the case of a re-assessment that has been done on the quantum of either of the parties, GDC shall appoint 2 (two) arbitrators in terms of 4.2 above. Arbitrators appointed to determine the quantum of the dispute shall be motor vehicle assessors with no less than 10 years' experience working as such in the insurance industry.
- 4.5. Where a dispute is referred for the determination of merits and quantum, GDC shall appoint 3 (three) arbitrators in terms of 4.2 above, one of the three arbitrators will be suitably qualified to make a determination regarding the merits of the dispute as stipulated in 4.3 above while the other two arbitrators shall be suitably qualified to make a determination regarding the quantum of the dispute as stipulated in 4.4 above.
- 4.6. The identity of the Arbitrator/s will not be revealed to the parties until the award is published.
- 4.7. Should the Arbitrator/s not be available, or not accept the terms of his/her appointment within two (2) business days, GDC shall appoint another Arbitrator/s of a similar standing on the same terms and conditions as the previous Arbitrator/s and in accordance with this Rule.

5. METHOD OF ADJUDICATION

- 5.1. The Arbitrator/s shall, unless the parties otherwise agree in writing, make his/her award after consideration of the information exchanged in terms of these Rules, and without any oral arguments of the parties and/or witnesses.
- 5.2. On the receipt of the parties' submissions in terms of Rule 3, the Arbitrator/s may issue a directive to request the parties to provide him/her with additional information required to make an award. The Arbitrator/s shall only request additional information where a specific matter needs clarification.
- 5.3. The Arbitrator/s request for additional information, specifying the matter that needs clarification, shall be delivered to GDC, who will deliver it to all the parties, detailing the matter that requires clarification. Such request for further information shall be limited to clarification only and shall not result in the submission of new evidence.
- 5.4. The parties may provide additional information relevant to the matter that requires clarification, within three (3) business days of the date of request delivered by GDC.

5.5. In the event of a party not supplying the information requested by the Arbitrator/s in terms of this Rule, the Arbitrator/s shall make his/her decision on the information submitted by the parties.

6. POWERS OF THE ARBITRATOR/S

6.1. The arbitrator/s shall determine:

6.1.1. the apportionment of fault between the drivers to a collision in the referred dispute;
and

6.1.2. the amount of damages to be paid by a party to the dispute in accordance with the apportionment referred to in 6.1.1 above.

6.2. It shall be the duty of the Arbitrator/s to determine the issues before him/her in a just, expeditious, economical, proactive and final manner.

6.3. The Arbitrator/s shall have the widest discretion and powers allowed by law, or determined by the parties, to make any ruling or give any direction mentioned in these Rules, or as he/she otherwise considers necessary or advisable for the just, expeditious, economical, proactive and final determination of all the disputes raised in the proceedings. In so doing, the Arbitrator/s shall not depart from the applicable delictual principles, legislation and/or case law and shall exercise this discretion in a reasonable manner.

6.4. The Arbitrator/s must proceed with the arbitration process in terms of these Rules notwithstanding any failure, neglect or refusal by either party to comply with these Rules, or to take part, or further part in the process.

7. THE AWARD OF THE ARBITRATOR/S

7.1. The award shall be in writing and shall set out brief, clear and substantive reasons on which the award is based.

7.2. GDC shall deliver the arbitrator/s award within ten (10) business days after the receipt of the parties' submissions or expiry of time periods in terms of these Rules.

7.3. If during the proceedings the parties settle the dispute, the Arbitrator/s shall terminate the proceedings and if requested by the parties and not objected to by the Arbitrator/s on

reasonable grounds, record the settlement in the form of an arbitral award on agreed terms. Such an award has the same status and effect as any other award on the merits of the case.

- 7.4. In the event of the award of an Arbitrator/s being taken on review in terms of section 33 of Act 42 of 1965, the award shall, subject to section 33(3) of Act 42 of 1965, nevertheless acquire the status of a provisional sentence judgement, and the successful party shall be entitled to execute the said award against the furnishing of security *de restituendo* in accordance with the parties' agreement, or as determined by the Arbitrator/s.

8. REMITTAL

- 8.1. The purpose of remittal is to correct any alleged patent error of fact or law in a published award, where the Arbitrator/s:

8.1.1. erred in understanding the evidence in the case documentation;

8.1.2. failed to consider evidence in the case documentation;

8.1.3. issued a default award in error or not in compliance with these Rules and/or provisions of the SLA;

8.1.4. materially misinterpreted case law that was submitted; and/or

8.1.5. issued an Award which is vague and embarrassing.

- 8.2. A party may remit an award of the same Arbitrator/s within five (5) business days from the date of receipt of the award for reconsideration in either the making of a further award or a fresh award or for such other purpose as the parties may specify in terms of the said remittal request.

- 8.3. The remittal application shall:

8.3.1. be accompanied by written submissions on why the remittal is sought;

8.3.2. not introduce new evidence and shall be based on the evidence that was before the Arbitrator/s at the time the award was issued and published.

- 8.4. On receipt of the remittal application, GDC shall send to the other party within 1 (one) day,

a Notice of Remittal.

- 8.5. Any party intending to oppose the remittal application, shall have three (3) business days, upon receipt of the Notice of Remittal, to respond to the remittal application.
- 8.6. GDC shall file the submissions within one (1) day with the arbitrator/s who published the award.
- 8.7. On receipt of the remittal application, the arbitrator/s shall within five (5) business days publish:
 - 8.7.1. A further award;
 - 8.7.2. A fresh and final award; or
 - 8.7.3. A notice that the published award is confirmed.
- 8.8. A party shall not have the right to remit an award in a claim where remittal has been previously sought and determined.

9. APPEAL

- 9.1. The Award issued by the Arbitrator/s shall be subject to Appeal in the event a party disagrees with the Award, and such disagreement cannot be corrected through a remittal.
- 9.2. A Remittal Ruling shall be subject to appeal in the event a party disagrees with the Remittal Ruling.
- 9.3. Within five (5) business days from the publication of the Award a party may give written notice to the other party and to GDC of its intention to refer the Award to the Appeal tribunal.
- 9.4. Within five (5) business days from filling the written Notice of Appeal in terms of Rule 9.3, the appellant shall deliver its Appeal Submissions, which will state:
 - 9.4.1. whether the appeal is against the whole or part of the Award, and if a part of such Award is appealed against, it shall state which part; and
 - 9.4.2. the grounds for the appeal.

- 9.5. Should GDC not receive the Appeal Submissions in the prescribed five (5) business days in term of Rule 9.4, the appeal will be deemed to be withdrawn and the Award shall be final.
- 9.6. The Respondent in the appeal shall within five (5) business days from receipt of the Appeal Submissions, deliver its submissions in response to the Appeal Submissions or its decision to abide by the decision of the Appeals tribunal.
- 9.7. On receipt of the Appeal Submissions and the Respondent's submissions or on expiry of the five (5) business days in terms of Rule 9.6, GDC shall:
 - 9.7.1. appoint an Appeal tribunal consisting of no less than three members of the panel of approved Insurance Industry Arbitrators, other than the Arbitrator/s that issued the original award;
 - 9.7.2. Submit the Appeal Submissions and the Respondent's submission to the Appeal tribunal to determine the matter; and
 - 9.7.3. give notice to the parties that the Appeal tribunal has been appointed and is seized of the matter.
- 9.8. The Appeal tribunal shall be entitled to:
 - 9.8.1. dismiss the Appeal;
 - 9.8.2. vary the Award;
 - 9.8.3. substitute the Award with its own Award; and/or
 - 9.8.4. dismiss the Appeal for non-compliance with the provisions of this Rule.
- 9.9. The decision of the Appeal Tribunal shall:
 - 9.9.1. be final and binding on the parties;
 - 9.9.2. constitute an Award as defined by the Arbitration Act for all purposes; and

9.9.3. be deemed to constitute the Award of the Arbitrator/s.

9.10. The outcome of the appeal shall be submitted to the parties within 10 (ten) business days from referral to the Appeal Tribunal.

10. PREMATURE REFERRAL AND JURISDICTIONAL OBJECTIONS

10.1. Should the Defendant dispute the validity of a referral on the basis that an offer of settlement has been issued and/or the referral is premature, or the dispute does not fall within the jurisdiction of the arbitrator/s, the Defendant must inform GDC that it challenges the referral and submit any evidence thereof to GDC. On receipt of such submission:

10.1.1. GDC shall within 1 (one) day of receipt thereof file a Notice of Challenge to Referral to the Claimant; and

10.1.2. The Claimant shall have 3 (three) business days to withdraw his referral or defend his referral by filing submissions in defence of the validity of their referral.

10.2. The dispute shall, within 1 (one) business day of receipt of submissions from the Claimant, be referred to the Arbitrator/s to determine.

10.3. The Arbitrator/s shall within 5 (five) business days determine whether the challenge is valid or not. If the challenge is valid the matter shall automatically be withdrawn. Such withdrawal shall not preclude the Claimant from re-referring the matter.

11. EXECUTION OF AWARD

An award, including an interim award and an award by agreement, may be made an order of court in terms of the Arbitration Act 42 Of 1965.

12. COSTS OF THE ARBITRATION

12.1. The Arbitrator/s shall only be entitled to award 50% of the costs incurred by the victorious party to refer the dispute for arbitration.

12.2. The costs of the arbitration process shall be paid by the parties in accordance with the rule set out in "Schedule B". GDC shall invoice the parties in accordance with the Rules as set out in "Schedule B".

13. RECESS PERIOD

All time periods in these Rules shall be stayed between 15th December to 15th January of every year.

14. EFFECTIVE DATE

The effective date of these Rules shall be the same date upon which a dispute has been successfully referred to GDC and shall only apply to the relevant dispute so referred.

15. DISPUTE ON RULES AND ARBITRATION AGREEMENT

15.1. Any dispute about the meaning or effect of any of these Rules or the terms of the parties' arbitration agreement shall be determined by the Arbitrator/s who shall further have power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules and or the arbitration agreement shall be carried into effect.

15.2. Any application to a Court of law on any matter related to arbitration proceedings commenced at GDC, shall not affect the continuation of the arbitration proceedings, save and to the extent that a Court or the Arbitrator/s otherwise orders.

15.3. Where any party to arbitration raises any jurisdictional issue, including rulings on any dispute with regard to the existence or validity of the arbitration agreement or the scope thereof, the appointed Arbitrator/s shall on application consider the issue raised and decide whether or not to proceed with the arbitration.

15.4. The Arbitrator/s shall, if both parties so agree, or may, if he/she so decides, or on the application of either party, determine any specified issue of law or fact, including jurisdictional issues, before other issues in the arbitration are determined

16. AMENDMENT OF THESE RULES

16.1. These Rules may be amended by the parties at any time. Such amendments shall only apply once incorporated into the Rules and such amended Rules are issued in terms of the Arbitration Agreement.

16.2. The amended rules shall only apply to disputes subjected to arbitration after the date upon which such amendments came into effect, unless the parties otherwise agree.

18. THE ARBITRATION ACT

18.1. Save as varied herein, the provisions of the Act shall apply.

18.2. Where the provisions of these Rules are in conflict with the provisions of any Statute of the Republic of South Africa, the provisions of that Statute shall prevail.

SCHEDULE "A"
REFERRAL TO ARBITRATION FORM

Referral reason (*compulsory*): Merits Quantum M & Q

	Claimant	Defendant
Insurer:		
Party Name:		
Representative:		
Claim No.:		
Repr. Contact Details:		
Reference No.:		
Total claim value:		

INDEX OF DOCUMENTS

		Attached?		New evidence? (<i>tick if yes</i>)
		Yes	No	
1	Driver's sketch and description			
2	Witness Statement			
3	Police report			
4	Police plan and sketch			
5	Photographs			
6	Reconstruction Specialist Report			
7	Investigator's report			
8	Tachograph			
9	Claim Form			
10	Vehicle Damage report			
11	Argument			
12	Case Law			
13	Other			

LIST OF WITNESSES

	Name of driver or witness	Their role/status	Statement attached?
1			
2			
3			

The last settlement offer made to the other party:

(*compulsory*) Claimant Driver Negligence: _____ %
 Defendant Driver Negligence: _____ %
 Or Absolution (*please tick*): _____

Name and signature:

Date:

SCHEDULE "B"

COSTS SCHEDULE

The calculation of costs is done in accordance with the following cost schedule.

Arbitration referrals

1. If the award made by the arbitrator/s is greater than the initial offer/suggested apportionment by the Defendant (as inputted in Schedule A) then the cost is borne fully by the Defendant.
2. If the award made by the arbitrator/s is equal to or less than the initial offer/suggested apportionment by the Defendant (as inputted in Schedule A) then the cost is borne fully by the Claimant.
3. In the event that an absolution is the outcome, then the referring party pays the costs. The submission of requested apportionment of fault by a Claimant or Defendant does not limit the arbitrator/s to determine apportionment of fault within the confines of the apportionment requested.

Withdrawal / Settlement

4. Should a matter be withdrawn by a Claimant for reasons, including but not limited to settlement:
 - 4.1. And the matter has not yet been given to an arbitrator/s to determine, the Defendant party shall be liable for 50% of the arbitration fee;
 - 4.2. And the matter has been given to an arbitrator/s to determine (whether an award has been issued or not), the Defendant party shall be liable for the full cost of the arbitration.

Premature referral and jurisdictional issues

5. The unsuccessful party shall pay the cost of the premature referral or jurisdictional application referral.

Remittals and Appeals

6. If a remittal is unsuccessful, the party that remitted the award shall bear the costs of the remittal application.
7. If a remittal is successful, GDC shall bear the costs of the remittal application.
8. The unsuccessful party to an appeal shall bear the costs of the appeal.

Payment terms

9. The parties shall pay all amounts invoiced by GDC within seven business days of receipt of the said invoice.
10. A party who seeks to dispute an invoice, must do so within five business days from receipt thereof. Failure to do so shall confirm the party's acceptance of the validity and accuracy of the invoice.
11. Should a party not pay an invoice with the seven business days specified in clause 13 above, GDC may charge interest at prime.

TABLE OF COSTS

Cost Item	Costs
Merits referral	R 4 000.00
Quantum referral	R 6 000.00
Merits and Quantum referral	R 10 000.00
Withdrawal (before referral to arbitrator/s)	R 1 000.00
Withdrawal (after referral to arbitrator/s)	R 2 000.00
Premature referral	R 1 000.00
Jurisdictional ruling	R 1 000.00
Remittal completed	R 3 000.00
Appeal completed	R 5 000.00
Withdrawal of remittal (before referral to arbitrator/s)	R 1 000.00
Withdrawal of remittal (after referral to arbitrator/s)	R 2 000.00
Withdrawal of appeal (before referral to appeal tribunal)	R 1 000.00
Withdrawal of appeal (after referral to appeal tribunal)	R 2 000.00

