

# DISPUTE RESOLUTION PROCESS

ZED PODS Ltd operates an open and transparent pricing policy and we aim to ensure all our subcontractors understand our payment and contract terms. We hold open discussions with contractors prior to entering into contract and disseminate our payment terms along with our issued Purchase Orders.

We acknowledge that disputes can happen and we have adopted the RICS Conflict avoidance and dispute resolution in construction based process. This starts with best practice conflict avoidance techniques and concludes by listing our three-tier hierarchy.

## Conflict avoidance by using Best Practice:

The aim of conflict resolution in the early stages should be to avoid conflict through best practice. We do this by:

- **Clear Contract Documentation:** this avoids ambiguities in contract documentation or argument as to whether there is a contract at all.
- **Good Project Management:** Means proactively managing all aspects of time, money and risk associated with the project to manage contractors and ensure an open and transparent process.
- **Communicating:** a good understanding of our project objectives and the subcontractors and maintaining good lines of communication with the client
- **Employing Good Constructor Management:** To conflict avoidance, we give an objective understanding of the project, the contract and the programme of works with regular objective assessments of progress and proactively dealing with issues arising during the project that fall within the subcontractors appointment.
- **Pro-activity:** We aim to be proactive with solving problems and delay with a positive, resolution and project focused outlook.

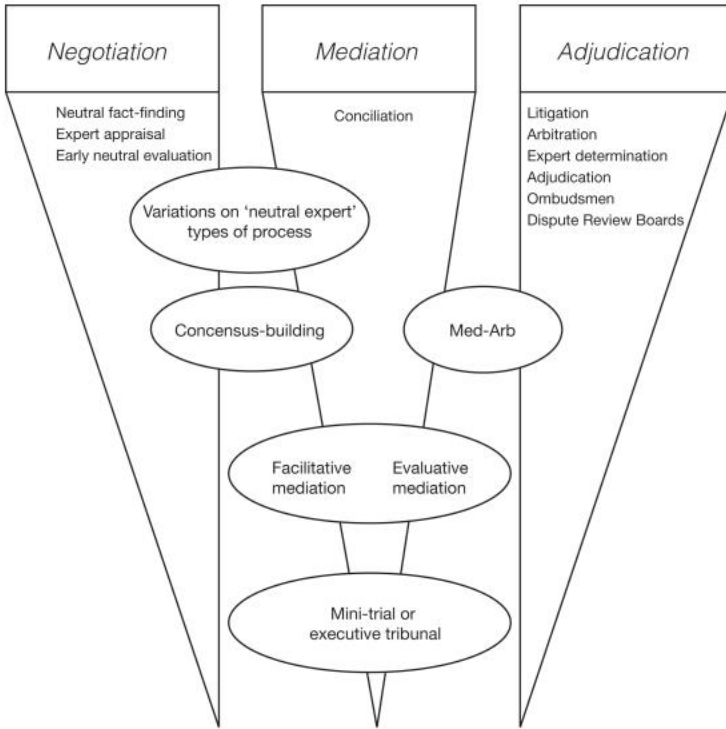
We:

- **Adopt Good Payment Practice:** Once payment provisions have been agreed, the valuation is encouraged to be made promptly and regularly. We aim to avoid animosity, conflict and dispute.
- **Adopt Good Record Keeping:** Disputes can be resolved by retrospectively considering records that have been kept during the course of the procurement and project management. Proper record keeping of labour, plant and materials used in respect of a project can help resolve disputes.

## Dispute Resolution

We follow the 3 pillars as set out by RICS and illustrated below

Figure 1: The Dispute Resolution Landscape



Source: Mackie, K., Miles, D. and Marsh, W. (1995) *Commercial Dispute Resolution: An ADR Practice Guide*, Butterworths, London, p. 50. The figure was derived from a chart by Professor Green of Boston University (1993).

We follow Negotiation, mediation and expert determination before we look to adjudication.

**Negotiation:** Under negotiation we hope the parties can resolve disputes based on using the principles of Conflict avoidance set-out above. Under negotiations we aim for the parties to work out between us how to resolve any issues that have arisen. Power to settle the dispute rests with the parties. This is the preferred route to resolution.

**Mediation and conciliation:** we agree between parties on an independent, third-party neutral system to facilitate discussions, with the goal of reaching a settlement. The power to settle remains with the parties, but the process is led by the mediator and not the parties.

**Expert determination:** We aim for the parties to agree a third party to make a binding decision. The terms are governed by the contract. The decision of the expert will be final, and it will not be possible to appeal that decision. This is our final step before Adjudication.

**Adjudication:** Adjudication is our preferred last resort. Under section 108 of the Housing Grants, Construction and Regeneration Act 1996 (HGRCA) was introduced in May 1998. The Local Democracy, Economic Development and Construction Act 2009 and the updated Scheme revises some aspects of the adjudication process. It has been widely used in the construction industry and applies not only to building contracts but also to professional appointments.

If the Act applies to a contract then either party may request the appointment of an adjudicator to be made within seven days of serving a Notice of Dispute, and the adjudicator has 28 days from issue of the Referral within which to issue a decision. That decision will bind the parties and in most cases be readily enforceable in the Technology and Construction Court (TCC). The TCC is the part of the High Court that deals with construction related litigation.

Our standard payment terms are copied below to be read in conjunction with the dispute resolution process.

# STANDARD TERMS & CONDITIONS OF PAYMENT

## **Payment of the Contract Price.**

**1.1.** The Payment terms applied are set out in the contract. Dependent upon the nature of the Subcontract, payments will either be made periodically (no greater than monthly valuations) or by completion of stipulated milestones. Our standard Payment terms are compliant with the 'Construction Act' and the Prompt Payment Code with payments being made within 30 days.

**1.2.** Payment of the Contract Price shall be made by Contractor to Subcontractor as follows:

### **1.2.1. Milestone Payments**

Where milestone payments form part of the Subcontract, the contract will contain an agreed schedule of milestones with the relevant payment against each milestone for which payment is to be made on completion of the milestone. We advocate that if Milestone payments are to be used, where possible the elements of work are broken down into smaller milestones to ensure that these can be achieved in shorter periods enabling regular cashflow for our subcontractors. We do however require that in order for payment to be made the completed milestone work must have passed the required quality checks.

### **1.2.2. Periodic Payment**

Where periodic payments form the basis of the Subcontract, this will usually provide for payment on a monthly basis. Each month following the commencement of work by the Subcontractor, the Subcontractor shall submit to the Contractor one application for payment per month. Each application for payment shall set forth the original Contract Price, any adjustments to the Contract Price, approved changes, and the total value of the labour and materials incorporated into the Subcontractor's Work and materials delivered to the Project site suitably stored by Subcontractor to the date of such application for payment, supported by such data as the Contractor may require substantiating the Subcontractor's right to payment. Periodic payments will reflect the quantity of actual work undertaken in the period.

### **1.2.3. Payment Schedule.**

No matter whether the basis of payment under the Subcontract is via milestone or periodic payments, so that all parties are clear regarding the payment provisions we prefer to provide as part of the Subcontract a payment schedule that sets out the following information:

- Application for payment date
- Due date
- Payment notice date
- Payless notice date
- Final date for payment

### **1.2.4. Application for Payment**

The Application for Payment shall include the value of the work undertaken in the period or the relevant value for completion of the milestone and along with supporting information set out in the subcontract.

#### **Due Date**

The due date will be set out on the Payment Schedule. Usually, this will be the same date as the date for the application for payment. We provide a separate due date so as to comply with the Construction Act Requirements.

### 1.2.5. Payment Notice

A 'Payment Notice' will be issued to the sub-contractor no later than 5 days after the due date, providing details of what is payable and why. The payment notice will contain the 'Notified Sum' and this is what, subject to any pay less notice, will be paid on the 'Final Date for Payment'.

### 1.2.6. Final Date for Payment

The Final Date for Payment is the date that the contractor will pay the subcontractor. The Final Date for payment is set out in the payment schedule and in the payment terms that have been agreed in the contract, and are never greater than 30 days from the due date.

### 1.2.7. Pay Less Notice

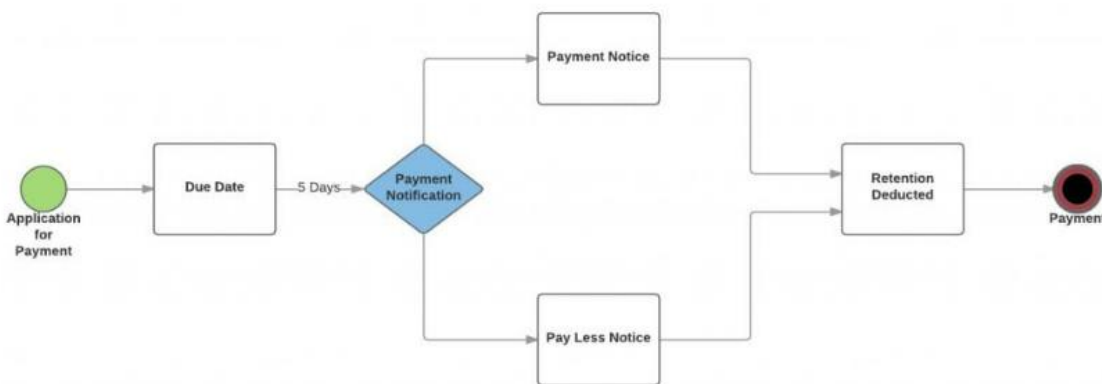
Whilst the Construction Act provides no limitation on when a pay less notice can be given, we believe that rather than leave it until the day before the final date for payment, our supply chain need to have confidence in what they are going to be paid and as such our conditions provide that any pay less notice that is to be given be issued no later than 5 days before the final date for payment. This does occasionally have to be changed depending upon the main contract conditions and the particular trade. Naturally, the Pay Less Notice will state the basis for how the new sum was calculated at that date.

### 1.2.8. Retention.

Where the contract conditions permit, we are advocates of the road map to zero retentions. Indeed, we have practiced this on a number of projects despite having retention withheld as Main Contractors. We believe that if certain safeguards, in particular quality control procedures, testing and the like can be implemented along with the selection of a reliable and stable supply chain members in the first instance, which we have developed through repeat business, this removes the need or at least reduces the amount of retention needed to be held. Where retention is necessary, we endeavour to limit this to the minimum amount necessary and as customary, our subcontract releases half upon satisfactory practical completion with no defects and the remainder following any defect liability period.

### 1.2.9. Final Payment.

Final payment of the full Contract Price as modified by approved Change Orders and subject to any retentions, if any, less the sum of payments previously made, shall be paid to the Subcontractor within thirty (30) calendar days after final acceptance of the Subcontractor's Work by the Contractor.



Tom Northway  
Chairman of ZED PODS Ltd