



FORM No. 5

REF No.

STATEMENT OF DEFENCE

PART A¹: Compulsory Information to be included in the Statement of Defence

DETAILS OF CLAIMANT²

NAME

ADDRESS

DETAILS OF RESPONDENT³

NAME

ADDRESS

For the purposes of Article 30 of the Arbitration Act, the respondent hereby provides:

1. A statement of facts supporting the defence:

1. Whilst the Claimant Company refers to "agreements dated sixth (6th) October two thousand seventeen (2017)", no agreement was annexed with its Statement of Claim and therefore it is not clear what agreement Claimant Company is referring to and basing its claims on.
2. This notwithstanding, the Respondent Company is not a party to any agreement with the Claimant Company and therefore is clearly not a party to the said "agreements dated sixth (6th) October two thousand seventeen (2017)".
3. Consequently, contrary to what is declared in the Statement of Claim, the Claimant Company was never engaged by the Respondent Company for the performance of any works.
4. Respondent Company never accepted any balance as being due and payable to Claimant Company and is contesting any such legitimate balances.

2. A reply to the points at issue:

1. Respondent Company is not the legitimate and proper defendant, since there was and/or is no contractual relationship between Respondent Company and Claimant Company and no instructions were ever given by the former to the latter. Accordingly, any eventual order given by the Arbitral Tribunal must necessarily be issued limitedly against the other Respondent Company.

¹ Where the space provided is not sufficient, further information may be submitted in separate sheets annexed to this form.

² The term 'claimant' includes one or more claimants.

³ The term 'respondent' includes one or more respondents.

2. Whilst Respondent Company reiterates its position that as a matter of fact it has no contractual relationship with Claimant Company and therefore it is not contractually bound by any arbitration clause in relation to the present dispute, Respondent Company hereby submits to the jurisdiction of the Arbitral Tribunal, without prejudice, however, to its first preliminary plea.
3. On the merits, and subordinately and without prejudice to the preceding pleas, Respondent Company states with respect that the claims of Claimant Company are unfounded in fact and at law, particularly (but not limitedly) for the following reasons –
 - (i) no direct instructions to carry out works were given to Claimant Company by Respondent Company;
 - (ii) the claims do not refer to actual work carried out by Claimant Company, but rather it appears that a substantial part of the amount claimed refers to alleged damages and/or penalties that Claimant Company calculated unilaterally and which is certainly not being accepted by Respondent Company;
 - (iii) Respondent Company made payments to the other Respondent Company in the present proceedings, in relation to the amounts being claimed by Claimant Company.
4. Without any prejudice to the above, Respondent Company has itself a claim for damages against the Claimant Company and this since for a period of time it blocked access to the site in such way that it disrupted the works at the same site.

3. The relief or remedy sought:

A decision in which the Arbitral Tribunal upholds the pleas raised by Respondent Company and rejects all the claims made by Claimant Company.

PART B⁴: Documents to be annexed or referred to in the Statement of Defence

The statement of defence is accompanied by the following documents:

Respondent Company reserves the right to file documents in the course of the proceedings.

PART C⁵: Other evidence

Other evidence that will be submitted by respondent:

All the witnesses indicated by Claimant Company and by the other Respondent Company.
Directors, officials, employees and representatives – past and present – of Respondent Company.

PART D⁶: Pleas as to the Jurisdiction of the Arbitral Tribunal

The following jurisdictional pleas are being entered by the respondent:

No plea to the jurisdiction of the Arbitral Tribunal is being raised for the reasons mentioned in 2.2 above.

⁴ Where the space provided is not sufficient, further information may be submitted in separate sheets annexed to this form.

⁵ Ibid.

⁶ Ibid.

PART E: *Service of the Statement of Defence*

The Statement of Defence shall be served on the claimant and the arbitral tribunal: (a) by the respondent or (b) by the Malta Arbitration Centre⁷.

PART F: *Composition and Appointment of the Arbitral Tribunal*

The Respondent agrees with the Claimant on the appointment of _____ as the arbitrator to hear and decide this arbitration.

OR

The Respondent does not agree with the person/s proposed by Claimant to act as arbitrator/s and recommends the following person/s:

PART G: *Additional information for the Parties' benefit*

Apart from drawing up his Statement of Defence, the respondent may wish to make a counter-claim arising out of the same contract or he may wish to rely on a claim arising out of the same contract for the purpose of a set-off and this in terms of Article 30 (3) and (4) of the Arbitration Act.

Additional Attachments/Documents (please list attachments/documents, if applicable)

Signature of Respondent/Representative

Date

⁷ Delete as necessary.

PART H: *For office use only*

Date of filing of the Statement of Defence:

By whom this form has been filed:

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