



AB18

General Conditions for the provision of works and supplies within building and engineering

A. Contractual basis

Application

§ 1. These present general conditions have been drawn up for the purpose of contracts for the provision of works and supplies within building and engineering, where the employer is not a consumer. The conditions shall apply when they have been agreed upon by the parties.

Subs. 2. Amendments to the general conditions shall be valid only when it is clearly and explicitly stated in the contract in which respects such amendments are to be made.

Definitions

§ 2. In relation to supplies, the term 'employer' shall be defined as the buyer and 'contractor' as the vendor. In relation to subcontracts, the term 'employer' shall be defined as the main contractor and 'contractor' as the subcontractor.

Subs. 2. The term 'works' shall also mean the contractor's delivery of materials, etc., regardless of whether the contractor as part of the works shall incorporate that material into the works or only perform a provision of supplies.

Subs. 3. The term 'works' shall also mean the project design that the contractor is required to perform, and the terms 'subcontracting' and 'subcontractors' shall also mean technical advice and consultants hired by the contractor to assist in such project design.

Subs. 4. The term 'interface' between works shall mean that part of a work that is adjacent to another work and is dependent on or influenced by its design, so that there is a need for mutual coordination. The relation of the works to existing buildings or plants can also be an interface.

Subs. 5. The term 'employer's supervisor' shall be defined as the employer's construction management, professional supervisor or other supervisors specially appointed by him. As to provisions, according to which the 'employer' can or must take action or receive a notice, the employer may entrust this to the employer's supervisor or to another representative of the employer.

Subs. 6. The term 'quality assurance' means activities aimed at preventing defects in a construction and ensuring that a selected quality is maintained during design and performance.

Subs. 7. The term 'scrutiny of a project' shall be defined as a coherent and systematic review of a project as part of the quality assurance in order to assess the ability of the project to meet the requirements of the project and to identify relevant problems.

Subs. 8. Unless otherwise provided, the amounts stated do not include VAT.

Subs. 9. The term 'working days' shall be defined as all Mondays through Fridays, which do not fall on a public holiday, 1 May, Constitution Day, Christmas Eve or New Year's Eve.



Applicable law

§ 3. The legal relationship between the parties shall in all respects be governed by Danish law.

The Employer's tender

§ 4. The term 'tender' shall be defined as the employer's invitation for bids.

Subs. 2. Bids must be made based on the information contained in the tender documents. These documents must be unambiguous. Depending on the degree of detail of these documents and the requirements for project design by the contractor, they must be drafted to provide clarity about works and terms.

Subs. 3. The tender documents must indicate whether the contractor is to carry out the project design and, if so, to what extent.

Subs. 4. The tender documents must include a main time schedule specifying

- a) start and end times of the works;
- b) any decisive time limits for the completion of certain parts of the contractor's works (interim deadlines);
- c) the number of common lost working days, which are recognized in the main time schedule due to weather conditions;
- d) any significant accessibility restrictions on the site of construction that the contractor must accept, including coordination with other contracts, employer's deliveries and putting to use before delivery;
- e) date of completion, the contractor's drafting of a work plan, and the employer's preparation of a detailed time schedule;
- f) start and end times for project review, mobilization, security coordination and pre-handover inspection; and
- g) start and end times for measurement, completion of design, the contractor's project design, and project optimization, if these activities have been agreed.

Subs. 5. If, in addition to an overall bid price, the contractor must quote unit prices, the tender documents must indicate whether the unit price is to apply to an estimated quantity, and in that case the list of prices shall indicate unit and quantity so that the contractor in his bid includes price per unit and the total of the item.

Subs. 6. Furthermore, the tender documents must contain information about other matters that may be considered of relevance to the contractor's bid.

Subs. 7. The tender documents may contain information about special circumstances that are important for the employer to be able to put the building or the engineering work to use.

The contractor's bid

§ 5. If, in addition to an overall bid price, the contractor's bid contains unit prices, both types of prices shall be binding on the bidder.



Subs. 2. The bid shall cover only those works, which are indicated as being part of the contract on drawings and models, including digital models handed over to the contractor to use as a basis for the bid, or which are mentioned in those sections of the work description, which apply to the contract in question. The bid shall also include all necessary professional secondary services for the completion of the works, see section 12(2).

Subs. 3. The contractor's reservations or deviations from the tender conditions must be clearly stated and listed together in the bid.

Subs. 4. To the extent that the contractor is required to implement winter measures during the winter period (1/11 - 31/3), seasonal winter measures will be deemed included in the bid, unless the same measures are to be implemented under several contracts. However, weather-based winter measures are paid as extra work.

Subs. 5. Bids are open for acceptance for a period of 20 working days from the date of the bid. If the employer's invitation to tender has been submitted to several bidders with a time limit for submission of bids, the 20 working days will begin to run from the bid deadline fixed in the tender.

Subs. 6. The employer must notify the bidders, whose bids have not been accepted, as soon as possible.

The construction contract

§ 6. The construction contract is entered into by acceptance of the submitted bid in writing or by signing a contract document.

Subs. 2. The main time schedule with any agreed changes is referred to as the agreed main time schedule.

Subs. 3. The following priority shall apply in case of conflicting provisions of the contract documents, unless otherwise provided by general principles of interpretation:

- a) The construction contract;
- b) Correspondence, minutes of meetings and other written material containing approved changes or additions to or clarifications of the tender or bid documents, and which are dated later than the bid;
- c) The contractor's bid;
- d) Correspondence, minutes of meetings and other written material containing changes, additions or clarifications of the tender documents, and which are dated later than the tender and earlier than the bid;
- e) The employer's tender documents;
- f) AB 18.

Assignment of rights

§ 7. The parties can assign their rights under the contract.



Subs. 2. If the contractor assigns claims under the contract, which are not due for payment, the assigned claims, which relate to the performance of the works, shall have priority over other assigned claims.

Subs. 3. Neither party can transfer his obligations to a third party without the other party's prior consent.

Subcontracting

§ 8. To the extent that it is usual or customary that the works are subcontracted, the contractor can entrust the performance of the works, including project design, to others. It may, however, be agreed that all or specific parts of the works be performed by the contractor himself or one particular subcontractor, so that the transfer of performance to others requires the employer's approval.

Subs. 2. The employer's approval pursuant to subs. 1, second sentence, can be refused only if it is reasonably justified by the circumstances of the appointed subcontractor, including qualifications, financial circumstances or lack of documentation pursuant to subs. 3, third sentence. At the request of the employer, the contractor must inform the employer about such circumstances as soon as possible. The employer must notify the contractor in writing of his approval or reasoned rejection of a subcontractor as soon as possible after the contractor has informed the employer about the appointment of a subcontractor and the circumstances of the subcontractor.

Subs. 3. If the contractor has hired a subcontractor to perform works before the works have commenced, the contractor must inform the employer thereof before the contractor commences the work in question. If the contractor subsequently hires or replaces a subcontractor, the contractor must inform the employer thereof before the subcontractor commences his works. At the request of the employer, the contractor must, as soon as possible, provide documentation that an agreement has been entered into with a subcontractor and that the subcontractor has acknowledged that the provisions of section 8 shall apply also in the event that a subcontractor assigns works to others, and that the employer can raise a claim for defects directly against the subcontractor in accordance with subsections 4 and 5.

Subs. 4. If it is deemed to be established that the employer cannot or only with great difficulty can enforce a claim for defects against the contractor, the employer is entitled to raise the claim directly against the contractor's subcontractors and suppliers if their performance suffers the same defect.

Subs. 5. A direct claim for defects is subject to the constraints imposed by the contractual relationship between the employer and the contractor as well as between the contractor and the subcontractor and the supplier, including disclaimers and limitations, which may have been agreed in both contractual relationships. Furthermore, it is subject to the provisions of Chapter J on dispute resolution. The employer waives his claims against subcontractors and suppliers for non-contractual damages in connection with circumstances covered by the direct claim for defects under this provision. If the direct claim is due to the subcontractor's or the supplier's intentional or grossly negligent circumstances, the first and the third sentence shall not apply.

Subs. 6. The provisions of subsections 1-5 shall also apply when a subcontractor or a supplier assigns the performance of the works to others.



A. Provision of security and insurance

Provision of security by the contractor

§ 9. Unless otherwise provided in the tender documents, the contractor must within a period of 8 working days after the contract is entered into provide security for the due performance of his obligations towards the employer. If the contract sum is less than DKK 1 million, the contractor must only provide security if the employer has requested it in the tender documents. The security can be in the form of an adequate guarantee from a bank, a fidelity guarantee insurance, or other adequate types of security.

Subs. 2. The purpose of the security is to satisfy all claims, which the employer may have under the contract, including such claims as relate to any extra work and the recovery of any overpayment made under the contract.

Subs. 3. Until the handing-over of the works, the security provided shall correspond to 15% of the contract sum excl. VAT. After the handing-over, the security shall be reduced to 10% of the contract sum. The contract sum according to the second sentence shall be calculated with the addition or deduction of all additional and reduced work, to the extent that the employer so requests in the handing-over protocol.

Subs. 4. The security provided for supplies delivered completely finished in instalments shall correspond to 10% of the purchase price excl. VAT.

Subs. 5. One year after the handing-over, the security shall be reduced from 10% to 2%, unless the employer has put forward in writing a prior complaint regarding defects. In this case, the security shall be reduced when the defects have been remedied.

Subs. 6. The security shall cease 5 years after the handing-over, unless the employer has put forward in writing a prior complaint regarding defects. In this case, the security shall cease when the defects have been remedied.

Subs. 7. It must be stated in the tender documents if the security is to be discontinued upon handing-over of independent parts, where defects after the handing-over cannot occur.

Subs. 8. If the contractor terminates the construction contract, the contractor's security shall expire 3 months after the termination of the contract, unless dispute resolution has been initiated concerning the eligibility of the termination according to Chapter J.

Subs. 9. If works are deferred for later handing-over, see section 45(1), the proportional release of the security according to subsections 3, 5, and 6 for the deferred works shall be made after these have been handed over.

Subs. 10. In case of sectional completion, see section 45(4), the proportional release of the security according to subsections 3 and 5-7 shall be made proportionately to the extent of the sectional completion.

Subs. 11. If the employer requests payment under the security provided, such request must be made in writing and simultaneously notified to the contractor and the guarantor with an exact indication of the nature and extent of the alleged breach as well as the amount claimed. The amount claimed must be paid to the employer within 10 working days upon receipt of the above notice, unless the contractor has filed a



prior request with the Danish Building and Construction Arbitration Board for a decision on the specific question whether the claim for payment is justified, see section 67. If the contractor is declared bankrupt, a request for a decision regarding the security can also be made by the guarantor, who then becomes a party to the case.

Subs. 12. If the parties disagree on the proportional release or the discontinuation of the security, each party – and in the event of the contractor’s bankruptcy the guarantor – can request a decision regarding the security provided, see subs. 67.

Subs. 13. If the circumstances justifying the claim according to subsections 11 or 12 are already the subject of a dispute between the parties in a pending case according to sections 68 or 69, the application will be filed under the pending case instead of a request for a decision regarding the security.

Subs. 14. The contractor must ensure that the guarantor has agreed that all disputes regarding the security be settled in accordance with the provisions of Chapter J, except for section 64.

Provision of security by the employer

§ 10. The employer must provide security for the due performance of his obligations towards the contractor within 8 working days after the conclusion of the contract, unless the employer is a public entity or a general housing association. The security can be in the form of an adequate guarantee from a bank, a fidelity guarantee insurance, or other adequate types of security.

Subs. 2. The purpose of the security is to satisfy all claims, which the contractor may have under the contract, including such claims as relate to any extra work.

Subs. 3. The security shall correspond to the average payment for a three-month period, however, with a minimum of 10% of the contract sum excl. VAT. If the contract is extended to include extra work according to section 23, the contractor is entitled to claim that the security be increased if the payment for all such extra work exceeds half of the average payment for one month of the contract sum. The employer can require the security reduced if the security exceeds the unpaid amount of the contract sum and the extra work.

Subs. 4. The security shall be discontinued when the contractor has submitted the final statement and has no unfulfilled requirements.

Subs. 5. If the contractor requests payment under the security provided, such request must be made in writing and simultaneously notified to the employer and the guarantor with an exact indication of the extent of the amount claimed. The amount claimed must be paid to the contractor within 10 working days upon receipt of the above notice, unless the employer has filed a prior request with the Danish Building and Construction Arbitration Board for a decision on the specific question whether the claim for payment is justified, see section 67. If the employer is declared bankrupt, a request for a decision regarding the security can also be made by the guarantor, who then becomes a party to the case.

Subs. 6. If the parties disagree on the discontinuation of the security, each party – and in the event of the employer’s bankruptcy, also the guarantor – can request a decision regarding the security provided, see section 67.



Subs. 7. If the circumstances justifying a claim according to subsection 5 or 6 are already the subject of a dispute between the parties in a pending case according to section 68 or 69, the bringing of the claim will be filed under the pending case instead of requesting a decision regarding the security provided.

Subs. 8. The employer must ensure that the guarantor has agreed that all disputes regarding the security be settled in accordance with the provisions of Chapter J, except for section 64.

Insurance

§ 11. The employer must take out and pay usual fire insurance and storm and tempest insurance from the commencement of the works until the defects ascertained in connection with the handing-over have been remedied. The contractor and any sub- contractors must be included as insured under the insurance policy. The insurance must cover the works of all contractors on the building or engineering works under the contract. As regards alterations or additions, the insurance must cover damage to the works and the building or engineering works on which alterations or additions are being made. Any deductible is borne by the employer.

Subs. 2. A public entity can claim acceptance as self-insurers.

Subs. 3. The contractor and any subcontractors must be covered by a general liability and product liability insurance.

Subs. 4. Upon request, the parties must provide documentation of such insurance being in force.

C. Performance of the contract

Services provided by the contractor

§ 12. The works must be performed in accordance with the provisions of the contract, with due professional skill and care and in accordance with any instructions given by the employer. To the extent that no special descriptions are made of the materials, they must generally be of good quality. The contractor must undertake quality assurance procedures for his works.

Subs. 2. The contractor must supply all materials and perform all secondary services required for the completion of the works.

Subs. 3. The contractor must notify the employer in writing of the use of methods and materials that have not been tested, including any possible risks in this respect, unless the use has been requested by the employer.

Subs. 4. The contractor must provide materials and other supplies intended for inclusion in the works without retention of title. Once the items in question have been delivered on the site, they become the property of the employer.

Subs. 5. Materials and other supplies for the works must be supplied with a 5-year supplier's liability for defects. The liability period shall commence at the handing-over of the works and shall be maximum 6 years from delivery to stock or for resale. Moreover, the supplier must acknowledge that the employer is entitled to raise claims for defects directly against the supplier pursuant to section 8 (4) and (5).

Subs. 6. The contractor can refrain from complying with the provisions of subs. 5 if such compliance will cause him considerable additional expenses or substantially delay the works or if, in case of contracts for



procurement of minor supplies, it will be burdensome to check compliance with the provision. In case of significant supplies, the employer must be notified of an omission as soon as possible after having received the offer from the supplier.

Subs. 7. The contractor must arrange for regular tidying-up and clearing-away and for the immediate removal of rejected materials from the building site.

Work and detailed time schedules

§ 13. Within the time set forth in the agreed main time schedule, the contractor must prepare a work schedule that complies with the time limits in the main time schedule. The work schedule must indicate the order of the individual parts of the contractor's works and take into account the obligations of the parties in accordance with the applicable working environment rules.

Subs. 2. If the employer has hired more contractors, the employer must, in collaboration with these, prepare a comprehensive work schedule (detailed time schedule) prior to the commencement of the works. The detailed time schedule must set out the order of the individual parts of the works.

Subs. 3. Any objection to the detailed time schedule from a contractor must be notified in writing to the employer within 5 working days after receipt.

Updating work and detailed time schedules

§ 14. It must continuously be assessed whether the work and time schedules are complied with. If it may reasonably be expected that the schedules will not be complied with, the relevant schedules must be updated, indicating to which extent an extension of the time is claimed or accepted, and whether the delay concerns a time limit subject to liquidated damages.

Subs. 2. If a contractor fails to participate as required in updating the schedules, the employer can update the contractor's work schedule as deemed necessary and include it in the detailed time schedule.

Setting out and construction site

§ 15. The employer sets out the main grid lines and heights (levels), whereas all additional setting out will be undertaken by the contractor.

Subs. 2. In case of construction works, the employer will, as necessary, provide for the installation of service pipes for drainage, electricity, gas, water and heat to the construction site.

Subs. 3. The employer must pay the required connection charges and any charges and fees incurred because sheds, containers, scaffolding, etc. as per agreement are not to be placed on the construction site.

Digital building models, etc.

§ 16. If digital building models are to be used for building and engineering works, the tender documents shall specify for which purpose and to what extent models are to be used, including whether they are to be used for planning and design as well as during the performance, and whether upon completion of the building works, a digital as-built model shall be provided for subsequent operations and rebuilding. Furthermore, it must be determined which design materials should take precedence in case of inconsistency with other design materials.



Subs. 2. The party who makes a digital building model available to others must set out for which purposes and to what extent the model can be used, including for design, quantification, collision tests and performance. The party in question must state whether there is a derogation from the general rule on priority referred to in subs. 1, last sentence.

Subs. 3. To the extent that other parties cooperating on a digital building model, including a joint digital building model, are to provide input to the model, the party making available a model must indicate which input is to be provided, in what form and data format, and when. The employer must ensure that these parties are required to follow the instructions by agreement with the parties concerned. This also applies if, at the completion of the works, the contractor must provide input to a digital as-built model.

Subs. 4. Data must be provided and uploaded in open data formats. Anyone who provides or uploads data must state with what software the data formats have been produced.

Subs. 5. The party who makes a digital building model available bears the risk of any defects in the digital model, its own input, and interfaces to other parties' design in the model, but not for errors in other parties' use of the model, in other parties' input or in the default software used for the preparation of the model.

Subs. 6. The provisions of subsections 1-5 on digital building models shall apply to other digital data with the necessary modifications.

Project design by the contractor

§ 17. The contractor shall only carry out the project design, if agreed (split consultancy services). To the extent that the contractor's works are described by specified requirements in the contract, the contractor must carry out the necessary project design. The contractor's submission of proposals, which the employer implements, does not entail that the contractor assumes the obligation to complete the project design, bears the risk of or is responsible for the proposal.

Subs. 2. If the contractor is to carry out the project design, the employer must appoint a designated design manager. The designated design manager represents the employer in relation to the organization and execution of the project design. The designated design manager can give and receive notices regarding the project design as well as provide instructions regarding the organization of the various contractors' project design in the interrelation between such contractors.

Subs. 3. The contractor must carry out the project design in accordance with the contract, good project design practice, and the instructions of the employer. The contractor's project design must contain information about the project design's connection with the remaining design in the interfaces defined in the contract. Coordination of the overall design, including definition of the interfaces, is the responsibility of the employer, see subs. 2. The contractor must participate in inter-disciplinary scrutiny of the overall design, as each party reviews its own design and its interfaces to other parties' designs.

Subs. 4. If the contractor's project design involves the use of methods and materials that have not been tested thoroughly, the contractor must notify the employer thereof in writing stating any possible risks involved with using such methods or materials.

Subs. 5. If the parties agree that the project design be divided into phases, they must set a time limit for delivery of the individual phases, and the provisions of subsections 6-8 shall also apply to each phase.



Subs. 6. The contractor must perform quality assurance, including scrutiny of his project if relevant, see section 21(1).

Subs. 7. The contractor must notify the employer in writing of the completion of the design (notice of completion) for the approval of the employer. The result of the contractor's quality assurance must be attached to the notice.

Subs. 8. As soon as possible after receipt of the notice of completion, the employer must inform the contractor in writing whether the employer agrees that the design has been completed and whether the employer can approve it as a basis for the contractor's further works. The notice must contain the employer's indication of any defects in the design or reservations for approval.

Project defects

§ 18. The contractor must and is entitled to remedy defects in his project design, which are ascertained at the delivery of the individual phases according to section 17 or later.

Subs. 2. The employer must fix a time limit in writing for remedying the defects ascertained. The extent of the time is determined in view of the nature and extent of the defects and other relevant circumstances. The contractor must notify the employer in writing when the defects have been remedied.

Subs. 3. If the employer after the expiry of the time referred to in subs. 2 – or upon receipt of a notice from the contractor that remedial work has taken place – the employer ascertains that the defects have not been remedied, the employer must, within 10 working days, notify the contractor in writing of the defects that the employer maintains.

Subs. 4. Subsequently, the employer is entitled to remedy the defects maintained at the expense of the contractor (remediation costs) or demand a reduction of the contract sum, see section 52.

Design review

§ 19. Before the performance of the building and engineering works is commenced, the employer must, together with the consultant and the contractor, review the contractual design and any design contributions and proposals for the selection of materials from contractors and suppliers. Furthermore, design reviews must be carried out in case of subsequent design changes, if the employer or the contractor assesses such review to be required.

Subs. 2. The purpose of the design review is to achieve a mutual understanding of the design, including the interfaces and chronological order between the individual parts of the design, and to allow the contractor to influence the construction process by pointing out the irregularities in the design. Furthermore, it takes place in order to identify risks and prepare to address these, as well as to reveal ambiguities and insufficiencies in the design. During the design review, the parties must identify specific works or materials to be supervised pursuant to section 21(4).

Subs. 3. The employer is responsible for the design review. All parties must loyally contribute to the design review.

Subs. 4. The employer must involve the employer's adviser, the designated design manager, the site manager, the safety coordinator and other consultants, who are taking part in the design and execution phase. The employer must ensure that the consultant involves sub-consultants, who have contributed to



the project design. The contractor must involve the appointed sub-contractors and suppliers, who will perform the contract or contribute to the project design.

Subs. 5. The employer, the consultant and the contractor must notify each other as soon as possible of any irregularities, ambiguities and insufficiencies that they identify. This also applies to defects in the design that they become aware of.

Subs. 6. The employer must, as soon as possible, prepare a statement concerning the design review with a specification of the time spent on the individual parts of the design. Furthermore, the statement must contain a description of the issues covered by subs. 5 with a specification of the measures to be taken to mitigate said issues. Comments to the statement must be sent to the employer as soon as possible.

Subs. 7. The parties involved in the project design must, as soon as possible, implement any required changes to their project designs in accordance with the statement.

Sub. 8. The contractor and the employer must notify the other party in writing as soon as possible of any possible required changes to the contract concerning price, time and security as a result of the mitigation measures set out in the statement. The provisions of section 25(3)-(5), shall apply mutatis mutandis.

Relations to public authorities

§ 20. The employer must arrange for the necessary planning permission for the project and defray all expenses thereby incurred. This also applies to the part of the design that is carried out by the contractor.

Subs. 2. The contractor must arrange for applications, apply for licences, request inspections and procure certificates as relate to the execution of the works and defray all expenses thereby incurred. Only by agreement with the employer can applications for exemptions be filed.

Quality assurance, supervision and rejection

§ 21. In the tender documents, the employer can provide provisions about the contractor's quality assurance of the works, including possible project design, as well as the nature and extent of tests, and the documentation of the performance of the works, the origin and characteristics of the materials used, and the tests performed to be provided by the contractor. Such provisions can be contained in a tender control plan.

Subs. 2. During the performance of the works and upon handing-over, the employer can demand that further tests be made. Also in this case, the contractor must make available the necessary staff for tests and test analyses. If such further tests show that the works are in accordance with the contract, the employer must be charged with the costs thereof as for extra work. Otherwise, the contractor must pay for the costs incurred by the employer.

Subs. 3. The contractor must grant the employer access to the building and production sites where the works are being carried out. Moreover, the employer can request such information to be furnished as is necessary to evaluate the performance of the contractor.

Subs. 4. The contractor and the employer will call for an inspection of specific works or materials selected by agreement during the design review for the purpose of assessing whether the works in question are in accordance with the contract or must be rejected as not in accordance with the contract. In addition, the contractor and the employer can as needed request an inspection in accordance with the first sentence.



Subs. 5. Prior to the inspection of the works pursuant to subs. 4, the contractor must make and, on request, document the agreed quality assurance. During the inspection, an audit protocol must be drafted indicating the reviewed properties of the works or materials with information on approval or rejection.

Subs. 6. The employer supervises the performance of the works and can reject works or materials that are not in accordance with the contract. Such rejection must be made as soon as possible.

Subs. 7. Supervision by the employer does not relieve the contractor of undertaking supervision.

The employer's instructions on the performance of the works

§ 22. The employer can provide instructions on how the works are to be carried out.

Subs. 2. The contractor must procure an instruction from the employer if the contract does not provide sufficient guidelines for the performance of the works.

Subs. 3. If the contractor finds that the employer's instructions on the performance of the works pursuant to subsections 1 and 2 imply a variation to the works pursuant to section 23, the contractor must notify the employer thereof as soon as possible.

Variations

§ 23. The employer can demand variations to works where such variations have a natural link to the contract works. A variation may entail that the contractor must provide something in addition to or instead of the materials agreed, that the nature, quality or performance of the works be changed or that agreed works not be performed.

The contractor is entitled to perform variations, unless the employer can establish reasons to let the works be performed by a third party, including that the remuneration required by the contractor for the performance of the works is not reasonable.

Subs. 2. The employer's request for a variation must be made in writing or at a site meeting and must contain a further description of the variation.

Additional payment and reduction of the contract sum

§ 24. Where variations concern works to which unit prices apply, the agreed contract sum shall be adjusted up or down accordingly, unless the parties agree otherwise, see section 25(4). However, adjustments in accordance with unit prices can be made only within +/-100% of the individual items on the bid list. In addition, an adjustment of a single item can only be up to +20% of the contract sum calculated by adding all additional work and, for reduced work, up to -10% of the contract sum calculated by counting all reductions. If work to which unit prices apply is replaced with another work, only the difference between the prices of the works shall be included in the calculation of the sum of either additional or reduced work.

Subs. 2. In relation to additional work to which unit prices apply and which exceeds the variation limits in subs. 1, the adjustments shall also be determined by the unit prices, unless it is established that the prerequisites for the unit price no longer apply.



Subs. 3. Except for cases where the adjustment is made in accordance with unit prices, see subsections 1 and 2, a variation shall be performed as per account rendered unless otherwise agreed by the parties in accordance with section 25(4).

Subs. 4. When performing a variation as per account rendered, the invoice shall include a detailed specification of labour (time spent), materials and equipment.

Subs. 5. In case of reduced work, the contractor must credit the employer the costs saved or which ought to have been saved, however, not exceeding the amount calculated for the works in the contract. Where the reduced work concerns works to which unit prices apply, see subs. 1, reductions can only be made to the extent that the reduced work leads to a reduction of the contract sum of more than 10%.

Price, time and security after a variation

§ 25. The parties' potential demands for changes to the contract with regard to price, time and security as a result of variations or the preconditions for the execution of the works must be submitted in writing or presented at a site meeting as soon as possible. The same applies to a party's demand for changes to the contract as a result of an approved proposal from the contractor or an instruction from the employer pursuant to section 22 or 26, which the party considers a variation, even if the proposal or instruction does not state that it is a variation.

Subs. 2. At the request of a party, the other party must state in writing as soon as possible whether it considers a specific work a variation, which entails changes to the contract with regard to price, time and security. The contractor is not obliged to initiate the works before the employer has answered such a request.

Subs. 3. If a party has demanded a change to the contract with regard to price, time or security pursuant to subsection 1, the other party must state in writing as soon as possible whether the demand is acceptable and, in the negative, the party must state the reasons for the rejection.

Subs. 4. The parties must, as soon as possible, enter into a written supplementary agreement concerning any changes pursuant to section 23 and the consequential changes with regard to price, time and security. Negotiations in that respect must not delay the performance of the works under the contract.

Subs. 5. The employer must keep a record of requested variations under section 23, claims under subs. 1, requests and notices pursuant to subsection 2, section 22(3), and section 26(1) and (2). If the contractor finds that there is an error in the employer's records, the contractor must notify the employer thereof as soon as possible.

Obstructions

§ 26. If the contractor finds that the works cannot be performed in accordance with the contract, the contractor must immediately notify the employer thereof and follow the instructions of the employer.

Subs. 2. The provision in subs. 1 shall also apply, if the contractor finds that circumstances have arisen which obstruct or render the works difficult or which are likely to make the employer suffer inconvenience or loss, including where the employer may incur liability towards third parties. If there is no time to obtain instructions from the employer, the contractor must – against payment and having been granted the necessary extension of time in relation to



such works – take the best possible measures for the purpose of avoiding loss being suffered by the employer and inform the employer accordingly as soon as possible.

Subs. 3. The tender documents must contain information on analyses made of groundwater and soil conditions, pollution, wires, cables, hazardous substances and materials or other obstructions. To the extent that the tender documents do not contain exhaustive information on such obstructions, the measures taken to overcome them and the resulting inconveniences shall be paid as extra work.

Subs. 4. If, despite the undertaking of reasonable or usual preliminary analyses as mentioned in subs. 3, considering the character, location and prior use of the site, unforeseen conditions should lead to orders or bans being imposed by public authorities, which may prevent continuation of the works or make continuation of the works unreasonably burdensome for the employer, the employer is entitled to cancel the contract. In case of cancellation of the contract, the employer must cover the loss suffered by the contractor due to the cancellation, except for the profit that the contractor loses by not completing the works.

Passing of risk

§ 27. Until the handing-over, the contractor bears the risk of damage to or loss of works and materials. The same applies to materials provided by the employer when these have come into the contractor's possession.

Subs. 2. However, the contractor shall not bear the risk of damage or loss attributable to the employer. The same applies to consequences of unintended and unexpected extraordinary events on which the contractor has no influence (force majeure), including war, riots, acts of terrorism and natural disasters.

Subs. 3. The employer is not liable for and does not bear the risk of damage caused by contractors to the works, materials and equipment of other contractors.

Subs. 4. The contractor must maintain the executed works until the handing-over.

Subs. 5. If works or parts thereof are put into use prior to the handing-over, the provisions of subsections 1-4 shall apply until such use commences. When the works are put into use, the employer may carry out a registration in accordance with the rules in section 63(2)-(4).

Subs. 6. As to building and related early or civil engineering works performed at premises that are in use during the performance, the rules in subsections 1-4 on the contractor's risk of any damage shall apply only to damage caused by another contractor not attributable to the employer. When the works have been completed and the contractor has left the premises, the works shall be considered put into use, see subs. 5.

Subs. 7. As to materials and movable property delivered to the employer or the contractor by a supplier, who is not going to perform any form of installation, processing, manufacturing or other works on the site, the rules in subsections 1-4 shall apply, until the materials and movable property have come into the possession of the employer or the contractor.

The employer's supervisor

§ 28. The employer must appoint a supervisor, who represents the employer in relation to the contractor with regard to the organisation and performance of the works. The supervisor can give and receive notices



concerning the works, approve or reject materials or works, and issue instructions for the organisation of interfaces between the works performed by the various contractors.

Subs. 2. The construction management is authorised by the employer to demand or agree on variations to the works, as well as changes to price, time and security resulting from such variations, subject to a maximum of DKK 50,000 for each variation and a maximum extension of time of 5 workdays for each change. If the employer has not appointed a construction management, the supervisor shall be authorised to the same extent.

Subs. 3. The supervisor must be present on the site or be on call.

The contractor's representative

§ 29. The contractor must appoint a person, who is authorized to act on his behalf in relation to the employer and the employer's supervisor concerning the organisation and performance of the works, and who can give and receive notices concerning the works.

Subs. 2. The contractor's representative must be present on the site or be on call.

Design meetings

§ 30. If the contractor is to carry out project design tasks, the employer must convene project design meetings with the contractor.

Site meetings

§ 31. Site meetings between the contractor and the employer must be convened by the employer.

Subs. 2. At each site meeting, the parties must

- a) review and update matters covered by section 25(5);
- b) review updates of work and time schedules, see section 14, and
- c) register the number of days when work

could not be carried out (lost days), as well as the cause of the loss and whether these are included in the lost working days that appear from the time schedules. Lost working days that regard one period but do not correspond to the actual lost working days during this period (unused lost working days) will not be transferred to subsequent periods.

Subs. 3. Changes to the authority of the construction management or the employer's supervisor, see section 28, must be communicated at the next site meeting. The same applies to any authority granted to the contractor's representative.

Common rules on design and site meetings

§ 32. The parties or their agents must attend all site meetings.

Subs. 2. The employer shall conduct the meetings and prepare minutes of the meetings to be forwarded to the contractor as soon as possible. The contractor has the right to have objections and claims entered in the minutes. Comments to the minutes must be sent to the employer as soon as possible and must be entered in the minutes of the following meeting.



Subs. 3. At the meetings, the parties can give and receive notices with binding effect. Notices must be entered in the minutes.

Duty of cooperation and loyalty

§ 33. The parties must cooperate loyally in order to avoid errors, delays and increased costs. The same applies to the contractor in relation to other contractors and the employer's supervisor.

D. Payment

Price adjustment and indexation

§ 34. The contract sum is fixed for 12 months from the date of bid (fixed price period).

Subs. 2. For the part of the works performed after 12 months from the date of bid, the price shall be adjusted according to the building or construction cost index agreed, or which – in the absence of an agreement – may be considered relevant for the works. The indexation is calculated based on the difference between the index 6 months after the date of bid and the index on the date of execution, which is considered to be the middle of the period in which the works in question have been performed, and the index at the said times shall, if necessary, be calculated by linear interpolation.

Subs. 3. The adjustment shall take place in connection with the payment for the part of the works affected by the indexation and be based on a substantiated statement from the contractor.

Extraordinary adjustments

§ 35. The contract sum shall be adjusted if a state intervention, carried out after the bid has been submitted, has resulted in significantly increased or reduced costs and such increase or decrease is not considered by other adjustments. The adjustment shall take place according to a statement from a relevant government agency.

Subs. 2. The contractor must also be reimbursed for any extraordinary price increase on materials, which are to be included in the works in their finished state or in a usual manner, or on fuel used directly for the works, unless such price increase is reimbursed pursuant to subsection 1.

Subs. 3. The price increase according to subsection 2 must

- a) have occurred after the date of bid and before the agreed indexation becomes effective,
- b) be general, and
- c) appear from official pricing materials or be documented in another way.

Subs. 4. Reimbursement pursuant to subsection 2 includes any price increase that exceeds 10% of the price of the materials or fuel in question on the date of bid. To this percentage should be added 0.5 percentage points for each whole month which has elapsed between the date of bid and the date of purchase. Price increases that occur after the date of purchase of the materials or fuel shall not be included.

Subs. 5. In order to be entitled to reimbursement pursuant to subsection 2, the total of the calculated adjustment sums shall amount to minimum 0.5% of the contract sum.

Subs. 6. If the contractor is required to reimburse his subcontractor in accordance with the provisions of subsections 2-5, the employer must, regardless of the provision in subsection 5, grant an equivalent reimbursement to the contractor.



Subs. 7. The adjustment pursuant to subsections 2-6 shall be made in connection with payment for the part of the works that is affected by the adjustment and shall be based on a documented statement provided by the contractor.

Payment and retention

§ 36. Upon written request to the employer, the contractor is entitled to receive payment twice a month for works and materials, which have been provided or delivered on the site in accordance with the contract.

Subs. 2. Subject to the same rules as referred to in subs. 1, the contractor can also demand payment for any materials, etc., purchased by him and not yet delivered to the site. If the employer so requests, the contractor must provide security for delivery in accordance with the contract, see section 9. The amount of such security shall correspond to the payment demanded – including VAT – for non-delivered materials.

Subs. 3. Instead of payment pursuant to subs. 1, the parties can agree on payment according to a schedule of payments. The schedule of payments shall follow the main time schedule agreed and stipulate at which points in time or stages the contract sum or certain parts thereof are to be paid. Payment shall be due at the agreed times, etc., upon the contractor's request, provided that the works to which the payment relates have been performed.

Subs. 4. If the time of payment for extra work has not been agreed, the contractor can request payment according to the provision in subs. 1. Payment must be requested within a reasonable time after the extra work has been carried out, unless particular circumstances make it impossible to settle the extra work.

Subs. 5. Upon handing-over, the contractor must submit a final and exhaustive statement to the employer, including all amounts due for extra work. Once the employer has received the final statement, the contractor can advance no further claims – with the exception of claims for which reservations have been specifically made in the final statement.

Subs. 6. The final statement must be submitted to the employer within 25 working days upon handing-over. However, for contracts with general contractors the time limit is 35 working days, and for early or civil engineering works that are not carried out in connection with building works, the time limit for submission of the final statement is 60 working days.

Subs. 7. If the employer has not received the final statement within the time limit provided in subs. 6, he can submit a written demand requiring that the statement be forwarded within 10 working days. If the contractor fails to submit the statement to the employer within this time, he must forfeit his claim for payment for extra work performed as per account rendered as well as for reimbursement for wage and price increases.

Subs. 8. If the employer finds that an amount for which payment has been claimed is not due, he must immediately notify the contractor thereof by a substantiated notice in writing.

Subs. 9. In case of a dispute between the parties concerning a statement, the employer must pay that part of the amount, which is undisputed by the employer.



Subs. 10. The employer can retain a reasonable amount as security for remedy of defects pointed out at the handing-over, see section 48. The amount must be paid to the contractor as soon as possible when the defects have been remedied.

Due date, time for payment and interest

§ 37. Payment of the amount stated in the contractor's final statement shall be due for payment upon the employer's receipt of the contractor's request for payment and must be effected within 15 working days upon receipt.

Subs. 2. Amounts due to the contractor shall carry interest from the due date in accordance with the Danish Interest Act. The time limit provided in subs. 1 is a period of grace.

The Contractor's right to stop works

§ 38. If the employer fails to effect a payment due before the expiry of the time of payment, the contractor can stop works with a prior written notice of 3 working days; however, the notice is 5 working days if the employer is a public entity or a general housing association.

Subs. 2. Moreover, the contractor can stop works immediately if the employer is declared bankrupt or is placed in corporate reconstruction, or if the general financial situation of the employer proves to be such that he must be assumed to be unable to fulfil his obligations under the contract. It is a condition that the employer has not provided adequate security for the performance of his obligations under the remaining part of the contract. If the employer provides such security without delay, the contractor must resume works.

Subs. 3. If the contractor stops works in accordance with subs. 2, the contractor can request that the employer provides adequate security for the performance of his obligations under the remaining part of the contract.

E. Extension of time and delay

The contractor's right to extension of time

§ 39. The contractor is entitled to extension of time in case of delay of the works caused by

- a) variations requested by the employer, see section 23,
- b) circumstances attributable to the employer or delay by another contractor,
- c) war, unusual natural events, fire, strike, lockout, blockade, vandalism, or similar circumstances which cannot be attributed to the contractor and which are outside his control,
- d) precipitation, low temperature, strong winds or other weather conditions which prevent or delay the works when such weather conditions are unusual for the season and region concerned, or
- e) public orders or prohibitions which are not attributable to the contractor.

Subs. 2. The contractor must endeavour to avoid or mitigate delays by such measures as can reasonably be expected.

Subs. 3. If the contractor becomes aware that a delay will occur, the contractor must notify the employer of such delay in writing as soon as possible.



Subs. 4. If the contractor considers himself entitled to an extension of time, he must notify the employer of the required extension of time and its reason in writing. The employer must respond in accordance with section 25(3).

The contractor's liability in case of delay

§ 40. The contractor is liable for any delay, which does not entitle the contractor to an extension of time.

Subs. 2. Where provisions have been made for liquidated damages or other particular sanctions, it is not possible to claim further damages due to delay.

Subs. 3. If liquidated damages are to be calculated as a fraction of the contract sum per day the contractor is delayed, these shall be calculated based on the contract sum without VAT per commenced working day. Liquidated damages are calculated for the time until the contractor has completed the works and has given notice of completion, and the liquidated damages shall be due for payment on the date of completion in accordance with the contractor's notice of completion.

Subs. 4. Delay shall only give rise to a claim for liquidated damages,

- a) if the time limit and the liquidated damages are clearly stated in the contract,
- b) if the number of days by which the time has been exceeded has been continuously recorded, with due regard to any extension of the time, and
- c) if the employer within a reasonable time after the employer has become aware that the time will be exceeded, has given notice that he will claim liquidated damages and from which point in time.

Subs. 5. Liquidated damages for exceeding a time limit other than for completion of the works (interim deadline) can only be claimed if the time limit is set to ensure completion of an activity that is essential to the construction process or for other significant reasons.

Subs. 6. Where no provisions have been made for liquidated damages or other particular sanctions, the loss suffered by the employer shall be assessed in accordance with the general rules of Danish law.

Acceleration

§ 41. The contractor is entitled to claim payment for acceleration,

- a) if the contractor has accelerated the works in accordance with an agreement with the employer;
or
- b) if the employer unjustly claims that the contractor is liable for delays and the contractor accelerates the works to recover such delays.

Subs. 2. If the contractor considers himself entitled to payment for acceleration under subsection 1(b), the contractor must – before undertaking the acceleration – notify the employer thereof. The contractor's claim for payment for acceleration shall be reduced if it is considered unreasonable.

The employer's right to extension of time

§ 42. The employer is entitled to extension of time in case of delay of the works caused by

- a) variations requested by the employer, see section 23,



- b) war, unusual natural events, fire, strike, lockout, blockade, vandalism, or similar circumstances not attributable to the employer or any other contractor and which are outside the control of the employer and other contractors,
- c) precipitation, low temperature, strong winds or other weather conditions which prevent or delay the works, including the works of another contractor, when such weather conditions are unusual for the season and region concerned, or
- d) public orders or prohibitions which are not attributable to the employer or another contractor.

Subs. 2. The employer must endeavour to avoid or mitigate delays by such measures as can reasonably be expected.

Subs. 3. If the employer becomes aware that a delay will occur, the employer must notify the contractor of such delay in writing as soon as possible.

Subs. 4. If the employer considers himself entitled to an extension of time, he must notify the contractor of the required extension of time and its reason in writing. The contractor must respond in accordance with section 25 (3)

The employer's liability for delay

§ 43. If the delay is caused by

- a) circumstances attributable to the employer and the employer has acted negligently, or
- b) another contractor is liable for the delay, see section 40(1), or another contractual party is liable for the delay,

the employer must pay damages to the contractor for his loss suffered.

Subs. 2. If the delay is caused by

- a) circumstances attributable to the employer where the employer has not acted negligently and where the circumstances are not covered by subs. 3,
- b) delay caused by another contractor not covered by subsections 1 or 3,
- c) variations requested by the employer, see section 23, or
- d) public orders or prohibitions which are not attributable to the employer or another contractor,

the employer must pay damages to the contractor for his loss suffered, except for any loss of profit suffered by him by not being able to perform other works for the duration of the delay and similar indirect loss.

Subs. 3. If the cause of the delay is

- a) war, unusual natural events, fire, strike, lockout, blockade, vandalism, or similar circumstances not attributable to the employer or any other contractor, and which are outside the control of the employer and other contractors, or
- b) precipitation, low temperature, strong winds or other weather conditions which prevent or delay the contractor's or another contractor's works, when such weather conditions are unusual for the season and region concerned, the contractor is not entitled to damages.



F. Handing-over

Pre-handover inspection

§ 44. The employer must, in writing and with a reasonable notice, convene an inspection of the works to take place at a reasonable time before the agreed handing-over (pre-handover inspection), which can be joint or divided into sections or contracts. If the employer fails to convene the pre-handover inspection, the contractor can convene the pre-handover inspection.

Subs. 2. During the pre-handover inspection, the employer must draft a pre-handover inspection protocol, listing the items pointed out by the employer and any comments made by the contractor.

Subs. 3. The fact that the employer has not called attention to a particular item at the pre-handover inspection does not preclude him from subsequently claiming that it is a defect.

Subs. 4. If the contractor is not present at the pre-handover inspection, the employer can proceed without the contractor's participation and must as soon as possible send the protocol to the contractor.

Handing-over meeting

§ 45. Immediately before the completion of the works, the contractor must inform the employer in writing of the time of completion (notice of completion). The employer must then convene the contractor to a handing-over meeting to take place within 10 working days of the time indicated above, however, see subs. 5. The provisions of the first two sentences shall also apply to works, which the parties have agreed to hand over later.

Subs. 2. The works shall be considered handed over to the employer when the handing-over meeting has been held, unless material defects were ascertained during the meeting, including defects that significantly prevent the use thereof. If this is the case, a new handing-over meeting shall be held when the contractor has informed the employer in writing that the defects have been remedied, see subs. 1.

Subs. 3. If the employer does not convene a handing-over meeting as stipulated in subs. 1, the works shall be regarded as handed over 10 working days after the stated time of completion. The same applies to a new handing-over meeting as stipulated in subs. 2, second sentence.

Subs. 4. Where the project is divided into several parts, the employer must await the completion of all contracts before convening the handing-over meeting. However, it may have been agreed or appear from the circumstances that contracts or parts thereof are to be handed over at different times or that building sections are to be handed over separately (sectional completion).

Subs. 5. As to early or civil engineering works that are not carried out in connection with building works, the individual contracts shall be handed over separately, unless otherwise agreed or apparent from the circumstances.

Handing-over protocol

§ 46. At the handing-over, the employer must draft a handing-over protocol. The protocol shall set out the defects and any other items pointed out by the employer as well as comments made by the contractor. Agreements concerning remedial work, including method statements and time of completion as well as the time of inspection of the remedial work carried out, see section 48(2) shall be entered in the protocol. It must appear from the protocol whether the parties consider the works handed over. The employer and the contractor must sign the protocol.



Subs. 2. If a party is not present at the handing-over meeting, the party present can proceed without the participation of the absent party and must as soon as possible send the handing-over protocol to the absent party.

G. Defects

The concept of defects

§ 47. If the works have not been performed in accordance with section 12(1) and (2), the works are defective.

Subs. 2. If the materials are not in accordance with the requirements of section 12(1) and (2), they are defective. However, this shall not apply

- a) when, in case of free choice of materials, the contractor substantiates that the materials stipulated in the contract do not exist or are not procurable because of war, import ban, etc., or
- b) when the employer has required the use of specific or equivalent materials, and the contractor substantiates that it is impossible to procure such materials in the condition stipulated in the contract due to circumstances which, at the time of the entering into of the contract, the contractor ought not to have foreseen.

In these instances, the contractor must notify the employer of the obstructions as soon as possible, see section 26.

Subs. 3. If the materials are not suitable for the purpose for which they are used, there is no defect,

- a) when the contractor, in the event of free choice of materials, substantiates that the materials were generally considered suitable at the time of the construction, or
- b) when the employer has required the use of certain or equivalent materials, and the contractor has used the specified materials.

Subs. 4. In any case, the works must possess the properties that are guaranteed by the contract.

Subs. 5. If some materials are to be delivered with a warranty obligation that goes beyond the general defect liability under these general terms, the contractor is only obliged to obtain such a warranty to the extent that it is possible for the contractor to purchase the materials with the required warranty and the supplier abides by and fulfils the warranty. If the contractor ascertains that the materials in connection with substantial deliveries cannot be purchased with the warranty, the contractor must notify the employer thereof as soon as possible.

Subs. 6. The time of handing-over shall be decisive for the ascertainment of defects, whether these are apparent or latent at this point.

Defects ascertained at the handing-over

§ 48. The contractor has an obligation and a right to remedy any defects ascertained at the handing-over.

Subs. 2. The employer must in writing stipulate a time limit for remedying the defects ascertained in view of the nature and extent of the defects and other relevant circumstances. Furthermore, the employer must stipulate a time for review of the remedial work, taking into account when the majority of the



defects are expected to be remedied. If the defects are not remedied until after the review of the remedial work, the contractor must notify the employer in writing when the defects have been remedied.

Subs. 3. During the inspection of the remedial work, the employer must draft a remediation protocol, in which the employer must state whether he considers the defects remedied, together with any comments made by the contractor. If a party is not present at the review of the remedial work, the party present can proceed without the participation of the absent party and must as soon as possible send the protocol to the absent party.

Defects ascertained after the handing-over

§ 49. For a period of 5 years after the handing-over, the contractor has an obligation and a right to remedy defects ascertained after the handing-over.

Subs. 2. The employer can rely upon such defects only if the contractor was notified thereof in writing within a reasonable time after the defects were, or ought to have been, discovered. However, this provision shall not apply if the contractor has acted with gross negligence.

Subs. 3. The employer must notify the contractor in writing of a time limit for remedying the defects ascertained. The time limit shall be fixed based on the nature and extent of the defects and other relevant circumstances. The contractor must notify the employer in writing when the defects have been remedied. Remedial work can, however, be postponed by the contractor to be completed together with the remedying of any defects ascertained at the 1-year inspection, provided that such postponement does not cause any defect to aggravate and does not cause any inconvenience to the employer.

Lapse of the contractor's right to remedy

§ 50. If the employer upon inspection of the remedial work or after the expiry of a time limit for remedial action – or after having received a notice from the contractor that remedial work has taken place – finds that the defects have not been remedied, the employer must, within 10 working days, notify the contractor in writing of the defects that the employer maintains.

Subs. 2. Subsequently, the employer is entitled to remedy the defects maintained at the expense of the contractor (remediation compensation) or demand a reduction of the contract sum. If the contractor has sought to remedy all defects maintained by the employer, and the defects that are maintained only constitute a minor part thereof, the contractor is, regardless of the first sentence, entitled to remedy these defects if the remedial work is commenced immediately after the employer's notice pursuant to subs. 1.

Lapse of the contractor's obligation to remedy

§ 51. The contractor's obligation to remedy and the employer's right to remedy at the expense of the contractor pursuant to sections 48-50 shall not apply if the remedial costs are disproportionate. In the assessment hereof, the employer's interest in the performance of the contract should be taken into consideration. The employer must in any event retain the right to a reduction of the contract sum pursuant to section 52.

The employer's right to a reduction of the contract sum

§ 52. If the contractor fails to remedy defects as stated in sections 48-50, the employer can decide not to let the defects be remedied at the expense of the contractor and instead claim a reduction of the contract sum. Moreover, the employer is entitled to a reduction of the contract sum if remedial action proves impossible or would cause considerable inconvenience, and in the events mentioned in section 51.



Subs. 2. As a starting point, the calculation of the reduction shall be equivalent to the costs of remedying the defects.

Subs. 3. If remedy of defects proves impossible or in the events mentioned in section 51, the reduction shall be estimated.

The contractor's liability for consequential or incidental damages

§ 53. The contractor is liable for damages due to defects in the works, where such defects are caused by negligence on the part of the contractor, or where the defects relate to properties that the contractor has explicitly or implicitly warranted.

Subs. 2. The contractor is not liable for operational losses, loss of profit or other indirect losses.

The contractor's product liability

§ 54. The contractor's liability for damages caused by a defective product included in the building and engineering works (product liability) is limited to the coverage according to the product liability insurance taken out, see section 11(3).

Subs. 2. The contractor is not liable for operational losses, loss of profits or other indirect losses as a result of a damage caused by a defective product included in the building and engineering works.

Cessation of the liability for defects

§ 55. The employer's claim against the contractor for defects must be put forward within 5 years of the handing-over of the works. After this period, the employer cannot put forward any claims against the contractor.

Subs. 2. If the contractor has remedied defects of which the employer has given proper notice, a new time limit for putting forward claims for remedial action shall commence pursuant to subsection 1, so that the time limit shall run from the conclusion of the remedial action, but not be extended beyond 3 years after the expiry of the original 5-year time limit.

Sub. 3. If the employer's claim against the contractor as a result of defects relates to chattels, fixtures and fittings that are not adapted to or permanently installed in the works, the time limit stated in subs. 1 shall be reduced to 2 years.

Subs. 4. Regardless of subsections 1-3, the employer's claims pursuant to subsections 1-3 shall continue to exist if

- a) the contractor has undertaken to extend the period of his liability,
- b) it is established during the handing-over that the agreed quality assurance measures have failed materially, or
- c) the contractor has acted with gross negligence.

H. 1- and 5-year inspections

1-year inspections

§ 56. The employer must convene the contractor to an inspection of the works to take place within one year of the handing-over.



5-year inspections

§ 57. The employer must convene the contractor to a final inspection of the works to take place not later than 30 working days prior to the expiry of a 5-year period after the handing-over.

Subs. 2. If the employer fails to convene an inspection as provided in subs. 1, the contractor can convene the employer to the inspection with a minimum notice of 10 working days.

Joint inspection rules

§ 58. The convening of inspections under sections 56 and 57(1) must be made in writing with a notice of maximum 60 and minimum 15 working days. However, for contracts with general contractors the minimum notice is 20 working days.

Subs. 2. In connection with the inspection, an inspection protocol must be drafted in which the employer must list any defective works and other issues pointed out by the employer as well as any comments made by the contractor in this regard and any agreements concerning remedial work, including method and making-good period.

Subs. 3. If a party is not present at the inspection, the party present can proceed without the participation of the absent party and must as soon as possible send the protocol to the absent party.

I. Termination for cause

The employer's right to terminate the contract for cause

§ 59. Following a written notice to the contractor, the employer can terminate the contract in whole or in part,

- a) if the performance of the work is substantially delayed giving rise to liability on the part of the contractor, and such delay causes considerable inconvenience to the employer,
- b) if the contractor is otherwise the cause of material delay in respect of matters of decisive importance to the employer,
- c) if the quality of the works performed is such that the employer has reason to believe that the contractor will not be able to complete the works without material defects, or
- d) in the event of general material breach of contract on the part of the contractor regarding matters of decisive importance to the employer.

Subs. 2. The employer can, upon written request, require that a subcontractor or a supplier be denied the provision of works and supply of materials, respectively, if the party in question has substantially disregarded applicable rules or agreed terms concerning social responsibility, including rules on safety and work environment. Under the same conditions, the employer can expel individuals from the site.

The contractor's right to terminate the contract for cause

§ 60. Following a written notice to the employer, the contractor can terminate the contract in whole or in part,

- a) in the event of material delay on the part of the employer or on the part of another contractor, and the employer does not make reasonable efforts to expedite the works, or



- b) if the employer is otherwise the cause of material delay or breach of contract in respect of matters of decisive importance to the contractor.

Bankruptcy, reconstruction, etc.

§ 61. If a party is declared bankrupt, and to the extent that nothing in the provisions of the Danish Bankruptcy Act prevents it, the other party can terminate the contract with immediate effect.

Subs. 2. If, under the provisions of the Danish Bankruptcy Act, the estate wants to subrogate into the contract, the estate must give notice of such intentions without undue delay.

Subs. 3. The provision in subs. 1 shall also apply if a party is placed in reconstruction, or if the general financial situation of said party proves to be such that the party can reasonably be assumed unable to fulfil the contract. However, the right to terminate shall be conditional upon said party not having provided, or at the request of the other party, not immediately providing, adequate security for the performance of the contract, see sections 9 and 10.

Subs. 4. If the party wants to continue the contract pursuant to the rules on reconstruction of the Danish Bankruptcy Act, the party must, upon request, notify the other party thereof without undue delay.

Subs. 5. If a party is a limited liability company, the other party is entitled to terminate the contract if the Danish Business Authority initiates proceedings for dissolution of the company. This provision shall not apply if, within 10 working days of receipt of a request from the other party, said party furnishes documentation, which substantiates that the conditions for a dissolution of the company are not present, or if the company provides adequate security for the performance of the contract.

Death of a party

§ 62. In the event that a party dies and the estate is administered as insolvent, the provisions of section 61(1) and (2) shall apply by analogy.

Joint rules on termination

§ 63. Termination must be notified in writing.

Subs. 2. Concurrently with the termination, the terminating party must convene a registration meeting (status meeting) in writing between the parties to take place as soon as possible. However, unless the parties agree otherwise, the status meeting shall be held one working day upon receipt of the convening notice, at the earliest. In case of disagreement concerning the status of the works, an expert appointed by the Danish Building and Construction Arbitration Board can undertake the survey in accordance with section 66.

Subs. 3. During the status meeting, a registration protocol must be drafted, describing the extent and quality of the work performed. The parties must sign the document unless the registration is undertaken by an expert survey.

Subs. 4. If, despite receipt of a convening notice, a party is not present at the status meeting, the party present can proceed without the participation of the absent party and must as soon as possible send the registration protocol to the absent party. Objections to the contents of the protocol must be submitted in writing no later than 5 working days after receipt.



Subs. 5. In case of termination by the employer, the employer or the person completing the works on behalf of the employer is entitled to use the contractor's materials and equipment present on the site, if removal thereof before the completion of the works will cause the employer a loss. Customary remuneration for the use of and materials and equipment shall be paid.

Subs. 6. In case of termination for cause by either party, the other party is liable for the loss suffered in accordance with the general rules of Danish law.

J. Disputes

Resolution ladder

§ 64. The parties must seek to clarify and settle disputes by negotiation between their project managers within 5 working days after a party has requested a negotiation pursuant to this provision. After the handing-over, subs. 1 shall not apply, and the parties must seek to clarify or settle the dispute pursuant to subs. 2.

Subs. 2. If the dispute is not settled pursuant to subs. 1, the parties must seek to settle the dispute by negotiation between the parties' management representatives within 5 working days after the expiry of the time limit referred to in subs. 1. If the dispute is not settled pursuant to the first sentence, the management representatives must discuss the next step in resolving the dispute within the same time.

Subs. 3. Each party must appoint its own project manager and management representative within 5 working days after the conclusion of the contract.

Subs. 4. Mediation, conciliation, prompt decision and arbitration cannot be initiated before the negotiation procedure pursuant to subsections 1 and 2 has been completed. The same applies to expert surveys, unless expert surveys are undertaken to secure evidence.

Mediation and conciliation

§ 65. Upon the request of a party, the Arbitration Board will appoint a mediator to attempt to settle a dispute. A request can also be submitted by the arbitration tribunal handling the dispute in question.

Subs. 2. Mediation cannot be initiated if a party wants the dispute resolved by a prompt decision and submits a request in this regard within 10 days after the request for mediation has been submitted.

Subs. 3. After consulting the parties, the Arbitration Board will appoint the mediator within 5 working days.

Subs. 4. The mediator is to convene the parties to a mediation meeting to take place no later than 10 working days after the mediator has been appointed.

Subs. 5. The parties are required to contribute to the completion of the mediation procedure, and arbitration cannot be initiated or continued until the procedure has been completed.

Subs. 6. The mediation procedure is finalised when

- a) the dispute is settled, or
- b) the mediator ascertains that there is no prospect of settling the dispute.



Subs. 7. The rules of procedure adopted by the Arbitration Board shall apply to mediation.

Subs. 8. Where mediation involves more than two parties, the provisions of subsections 1-7 shall also apply to the interrelation between such parties.

Subs. 9. The provisions of subsections 1-8 shall also apply to conciliation.

Expert Surveys

§ 66. At the request of a party, the Arbitration Board will appoint an expert to perform a survey in order to establish proof of a matter or assess the facts. If a party has requested a decision on security provided or a prompt decision, no survey can be performed regarding the same matter before the matter of security provided or of a prompt decision has been finalised, unless the purpose of the survey is to establish proof.

Subs. 2. The Arbitration Board – normally after consulting the parties – can appoint one or more experts and decide about the contents of the questions for the experts.

Subs. 3. Another survey by a different expert can be carried out only where considered appropriate by the Arbitration Board.

Subs. 4. If, while an expert survey is pending, the dispute is referred to arbitration proceedings regarding the issues of the survey, the survey will continue as a survey under the arbitration proceedings. The parties to the survey, who are not parties to the arbitration proceedings, will continue as joint parties to the survey.

Subs. 5. The rules of procedure adopted by the Arbitration Board shall apply to expert survey.

Subs. 6. Where an expert survey involves more than two parties, the provisions of subsections 1-5 shall also apply to the interrelation between such parties.

Expert opinions on security provided

§ 67. At the request of a party, the Arbitration Board can appoint an expert to decide on the release, reduction or discharge of security provided, see sections 9(11) and (12) and 10(5) and (6), unless a decision has already been made on the subject pursuant to sections 68 or 69, or the circumstances giving rise to the request are already the subject of a dispute between the parties in a pending case pursuant to sections 68 or 69.

Subs. 2. After consulting the parties, the Arbitration Board will appoint one or more experts within a period of 3 working days.

Subs. 3. The counterparty can reply within 10 working days upon receipt of the request for a decision concerning the provision of security. Subsequently, each party can submit a pleading within 5 working days upon receipt of the other party's pleading. Under exceptional circumstances, the Arbitration Board can extend the time limits or allow one additional pleading by each party.



Subs. 4. With a notice of normally five working days, the expert can request the parties to provide additional information and material.

Subs. 5. The expert can carry out an inspection with a notice of five working days after having summoned the parties. A survey cannot be carried out as part of this expert opinion procedure.

Subs. 6. Not later than 10 working days after the expert has received the last pleading together with any additional information and material and has carried out a survey, where appropriate, the expert will decide to what extent the request for payment shall be fulfilled and which party shall bear the costs of the proceedings.

Subs. 7. Under special circumstances it can be decided that payments to contractors and to employers, who are not a public entity or a general housing association, be conditional upon the provision of security. In that case, the expert will determine the type and magnitude of such security as well as the conditions for its release or discharge.

Subs. 8. Under special circumstances, the expert can refer the parties to arbitration pursuant to section 69 and not render a decision concerning the security provided.

Subs. 9. Payments comprised by a decision concerning the release of security provided must be effected within 3 working days of the day when the parties and the guarantor have been notified of the decision in writing.

Subs. 10. A decision on security provided has, as an arbitration award, binding effect on the parties to the case. A decision on the reduction or discharge of security provided must be fulfilled not later than 8 weeks after it has been made. The decision can be referred to arbitration 8 weeks after it has been made, and the dispute shall be finally settled by arbitration. If arbitration proceedings are not initiated before the expiry of the time limit, the decision is final. Initiation of arbitration proceedings does not have suspensory effect unless the decision concerns reduction or discharge of security provided and the arbitration court decides otherwise.

Subs. 11. The rules of procedure adopted by the Arbitration Board shall apply to expert decisions concerning security provided.

Prompt decision

§ 68. At the request of a party, the Arbitration Board can appoint an umpire to make a prompt decision on

- a) the employer's right to retain payments or make set-offs against payments to be made to the contractor;
- b) the employer's right to vary and the contractor's right to carry out variations;
- c) the contractor's right to additional payment for variations and the employer's right to set off savings in case of variation;
- d) the contractor's right to an adjustment of the contract sum;
- e) the contents of a detailed time schedule;
- f) the contractor's and the employer's right to extension of time;
- g) who bears the risk of damage to or loss of works or materials;



- h) definition of interfaces;
- i) rejection of an appointed subcontractor;
- j) disputes with a value of less than DKK 200,000; and
- k) other disputes, if the parties so agree.

Subs. 2. Proceedings concerning a prompt decision cannot be brought if arbitration proceedings concerning the same dispute are pending.

Subs. 3. After consulting the parties, the Arbitration Board will appoint one or more umpires within a period of 3 working days.

Subs. 4. The counterparty(/ies) can respond within 10 working days of receipt of the request for a prompt decision but cannot bring any other disputes into the proceedings. Not later than at the same time as the reply is submitted, the counterparty(/ies) can bring additional parties into the case by a third-party notice, and the party(ies) in question must then respond within 10 working days of receipt of the third-party notice. Subsequently, each party can submit a pleading within 5 working days of receipt of the counterparty's pleading. Subject to exceptional circumstances, the Arbitration Board can extend the time limits or allow one additional pleading from each party.

Subs. 5. With a notice of generally 5 working days, the umpire can request the parties to provide additional information and material.

Subs. 6. The umpire can carry out an inspection with a notice of 5 working days after having summoned the parties. A survey cannot be carried out as part of this prompt decision procedure.

Subs. 7. Not later than 10 working days after the umpire has received the last pleading together with any additional information and material and has carried out an inspection, where relevant, the umpire will decide which party shall bear the costs of the proceedings.

Subs. 8. The umpire can refer the parties to mediation or conciliation pursuant to section 65 or to initiate arbitration proceedings pursuant to section 69, if the umpire considers that the dispute is not suitable for a prompt decision.

Subs. 9. A prompt decision has, as an arbitration award, binding effect on the parties to the case. A decision must be fulfilled not later than 8 weeks after it has been made. The decision can be referred to arbitration, pursuant to section 69, not later than 8 weeks after it has been made, and the dispute shall be finally settled by arbitration. If arbitration proceedings are not brought before the expiry of the time limit, the decision will be final. The bringing of arbitration proceedings does not have suspensory effect unless the arbitration court decides otherwise.

Subs. 10. The rules of procedure adopted by the Arbitration Board shall apply to prompt decisions.

Subs. 11. Where a case concerning prompt decisions involves more than two parties, the provisions of subsections 1-10 shall also apply to the interrelation between such parties.



Arbitration

§ 69. Disputes between the parties must be settled finally by arbitration by the Danish Building and Construction Arbitration Board.

Subs. 2. Arbitration proceedings cannot be initiated until four weeks after the completion of a negotiation process pursuant to section 64. Furthermore, arbitration proceedings cannot be brought if proceedings regarding mediation, conciliation, prompt decision, or a decision on security concerning the same dispute are pending.

Subs. 3. The arbitration case will be reviewed in accordance with the ordinary rules on arbitration, unless it should be decided in accordance with the rules on simplified arbitration, see subs. 4.

Subs. 4. The arbitration case will be reviewed in accordance with the rules on simplified arbitration, if

- a) the parties agree; or
- b) one of the parties so requests and the value of the dispute is less than DKK 1 million.

Subs. 5. In the case of ordinary arbitration proceedings, the arbitration tribunal is composed of 3 arbitrators, unless the parties agree that it be restricted to 1 arbitrator, or a party requests that it be extended to 5 arbitrators. In the case of simplified arbitration, the arbitration tribunal is composed of 1 arbitrator, unless the parties agree that it be extended to 2 or 3 arbitrators. Arbitrators can be technical arbitrators appointed by the Arbitration Board or legal arbitrators appointed by the chair of the Presidium of the Arbitration Board.

In all cases, appointments will take place after consulting the parties.

Subs. 6. The rules of procedure adopted by the Arbitration Board shall apply to arbitration proceedings.

Subs. 7. Where arbitration proceedings involve more than two parties, the provisions of subsections 1-6 shall also apply to the interrelation between such parties.