

ABT 93

General Conditions

for turnkey contracts

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Issued by the Danish Ministry of Housing on 22 December 1993

'General conditions for turnkey contracts' was drafted in accordance with the recommendations made by a committee set up by the Danish Ministry of Housing with representatives from:

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A. Contractual Basis

General conditions

§ 1. The present general conditions for turnkey contracts shall apply to package contracts (also termed 'design and build contracts') within building and engineering.

Subs. 2. For the purpose of the present conditions, 'turnkey contract' shall be defined as a contract covering the most important part of the design and planning process and most of the other services provided for the building or construction works.

Subs. 3. Deviations from the general conditions shall be valid only when it is clearly and explicitly stated in which respects such deviations are to be made.

Subs. 4. Unless otherwise provided the amounts stated shall not include value-added tax (VAT).

Subs. 5. Unless otherwise provided the term 'workday' shall be defined as all such weekdays from Monday through to Friday as are not official public holidays.

Subs. 6. All documents shall be drafted in Danish, and all indications of currency, measures and weight shall be Danish indications. Negotiations, including site meetings, shall be conducted in Danish. If documents are also drafted in another language and in the event that discrepancies appear between the foreign-language version and the Danish text, the Danish text shall prevail.

Subs. 7. The legal relationship between the parties shall in all respects be treated in accordance with Danish law.

Subs. 8. For the purpose of the present conditions, the term 'the work' shall include the project, and 'sub-contractors' shall include consulting engineers and technicians employed by the contractor.

The employer's invitation to tender

§ 2. 'Tender' shall be defined as the employer's invitation of bids.

Subs. 2. Bids shall be made on the basis of the information and requirements contained in the tender documents. The contents of these documents must be unambiguous and presented so as to make quite clear the extent and nature of the services to be provided. The employer shall be responsible for making sure that such information and requirements comply with current legislation, other public rules and regulations, easements and covenants and other similar rights registered on the property.

Subs. 3. The tender documents must stipulate a time schedule. A time limit may be fixed within which the necessary

permits from public authorities must be obtained, cf. § 24, subs. 1(6).

Subs. 4. The tender documents must inform of the existence on the site of any ancient monuments, cf. § 16.

Subs. 5. In a competitive tender a declaration must be made of such matters as the employer will give great weight in his evaluation of the bids. If an evaluation jury is set up, its composition must be indicated.

Subs. 6. In a competitive tender a declaration must be made of the amount payable in remuneration for each bid project. Such remuneration shall be paid to all bidders immediately upon completion of the evaluation process. The remuneration payable to the successful bidder shall be deducted from the contract amount at the first pay-out.

The contractor's bid

§ 3. Where a bid is submitted by several tenderers in unison, they shall all be jointly and severally bound by it.

Subs. 2. In a competitive tender bids shall be open for acceptance for a period of 40 workdays from the day the bids were opened. Other bids in writing shall be open for acceptance for a period of 40 workdays from the date of the bid.

Subs. 3. Unsuccessful bidders may demand that their own bid, drawings, calculations and descriptions be returned to them.

Subs. 4. The bid shall cover compliance with such public requirements as appear from statutory provisions, building regulations, standards or other generally applying rules and regulations.

Subs. 5. If the employer has not fixed a time limit within which the required permits from public authorities must be obtained, cf. § 2, subs. 3, the contractor may stipulate such limit in his bid, cf. § 24, subs. 1(6).

Subs. 6. Costs arising out of compliance with rights under civil law shall be included in the bid to the extent that they are adequately defined in the tender documents.

Subs. 7. The bid sum shall incorporate payment for the employer's use of the bid project in the performance of the work and any further design and planning work required for that purpose. Moreover, all rights in the project shall be vested in the bidder and not the employer.

Subs. 8. If more than 2 bids are invited, the bids shall be submitted in closed envelopes to be opened at a pre-determined time. In case of a demand for bid sums to be submitted in separate envelopes, a time must be fixed in ad-

vance for the opening of these envelopes, too. Bidders are entitled to be present at the opening of bids and price envelopes and to be informed of the bid sums.

Subs. 9. Immediately upon completion of the evaluation of the bids received – including any technical clarifications – and before the initiation of contract negotiations, the bidders shall be informed in writing of the identity of the bidder whose bid, in the opinion of the employer, is the most advantageous.

The contract

§ 4. An agreement for the performance of a turnkey contract shall be made by acceptance in writing of the bid submitted or by a special document. Reference must be made to the documents upon which the contract is based.

Subs. 2. Any stamp duty must be paid by the employer.

Assignment of rights and obligations, etc.

§ 5. The parties may assign their rights under the contract.

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

Subs. 3. Neither party may transfer his obligations to a third party without prior consent from the other party.

Subs. 4. However, the contractor may sub-let unto others the performance of the work to the extent that it is customary or natural for such work to be performed under a sub-contract.

Subs. 5. Where it has been proved that a claim against the contractor concerning defects cannot, or can only with the greatest difficulty, be successful, the employer shall be entitled to put forward the claim directly against the contractor's sub-contractors and suppliers, cf. § 10, subs. 4.

B. Performance bond and Insurance

The provision by the contractor of a performance bond

§ 6. Unless otherwise provided in the tender documents, the contractor must within a period of 8 workdays of the conclusion of the contract provide security for the due performance of his obligations towards the employer. The bond may be in the form of an adequate guarantee from a bank or a savings bank, an insurance-guarantee or other adequate types of security.

Subs. 2. Until the handing-over of the work, the bond provided must correspond to 15% of the contract sum. After handing-over the bond must correspond to 10% of the contract sum.

Subs. 3. One year after handing-over the bond shall be reduced, however cf. § 36, subs. 3.(1), to 2% of the contract sum, unless a prior claim for the rectification of defects has been put forward in writing by the employer, in which case the bond shall be reduced when such rectification has been effected.

Subs. 4. The bond shall cease 5 years after the handing-over, however cf. § 36, subs. 3.(1), unless a prior claim for rectification has been put forward in writing by the employer, in which case the bond shall cease when such rectification has been effected.

Subs. 5. Proportional release of the bond shall be made in case of sectional completion and handing-over.

Subs. 6. If the employer requests payment under the bond provided, such request must be made in writing and notified simultaneously to the contractor and the guarantor, with an exact indication of the nature and extent of the alleged breach as well as the magnitude of the amount claimed. The amount shall be payable to the employer within 10 workdays of receipt of the above notification, unless the contractor has filed a prior request with the Court of Arbitration asking for an order on the specific question whether the payment claim of the employer is justified, in which case the provisions of § 46 shall apply.

Subs. 7. The purpose of the bond shall be 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 too large payments already made under the contract.

The provision by the employer of a performance bond

§ 7. If the contractor so requires, the employer under a private contract shall provide a performance bond for the due performance of his pecuniary obligations towards the contractor within 8 days of a demand therefor. The bond shall be provided in the form of an adequate guarantee from a bank or a savings bank, an insurance-guarantee or other adequate types of security.

Subs. 2. The bond shall correspond to the average payment for a three-month period, however with a minimum of 10% of the contract sum, so calculated that the contract sum is divided evenly on the number of months stipulated in the contract for the performance of the work. Where the contract is extended to include extra work under § 14, the contractor may claim the bond to be increased if the payment for the totality of such extras – to the exclusion of work for which payment has already been effected – exceeds half of the average payment for one month under the original contract.

Subs. 3. If the contractor requests payment under the bond provided, such request must be made in writing and notified simultaneously to the employer and the guarantor, with an exact indication of the magnitude of the amount claimed. The amount shall be payable to the contractor within 10 workdays of receipt of the above notification, unless the employer has filed a prior request with the Court of Arbitration asking for an order on the specific question whether the payment claim of the contractor is justified, in which case the provisions of § 46 shall apply.

Subs. 4. The purpose of the bond shall be to satisfy all claims which the contractor may have under the contract, including such claims as relate to any extra work.

Insurance

§ 8. The employer shall take out and pay for the usual fire and storm and tempest insurance from the commencement of the work and until any defects established in connection with the handing-over have been rectified. At the request of the contractor, the contractor and any sub-contractor shall be included as insured under the insurance policy. The insurance must provide cover for the work of all contractors on the building or engineering work under the contract. For building alterations or additions the insurance must provide cover for damage to the work and the building or engineering work on which alterations or additions are being made.

Subs. 2. Public-sector employers may claim acceptance as self-insurers.

Subs. 3. The contractor and any sub-contractors must be covered by the usual liability insurance in relation to injury or damage for which they may incur liability under the general provisions of Danish legislation. Upon request the contractor must furnish documentation of such insurance being in force.

C. Performance of the Contract

Working schedule and measurements

§ 9. The contractor must as soon as possible, and in cooperation with the employer, prepare a working schedule.

Subs. 2. Unless the parties agree otherwise, all measurements shall be set out by the contractor.

Services provided by the contractor

§ 10. The work must be performed in accordance with the provisions of the contract, with due professional care and skill or in accordance with any instructions given by the employer under § 15. To the extent that no special descriptions are made of the materials, they must be of a general, good quality.

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

Subs. 3. Materials and other supplies intended for incorporation in the work must be supplied by the contractor without any right of lien. Once the specific objects have been delivered at the site they become the property of the employer.

Subs. 4. Materials and other supplies for the work must be supplied with a 5-year suppliers' liability for defects, howe-

ver cf. § 36, subs. 3(2). The liability period shall commence upon the handing-over of the work and shall be limited to a maximum of 6 years from delivery to stock or for resale. Moreover, the supplier must have accepted partly that claims of defects under the circumstances mentioned in § 5, subs. 5, can be made directly against the supplier, partly that disputes concerning defective supplies can be brought before the Building and Construction Arbitration Court. This shall also apply to consulting engineers and technicians employed by the contractor, cf. § 1, subs. 8.

Subs. 5. The contractor may refrain from complying with the provisions of subs. 4 above if such compliance will cause him considerable additional expense or substantially delay the work or if, in the case of small supplies, control of compliance with that provision will be too burdensome. In the case of large supplies the employer must be informed of such omission.

Project conferences, documentation and tests

§ 11. Project conferences shall be held at the request of either party. The contract may provide for the nature and extent of samplings and the kind of documentation to be furnished by the contractor in relation to the performance of the work, constructions made, the origin and properties of the materials used and the samplings made. Such provi-

sions may be contained in a tender control plan. Participation in project conferences and the furnishing of documentation and tests form part of the service to be provided by the contractor.

Subs. 2. During the performance of the work and upon handing-over the employer may demand that further tests be made. In this case, too, the contractor must make available the necessary staff for tests and test analyses. If such further tests show that the services provided are up to contract, the employer must be charged with the cost thereof as for extra work. Otherwise the contractor shall pay for the costs incurred by the employer.

Subs. 3. The contractor shall allow access for the employer and his supervisors to the building and production sites where the work is being carried out. Moreover, the employer may claim that such information be furnished as is necessary to evaluate the service.

Subs. 4. During the performance of the work the employer and his supervisors may reject work or materials that are not up to contract. Such rejection must be made at the earliest possible time.

Subs. 5. The contractor must arrange for regular tidying-up and clearing-away and for the immediate removal of rejected materials from the building site.

Deterioration of the work, etc. Maintenance

§ 12. If the work, or part thereof, is deteriorated, destroyed or lost before handing-over, the contractor shall arrange for and defray all expenses arising out of the provision of a service which is up to contract, unless the occurrence was caused by the employer. If the employer delivers materials to the work done by the contractor, the same rule shall apply to these materials in the time from the receipt by the contractor thereof and until the handing-over of the work.

Subs. 2. The employer shall not be liable for damage caused by contractors to the work, materials and equipment of other contractors.

Subs. 3. The contractor shall maintain the work performed until handing-over.

Subs. 4. If works or parts thereof are put to use prior to handing-over, the provisions of subs. 1-3 above shall apply in the period until such works are put to use.

Relations to public authorities

§ 13. The contractor shall arrange for the necessary planning permission for the project and shall inform the employer thereof to the necessary extent. If the parties have agreed that the contractor shall also defray the expenses arising thereout of by way of fees or similar charges, adjustments shall be made in the bid sum in the event that, after

the submission of the bid, new fees and similar charges are introduced or existing ones are abolished or changed.

Subs. 2. The contractor shall arrange for notifications, applications for licences, requests for inspections and such certificates as relate to the execution of the work itself and shall defray all expenses thereby incurred.

Alterations in the work

§ 14. The employer may demand that alterations be made in the nature and extent of the work where such alterations are naturally linked to the services agreed upon. The contractor shall be entitled to undertake such alterations, unless the employer points out special conditions which justify that the performance of the work be undertaken by others.

Subs. 2. The employer's demands for alterations shall be made in writing. The same shall apply to any demands by the parties for alterations in the contract in respect of price, time and performance bond because of such alteration. An additional contract for the alteration shall be made as soon as possible, and negotiations thereon must not lead to a delay in the performance of the work under the contract.

Subs. 3. Where such alterations relate to work for which unit prices apply, the agreed contract sum shall be adjusted accordingly, unless the parties agree otherwise, cf. subs. 2. However, adjustments in accordance with unit prices may be made only within +/- 15% of the contract sum and within +/- 100% of the individual items in the tender list.

Subs. 4. Payment for alterations other than those provided for in subs. 3 shall be by account rendered unless otherwise agreed by the parties.

Subs. 5. In case of reductions in the extent of the work the contractor shall give the employer the benefit for any costs for which savings are, or ought to have been, obtained. However, where the reduction concerns work for which unit prices apply, cf. subs. 3, this may be done only to the extent that the reduction in work leads to a reduction of the contract sum of more than 15%.

Lack of clarity, obstructions or similar matters

§ 15. The contractor shall consult with the employer if the contract and its basis do not provide sufficient guidelines for the performance of the work.

Subs. 2. Where the contractor finds that the work cannot be performed in accordance with the contract entered into, he shall immediately inform the employer thereof and follow the latter's instructions.

Subs. 3. The contractor shall immediately inform the employer of the occurrence of any events which obstruct work or render work difficult or due to which the employer is

likely to suffer inconvenience or loss, including cases in which the employer will incur liability towards third parties. If there is no time to receive instructions from the employer, the contractor must take the best possible measures for the purpose of avoiding losses being suffered by the employer in return for being granted the necessary extension of time limits and against payment.

Subs. 4. The tender documents must contain information on any analyses made of groundwater and soil conditions, contamination or other obstructions. To the extent that the tender documents do not contain exhaustive information on such obstructions, measures aimed at eliminating them and the resulting inconvenience shall be paid as extras.

Subs. 5. If, despite the undertaking of such preliminary analyses as are reasonable or usual considering the character, location and prior use of the site, unforeseen matters arise which lead to orders or bans being imposed by public authorities which prevent continuation of the work or make continuation of the work unreasonably burdensome for the employer, the latter may determine the contract against payment of compensation to the contractor. Such compensation shall not cover the loss of profit suffered by the contractor by not completing the work but only such other losses as the contractor may suffer.

Ancient monuments

§ 16. The contractor shall see to it that no in situ ancient monuments are damaged, altered or moved.

Subs. 2. The contractor shall immediately notify the discovery of ancient monuments to the Keeper of National Antiquities and the employer, and work must be suspended to the extent that it affects the ancient monument.

Subs. 3. The contractor shall see to it that all objects found in the course of work are handed over to the employer.

Subs. 4. The provisions of subs. 1-3 above shall also apply to wrecks and in situ ancient monuments found on the sea bed.

The employer's supervisors

§ 17. The employer's supervisors represent the employer

towards the contractor in relation to the performance of the work. The supervisors may deliver and receive information concerning the work and approve or reject materials or work.

Control by the contractor

§ 18. Although the employer attends project conferences or effects supervision of the work performed by the contractor, this shall in no way diminish the employer's responsibility for the project or the work in general.

Site meetings

§ 19. Unless the parties agree otherwise, site meetings with the employer shall be convened by the contractor who shall also prepare minutes from the meetings to be sent to the employer as soon as possible.

Days lost

§ 20. At all site meetings statements shall be made of the number of workdays – days lost – on which work has been wholly or partially at a standstill, with indication of the reasons.

Calling-in of employer and contractor

Parties residing abroad

§ 21. The employer and the contractor shall each provide the other with an address and telephone number to which communications are to be made and from where the employer and his supervisors, respectively the contractor or his agent, can be called in.

Subs. 2. If either contractual party resides abroad or takes up residence abroad after the conclusion of the contract, said party shall appoint a person with an address or domicile in this country who is authorised to enter into financially binding commitments on his behalf, against whom legal action can be taken on behalf of said party and with whom all negotiations on behalf of said party can be pursued with binding effect.

D. The employer's Obligation to pay

Payment

§ 22. Upon written request to the employer the contractor shall be entitled to receive payment once a month for work performed, etc. Within 15 days of receipt of such request, cf. subs. 11, the employer shall effect payment of the

amount for which works and materials in accordance with the contract have been provided on the site.

Subs. 2. Subject to the same rules as under subs. 1, the contractor may also demand payment for any off-site materials, etc., purchased by him and not yet delivered. If the em-

ployer so demands, the contractor shall provide a performance bond for delivery in accordance with the contract, cf. § 6. The size of such bond shall correspond to the payment demanded for non-delivered materials, inclusive of VAT.

Subs. 3. Requests for payment for materials, etc., made more than 20 workdays prior to the application thereof on the site shall be conditional upon provisions to that effect in the bid.

Subs. 4. Instead of payment under subs. 1, the parties may agree on payment being effected in accordance with a payment schedule which follows the time schedule and stipulates at which times the contract sum or parts thereof are to be paid. Alternatively, the payment schedule may stipulate the stages at which specified amounts, be it the contract sum or parts thereof, have to be paid. Payment must be made at the agreed times, etc., conditional upon the completed performance of the work to which the payment is related.

Subs. 5. If, in the case of extra work, no agreements have been made on the time of payment thereof, payment may be demanded as provided by subs. 1.

Subs. 6. If the contract provides for adjustment of the contract sum in case of changes of index, wages under collective wage agreements, prices of materials, etc., such adjustment shall be made in connection with the payment for such parts of the work as are affected by the change. Adjustment is to be based on a documented statement provided by the contractor.

Subs. 7. Upon handing-over the contractor shall submit a final and exhaustive account, including one indicating amounts due for all extras. Once the employer has received such account the contractor may advance no further claims, to the exception of such claims for which reservations have been specifically made in the final account.

Subs. 8. For building works, including site development works, the final account must be submitted to the employer within 35 workdays of handing-over. For engineering works, apart from those mentioned in § 36, subs. 1, the time limit for submission of the final account shall be 60 workdays.

Subs. 9. If the employer is not in receipt of the final account at the expiry of the period provided in subs. 8, he may submit a written demand requiring the account to be forwarded

within 10 workdays. If the contractor fails to submit the account to the employer within this period, he shall forfeit his claim for payment for extra work performed on an account-rendered basis as well as for reimbursement for wage and price increases.

Subs. 10. Payment of the amount stated in the contractor's final account shall be effected within 15 days of receipt thereof.

Subs. 11. Amounts due to the contractor shall carry an interest from the due date as provided by the Danish Interest Rate Act. The time limit provided in subs. 1 is days of grace.

Subs. 12. Where the employer finds that an amount for which payment has been claimed has not been paid, he shall immediately notify the contractor thereof in writing.

Subs. 13. In case of dispute between the parties concerning an account, the employer shall effect payment of all undisputed amounts due.

Subs. 14. If the parties disagree on the employer's right to hold back payments or effect set-offs against the claim of the contractor, the provisions of § 46 shall apply at the request of either party.

Subs. 15. Whenever necessary in order to prevent work standstills, the employer may at the expense of the contractor effect payment of wages due to the employees of the contractor.

The right of the contractor to stop work

§ 23. If the employer fails to effect payment within the above time limits of amounts due, the contractor may stop work with a written notice of 5 workdays.

Subs. 2. Moreover, the contractor may stop work immediately upon the employer's bankruptcy or suspension of payments, or if negotiations are initiated on enforced composition, or if the general financial situation of the employer proves to be such that it must be assumed that he is unable to fulfil his obligations under the contract. However, the above shall not apply where the employer has provided, or does so at the request of the contractor, adequate security for the performance of his obligations under the remaining part of the contract.

E. Extension of Time limits and Delays

The contractor's right to extension of time limits

§ 24. The contractor shall be entitled to extensions of time limits in case of delay of the work caused by

- (1) alterations in the nature and extent of the work ordered by the employer, cf. 14,
- (2) circumstances relating to the employer,
- (3) circumstances for which the contractor cannot be blamed and which are outside his control, e.g. war, un-

- sual natural events, fire, strikes, lock-out or vandalism,
- (4) the occurrence of precipitation, low temperature, strong winds or other weather conditions which prevent or delay the work because they are essentially greater than what is usual for the season and region concerned, or
 - (5) public orders or bans which were not issued because of the contractor's own situation, or
 - (6) the fact that the permits from public authorities required for the performance of the building work have not been obtained within 30 workdays of adequate project documentation having been filed with the public authorities, unless the parties have agreed on a different time limit, cf. § 2, subs. 3 and § 3, subs. 5.

Subs. 2. However, the contractor must endeavour to avoid or limit the extent of delays by means of such measures as can reasonably be required.

Subs. 3. Where the contractor feels entitled to an extension of a time limit he must inform the employer thereof in writing without delay. The contractor must upon request substantiate that the delay was caused by the circumstances relied upon by him.

The contractor's liability in case of delays

§ 25. Delays which do not entitle the contractor to an extension of time limits shall be considered the liability of the contractor.

Subs. 2. Where provisions have been made for liquidated damages or other special penalties, no additional claims arising out of delays can be made in excess thereof.

Subs. 3. Where no provisions have been made for liquidated damages or other special penalties, the loss suffered by the employer shall be assessed in accordance with the general provisions of Danish legislation on compensation.

The employer's right to extension of time limits

§ 26. The employer shall be entitled to extensions of time limits in case of such delays of the work as are caused by the exposure of the employer or another contractor to the circumstances mentioned in § 24, subs. 1(3), (4) and (5). The employer shall be vested with the same right in relation to alterations as mentioned in § 24, subs. 1(1).

Subs. 2. However, the employer shall endeavour to avoid or limit the extent of the delay by means of such measures as can reasonably be required.

Subs. 3. Where the employer feels entitled to an extension of a time limit he must inform the contractor thereof in writing without delay. The employer must upon request substantiate that the delay was caused by the circumstances relied upon by him.

The employer's liability in case of delay

§ 27. The contractor shall be entitled to compensation for losses suffered because of delays caused by

- (1) circumstances relating to the employer, cf. § 24, subs. 1(2), and where he is guilty of any errors or neglect, or
- (2) liability-entailing delays by other contractors, cf. § 25, subs. 1, or liability-entailing delays on the part of other contractual parties.

Subs. 2. The contractor shall be entitled to indemnity if the cause of the delay falls under:

- (1) § 24, subs. 1(1), 1(5) and 1(6), or
- (2) § 24, subs. 1(2), however without falling under subs. 1. or subs. 3. of the present section.

The indemnity shall amount to the loss sustained by the contractor, however to the exclusion of any loss of profit sustained by him by not being able to perform other works for the duration of the delay or similar consequential losses.

Subs. 3. If the cause of the delay falls under § 24, subs. 1(3) or § 24, subs. 1(4), the contractor shall be entitled to neither indemnity nor compensation.

F. Handing-over of the work

§ 28. Just before completion of the work the contractor must inform the employer in writing of the time of completion (completion notice). At the same time as sending the completion notice, the contractor shall convene a handing-over meeting, unless the parties have agreed for the employer to do so, cf. subs. 3. Such handing-over meeting shall take place at the point in time stipulated in the convening notice, unless the employer objects to the time immediately upon receipt of the convening notice, in which case the handing-over meeting shall be held within 10

workdays of the stated time of completion, unless the parties agree on another time.

Subs. 2. The work shall be taken to be handed over to the employer upon the conclusion of the handing-over meeting, unless material defects were discovered in the course thereof, in which case a new handing-over meeting shall be arranged to be held when the contractor has informed the employer in writing that rectification has taken place, cf. subs. 1 and 3.

Subs. 3. If the parties have agreed that the employer is to convene a handing-over meeting, he shall convene the contractor to a handing-over meeting which shall take place within 10 workdays of the stated time of completion. If the employer does not convene a handing-over meeting as provided in subs. 1, the work shall be taken to have been handed over 10 workdays after the stated time of completion. The same shall apply in relation to a new handing-over meeting as provided in subs. 2, 2nd full stop.

Handing-over protocol

§ 29. During the handing-over meeting a document shall be drafted (the handing-over protocol) in which shall be listed

any claims for defective work and any other circumstances pointed out by the employer in addition to any comments made by the contractor thereon. It must appear from the document whether the parties consider the work as having been handed over or not.

Subs. 2. The document shall be signed by the employer and the contractor.

Subs. 3. If either party is unrepresented at the handing-over meeting, the meeting may proceed without the representation of said party. The present party must as soon as possible inform the other party in writing of the proceedings of the handing-over meeting and of the contents of the handing-over protocol.

G. Defects

The concept of defects

§ 30. If the work has not been performed in accordance with the contract, with due professional care and skill or in accordance with any instructions given by the employer under § 15, it shall be deemed to be defective. The same shall apply whenever the contractor has failed to provide other services agreed upon in relation to the work.

Subs. 2. If the materials are not the agreed materials or are not of a general, good quality, cf. § 10, subs. 1, they shall be taken to be defective. However, this provision shall not apply

- (1) where, in case of a 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 bans, etc., or
- (2) where, in case the employer has ordered the use of specific materials, the contractor substantiates that it is impossible to procure such materials in the stipulated condition due to circumstances which, at the conclusion of the contract, the contractor ought not to have foreseen.

In case of (1) and (2), the contractor must as soon as possible notify the employer of the actual or possible occurrence of obstacles, cf. § 15.

Subs. 3. The work must in any case possess such properties as are guaranteed by the contract.

Subs. 4. The time of handing-over shall be decisive for the establishment of defective work, whether the defects can be established at this point or are hidden.

Defects established during handing-over

§ 31. The contractor shall be bound to rectify any defects discovered during handing-over.

Subs. 2. The employer must stipulate in writing a time limit for the rectification of defects discovered. The duration of such limit shall be fixed on the basis of the nature and extent of the defects and the circumstances in general. The contractor shall notify the employer in writing when rectification has taken place.

Subs. 3. If, upon the expiry of the time limit mentioned in subs. 2, or after having received a notice from the contractor to the effect that rectification has taken place, the employer is of the opinion that the defects have not been rectified, he must inform the contractor in writing of any unrectified defects within 10 workdays.

Subs. 4. If the contractor does not proceed immediately to rectify said defects, the employer shall be entitled to have them rectified at the expense of the contractor or demand a reduction of the contract sum, cf. § 34.

Defects established after handing-over

§ 32. For a period of 5 years after handing-over, the contractor shall have an obligation and a right to rectify defects established after handing-over, however cf. § 36, subs. 3(3).

Subs. 2. Such defects may be relied upon by the employer only if the contractor was notified thereof in writing within a reasonable period of the time when the defects were, or ought to have been, discovered. However, this provision shall not apply where the contractor is guilty of gross recklessness.

Subs. 3. The employer must stipulate in writing a time limit for the rectification of defects established. The duration of such limit shall be fixed on the basis of the nature and extent of the defects and the circumstances in general. The contractor shall notify the employer in writing when rectification has taken place. Rectification of a defect may be post-

poned in order for it to be effected together with the rectification of any defects established during the 1-year inspection, provided that such postponement does not cause the defect to aggravate and does not cause any inconvenience to the employer.

Subs. 4. If the contractor fails to rectify the defects established within the limit provided in subs. 3, the employer shall be entitled to arrange for rectification and charge the contractor with the cost thereof or demand a reduction of the contract sum, cf. § 34.

Subs. 5. The employer may have defects rectified at the expense of the contractor where such rectification is urgent and the contractor is not capable of effecting rectification immediately. The same shall apply where the employer has reason to believe that the contractor will not effect rectification in the proper manner or without delay.

Lapse of the contractor's obligation to rectify, etc.

§ 33. The contractor's obligation to rectify and the employer's access to effecting rectification at the expense of the contractor, cf. § § 31 and 32, shall lapse if the costs of rectification are disproportionately large. In the assessment thereof consideration must be given to the employer's interest in fulfilment of the contract. However, the employer shall in any case preserve his right to a reduction, cf. § 34.

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

§ 34. If the contractor fails to rectify defects as provided by § 31, subs. 4 and § 32, subs. 4, the employer may choose not to have the defects rectified at the expense of the contractor but, instead, to claim a reduction of the contract sum. Moreover, the employer shall be entitled to a reduction of the contract sum if rectification proves impossible and under the circumstances mentioned in § 33.

Subs. 2. The calculation of the reduction shall be based upon the amount payable for such rectification had it actually taken place.

Subs. 3. Where rectification of defects proves impossible or gives rise to disproportionately large costs, the employer may choose whether the reduction is to be fixed by estimate or in one of the following ways:

- (1) either as the difference between the contract sum agreed upon and the contract sum which the parties presumably would have agreed upon had a contract been concluded for the work in its present condition,

- (2) or as the difference between the value of the work as provided under the contract without defects and the value of the work in its present condition.

Subs. 4. The employer's right to determine the contract because of defects shall follow the rules provided in § 40.

The contractor's liability for consequential damage

§ 35. The contractor shall be liable for compensation for losses suffered due to defects in the work, where such defects are caused by errors or negligence on the part of the contractor, or where they relate to properties the presence of which has been guaranteed in the contract.

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

Cessation of the liability for defects

§ 36. In connection with building works and attendant engineering works, the employer's claim against the contractor for defects shall be put forward within 5 years of the handing-over of the work. After this period the employer may not put forward any claims against the contractor. The provisions of act no. 274 of December 22, 1908, on the time-barring of certain claims shall not apply to these cases.

Subs. 2. However, the claim of the employer shall continue to exist in relation to those sections of the work to which it applies that

- (1) the contractor has undertaken to extend the period of his liability,
- (2) it is established during handing-over that agreed quality assurance measures have failed materially, or
- (3) the contractor has acted in gross recklessness.

Subs. 3. For engineering works, apart from such as are mentioned in subs. 1, the liability for defects shall cease as provided by the general conditions of Danish legislation, unless the tender documents stipulate otherwise. If it follows that the liability for defects shall cease under the general conditions of Danish legislation, the following shall apply:

- (1) The rule in § 6, subs. 4, on the reduction of the performance bond shall be changed to the effect that the bond shall cease.
- (2) The contractor may refrain from fulfilling the provision of § 10, subs. 4, on supplier liability.
- (3) The time limit for rectification rights and obligations, cf. § 32, subs. 1, shall be changed to 1 year.
- (4) The provision in § 38 on 5-year inspections shall not apply.

H. 1- and 5-year inspections

1-year inspections

§ 37. The employer shall convene the contractor to an inspection of the work to take place within one year of the handing-over.

5-year inspections

§ 38. The employer shall convene the contractor to a final inspection of the work to take place not later than 30 workdays prior to the expiry of a 5-year period after handing-over, however cf. § 36, subs. 3(4).

Subs. 2. If the employer fails to convene an inspection as provided by subs. 1, the contractor may convene the employer to the inspection. Such convening must be made in writing with a minimum notice of 10 workdays.

Joint inspection rules

§ 39. The convening of inspections under § § 37 and 38, subs. 1, must be made in writing with a notice of maximum 60 and minimum 20 workdays.

Subs. 2. In connection with the inspection a document shall be drafted (the inspection protocol) in which shall be listed any claims for defective work and any other circumstances pointed out by the employer in addition to any comments made by the contractor thereon.

Subs. 3. The document shall be signed by the employer and the contractor.

Subs. 4. If either party is unrepresented at the inspection, the meeting may proceed without the representation of said party. The present party must as soon as possible inform the other party in writing of the proceedings of the inspection and of the contents of the inspection protocol.

I. Special provisions on determination

The employer's right to determine the contract

§ 40. Following the submission to the contractor of a written notice thereof, the employer may determine the contract

- (1) if, without entitling him to an extension of time limits, the contractor is the cause of material delay in the performance of the work, and where such delay causes considerable inconvenience to the employer, or
- (2) if the contractor is otherwise the cause of material delay in respect of matters of decisive importance to the employer, unless the interests of the latter have been sufficiently safeguarded in another way, e.g. by the possibility of discontinuing payments or by the provision of security, or
- (3) if the quality of the work performed is such that the employer has reason to believe that the contractor will not be able to complete the work without material defects.

The contractor's right to determine the contract

§ 41. In case of material delay the contractor may, upon submission to the employer of a written notice thereof, determine the contract under such circumstances as are mentioned in § 24, subs. 1(2), if the employer does not demonstrate reasonable endeavours for the purpose of furthering work as much as possible.

Subs. 2. Moreover, the contractor may, upon submission to the employer of a written notice thereof, determine the contract if the employer is the cause of material delay in respect of matters of decisive interest to the contractor. However, the contract cannot be determined if the contractor's interests have been sufficiently safeguarded in another way, e.g. by his possibility of stopping work or by the provision of security.

Bankruptcy, suspension of payments, composition, etc.

§ 42. In the event of the bankruptcy of a party under contract, and to the extent that nothing in the provisions of the Danish Bankruptcy Act prevents it, the other party may determine the contract immediately.

Subs. 2. If, under the provisions of the Danish Bankruptcy Act, the estate is entitled to enter into the contract, it shall within a period of 5 workdays of a request thereon inform of its intentions in that respect.

Subs. 3. The provision of subs. 1 shall also apply in the case of the suspending of payments by a party under the contract, if negotiations are initiated on a composition scheme, or if the general financial situation of said party proves to be such that it must be assumed that he is unable to fulfil his obligations under the contract. However, the right to determine shall be conditional upon said party not having provided, or not providing, at the request of the other party

adequate security for the performance of his obligations under the contract, cf. § § 6 and 7.

Subs. 4. If a party is a limited company or a private company, the other party may determine the contract in case a claim for the dissolution of such company is put forward by the Danish Commerce and Companies Agency. This provision shall not apply if, within 10 workdays of receipt of a claim from the other party, said party furnishes documentation which substantiates that the conditions for a dissolution of the company are nonexisting, or if said party provides full security for the fulfilment of his obligations under the contract.

Subs. 5. In case of determination the provisions of § 44 shall apply.

Death of a party

§ 43. In the event that a party dies and the debt of the deceased is disclaimed by the estate, the provisions of § 42, subs. 1 and 2 shall apply.

Subs. 2. Where the administration of the estate is different from the method mentioned in subs. 1, the estate and the heirs shall be entitled to enter into the contract, however cf. subs. 3. The same shall apply to the spouse of the deceased if said spouse retains undivided possession of the estate. The right of entry shall be conditional upon the provision of adequate security for the fulfilment of the obligations under the contract, cf. § § 6 and 7.

Subs. 3. Upon the death of the contractor a further condition for a right of entry shall be the appointment of a manager for the work against whom the employer has no legitimate objections. Where the nature of the work is special to the point where, after the contractor's death, it cannot be expected to be duly completed, there shall be no entry.

Subs. 4. In case of determination the provisions of § 44 shall apply.

Joint rules on determination

§ 44. Determination shall be made in writing.

Subs. 2. Concurrent with the determination the determining party shall arrange for the convening in writing of a registration meeting (status meeting) to take place as soon as possible. However, unless the parties agree otherwise the registration meeting shall be held 1 workday upon receipt of the convening notice at the earliest.

Subs. 3. During the registration meeting a document shall be drafted (the registration protocol) which shall describe the extent and quality of the work performed. The document shall be signed by the parties unless registration is undertaken by an expert appointed by the arbitration board, cf. § 45.

Subs. 4. If, despite receipt of a convening notice, a party is unrepresented at the registration meeting, the meeting may proceed without the representation of said party. The present party must as soon as possible inform the other party in writing of the proceedings of the registration and of the contents of the registration protocol.

Subs. 5. In case of determination by the employer, the employer or the person charged with completion of the work on his behalf shall be entitled to use such materials and equipment of the contractor as are present on the site, if removal thereof before completion of the work will cause the employer to suffer losses. The same shall apply to plans, descriptions and other project documents, etc. Payment for the use thereof shall follow the usual rates.

Subs. 6. In case of determination by either party the other party shall be liable for the loss suffered in accordance with the general conditions of Danish legislation.

J. Disputes

Inspection and survey by experts

§ 45. If, in the case of disputes between the parties or in order to establish proof of a matter, there is a wish for inspection and survey by an appointed expert, a request thereon shall be submitted to the Building and Construction Arbitration Board in Copenhagen.

subs. 2. Such request must be accompanied by

- (1) information on the parties involved, their addresses and telephone numbers,
- (2) a written statement containing a brief description of the case and a list of the questions to be answered by the expert (the matter of issue),
- (3) all relevant documents,

- (4) an indication, if appropriate, of the technical qualifications to be possessed by the expert, and
- (5) an indication of whether the inspection and survey is to be treated as urgent, in which case a special fee is payable.

Subs. 3. As a general rule, one expert shall be appointed. Where the Arbitration Board finds it appropriate, it may appoint two experts or, where special circumstances so require, more. In its decision thereon the Arbitration Board shall consider any wishes of the parties.

Subs. 4. Another inspection and survey by a different expert may be made only where considered appropriate by the Arbitration Board. If the dispute has already been referred

to arbitration, cf. § 47, the Arbitration Court shall consider requests made for a supplementary inspection and survey or another inspection and survey by the same, or a different, expert.

Subs. 5. The person or persons who have requested the expert inspection and survey shall be liable for the costs arising therefrom, including the fee to the expert as fixed by the Arbitration Board. If the dispute or part thereof is referred to the Arbitration Court, the costs and the necessity of it shall be considered in the fixing of arbitration costs. In such case the fee payable to the expert shall be fixed by the Arbitration Court.

Subs. 6. Where the present general conditions – or similar conditions – apply to the relationship between the employer and several parties (contractors, suppliers, etc.), the provisions of subs. 1-5 shall also apply to the interrelations between such parties.

Subs. 7. The rules applying to an expert inspection and survey shall be fixed by the Building and Construction Arbitration Board.

Expert opinions on security provided, etc.

§ 46. At the request of a party the Arbitration Board may appoint an expert who shall be asked to give an opinion on the release of security provided, cf. § 6, subs. 7, and § 7, subs. 3, and on the justification of holding back payments or making set-offs in case of disagreements between the parties as described in § 22, subs. 14.

Subs. 2. Depending upon the nature of the dispute the Arbitration Board may decide that such opinion is to be given by several experts.

Subs. 3. The request must contain such information, etc., as is listed in § 45, subs. 2. A copy of the request shall at the same time be sent to the other party under the contract.

Subs. 4. The Arbitration Board shall stipulate a short period within which the opponent may file a statement. Under special circumstances the expert may allow the parties to file one more statement within a short period fixed by the expert. Upon the expiry of such period the expert will as soon as possible and within 15 workdays decide to what extent the request for payment is seen to be justified and award costs, including the fee payable to the expert. The Arbitration Board shall fix the size of such fee.

Subs. 5. Under special circumstances it may be decided that payments to private employers and to contractors are to be conditional upon the provision of security, in which case the expert shall stipulate the type and magnitude of such security as well as the conditions applying to payments under it or its cessation. In case of requests for payment under security provided by the employer, the expert may under special circumstances also refer the contractor to bring the matter before the Arbitration Court under § 47.

Subs. 6. Under very special circumstances the Arbitration Board may extend the time limits provided in subs. 4 by up to 10 workdays.

Subs. 7. The payment of amounts under the decision shall be effected within 3 workdays of the day when the parties and the guarantor receive notice in writing thereof.

Subs. 8. The procedure to be followed in cases on expert opinions shall follow the rules fixed by the Building and Construction Arbitration Board.

Arbitration

§ 47. Disputes between the parties shall be decided by the Building and Construction Arbitration Court in Copenhagen whose awards shall settle the matters finally and conclusively.

Subs. 2. Matters shall be brought before the Arbitration Court by the submission of a statement of claim addressed to the Arbitration Board.

Subs. 3. Such statement of claim must contain

- (1) information on the parties involved, their addresses and telephone numbers,
- (2) the claim of the applicant containing a brief description of the facts upon which the claim is based, and
- (3) indication of such documents and other pieces of evidence as the applicant intends to rely upon. The documents must be enclosed.

Subs. 4. The Arbitration Court shall, however cf. subs. 5 and 6, consist of 1 member of the Court's Presidium to be appointed by the Chairman of the Presidium and 2 experts to be appointed by the Arbitration Board on a case-by-case basis, depending upon the nature of the dispute. The Chairman of the Presidium may decide that one of its deputy members is to be President of the Arbitration Court.

Subs. 5. At the request of either party the court shall be extended to include 2 more members or deputy members of the Presidium. The additional costs thereby incurred shall be awarded in connection with the Arbitration Court's decision on the general arbitration costs. It may be decided that, where the Court finds the extension of the Court to be insufficiently justified, such costs as follow from the extension of the Court are to be defrayed by the party requesting it.

Subs. 6. Where the parties so agree, the Arbitration Court may have 1 member only.

Subs. 7. The procedure to be followed by the Arbitration Court in the settlement of the disputes shall follow the rules fixed by the Building and Construction Arbitration Board. Otherwise the Danish Arbitration Act shall apply.

Subs. 8. Where the present general conditions – or similar conditions – apply to the relationship between the employer and several parties (contractors, suppliers, etc.), the provisions of subs. 1-7 shall also apply to the interrelations between such parties.