

LINDO PORT OF ODENSE



Fairway expansion – lite 150 PARTICULAR TERMS



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1 Background

This document describes the working conditions and social clauses as well as the contractual terms that apply to the execution of the contract, including the additional special conditions and requirements that apply to the tender and the contract in relation to "General Conditions for the provision of works and supplies within building and engineering", prepared by the Ministry of Housing, 10 December. December 1992 – hereinafter referred to as AB 92.

2 Working conditions and social clauses

2.1 Ethics and social responsibility

THE CONTRACTOR is obliged to observe the working conditions stated in the “Standard conditions for suppliers of construction and civil engineering operations and service provisions to LINDØ port of ODENSE A/S”, attached as Attachment A.1.

THE CONTRACTOR and its subcontractors and suppliers shall furthermore observe international conventions ratified by Denmark, including the following fundamental conventions of the International Labour Organization (ILO):

- Forced labour (ILO convention nos. 29 and 105)
- Non-discrimination in employment (ILO convention nos. 100 and 111)
- Minimum age for admission to employment, plus prohibition and the elimination of the worst forms of child labour (ILO convention nos. 138 and 182)
- Freedom of association and protection of the right to organise (ILO convention nos. 87, 98 and 135)
- Occupational safety and health and working environment (ILO convention no. 155)

THE CONTRACTOR and its subcontractors and suppliers shall respect basic human rights, including complying with the UN Declaration on Human Rights and the European Convention on Human Rights.

Should the Client become aware of THE CONTRACTOR or its subcontractors or suppliers failing to fulfil the above provision and undertakings according to the “Standard conditions for suppliers of construction and civil engineering operations and service provisions to LINDØ port of ODENSE A/S”, THE CONTRACTOR shall remedy the shortcoming. Any costs incurred by THE CONTRACTOR as a result of the above cannot be charged to the Client.

Failure to observe the provisions of this clause and the undertakings according to the “Standard conditions for suppliers of construction and civil engineering operations and service provisions to LINDØ port of ODENSE A/S” (appended as Attachment A.1) shall be regarded as material breach of the contract.

3 AB 92 with additions and amendments

A. Contractual Basis

Section 1 General conditions

Subs. 1

The present general conditions shall apply to contracts for the provision of works and supplies within building and engineering.
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ref. Subs. 1

This AB is a supplement to the special conditions to the "General Conditions for the provision of works and supplies within building and engineering, issued by the Danish Ministry of Housing on 10 December 1992 – hereinafter AB92, and with the following additions and amendments shall apply to all the work, including any agreed extra work during execution.

The individual section and subsection numbers refer to the corresponding ones in AB92.

The following supplements and amendments follow the sectioning and numbering of AB92 and take preference over AB92.

Subs. 2

In relation to supplies the term 'employer' shall be defined as the buyer and 'contractor' as the vendor. In relation to sub-contracts the term 'employer' shall be defined as the main contractor and 'contractor' as the sub-contractor.

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 'work-day' 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.

Section 2 The employer's invitation to tender

Subs. 1

'Tender' shall be defined as the employer's invitation for bids.

ref. Subs. 1

The work shall be tendered at a fixed price and time for the entire execution period. Reference is made to sections 14 and 22 below and Form of Prices and Payment (PaP) TAG in Danish.

Subs. 2

Bids shall be made on the basis of the information 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.

Subs. 3

The tender documents must stipulate a time schedule.

ref. Subs. 3

The time schedule and deadlines are specified in GT section 7.4.

Commencement deadline, final deadline and submission of final documentation are held in accordance with Section 25 Subs. 2.

Subs. 4

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

ref. Subs. 4

The Client is not aware of any ancient monuments within the contract area.

Subs. 5

If a fee is charged for the tender documents to ensure their return, this must appear from the invitation to tender. The fee shall be refunded immediately upon the return within a reasonable time of a complete and undamaged set of tender documents, irrespective of whether the person returning the documents has submitted a bid or not.

Subs. 6

With a view to the evaluation of the bids received, the employer may in the tender documents set conditions for the form in which bids are to be submitted, including one which requires bids to be drafted with a reasonable specification of the bid price on tender lists made available for that purpose.

Subs. 7

If the bid, or parts thereof, is to be made in the form of unit prices, the employer must stipulate the weight given to the individual unit prices in the evaluation of the total bid.

ref. Subs. 6

Tenders must be drafted using the form of Bill of Quantities (BoQ) for the project, which must be filled in with a total amount (offer price) for each subcontract and with fixed unit prices or sums for all listed services (main items, items and subheadings) in order for the tender to be conditional.

Section 3 The Contractor's bid

Subs. 1

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

ref. Subs. 1

When a consortium of contractors is responsible for a contract, their tender must indicate who is responsible for negotiations, signing contracts and receiving payment on behalf of the contractor.

Subs. 2

ref. Subs. 2

Prices for individual parts for which the Client has requested to be stated in the offer may be considered as distinct bids.

If, in an invitation for tenders, tenderers are requested to stipulate a price not only for the work as a whole, but also for parts of the work, the prices quoted for the individual parts may be considered as distinct bids only when this has been explicitly stated in the tender documents or in connection with the submission of the bid.

Subs. 3

If, in addition to an overall bid price, a bid is to contain unit prices, both types of prices shall be binding upon the tenderer. Unit prices shall be applied in case of adjustments of payment occasioned by services being of a different extent than stated by the employer in the tender documents. The internal sequence of bids shall be determined on the basis of the total bids only.

Subs. 4

The bid shall cover only those services which are indicated as belonging under the contract on drawings given 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.

Subs. 5

Bids shall be open for acceptance for a period of 20 workdays from the closing date. Other bids in writing shall be open for acceptance for a period of 20 workdays from the date of the bid.

ref. Subs. 5

Tenders shall be binding for 40 working days from the expiration of the tender submission deadline, cf. GT section 7.1.

Subs. 6

Bidders whose bids are not accepted may demand that their own bid, drawings, calculations and descriptions be returned to them.

Subs. 7

The employer must promptly notify unsuccessful bidders of the result of the tender.

Section 4 The contract

Subs. 1

An agreement for the performance of work or the provision of supplies 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.

Section 5 Assignment of rights and obligations, etc.

Subs. 1

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.

ref. Subs. 2

The contractor's receivables can only be assigned to a recognised SIFI bank or another assignee with the prior written consent of the Client. The contractor can only make one assignment and only on its total receivables/monies outstanding from the Client. The Assignment shall be ordered by the Contractor and only becomes valid when reported to and acknowledged in writing by the Client's accounts dept.

Any other assignment of claims is invalid, which can be declared at any time by the Client, including in retrospect.

Subs. 3

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

Subs. 4

ref. Subs. 4

When submitting a tender, Contractor shall provide a list of the subcontractors it intends to use.

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.

Subcontractors and sub-suppliers listed in the tender and/or contract cannot be changed unless approved in writing by the Client.

B. Performance bond and Insurance

Section 6 The provision by the contractor of a performance bond

Subs. 1

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.

ref. Subs. 1

Contractor shall provide the performance bond required

no later than 10 days after signing the contract.

The performance bond shall be drawn on a bank, finance company or guarantee insurance company licensed in the EU/EEA and approved by the Client.

If the bank or insurance company is not Danish, it shall be rated at least by either Standard & Poor's or Fitch.

The following applies to foreign banks or insurance companies: The bank or guarantee insurance company cannot have a long-term rating with any company with which it is rated less than A-.

If the bank or guarantee insurance company has a rating after providing the performance bond no

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longer meets the above criterion, the Client is entitled to demand a new performance bond from a bank or guarantee insurance company that fulfils it.

The performance bond shall be adjusted for each million kroner excluding VAT the contract sum increases.

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

The bond provided for supplies delivered completely finished in instalments must correspond to 10% of the purchasing amount.

Subs. 4

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. 5

The bond shall cease 5 years after 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. 6

Proportional release of the bond shall be made in case of sectional completion, cf. § 28, subs. 4., last full stop.

Subs. 7

ref. Subs. 2

The bond shall equate to 15% of the contract sum excluding VAT. At the end of the work and taken over by the Client, the bond will be adjusted to an amount corresponding to 0% of the contract sum calculated at the time, excluding VAT.

ref. Subs. 6

Unless specifically agreed between the Client and Contractor, no proportional release of the bond can be made in the event of partial handover.

ref. Subs. 7

This subsection does not apply for the Contract as the guarantee is a demand guarantee, cf. Attachment A.2.

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. 8

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.

Section 7 The provision by the Client of a performance bond

Subs. 1

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

Ref. Subs. 1

AB92 § 7 does not apply for this contract as the Client is not obliged to issue any guarantees.

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 or 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 extra work for which payment has already been affected 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.

Section 8 Insurance

Subs. 1

ref. Subs. 1

The Client shall not take out insurance for the contract. The Contractor shall bear all risk during execution of the work, cf. above.

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

Section 9 Working schedule and measurements

Subs. 1

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

Subs. 2

The setting out of the main grid lines and heights (levels) shall be the responsibility of the employer, with all other setting out being undertaken by the contractor.

Section 10 Services provided by the contractor

Subs. 1

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.

ref. Subs. 1

If the Contractor suggests use of untraditional methods or materials, it shall and without cost to the Client prove to the latter that such methods and materials are suitable.

In relation to fulfilment of the contract and its requirements, the Contractor is liable to the Client for its subcontractors and any suppliers.

The Contractor's personnel shall never be under the influence of alcohol or other stimulants, and the taking of the same is forbidden during working hours on the Client's property and areas belonging to the Client.

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, however 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.

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.

Section 11 Project conferences, documentation and tests

Subs. 1

ref. Subs. 1

Contractor shall continually prepare quality documentation as described in PT section 3.3.

In the tender documents the employer may provide that the contractor is to participate in project conferences. Provisions may also be made 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 provisions 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.

Section 12 Deterioration of the work, etc. Maintenance

Subs. 1

If the work, or part thereof, is deteriorated, destroyed or lost before handing-over, the contractors 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.

Section 13 Relations to public authorities

Subs. 1

The employer shall arrange for the necessary planning permission for the project and shall defray all expenses thereby incurred.

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.

Section 14 Alterations in the work

Subs. 1

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

ref. Subs. 2

If instructions given by the Client or the supervision constitute extra work in Contractor's judgement, Contractor must immediately report this to the supervision.

Agreements on additional work must be made in writing to be considered valid and must include a description of the work's scope and form of settlement and, if possible, the size of the agreement amount. The Client's written acceptance of additional work, specifying its scope and price, must be obtained before the work is initiated. Work will not be honoured in the absence of such written acceptance.

Before changes to the work are implemented, Contractor must draw up an estimate if the supervision deems this necessary.

ref. Subs. 3

If the unit prices given in the Bill of Quantities (BoQ) can be used in conjunction with the additional work, these prices should be used for billing.

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 $\pm 15\%$ of the contract sum and within $\pm 100\%$ 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%.

Section 15 Lack of clarity, obstructions or similar matters

Subs. 1

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

ref. Subs. 1

The Contractor is obliged to notify the Client/supervision of any faults or inconsistencies in the contractual basis or deficient drawings or information etc. sufficiently in advance to avoid delaying the contract for this reason.

If the Contractor observes disparity between the project and the ground conditions, these must be immediately reported to the Client/supervision.

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.

Section 16 Ancient monuments

Subs. 1

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.

Section 17 The employer's supervisors

Subs. 1

The employer's supervisors shall be defined as his superintending officers, professional supervisors or other supervisors especially appointed by him.

Subs. 2

The employer or his supervisors must be pre-sent at the site or be on call.

Subs. 3

The employer's supervisors represent the employer towards the contractor in relation to the organisation and performance of the work. The supervisors may deliver and receive information concerning the work, approve or reject materials or work and issue instructions for the organisation of the work performed by the different contractors with a view to their inter-relations.

Subs. 4

Supervision by the employer does not relieve the contractor of undertaking a control of his own.

Section 18 Control by the Contractor

Subs. 1

The contractor shall manage the work either in person or through an agent who acts as his representative towards the employer and the supervisors in relation to the organisation and performance of the work.

Subs. 2.

The contractor or his agent shall be pre-sent at the site or be on call.

Section 19 Site meetings

Subs. 1

Site meetings shall be convened by the employer or his supervisors who shall also prepare minutes from the meetings to be sent as soon as possible to the contractors with whom the employer has concluded contracts.

Subs. 2

The contractor himself or his agent shall attend all site meetings.

Subs. 3

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.

Section 20 Collaboration with other contractors

Subs. 1

The contractor shall collaborate with other contractors at the site and shall negotiate with the supervisors in due time for errors and delays caused by insufficient inter-contractor collaboration to be avoided.

Section 21 Calling-in of employer and Contractor Parties residing abroad

Subs. 1

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

Section 22 Payment

Subs. 1

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 affect 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 employer 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

ref. Subs. 1

The payment deadline is changed from 15 working days to 20 working days from the Client's receipt of a correct invoice.

Monthly on-account payments are made to Contractor released on the basis of a jointly conducted assessment of the actual status of the contract in relation to the BoQ. On-account payments are not made, however, before the Contract has been established, the guarantee paid, Contractor has obtained the necessary insurance cover and a detailed work schedule is in place.

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.

ref. Subs. 5

Additional work must be finally settled immediately after its completion. Payment shall follow the rule in (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.

ref. Subs. 6

The fixed contract sum is adjusted in case of state intervention occurring after submission of the tender and resulting in non-negligible increase or decrease in expenses in execution of the work, and that are not covered by another adjustment. Regulation takes place in accordance with notices from the Danish Enterprise and Construction Authority.

The provision does not cover changes due to currency exchange rates or regulatory solutions of the labour market's agreement conditions.

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 25 workdays of handing-over, however for main contracts within 35 workdays thereof. 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 affected 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.

ref. Subs. 8

The final account must be submitted to the employer within 30 workdays of handing-over.

ref. Subs. 10

TEs final account is paid with deductions for any remedies left incomplete at the time of payment. The payment deadline is changed from 15 working days to 20 working days.

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 affect 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.

Section 23 The right of the Contractor to stop work

Subs. 1

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 deadlines and Delays

Section 24 The Contractor's right to extension of deadlines

Subs. 1

The contractor shall be entitled to extensions of time limits in case of delay of the work caused by alterations in the nature and extent of the work ordered by the employer, cf. 14, circumstances relating to the employer or delay on the part of another contractor, circumstances for which the contractor cannot be blamed, and which are outside his control, e.g. war, unusual natural events, fire, strikes, lock-out or vandalism, 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 public orders or bans which were not issued because of the contractor's own situation.

Subs. 2

ref. Subs. 1

(1)

Delays caused by any problems with the official permits for which Contractor is responsible shall not justify an extension of deadline.

(4)

Inclement weather is defined as a working day where one or more of the weather criteria below are fulfilled:

- a) the activity affected by the inclement weather day is in the critical path,
- b) the activity would take place in accordance with the work schedule,
- c) the activity factually was not or could not be performed,

All the above-mentioned provisions must be fulfilled at the same time.

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.

Section 25 The Contractor's liability in case of delays

Subs. 1

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.

ref. Subs. 2

If a delay occurs beyond the final completion deadline or interim deadlines set in the detailed work plan/time schedule, cf. section 3.6 above, corrected for any agreed deadline extension during the contract's execution, Contractor shall pay the Client a penalty for this deadline overrun. Daily penalties are not subject to VAT.

Penalty sizes per new calendar day are as follows (excluding VAT):

Completion deadline: 1‰ of the contract total

Final documentation (QA material): DKK 50,000

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.

Section 26 The employer's right to extension of deadlines

Subs. 1

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.

Section 27 The employer's liability in case of delay

Subs. 1

The contractor shall be entitled to compensation or losses suffered because of delays caused by circumstances relating to the employer, cf. § 24, subs.1(2), and where he is guilty of any errors or neglect, or 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 § 24, subs. 1(1) and § 24, subs. 1(5), or § 24, subs. 1(2), however without falling under subs. 1. or subs. 3. of the present section.

ref. Subs. 1-2

If Contractor considers that he is entitled to damages or compensation on the basis of conditions contingent upon the Client or another part to the agreement, Contractor must submit this claim to the Client within 20 working days from the date on which the delay took place. If the claim is not communicated in writing to the Client by this deadline, it is considered waived. Any changes in the size of a submitted claim must be estimated once a month.

The Client is under no circumstances liable for Contractor's operating losses, loss of profit, or other indirect losses.

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

Section 28 Handing-over of the work

Subs. 1

Just before completion of the work the contractor must inform the employer in writing of the time of completion (completion notice). The employer shall then convene the contractor to a handing-over meeting to take place within 10 workdays of the time indicated, however cf. subs. 4.

ref. Subs. 1

All work in the contract must be completed, and all quality assurance and related documentation required by the Client and completion notices must be in place, before the handover meeting can be called to take place.

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.

ref. Subs. 2

A large number of defects – notwithstanding that each individual defect is less significant – shall entitle the Client to refuse delivery.

Defects in relation to mandatory quality assurance and documentation of the same and “as built” documentation may be considered a significant deficiency.

Subs. 3

If the employer does not convene a hand-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 hand-over meeting as provided in subs. 2, 2nd full stop.

Subs. 4

Where the work comprises several contracts, the employer must await the completion of all contracts before convening the hand-over meeting. However, it may have been provided for in the contract 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.

Subs. 5

For engineering works – apart from those mentioned in § 36, subs. 1 – the individual contracts shall be handed over separately, unless otherwise agreed or indicated by the circumstances.

Section 29 Handing-over protocol

Subs. 1

During the hand-over meeting a document shall be drafted (the hand-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 party present 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

Section 30 The concept of defects

Subs. 1

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

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

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 bidden.

Section 31 Defects established during handing-over

Subs. 1

The contractor shall have an obligation and a right 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.

Section 32 Defects established after handing-over

Subs. 1

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).

ref. Subs. 1

The timeframe for the duty and right to remedy defects is counted from the time of the work's approved delivery.

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 postponed in order for it to be affected 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 affect rectification in the proper manner or without delay.

Section 33 Lapse of the Contractor's obligation to remedy, etc.

Subs. 1

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.

Section 34 The Client's right to a reduction of the contract sum

Subs. 1

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:

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,

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.

Section 35 The contractor's liability for consequential damages

Subs. 1

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.

ref. Subs. 2

The said limitation does not apply, if Contractor has acted in gross negligence.

Section 36 Cessation of the liability for defects

Subs. 1

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.

ref. Subs. 1

Liability for deficiencies in this contract expires 5 years after delivery.

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

Section 37 1-year inspections

Subs. 1

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

Section 38 5-year inspections

Subs. 1

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 work-days.

Section 39 Joint inspection rules

Subs. 1

The convening of inspections under §§ 37 and 38, subs. 1, must be made in writing with a notice of maximum 60 and minimum 15 workdays – however for main contracts 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 party present 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

Section 40 The Client's right to determine the contract

Subs. 1

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

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
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
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.

Section 41 The Contractor's right to determine the contract

Subs. 1

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.

Section 42 Bankruptcy, suspension of payments, composition, etc.

Subs. 1

In the event of the bankruptcy of a party under a 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 non-existing, 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.

Section 43 Death of a party

Subs. 1

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.

Section 44 Joint rules on determination

Subs. 1

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 party present 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 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.

ref Subs. 5

This section does not apply to the following marine dredging equipment: Trailing Suction Hopper Dredger (TSHD), Backhoe Dredger (BHD).

J. Disputes

Section 45 Inspection and survey by experts

Subs. 1

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.

ref. Subs. 1

Disputes between the Client and Contractor, as well as disputes between Contractor, subcontractors or suppliers, do not serve to substantiate suspension or delay of work. Contractor's right to suspension in accordance with Section 23 applies unchanged. Disputes are handled as set forth in AB92 regarding disputes. The court of arbitration shall always be based in Copenhagen.

If charges or a summons are brought against the Client in the general courts as a result of Contractor' execution of the contract, the Client may involve Contractor in such summons/charges, regardless of the provisions pertaining to disputes.

Subs. 2

Such request must be accompanied by information on the parties involved, their addresses and telephone numbers, 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), all relevant documents, all relevant documents, an indication, if appropriate, of the technical qualifications to be possessed by the expert, and 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 than two. 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 thereof 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 apply to the relationship between the employer and several parties (contractors, suppliers), 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.

Section 46 Expert opinions on security provided, etc.

Subs. 1

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 work-days 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 work-days.

Subs. 7

The payment of amounts under a decision on the payment of security provided shall be affected 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.

Section 47 Arbitration

Subs. 1

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 information on the parties involved, their addresses and telephone numbers, the claim of the applicant containing a brief description of the facts upon which the claim is based, and 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 apply to the relationship between the employer and several parties (contractors, suppliers), the provisions of subs. 1-7 shall also apply to the interrelations between such parties.

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