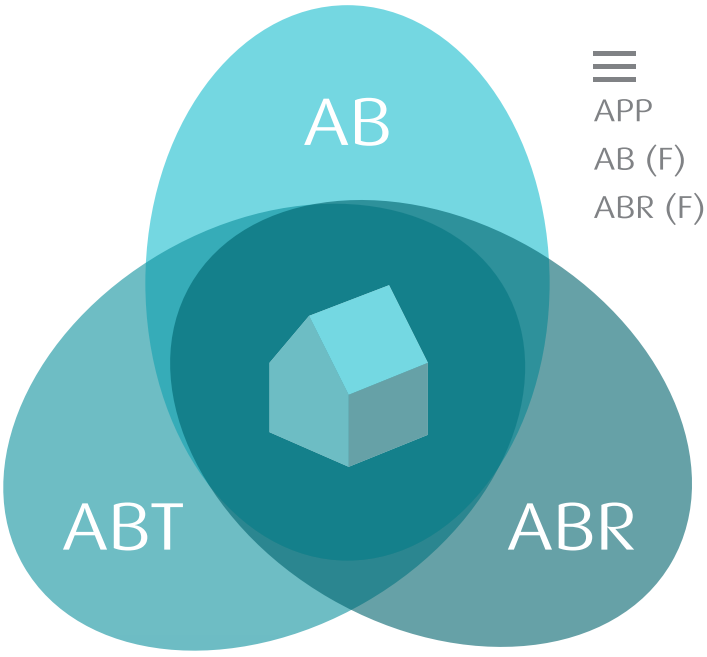
General conditions

for building and construction works and supplies (AB 18)



These 'General conditions for building and construction works and supplies' have been prepared by a committee appointed by the Minister for Climate, Energy and Building in accordance with Report 1570 issued on 21 June 2018, comprising representatives of the following organisations:

- **BL, Danmarks Almene Boliger**
  BL – Danish Social Housing
- **Bygherreforeningen**
  Danish Association of Construction Clients
- **Bygningsstyrelsen**
  Danish Building and Property Agency
- **Danske Arkitektvirksomheder**
  Danish Association of Architectural Firms
- **Dansk Byggeri**
  Danish Construction Association
- **Danske Regioner**
  Danish Regions
- **Dansk Industri**
  Confederation of Danish Industry
- **Foreningen af Rådgivende Ingeniører**
  Danish Association of Consulting Engineers
- **Kommunernes Landsforening**
  Local Government Denmark
- **Kooperationen**
  Danish Cooperative Employers' Association
- **SMVdanmark (tidligere Håndværksrådet)**
  SMEdenmark (formerly the Danish Federation of Small and Mediumsized Enterprises)
- **TEKNIQ**
  TEKNIQ - Danish Mechanical and Electrical Contractors' Association
- **Vejdirektoratet**
  Danish Road Directorate
- **Voldgiftsnævnet for bygge og anlægsvirksomhed**
  Danish Building and Construction Arbitration Board

Prevailing Language
The Danish language version of these general conditions shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions.

English version published 8 March 2019

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A. Contractual basis

Clause 1. Application
Subclause (1) These general conditions are intended for use in relation to contracts on building and construction works and supplies when the client is not a consumer. The conditions apply once they have been accepted by the parties to the contract.

Subclause (2) Deviation from the conditions is only valid if the points to be deviated from are clearly and explicitly specified in the contract.

Clause 2 . Definitions
Subclause (1) In relation to supplies, 'client' means the buyer, and 'contractor' means the seller. In relation to subcontracting, 'client' means the contractor, and 'contractor' means the subcontractor.

Subclause (2) 'Work'/'Works' also include the contractor's supply of materials etc, regardless of whether the contractor incorporates, as part of the work, such materials in the works or solely provides a supply.

Subclause (3) 'Work'/'Works' also include design to be performed by the contractor, and 'subcontracting' and 'subcontractors' also mean technical advice and consultants engaged by the contractor to assist in such design.

Subclause (4) 'Interface' between works means the part of the works which adjoins other works and which is dependent on or influences such other works, thus necessitating mutual coordination. The relationship to existing buildings or structures may also constitute an interface.

Subclause (5) 'Client supervision' means the client's construction management and supervision or other supervisors specially appointed by the client. In provisions according to which the 'client' may or must take action or receive notifications, the client may entrust such activities to supervisors or another representative of the client.

Subclause (6) 'Quality assurance' means activities intended to prevent defects in a building or structure and to ensure that a chosen quality level is maintained during the design and execution stages.

Subclause (7) 'Design scrutiny' means coherent and systematic review of a project design as part of quality assurance intended to assess the ability of the design to meet design requirements and to identify relevant problems.

Subclause (8) All amounts are exclusive of VAT unless otherwise stated.

Subclause (9) 'Working days' are all weekdays from Monday to Friday, with the exception of public holidays, Labour Day (1 May), Constitution Day (5 June), Christmas Eve (24 December) and New Year's Eve (31 December).

Clause 3. Governing law
Subclause (1) The legal relationship in its entirety is to be governed by Danish law.

Clause 4. The client's call for tenders
Subclause (1) A call for tenders means the client's invitation to submit tenders.

Subclause (2) Tenders are submitted on the basis of the information contained in the tender documents. The wording of the documents must be unambiguous. Depending on the level of detail of the documents and the requirements made with regard to contractor design, the documents must be drafted in such a way that both the services and the terms and conditions are clear.

Subclause (3) The tender documents must specify whether the contractor is to carry out design work and, if so, to what extent.

Subclause (4) The tender documents must include a master programme specifying:

a) the start and end dates of the works;
b) any decisive deadlines for early completion of individual elements of the contractor's work (interim deadlines);
c) the number of ordinary days lost due to weather conditions and included in the master programme;
d) any material constraints on the construction site that the contractor must tolerate, including coordination with other construction contracts, client supplies and prehandover use;
e) the final dates for the signing of the contract, the contractor's preparation of a working schedule and the client's preparation of a detailed time schedule;
f) the start and end dates of design review, mobilisation, health and safety coordination and prehandover review; and
g) the start and end dates for quantity verification, completion of design, contractor design and design optimisation if such services have been agreed upon.

Subclause (5) If the contractor is required to submit a tender for unit prices in addition to the total tender sum, the tender documents must specify whether unit prices are to be provided for an estimated quantity and, if so, the schedule of prices must indicate unit and quantity for each item so that the contractor can add the price per unit and the total sum for the item in the tender.

Subclause (6) In addition, the tender documents must include information about other matters that are considered to be of significance to the contractor's tender.

Subclause (7) The tender documents may contain information about particular matters of material importance in terms of enabling the client to put the building or structure into use.

Clause 5. The contractor's tender
Subclause (1) If the contractor's tender includes a unit price tender in addition to a total tender sum, both tender elements are binding on the tenderer.

Subclause (2) The tender includes only services that are designated as forming part of the contract according to drawings and models, including digital models, provided to the contractor as a basis for the preparation of the tender, or the services mentioned in the parts of the works description applying to the contract in question. The tender also includes all ancillary professional services needed for the completion of the works; see clause 12, subclause (2).

Subclause (3) Any contractor reservations regarding or deviations from the tender conditions must be clearly and collectively stated in the tender.

Subclause (4) To the extent that the contractor is to take winter measures in the winter season (1 November to 31 March), seasonal winter weather measures are considered to be included in the tender unless they are common to two or more contracts. Weatherrelated winter measures are, however, paid for as extra work.

Subclause (5) The tender acceptance period is twenty working days from the date of the tender. If the client's invitation to tender is sent to two or more tenderers with a deadline for submission of tenders, the twenty working days are counted from the deadline stated in the invitation.

Subclause (6) The client must as soon as possible notify tenderers whose tenders are not accepted.

Clause 6. The construction contract
Subclause (1) A construction contract is entered into once the tender submitted is accepted in writing or when a construction contract is signed.

Subclause (2) The master programme, including any changes agreed upon, is called the agreed master programme.

Subclause (3) The following order of priority will apply in the event of conflict between the provisions of the contract documents unless otherwise provided by general principles of interpretation:

a) the construction contract;
b) letters exchanged, minutes of meetings and other written material containing agreed changes to, additions to or clarifications of tender documents or the actual tender and which are after the tender date;
c) the contractor's tender;
d) letters exchanged, minutes of meetings and other written material containing agreed changes to, additions to or clarifications of the tender documents and which are after the date of the tender documents, but before the tender date;
e) the client's tender documents;
f) AB 18.

Clause 7. Assignment
Subclause (1) The parties may assign their rights under the contract.

Subclause (2) If the contractor assigns claims under the contract that are not yet due for payment, assigned claims relating to the execution of the works take priority over any other assigned claims.

Subclause (3) Neither party may assign its obligations to third parties without the consent of the other party.

Clause 8. Subcontracting
Subclause (1) To the extent that it is customary or natural for the works to be executed under a subcontract, the contractor may subcontract the execution of the works, including design, to third parties. The parties may agree, however, that all or specified parts of the works are to be executed by the contractor or by a specific subcontractor, with the effect that the client's approval is required if the contractor desires to subcontract works.

Subclause (2) Approval by the client in accordance with the second sentence of clause 8, subclause (1), may be refused only if such refusal is reasonably justified by the circumstances of the appointed subcontractor, including the subcontractor's qualifications, financial situation or failure to provide documentation in accordance with the third sentence of clause 8, subclause (3). At the client's request, the contractor must notify the client of these circumstances as soon as possible. The client must issue a reasoned written approval or refusal as soon as possible after the contractor has given notification of the appointment of a subcontractor and the circumstances of the subcontractor.

Subclause (3) If, before the execution of the works begins, the contractor has engaged a subcontractor to carry out work, the contractor must notify the client of this before the contractor begins the works. If the contractor later engages or replaces a subcontractor, the contractor must notify the client of this before the subcontractor begins the works. At the client's request, the contractor must submit documentation as soon as possible to prove that a contract has been concluded with a subcontractor and that the subcontractor has acknowledged that the provisions of clause 8 also apply where a subcontractor entrusts others with the work and that the client is entitled to bring a claim for defects directly against the subcontractor in accordance with clause 8, subclauses (4) and (5).

Subclause (4) If it is considered to have been substantiated that the client is not able, or is able only with great difficulty, to pursue a claim for defects against the contractor, the client is entitled to bring the claim directly against the contractor's subcontractors and suppliers if their works suffer from the same defect.

Subclause (5) Any direct claim for defects is subject to the limitations following from the contracts both between the client and the contractor and between the contractor and the subcontractor and the supplier, including liability exclusions and limitations set out in both contracts. Such a claim is also subject to the provisions of chapter J on dispute resolution. The client waives any claim for non contractual damages against subcontractors and suppliers in respect of matters covered by a direct claim for defects. If the direct claim for defects has been caused by an intentional or grossly negligent act of the subcontractor or supplier, the first and third sentences do not apply.

Subclause (6) The provisions of clause 8, subclauses (1) to (5), also apply where a subcontractor or a supplier entrusts others with the execution of the works.

B. Performance bond and insurance

Clause 9. Performance bond provided by the contractor

Subclause (1) The contractor must provide a performance bond as security for the performance of the contractor's obligations to the client no later than eight working days after the conclusion of the contract unless otherwise specified in the tender documents. If the contract sum is less than DKK 1 million, the contractor must provide a performance bond only if the client has required this in the tender documents. The performance bond must be in the form of an adequate bank guarantee, fidelity insurance or some other adequate type of security.

Subclause (2) The performance bond serves to satisfy all claims the client has under the contractual relationship, including claims relating to extra work, if applicable, and repayment of contract sum overpayments.

Subclause (3) Until handover has taken place, the performance bond must correspond to 15% of the contract sum exclusive of VAT. After handover, the performance bond must be reduced to 10%. The

contract sum according to the second sentence must be determined with addition or deduction of all extra or reduced work to the extent requested by the client in the handover protocol.

Subclause (4) For deliveries supplied fully completed in instalments, the performance bond must correspond to 10% of the purchase price exclusive of VAT.

Subclause (5) The performance bond is reduced from 10% to 2% one year after handover unless the client has submitted a prior written complaint of defects. In such case, the bond is reduced when the defects have been rectified.

Subclause (6) The performance bond ceases five years after handover unless the client has submitted a prior written complaint of defects. In such case, the bond ceases when the defects have been rectified.

Subclause (7) If the performance bond is to cease at the time of the handover of works under separate contracts where no defects can occur after handover, this must be specified in the tender documents.

Subclause (8) If the contractor terminates the construction contract, the performance bond provided by the contractor ceases three months after the date of termination unless a dispute resolution procedure in accordance with chapter J has been initiated before then on the legitimacy of the termination.

Subclause (9) If works have been postponed for later handover (see clause 45, subclause (1)), the reduction relating to the postponed works in accordance with clause 9, subclauses (3), (5) and (6), is made after the postponed works have been handed over.

Subclause (10) If the works are handed over in stages (see clause 45, subclause (4)), the reduction set out in clause 9, subclauses (3) and (5) to (7), is made proportionally according to the scope of the works stage handed over.

Subclause (11) If the client requests payment under the performance bond, such request must be made in writing and notified simultaneously to the contractor and the guarantor with a precise specification of the nature and extent of the alleged breach and the size of the amount claimed. The amount claimed must be paid to the client within ten working days after receipt of the notification unless the contractor has filed a request with the Danish Building and Construction Arbitration Board before then, asking the Board to issue a decision on the security provided, in particular with a view to determining whether the payment claim is justified; see clause 67. If the contractor is declared bankrupt, a request for a decision concerning the performance bond may also be filed by the guarantor, who in such case becomes a party to the case.

Subclause (12) If the parties disagree on the reduction or cessation of the performance bond, either party – and, in the event of the contractor's bankruptcy, also the guarantor – may request a decision on the security provided; see clause 67.

Subclause (13) If the circumstances warranting a claim in accordance with clause 9, subclause (11) or (12), are already the subject of a dispute between the parties in pending proceedings as set out in clause 68 or clause 69, an introduction of the claim in the pending proceedings replaces the request for a decision on the security provided.

Subclause (14) The contractor must ensure that the guarantor has accepted that all disputes concerning the performance bond are resolved in accordance with the provisions of chapter J,

except for clause 64.

Clause 10. Performance bond provided by the client
Subclause (1) The client must provide a performance bond as security for the performance of the client's obligations to the contractor no later than eight working days after the signing of the contract unless the client is a publicsector client or a social housing organisation. The performance bond must be in the form of an adequate bank guarantee, fidelity insurance or some other adequate type of security.

Subclause (2) The performance bond serves to satisfy all claims the contractor has under the contractual relationship, including claims relating to extra work, if applicable.

Subclause (3) The performance bond must correspond to three months' average payments – but not less than 10% – of the contract sum exclusive of VAT. If the contract is extended to include extra works in accordance with clause 23, the contractor may demand that the performance bond be increased if the remuneration for all unpaid extra works exceeds the average payment of the contract sum for half a month. The client may demand that the performance bond be reduced if the bond exceeds the unpaid part of the contract sum and the extra works.

Subclause (4) The performance bond ceases when the contractor has submitted the final account and has no unsatisfied claims.

Subclause (5) If the contractor requests payment under the performance bond, such request must be made in writing and notified simultaneously to the client and the guarantor with a specification of the size of the amount claimed. The amount claimed is payable to the contractor within ten working days after receipt of the notification unless the client has filed a prior request with the Danish Building and Construction Arbitration Board, asking the Board to issue a decision on the security provided under the performance bond, in particular with a view to determining whether the payment claim is justified; see clause 67. If the client is declared bankrupt, a request for a decision concerning the performance bond may also be filed by the guarantor, who in such case becomes a party to the case.

Subclause (6) If the parties disagree on the cessation of the performance bond, either party – and, in the event of the client's bankruptcy, also the guarantor – may request a decision on the security provided; see clause 67.

Subclause (7) If the circumstances warranting a claim in accordance with clause 10, subclause (5) or (6), are already the subject of a dispute between the parties in pending proceedings as set out in clause 68 or clause 69, an introduction of the claim in the pending proceedings replaces the request for a decision on the security provided.

Subclause (8) The client must ensure that the guarantor has accepted that all disputes concerning the performance bond are resolved in accordance with the provisions of chapter J, except for clause 64.

Clause 11. Insurance
Subclause (1) The client must take out and pay for usual fire and storm damage insurance from the commencement of works until any defects identified at the time of handover have been rectified. The contractor and any subcontractors must be named as insureds under the insurance policy. The insurance must cover all of the contractors' works on the building or structure covered by the construction contract. In case of alteration or extension works, the insurance must cover any damage to such works and to the building or structure that is altered or extended. Any excess is payable by the client.

Subclause (2) A publicsector client may demand to provide selfinsurance.

Subclause (3) The contractor and, if applicable, the subcontractors must take out usual professional and product liability insurance.

Subclause (4) On request, the parties must provide documentation proving that the insurance policies are in force.

C. Execution of the works

Clause 12. Services to be provided by the contractor
Subclause (1) The works must be executed in accordance with the contract, good professional practices and the client's instructions. If the nature of materials is not stated, they must be of customary good quality. The contractor must perform quality assurance of its services.

Subclause (2) The contractor must supply all materials and perform all ancillary services needed to complete the works.

Subclause (3) The contractor must notify the client in writing about any use of methods and materials that are not thoroughly tested, including any associated risks, unless such use is prescribed by the client.

Subclause (4) Materials and other supplies intended for incorporation in the works must be supplied by the contractor without any retention of title. Once such materials and supplies have been delivered to the construction site, they belong to the client.

Subclause (5) Materials and other supplies to be used in the works must be covered by a five year supplier liability period for defects in the supply. The liability period is counted from the date on which the works are handed over and limited so that the supplier's liability ends no later than six years after the materials are delivered to a warehouse or sold to a third party. In addition, the supplier must have recognised that the client may file claims for defects directly with the supplier as set out in clause 8, subclauses (4) and (5).

Subclause (6) The contractor may refrain from complying with the provision set out in clause 12, subclause (5), if compliance involves considerable additional expenses for the contractor or a substantial delay in the works or if, in the case of relatively small scale supplies, it would be difficult to check compliance with the provision. In connection with significant supplies the client must be notified of such non compliance as soon as possible after a quotation has been obtained from the supplier.

Subclause (7) The contractor must regularly clear up and immediately remove discarded materials from the construction site.

Clause 13. Working schedule and detailed time schedule
Subclause (1) By the deadline stated in the agreed master programme, the contractor must prepare a working schedule that meets the deadlines set out in the agreed master programme. The working schedule must state the sequence of the individual elements of the contractor's works and take the parties' obligations under health and safety regulations into account.

Subclause (2) If the client has engaged two or more contractors, the client must prepare an overall working schedule (detailed time schedule) in collaboration with the contractors before the works

are commenced. The detailed time schedule must state the sequence of the individual work elements.

Subclause (3) Objections to the detailed time schedule must be submitted to the client in writing within five working days after receipt of the schedule.

Subclause (4) If a contractor fails to contribute sufficiently to the activities set out in clause 13, subclauses (1) to (2), the client may determine the contractor's working schedule to the extent needed and let it form part of the detailed time schedule.

Clause 14. Updating working schedules and time schedules
Subclause (1) Compliance with working schedules and time schedules must be assessed on an ongoing basis. If it seems likely that the schedules will not be observed, they must be updated stating to what extent extension of time is requested or accepted, and whether the delay concerns a deadline associated with liquidated damages.

Subclause (2) If a contractor fails to contribute sufficiently to the updating of the schedules, the client may update that contractor's working schedule to the extent needed and let it form part of the detailed time schedule.

Clause 15. Setting out and construction site
Subclause (1) The client sets out the overall grid lines and heights (reference levels), while all other setting out is done by the contractor.

Subclause (2) In connection with building works, the client arranges for all necessary establishment of service lines for sewage, electricity, gas, water and heating up to the boundary of the construction site.

Subclause (3) The client pays all necessary connection fees as well as any other duties and charges payable as a result of an agreement stating that sheds, containers, skips, scaffolding, etc, are not to be located on the construction site.

Clause 16. Digital building models etc
Subclause (1) If digital building models are to be used in relation to building and construction works, the tender documents must specify the purpose and extent of the use of such models, including whether they are to be used for planning and design as well as during execution of the works and whether a digital asbuilt model is to be submitted on completion of the works for use in subsequent operations and remodelling. In addition, it must be decided which design material will take precedence in the event of discrepancy between design material.

Subclause (2) A party who places a digital building model at the disposal of other parties must specify at the same time for what purposes and to what extent the model may be used, including design, quantity estimation, collision testing and execution. The party in question must also state whether a deviation from the general provision on precedence applies at the stage concerned; see the last sentence of clause 16, subclause (1).

Subclause (3) Insofar as other parties collaborating on a digital building model, including an overall digital building model, are to provide input to the model, the party which places the model at disposal must specify which input is to be provided, its form and data format, as well as when it is to be provided. The client must ensure through agreement with the parties involved that they accept a duty to comply with such instructions. This also applies if the contractor is to provide input to a digital asbuilt model on completion of the construction works.

Subclause (4) Data must be supplied and uploaded in open data formats. A party that supplies or uploads data must state which software has been used to produce the data formats.

Subclause (5) A party who places a digital building model at disposal bears the risk of errors in the digital model, the party's own input and interfaces with design of others in the model, but not of errors in other parties' use of the model, the input of others or the standard software used for the making of the model.

Subclause (6) The provisions in clause 16, subclauses (1) to (5), on digital building models apply likewise to other digital data with the exceptions that follow from the nature of the circumstances.

Clause 17. Contractor design

Subclause (1) The contractor is to carry out design work only if this has been agreed (separate consultancy services). If the contract describes the works to be performed by the contractor in the form of functional requirements, the contractor must carry out the necessary design in this respect. Proposals presented by the contractor and implemented by the client do not imply that the contractor undertakes to carry out the design, bears any risk or assumes any liability in relation to such proposals.

Subclause (2) If the contractor is to carry out design work, the client must appoint a design manager. The design manager represents the client in relation to the contractor with regard to the organisation and execution of design work. The design manager can issue and receive notifications concerning the design and issue instructions regarding the coordination of design work made by the various contractors in their mutual relations.

Subclause (3) The contractor's design must comply with the contract, good design practice and the client's instructions. The contractor's design must include information about the correlations between the contractor's design and other design in the interfaces defined in the contract. The client is responsible for coordination of the overall design, including the determination of interfaces; see clause 17, subclause (2). The contractor must participate in interdisciplinary scrutiny of the overall design, as each party must scrutinise its own design and its interfaces with design prepared by others.

Subclause (4) If the contractor's design involves the use of methods and materials that have not been thoroughly tested, the contractor must notify the client in writing of this as well as of any associated risks.

Subclause (5) If the parties agree that the design is to be prepared in stages, they must fix deadlines for the delivery of the individual stages, and the provisions of clause 17, subclauses (6) to (8), will then apply to each stage.

Subclause (6) The contractor must perform quality assurance, if appropriate including scrutiny of the contractor's own design; see clause 21, subclause (1).

Subclause (7) The contractor must notify the client in writing of the completion of the design (notice of completion) with a view to obtaining the client's approval. The outcome of the contractor's quality assurance must accompany the notice.

Subclause (8) As soon as possible after receipt of the notice of completion, the client must notify the contractor in writing whether the client agrees that the design has been delivered and whether the client can approve it as the basis for the contractor's further work. The client's notice must state any defects in the design delivered as well as any reservations made regarding the approval.

Clause 18. Design defects
Subclause (1) The contractor has a duty and a right to rectify defects in the contractor's design identified at the delivery of the individual stages under clause 17 or later.

Subclause (2) The client must issue a written notification of a deadline for rectification of defects identified. The deadline must take into consideration the nature and extent of the defects as well as the circumstances in general. The contractor must notify the client in writing when the defects have been rectified.

Subclause (3) If after expiry of the deadline in clause 18, subclause (2), or after the contractor has notified the client that remedial action has been completed, the client finds that the defects have not been rectified, the client must notify the contractor in writing within ten working days of the defects that remain unrectified.

Subclause (4) The client is subsequently entitled to have the defects in question rectified at the contractor's expense (compensation for rectification) or to have the contract sum reduced; see clause 52.

Clause 19. Design review
Subclause (1) Before execution of the building and construction works is initiated, the client, together with the consultant and the contractor, must review the design agreed upon as well as any design contributions and proposals for materials submitted by contractors and suppliers. Design reviews must also be carried out in connection with subsequent design changes if the client or contractor finds this to be necessary.

Subclause (2) The purpose of the design review is to achieve a common understanding of the design, including interfaces and the sequence of the individual design elements, and to enable the contractor to influence the construction process by pointing out impractical aspects of the design. Another purpose is to identify risks in order to enhance the management of such risks and to identify uncertainties and inadequacies in the design. In connection with the design review, the parties must designate specific works or materials in relation to which supervision is to be carried out under clause 21, subclause (4).

Subclause (3) The client must take charge of the design review. All parties must participate in the review in good faith.

*Subclause (4) T*he client must involve the client adviser, the design manager, the construction manager, the safety coordinator and other consultants participating in the design and execution stages. The client must ensure that the consultant involves subconsultants who have contributed to the design. The contractor must involve chosen subcontractors and suppliers who are to execute the works or who have contributed or will contribute to the design.

Subclause (5) The client, the consultant and the contractor must notify each other as soon as possible about any impractical aspects, uncertainties and inadequacies they have identified. This also applies to any design errors they discover.

Subclause (6) The client must as soon as possible prepare a design review report stating what has been covered and how much time has been spent on the individual design elements. The report must also include a description of matters covered by clause 19, subclause (5), stating the measures to be taken to mitigate such matters. Remarks on the report must be sent to the client as soon as possible.

Subclause (7) The designing parties must align their design as necessary in accordance with the report as soon as possible.

Subclause (8) The contractor and the client must as soon as possible send written notification to the other party concerning any demands for amendments to the contract with regard to price, time and security resulting from the mitigation measures stated in the report. The provisions of clause 25, subclauses (3) to (5), apply accordingly.

Clause 20. Relations with authorities
Subclause (1) The client arranges for the necessary approval of the design and bears the associated expenses. This also applies to any part of the design prepared by the contractor.

Subclause (2) The contractor arranges for notifications, applies for permits, requests inspections and provides certificates relating to the actual execution of the works and pays the associated expenses. Exemptions may only be applied for following agreement with the client.

Clause 21. Quality assurance, supervision and rejection
Subclause (1) The client may set out provisions in the tender documents requiring the contractor to perform quality assurance of the work, including the design, if relevant, and provisions on the type and extent of samples to be taken, as well as on the documentation to be submitted by the contractor concerning the execution of the work, the origin and characteristics of the materials used and the samples taken. Such provisions may form part of a tender control plan.

Subclause (2) During the execution of the works and in connection with the handover, the client may request additional samples. If such samples are required, the contractor must make necessary personnel available for the taking and examination of the samples. If such additional samples show contractually compliant performance of the work, the client must pay for them as extra work. If not, the contractor must pay theclient's expenses.

Subclause (3) The contractor must give the client access to the work sites and production sites where the work is performed. In addition, the client may demand information that is necessary for assessing performance.

Subclause (4) The contractor and the client convene supervision meetings for review of specific works or materials agreed upon in connection with the design review in order to assess whether the works in question are contractually compliant in relation to specified characteristics or whether they should be rejected as noncompliant. In addition, the contractor and the client may request supervision reviews as set out in the first sentence of this subclause as and when needed.

Subclause (5) Before the supervision review mentioned in clause 21, subclause (4), the contractor must have performed, and on request documented, the quality assurance agreed. In connection with the supervision review, a supervision protocol is prepared, describing the characteristics of the works or materials and specifying whether they have been approved or rejected.

Subclause (6) During the execution of the works, the client supervises the progress of the work and may reject noncompliant works or materials. Such rejection must be made as soon as possible.

Subclause (7) The client's supervision does not exonerate the contractor from carrying out control.

Clause 22. Client instructions concerning execution of works
Subclause (1) The client may issue instructions concerning the execution of works.

Subclause (2) The contractor must obtain the client's decision if the contract and the basis for it do not provide sufficient guidance for the execution of the works.

Subclause (3) If the contractor finds that the client's instructions concerning the execution of the works under clause 22, subclauses (1) and (2), involve variations to the works as stated in clause 23, the contractor must notify the client of this as soon as possible.

Clause 23. Variations to works
Subclause (1) The client may order variations to the works when such variations are naturally linked to the services agreed upon. A variation may be that the contractor supplies a service in addition to or instead of a service originally agreed, that the nature, quality, type or execution of a service is changed or that services agreed upon are omitted.

Subclause (2) The contractor is entitled to carry out a variation ordered, unless the client shows that there are special reasons for having others perform the work, including that the payment requested by the contractor is not reasonable.

Subclause (3) The client's variation orders must be submitted in writing or presented at a construction meeting, and they must provide details of the variation.

Clause 24. Additional payment and cost reductions
Subclause (1) If a variation concerns work to which unit prices apply, the contract sum must be adjusted upwards or downwards accordingly unless otherwise agreed; see clause 25, subclause (4). Adjustment based on unit prices may only be made within the interval of +/ 100% of the individual item in the schedule of prices. In addition, adjustment based on unit prices for extra works may not exceed the contract sum by more than 20%, calculated by adding up together all extra works, while adjustments for reduced work may be up to 10% of the contract sum, calculated by adding together all work reductions. If work is replaced by other work, only the price difference between the two work items is included in the calculation of the sum of either extra work or reduced works.

Subclause (2) For extra work to which unit prices apply if the work exceeds the variation limits in clause 24, subclause (1), adjustment is based on unit prices as well unless it is substantiated that the prerequisites for applying the unit prices are not met.

Subclause (3) With the exception of situations in which adjustment is made on the basis of unit prices in accordance with clause 24, subclauses (1) and (2), variations to the work are carried out on an on account basis unless otherwise agreed in accordance with clause 25, subclause (4).

Subclause (4) For variations to the works carried out on an on account basis, accounts must include specifications of hours of work, materials and equipment.

Subclause (5) If the scope of the works is reduced, the contractor must credit the expenses that are saved or should have been saved to the client, the maximum amount being the amount at which the work has been calculated in the contract. If the reduction relates to work for which unit prices apply (see clause 25, subclause (1)), this is only required to the extent that the reduced work leads to a contract sum reduction in excess of 10%.

Clause 25. Price, time and security after variations
Subclause (1) Any claim by the parties concerning amendments to the contract in terms of price, time and security resulting from a variation to the works or changes in the conditions for executing the works must be submitted in writing or presented at a construction meeting as

soon as possible. This also applies to a party's claim for amendments to the contract resulting from an approved proposal by the contractor or an instruction issued by the client in accordance with clause 22 or clause 26 which the party considers to be a variation to the works, even if the proposal or the instruction does not state that a variation is involved.

Subclause (2) At the request of a party, the other party must state in writing as soon as possible whether that party considers specified work to represent a variation that entails requirements for amendments to the contract in terms of price, time and security. The contractor is not obliged to commence the work in question before the client has responded.

Subclause (3) If a party submits a claim under clause 25, subclause (1), for amendment of the contract in terms of price, time or security, the other party must state as soon as possible whether the claim is accepted and, if not, the reason why it is not accepted.

Subclause (4) The parties must as soon as possible enter into a written addendum to the contract concerning variations as set out in clause 23 and concerning resultant amendments to the contract in terms of price, time and security. Negotiations about such an addendum must not delay the execution of the works.

Subclause (5) The client must regularly record variations ordered under clause 23, claims requested under clause 25, subclause (1), as well as requests and notifications under clause 25, subclause (2), clause 22, subclause (3), and clause 26, subclauses (1) and (2). If the contractor finds that there are errors in the client's records, the contractor must notify the client as soon as possible.

Clause 26. Obstacles

Subclause (1) If the contractor finds that the works cannot be performed in accordance with the contract entered into, the contractor must notify the client accordingly as soon as possible and then follow the client's instructions.

Subclause (2) The provision in clause 26, subclause (1), also applies if the contractor finds that circumstances have arisen which prevent the execution of the works or make their execution difficult, or which are likely to cause inconvenience to or inflict a loss on the client, including liability towards third parties. If there is not time to obtain instructions from the client, the contractor must - against payment and any necessary extension of time - in the best possible manner take measures to avoid losses being inflicted on the client and must notify the client accordingly as soon as possible.

Subclause (3) The tender documents must include information about surveys and studies made concerning groundwater and soil conditions, contamination, pipes, cables, hazardous substances and materials as well as any other obstacles. If the tender documents do not contain exhaustive information about such obstacles, measures must be taken to overcome the obstacles and the associated inconveniences must be paid for as extra work.

Subclause (4) In the event of unforeseen circumstances, despite the performance of preliminary studies as mentioned in clause 26, subclause (3), which are reasonable or customary given the nature, location and former use of the site, which lead to public enforcement notices or prohibitions that make it impossible or unreasonably burdensome for the client to continue with the works, the client is entitled to cancel the contract. In the event of cancellation, the client must compensate the contractor for the loss the contractor suffers as a result of the cancellation, with the exception of the profit lost by the contractor because of noncompletion of the works.

Clause 27. Transfer of risk
Subclause (1) The contractor bears the risk of damage to or loss of works and materials until the handover date. This also applies to materials supplied by the client, once such materials are in the contractor's possession.

Subclause (2) However, the contractor does not bear the risk of damage or loss due to circumstances relating to the client. This also applies to consequences of exceptional external events beyond the control of the contractor (force majeure), including war, riot, acts of terrorism and acts of God.

Subclause (3) Damage caused by a contractor to the works, materials or equipment of other contractors is of no concern to the client.

Subclause (4) The contractor must maintain the works executed until handover.

Subclause (5) For works or parts of works put into use before handover, the provisions of clause 26, subclauses (1) to (4), apply until such works are put into use. In connection with the putting into use of the works, the client may conduct a registration as set out in clause 63, subclauses (2) to (4).

Subclause (6) As regards building works and any connected construction works carried out at locations that are in use during construction, the provisions of clause 27, subclauses (1) to (4), concerning the contractor's risk of damage apply only to damage caused by another contractor where such damage is not due to circumstances relating to the client. Once the works are completed and the contractor has left the location, the works are considered to have been taken into use; see clause 27, subclause (5).

Subclause (7) As regards materials and other movables supplied to the client or the contractor by a supplier who is not to perform any installation, processing, manufacturing or other work on the construction site, the provisions of clause 27, subclauses (1) to (4), apply until the materials or the movables are in the possession of the client or the contractor, as the case may be.

Clause 28. Client supervision
Subclause (1) The client must appoint a supervisor to represent the client in relation to the contractor with regard to the organisation and execution of the work. The supervisor may issue and receive notifications concerning the work, approve or reject materials or works, and issue instructions regarding the coordination of the individual contractors' work in their mutual relations.

Subclause (2) The construction management is authorised on behalf of the client to demand or enter into agreements on variations to the works and on resultant amendments to the contract in terms of price, time and security involving an additional payment of a maximum of DKK 50,000 for each variation and extension of time of not more than five working days for each variation. If the client has not appointed a construction management, the supervisors are authorised to the same extent.

Subclause (3) The supervisors must be present on the construction site, or it must be possible to call them in.

Clause 29. The contractor's representative
Subclause (1) The contractor must appoint a person who represents the contractor in relation to the client and the supervisors in matters relating to the organisation and execution of the works, and who can issue and receive notifications on these matters.

Subclause (2) The contractor's representative must be present on the construction site, or it must be possible to call in the representative.

Clause 30. Design meetings
Subclause (1) The client must convene design meetings with the contractor if the contractor is to provide design services.

Clause 31. Construction meetings
Subclause (1) The client must convene construction meetings with the contractor.

Subclause (2) At each construction meeting, the parties must

a) go through and update matters covered by clause 25, subclause (5);
b) go through updated working schedules and time schedules; see clause 14; and
c) record the number of days on which work has been fully or partly at a standstill (days lost and the reasons for this, indicating whether they are contained in the days lost included in the time schedules. Days lost which are taken into account for a period, but which do not correspond to actual days lost in the period (unused days lost) are not carried forward to later periods.

Subclause (3) Changes to the authorisation of the construction management or supervisors (see clause 28) must be announced at the first construction meeting after the change. This also applies to any authorisation given to the contractor's representative.

Clause 32. General rules on design and construction meetings
Subclause (1) The parties must attend meetings themselves or through representatives.

Subclause (2) The client chairs the meetings and prepares minutes of the meetings, which are sent to the contractor as soon as possible. The contractor is entitled to have objections and claims recorded in the minutes. Comments on the minutes must be sent to the client as soon as possible and must be included in the minutes of the next meeting.

Subclause (3) At the meetings, the parties may present and receive notifications with binding effect. Such notifications must be recorded in the minutes.

Clause 33. Duty of cooperation and good faith
Subclause (1) The parties have a duty to work together in good faith so that errors, delays and cost increases are avoided. This duty also applies to the contractor in relations with other contractors and the supervisors.

D. Payment

Clause 34. Price and indexation
Subclause (1) The contract sum is a fixed price for the part of the works executed within twelve months of the date of tender (fixedprice period).

Subclause (2) For the part of the works executed more than twelve months after the date of tender, the price is adjusted in accordance with the building or construction cost index that has been agreed or which – in the absence of agreement – is considered relevant to the works. The indexation is determined according to the change in the index from six months after the date of tender until the time of execution, which is considered to be the middle of the period during which the works concerned are executed, the index at the times in question, if necessary, being

calculated by linear interpolation.

Subclause (3) Indexation must be made in connection with the payment for the part of the works that is affected by the indexation and on the basis of a documented account provided by the contractor.

Clause 35. Exceptional adjustments
Subclause (1) The price is adjusted if a central government intervention carried out after the tender was submitted has caused significant increases or decreases in costs and is not covered by any other adjustment. Adjustment is made in accordance with notification from a central government authority.

Subclause (2) The contractor is also granted compensation for exceptional price increases for material which in finished form or in a customary manner forms part of the works or for fuel directly used for the works unless compensation is received under clause 35, subclause (1).

Subclause (3) The price increase under clause 35, subclause (2) must

a) have occurred after the date of tender and before any agreed indexation has taken effect;
b) be generally occurring; and
c) be apparent from official price documents or be capable of being documented in some other way.

Subclause (4) Compensation under clause 35, subclause (2), comprises the price increase exceeding 10% of the price of the relevant material or fuel at the date of tender. This rate is increased by 0.5 percentage points for each full month between the date of tender and the date of purchase. Any price increase occurring after the time when the material or fuel was purchased cannot be included.

Subclause (5) A prerequisite for obtaining compensation under clause 35, subclause (2), is that the sum of the calculated adjustment amounts totals at least 0.5% of the contract sum.

Subclause (6) If the contractor is required to grant compensation to subcontractors in accordance with the provisions of clause 35, subclauses (2) to (5), the contractor must be granted similar compensation by the client, regardless of the provision of clause 35, subclause (5).

Subclause (7) Adjustment under clause 35, subclauses (2) to (6), is made in connection with the payment for the part of the works that is affected by the adjustment and on the basis of a documented account provided by the contractor.

Clause 36. Payment and retention
Subclause (1) On written request to the client, the contractor is entitled to receive payment twice a month for any works and materials executed or delivered on the construction site in conformity with the contract.

Subclause (2) Subject to the same provisions as those set out in clause 36, subclause (1), the contractor may also request payment for any materials, etc purchased by the contractor and not delivered on the construction site. If the client so requires, the contractor must provide a performance bond as security for delivery in conformity with the contract; see clause 9. The size of the performance bond must correspond to the payment inclusive of VAT demanded for nondelivered materials.

Subclause (3) It may be agreed that payment is to be made in accordance with a payment schedule instead of as set out in clause 36, subclause (1). The payment schedule must follow the agreed master programme and stipulate the dates or milestones at which the contract sum falls due for payment in full or in part. On submission of a payment request, the contractor is entitled to receive payment at the agreed dates, etc, provided that the work to which the payment is related has been performed.

Subclause (4) If the date of payment for any extra work has not been agreed, the contractor may request payment in accordance with the provision of clause 36, subclause (1). A request for payment must be submitted within a reasonable period of time after the performance of extra works unless special circumstances prevent billing of such works.

Subclause (5) After handover, the contractor submits a complete and final account to the client, including a specification of amounts receivable for all extra works. Once the client has received the final account, the contractor may not bring further claims – except for claims for which specific reservations have been expressed in the final account.

Subclause (6) The final account must be submitted to the client no later than 25 working days after handover. For main contracts, however, the time limit is 35 working days, and for construction works not executed in connection with building works, the time limit is 60 working days.

Subclause (7) If the client has not received the final account within the time limit referred to in clause 36, subclause (6), the client may demand in writing that the account be submitted within ten working days. If the contractor fails to submit the account to the client within this time limit, the contractor forfeits any right to claim payment for extra works executed on an on account basis and payment for wage and price increases.

Subclause (8) If the client finds that the contractor has requested payment of an amount that has not yet fallen due, the client must immediately provide the contractor with a reasoned written notification.

Subclause (9) If the parties disagree on an account, the client must pay the part of the amount which the client does not dispute owing.

Subclause (10) The client may retain a reasonable amount as security for the rectification of defects notified at the time of handover; see clause 48. The amount is payable to the contractor as soon as possible after the defects have been rectified.

Clause 37. Due date, final date for payment and interest

Subclause (1) The contractor's claims under clause 36 fall due for payment when the client receives a request for payment and are payable no later than 15 working days after receipt.

Subclause (2) Any amount receivable by the contractor carries interest from the due date at the rate of interest provided for in the Danish Interest Act. The time limit set out in clause 37, subclause (1), is the grace period.

Clause 38. The contractor's right to stop work

Subclause (1) If the client fails to pay an amount due by the final date for payment, the contractor may stop work after having given written notice of three working days. If the client is a publicsector client or a social housing organisation, the notice is five working days.

Subclause (2) In addition, the contractor is entitled to stop work immediately if the client is

declared bankrupt or subjected to reconstruction proceedings, or if the client's financial situation in general proves to be of such a nature that the client must be assumed to be unable to fulfil its obligations under the construction contract. This is subject to the condition that the client has not provided adequate security for the performance of the remaining part of the contract. If the client provides such security immediately, the contractor must resume work.

Subclause (3) If the contractor is entitled to stop work under clause 38, subclause (2), the contractor may demand that the client immediately provides adequate security for the performance of the remaining part of the contract.

E. Extension of time and delay

Clause 39. The contractor's right to extension of time
Subclause (1) The contractor is entitled to extension of time if the execution of the works is delayed as a result of:

a) variations to the works ordered by the client; see clause 23;
b) the circumstances of the client or delay on the part of another contractor;
c) war, acts of God, fire, strike, lockout, picketing, vandalism or similar events that are without the fault and beyond the control of the contractor;
d) precipitation, low temperatures, strong winds or other weather conditions that prevent or delay the work when such weather conditions occur to a significantly greater extent than is usual for the relevant season and region; or
e) public enforcement notices or prohibitions which are not due to circumstances of the contractor.

Subclause (2) The contractor must endeavour to avoid or reduce delays by taking such measures as may reasonably be required.

Subclause (3) If the contractor becomes aware that a delay will occur, the contractor must notify the client of this in writing as soon as possible.

Subclause (4) If the contractor believes to be entitled to extension of time, the contractor must as soon as possible notify the client in writing of the required extension of time and the reason for such extension. The client must reply in accordance with clause 25, subclause (3).

Clause 40. The contractor's liability in case of delay
Subclause (1) A delay which does not entitle the contractor to extension of time constitutes an actionable wrong.

Subclause (2) If provisions have been made for liquidated damages or other special penalties, no claim for additional damages may be brought as a result of delay.

Subclause (3) If liquidated damages are calculated as a fraction of the contract sum per day of delay in the contractor's performance, the calculation is based on the contract sum exclusive of VAT per working day or part of working day. Liquidated damages are calculated for the period until the contractor has completed the works and has notified the client of the completion and fall due for payment on the date of completion stated in the contractor's notice of completion.

Subclause (4) If a deadline is missed, liquidated damages may be claimed only
a) if the deadline and the liquidated damages are clearly specified in the contract;

b) if any noncompliance with the deadline as it may have been changed through extension of time has been recorded on an ongoing basis; and
c) if, within a reasonable period of time after the client has become aware that the deadline will be missed, the client has stated that the client will claim liquidated damages and the time from which such damages will be claimed.

Subclause (5) Liquidated damages for noncompliance with a deadline other than the date for handover (interim deadline) may be claimed only if the deadline has been set to ensure completion of an activity that is crucial to the construction process or other material matters.

Subclause (6) If no provision has been made for liquidated damages or other special penalties, the client's loss is determined in accordance with the general rules of Danish law.

Clause 41. Acceleration
Subclause (1) The contractor may request payment for acceleration

a) if the contractor has accelerated works in accordance with an agreement with the client, or
b) if the client wrongly claims that the contractor is in actionable delay and the contractor accelerates the works to safeguard against this.

Subclause (2) If the contractor believes to be entitled to payment for acceleration under clause 41, subclause (1), para b, the contractor must notify the client of this in writing before acceleration is initiated. The contractor's claim for payment as a result of the acceleration will be reduced if it is deemed to be unreasonable.

Clause 42. The client's right to extension of time
Subclause (1) The client is entitled to extension of time where the works are delayed as a result of

a) variations to the works ordered by the client; see clause 23;
b) war, acts of God, fire, strike, lockout, picketing, vandalism or similar events that are without the fault and beyond the control of the client or another contractor;
c) precipitation, low temperatures, strong winds or other weather conditions that prevent or delay the works, including the work of another contractor, when such weather conditions occur to a significantly greater extent than is usual for the season or region in question; or
d) public enforcement notices or prohibitions that are not due to circumstances of the client or another contractor.

Subclause (2) The client must endeavour to avoid or reduce delays by taking such measures as may reasonably be required.

Subclause (3) If the client becomes aware that a delay will occur, the client must notify the contractor of this in writing as soon as possible.

Subclause (4) If the client believes to be entitled to extension of time, the client must as soon as possible notify the contractor in writing of the required extension of time and the reason for such extension. The contractor must reply in accordance with clause 25, subclause (3).

Clause 43. The client's liability in case of delay
Subclause (1) If the delay is due to

a) circumstances relating to the client, and the client has committed an error or been negligent; or

b) another contractor's actionable delay (see clause 40, subclause 1) or action able delay caused by another party to the contract, the client must pay compensation to the contractor for the loss sustained.

Subclause (2) If the delay is due to

a) circumstances relating to the client where the client has not committed an error or been negligent and where the matter is not covered by clause 43, subclause (3);
b) another contractor's delay where the reason for the delay is not covered by clause 43, subclause (1) or (3);
c) variations to the works ordered by the client under clause 23; or
d) public enforcement notices or prohibitions that are not due to circum stances of the client or another contractor, the client must compensate the contractor for the loss sustained by the contractor because of the delay, with the exception of profits lost because the contractor is unable to carry out other work in the delay period and similar ensuing losses.

Subclause (3) If the delay is due to

a) war, acts of God, fire, strike, lockout, picketing, vandalism or similar events that are without the fault and beyond the control of the client or another contractor; or
b) precipitation, low temperatures, strong winds or other weather conditions that prevent or delay the contractor's or another contractor's work when such weather conditions occur to a significantly greater extent than is usual for the season and region in question, the contractor is not entitled to compensation.

F. Handover

Clause 44. Prehandover review
Subclause (1) The client must call in the parties in writing and at reasonable notice to attend a review of the works in reasonable time before the agreed handover (prehandover review) either for the works as a whole or for individual sections or contracts. If the client fails to do so, the contractor may convene such a prehandover review.

Subclause (2) At the prehandover review the client prepares a protocol stating all matters identified as well as any remarks made by the contractor.

Subclause (3) Failure by the client to identify a matter in connection with the prehandover review does not preclude the client from raising the matter as a defect at a later date.

Subclause (4) If the contractor does not attend the prehandover review, the review may be conducted without the participation of the contractor. The client must then send the protocol to the contractor as soon as possible.

Clause 45. Handover meeting
Subclause (1) Immediately before completion of the works, the contractor must notify the client in writing about the date of completion (notice of completion). The client then calls in the contractor for a handover meeting, which must take place no later than ten working days after the date stated; see however clause 45, subclause (5). The provisions in sentences 1 and 2 also apply to work that has been postponed for later handover by agreement with the client.

Subclause (2) Works are considered to be handed over to the client once the handover meeting

has been held, unless material defects are identified at the meeting, including matters that to a material extent would prevent the works from being put into use. In such a scenario, a new handover meeting is held when the contractor has notified the client in writing that the defects have been rectified; see clause 45, subclause (1).

Subclause (3) If the client fails to convene a handover meeting as set out in clause 45, subclause (1), the works will be considered to have been handed over ten working days after the date of completion stated. The same applies to a new handover meeting as referred to in clause 45, subclause (2), second sentence.

Subclause (4) If works involve more than one contract, all contracts must be completed before the client convenes a handover meeting. However, it may be agreed or it may follow from the circumstances that works or parts of works are to be handed over at different times or that certain building sections are to be handed over individually (handover in stages).

Subclause (5) In relation to construction works that are not linked to any building works, the works under the individual construction contracts are handed over separately unless otherwise agreed or following from the circumstances.

Clause 46. Handover protocol
Subclause (1) At the handover meeting the client prepares a handover protocol in which the defects and other matters identified by the client are stated together with the contractor's remarks. Agreements concerning rectification, including methods and deadlines as well as the time for a review of the rectification (see clause 48, subclause (2)) must be included in the protocol. The parties' positions as to whether the works have been handed over must be stated in the protocol. The protocol must be signed by the client and the contractor.

Subclause (2) If a party fails to attend a handover meeting, the meeting may be held without the participation of that party. The attending party must then send the protocol to the nonattending party as soon as possible.

G. Defects

Clause 47. Definition of defect
Subclause (1) If the works do not comply with clause 12, subclauses (1) and (2), there is a defect.

Subclause (2) If materials do not comply with the requirements set out in clause 12, subclauses (1) and (2), there is a defect. However, this does not apply

a) if, when the contract stipulates a free choice of materials, the contractor substantiates that conforming materials do not exist or cannot be provided due to war, import bans or similar; or
b) if the client has ordered the use of a specific or similar material, and the contractor substantiates that the possibility of providing it in contractual condition must be considered to be ruled out by circumstances that the contractor ought not to have taken into consideration at the signing of the contract. In these cases, the contractor must notify the client of the obstacles as soon as possible; see clause 26.

Subclause (3) However, if materials are not suitable for the purpose for which they have been used, there is no defect

a) if, when the contract stipulates a free choice of materials, the contractor substantiates that,

based on construction knowledge at the time, the material was considered suitable; or
b) if the client has demanded use of a specific or similar material and the contractor has used the material demanded.

Subclause (4) In all events, the works must have the characteristics warranted in the contract.

Subclause (5) If some materials are to be supplied with a guarantee that involves obligations that go beyond ordinary defect liability under these general conditions, the contractor is bound by them only insofar as it is possible for the contractor to purchase the materials with the guarantee requested and the supplier abides by and complies with the guarantee. If the contractor realises that materials for significant supplies cannot be bought with such a guarantee, the contractor must notify the client accordingly as soon as possible.

Subclause (6) The time of the handover is crucial in terms of determining whether the workssuffer from defects, irrespective of whether they are latent or patent at that point in time.

Clause 48. Defects identified at handover
Subclause (1) The contractor has a duty and a right to rectify defects identified at handover.

Subclause (2) The client must set a written deadline for rectification of the defects identified taking into consideration the nature and extent of the defects and the circumstances in general. The client must also specify a date for review of the rectified work, taking into consideration when the majority of the defects can be expected to be rectified. If defects are not rectified until after the defect rectification review, the contractor must notify the client in writing when the defects have been rectified.

Subclause (3) At the defect rectification review, the client prepares a defect rectification protocol in which the client states whether the client considers the defects to have been rectified, including any remarks made by the contractor. If a party does not attend the defect rectification review, the review may be conducted without the participation of that party. The attending party must then send the protocol to the nonattending party as soon as possible.

Clause 49. Defects identified after handover
Subclause (1) The contractor has a duty and a right for a fiveyear period after handover to remedy defects identified after handover.

Subclause (2) The client may only present claims concerning such defects if the contractor has been notified in writing of them within a reasonable period of time after the defects were or should have been discovered. However, this does not apply if the contractor has been grossly negligent.

Subclause (3) The client must notify the contractor in writing of a deadline for rectification of defects identified. The deadline is fixed with consideration of the nature and extent of the defects and the circumstances in general. The contractor must notify the client in writing when the defects have been rectified. The contractor may postpone rectification of a defect in order to rectify it together with any other defects identified at the oneyear inspection, provided that the defect will not become worse as a result of such postponement and that the postponement does not cause any inconvenience to the client.

Clause 50. Lapse of the contractor's right to rectify defects
Subclause (1) If, at the defect rectification review or after expiry of a deadline for rectification, or after having received the contractor's notification that rectification has been done, the client finds

that the defects have not been rectified, the client must send a written notice to the contractor within ten working days, stating which defects remain outstanding.

Subclause (2) The client is then entitled to have the defects in question rectified at the contractor's expense (compensation for rectification) or to be granted a reduction in the contract sum. However, if the contractor has sought to rectify all defects previously identified, and the outstanding defects only constitute a small proportion of them, the contractor is entitled to rectify such defects regardless of the first sentence of this subclause, provided that rectification is initiated immediately after the client's notification under clause 50, subclause (1).

Clause 51. Lapse of the contractor's duty to rectify defects
Subclause (1) The contractors' duty to rectify defects and the client's entitlement to have defects rectified at the contractor's expense (see clauses 48 to 50) lapse if rectification involves disproportionately high costs. When assessing whether this is the case, consideration is taken to the client's interest in the performance of the contract. In all events, the client retains the right of reduction; see clause 52.

Clause 52. Reduction in the contract sum
Subclause (1) If the contractor does not rectify defects as set out in clauses 48 to 50, the client may demand a reduction in the contract sum instead of having the defects rectified at the contractor's expense. The client is also entitled to a reduction in the contract sum if rectification is impossible or would cause considerable inconvenience, as well as in the situations mentioned in clause 51.

Subclause (2) The reduction is in principle calculated as the amount it would have cost to rectify the defects.

Subclause (3) If rectification of defects is impossible, and in the situations mentioned in clause 51, the reduction is determined on a discretionary basis.

Clause 53. The contractor's liability for consequential and indirect losses
Subclause (1) The contractor is liable for losses resulting from defects in the works if the defects are due to errors or omissions on the part of the contractor, or if the defects relate to characteristics that must be considered to be warranted under the contract.

Subclause (2) The contractor is not liable for any loss of business, loss of profit or other indirect loss.

Clause 54. The contractor's product liability
Subclause (1) The contractor's liability for damage caused by a defect in a product used in the building or construction works (product liability) is limited to the cover provided by the product liability insurance taken out; see clause 11, subclause (3).

Subclause (2) The contractor is not liable for any loss of business, loss of profit or other indirect loss resulting from damage caused by a defect in a product used in the building or construction works.

Clause 55. Expiry of defect liability
Subclause (1) The client's claims against the contractor for defects must be submitted no later than five years after handover of the works. After expiry of this period of time, the client is not entitled to file any claims against the contractor.

Subclause (2) If the contractor has rectified defects of which the client has given notice, a new time limit for the submission of claims relating to the defects will apply as set out in clause 55,

subclause (1), so that the time limit starts at completion of the defect rectification but ceases after a maximum of three years after the expiry of the original fiveyear time limit.

Subclause (3) If the client's claims for defects against the contractor concern movables and fixtures that are not specially adapted or permanently fixed, the time limit set out in clause 55, subclause (1), is reduced to two years.

Subclause (4) Regardless of the provisions of clause 55, subclauses (1) to (3), the client's claims under clause 55, subclauses (1) to (3), are retained in relation to defects if

a) the contractor has undertaken to extend the warranty period;
b) it is established at handover that the quality control agreed has failed significantly; or
c) the contractor has been grossly negligent.

H. Oneyear and fiveyear inspections

Clause 56. Oneyear inspection
Subclause (1) The client calls in the contractor for an inspection of the works, the inspection date being no later than one year after handover.

Clause 57. Fiveyear inspection
Subclause (1) The client calls in the contractor to attend a final inspection of the works, the inspection date being no later than thirty working days before the end of the five year period after handover.

Subclause (2) If the client has not called in the contractor in accordance with clause 57, subclause (1), the contractor may send a written notice to the client calling in the client to the inspection with at least ten working days' notice.

Clause 58. Common provisions on inspection
Subclause (1) Notices concerning inspections under clause 56 and clause 57, subclause (1), must be made in writing and issued with a notice period of not more than sixty and not fewer than fifteen working days, however at least twenty working days for main contracts.

Subclause (2) During the inspection the client prepares an inspection protocol in which the client states the defects in the works as well as any other issues identified by the client, together with any remarks made by the contractor and any agreements made concerning rectification of defects, including methods and time limits.

Subclause (3) If a party fails to attend the inspection, the attending party may conduct the inspection without the participation of the nonattending party and must then subsequently send the protocol to the nonattending party as soon as possible.

I. Termination with immediate effect

Clause 59. The client's right to terminate the contract
Subclause (1) After having provided written notice, the client is entitled to terminate the construction contract in whole or in part with immediate effect

a) if the contractor causes material actionable delay in the execution of the works where such delay causes substantial inconvenience to the client;
b) if the contractor causes other material delay with regard to matters of decisive importance to the client;
c) if the works executed are of such quality that the client has reason to believe that the contractor will not be able to complete the works without material defects; or
d) if the contractor otherwise commits material breach with regard to matters of decisive importance to the client.

Subclause (2) After having provided written notice, the client is entitled to demand that a subcontractor or supplier be deprived of its right to execute works and deliver materials, respectively, if the subcontractor or supplier has failed materially to comply with applicable rules or agreed terms and conditions on social responsibility, including rules on health and safety at work. Under the same terms and conditions, the client is entitled to summarily dismiss individuals and order them to leave the construction site.

Clause 60. The contractor's right to terminate the contract
Subclause (1) After having provided written notice, the contractor is entitled to terminate the construction contract with immediate effect

a) in the event of material delay as a result of the circumstances of the client or delay on the part of another contractor where the client does not make reasonable efforts to expedite the works to the fullest possible extent; or
b) if the client causes other material delay or commits material breach with regard to matters of decisive importance to the contractor.

Clause 61. Bankruptcy, reconstruction, etc
Subclause (1) If either party is declared bankrupt, the other party is at once entitled to terminate the contract with immediate effect to the extent not precluded by the provisions of the Danish Bankruptcy Act.

Subclause (2) If the bankruptcy estate desires to become a party to the contract in accordance with the provisions of the Danish Bankruptcy Act, the estate must give notification of this without undue delay if requested to do so.

Subclause (3) The provision of clause 61, subclause (1), also applies if a party is subjected to reconstruction proceedings or if the party's financial situation in general proves to be of such a nature that the party must be assumed to be unable to perform the construction contract. This is subject to the condition, however, that the party has not provided – or, at the request of the other party, does not immediately provide – adequate security for the performance of the contract; see clauses 9 and 10.

Subclause (4) If the party desires to continue the contract in accordance with the provisions of the Danish Bankruptcy Act on reconstruction proceedings, the party must give notification of this without undue delay if requested to do so.

Subclause (5) If either party is a limited liability company the dissolution of which has been ordered by the Danish Business Authority, the other party is entitled to terminate the construction contract with immediate effect. This provision does not apply if, within ten working days of its receipt of a demand from the other party, the company documents that the conditions for dissolving the company have not been fulfilled, or if the company provides adequate security for the performance of the contract.

Clause 62. Death of a party
Subclause (1) If a party dies, and the estate is administered as an insolvent estate, the provisions of clause 61, subclauses (1) and (2), apply correspondingly.

Clause 63. Common rules on termination with immediate effect
Subclause (1) Notice of termination must be given in writing.

Subclause (2) Concurrently with the termination with immediate effect, the party terminating the contract must issue a written notice calling in the parties in writing to attend a registration meeting (status meeting) to be held as soon as possible. Unless otherwise agreed, the status meeting is held not earlier than one working day after receipt of the convening notice. In case of disagreement over the progress of the works, the status meeting may be held in the form of an appraisal by an expert appointed by the Danish Building and Construction Arbitration Board; see clause 66.

Subclause (3) A registration protocol describing the extent and quality of the works executed must be drawn up at the status meeting. The document is signed by the parties unless the registration is made through an expert appraisal.

Subclause (4) If a party fails to attend a status meeting despite having received a convening notice, the attending party may hold the meeting without the participation of the nonattending party and must subsequently send the registration protocol to the nonattending party as soon as possible. Objections to the contents of the protocol must be made in writing no later than five working days after its receipt.

Subclause (5) In the event that the client terminates the contract with immediate effect, the client or the party completing the works on behalf of the client is entitled to use the contractor's equipment and materials present on the construction site if their removal before completion of the works would inflict a loss on the client. Customary remuneration is payable for such use.

Subclause (6) If either party terminates the contract with immediate effect, the other party is liable for the loss suffered in accordance with the general rules of Danish law.

J. Disputes

Clause 64. Dispute resolution ladder
Subclause (1) Efforts must be made to resolve and settle a dispute between the parties through negotiation between the parties' project managers no later than five working days after either party has requested negotiation under this provision. After handover, this clause 64, subclause (1), does not apply, and efforts must instead be made to resolve or settle the dispute as set out in clause 64, subclause (2).

Subclause (2) If a dispute is not resolved as set out in clause 64, subclause (1), management representatives of the parties must seek to settle it by negotiation no later than five working days after the expiry of the deadline stated in clause 64, subclause (1). If the dispute is not resolved as set out in the first sentence of this subclause, the management representatives must discuss within the same time limit the next step to be taken to resolve the dispute.

Subclause (3) Each party must appoint a project manager and a management representative no later than five working days after the signing of the construction contract.

Subclause (4) Mediation, conciliation, speedy resolution and arbitration may not be initiated before the negotiation procedure set out in clause 64, subclauses (1) and (2), has been completed. This also applies to expert appraisal unless the purpose of such appraisal is to secure evidence.

Clause 65. Mediation and conciliation

Subclause (1) At the request of either party, the Danish Building and Construction Arbitration Board appoints a mediator with a view to settling a dispute. A request may also be filed by an arbitral tribunal that hears the dispute in question.

Subclause (2) Mediation cannot be initiated if a party desires speedy resolution of the dispute and files a request to that effect no later than ten working days after the request for mediation was made.

Subclause (3) The Danish Building and Construction Arbitration Board appoints a mediator after having heard the parties, giving the parties a time limit of five working days.

Subclause (4) The mediator calls in the parties to attend a mediation meeting, which must be held no later than ten working days after the date on which the mediator was appointed.

Subclause (5) The parties have a duty to participate in the completion of the mediation process, and no arbitral proceedings may be initiated or continued until the mediation process is completed.

Subclause (6) The mediation process is completed when

a) the dispute is settled; or
b) the mediator establishes that it is unlikely that the dispute can be settled.

Subclause (7) In mediation cases, the rules laid down by the Danish Building and Construction Arbitration Board apply.

Subclause (8) When mediation involves more than two parties, the provisions of clause 65, subclauses (1) to (7), also apply to the relationship between the various parties.

Subclause (9) The provisions set out in clause 65, subclauses (1) to (8), apply correspondingly to conciliation.

Clause 66. Expert appraisal

Subclause (1) At the request of either party, the Danish Building and Construction Arbitration Board appoints expert appraisers to secure evidence of or assess actual conditions. If a party has requested a decision concerning the provision of security or speedy resolution, no expert appraisers may be appointed to consider the same matter until the question of the provision of security or speedy resolution has been finally concluded, unless the purpose of expert appraisal is to secure evidence.

Subclause (2) The Danish Building and Construction Arbitration Board appoints one or more expert appraisers, normally after having heard the parties, and makes decisions on the questions to be answered by the experts.

Subclause (3) A new expert appraisal involving another expert is only possible if the Danish Building and Construction Arbitration Board finds it appropriate.

Subclause (4) If arbitral proceedings concerning the matters submitted to expert appraisal are initiated while the outcome of the expert appraisal is pending, the expert appraisal continues as expert appraisal in the arbitral case. Parties to the expert appraisal proceedings who are not parties in the arbitral case continue as third parties in the expert appraisal.

Subclause (5) The rules laid down by the Danish Building and Construction Arbitration Board apply to expert appraisal.

Subclause (6) If expert appraisal involves more than two parties, the provisions of clause 61, subclauses (1) to (5), also apply to the relationship between the various parties.

Clause 67. Decision on security provided

Subclause (1) At the request of either party, the Danish Building and Construction Arbitration Board appoints an expert to make a decision on the payment under, reduction of or cessation of security provided (see clause 9, subclauses (11) and (12), and clause 10, subclauses (5) and (6)), unless a prior decision has been made under clause 68 or clause 69 or the circumstances on which the claim is based are already the subject of dispute between the parties in a pending case conducted under clause 68 or clause 69.

Subclause (2) The Danish Building and Construction Arbitration Board appoints one or more experts after having heard the parties, giving the parties a time limit of three working days.

Subclause (3) The opposing party may submit a reply no later than ten working days after receipt of the request for a decision on security provided. Each party may then submit a pleading no later than five working days after receipt of the opposing party's pleading. If very special circumstances decisively support this, the Danish Building and Construction Arbitration Board may extend the time limits or allow submission of one additional pleading from each party.

Subclause (4) The expert may ask the parties to submit supplementary information and material, the normal time limit for such submission being five working days.

Subclause (5) The expert may carry out inspections after having called in the parties with a notice of five working days. No expert appraisal may be organised as part of these proceedings.

Subclause (6) No later than ten working days after the expert has received the last pleading and any supplementary information and material and has carried out an inspection, where applicable, the expert decides to what extent the claim should be allowed and who is to pay the costs of the proceedings.

Subclause (7) In special circumstances it may be decided that payments to contractors and to clients who are not publicsector clients or a social housing organisation should be conditional upon the provision of security. In such circumstances, the expert determines the nature and magnitude of the security as well as the conditions for payment under the security provided or its expiry.

Subclause (8) Instead of making a decision concerning security provided, the expert may in special circumstances refer the parties to initiate arbitration in accordance with clause 69.

Subclause (9) Amounts covered by a decision to make payments under security provided must be paid out no later than three working days after the parties and the guarantor have received written notification of the decision.

Subclause (10) A decision concerning security provided is binding on the parties to the case in the same way as an arbitral award. A decision concerning reduction or cessation of security provided must be complied with no later than eight weeks after the decision was made. The decision may be brought before an arbitral tribunal no later than eight weeks after it was made, and the dispute will then be finally settled in the arbitral proceedings. If no arbitral proceedings are initiated before the deadline, the decision is final. Initiation of arbitral proceedings does not have any suspensory effect unless the decision concerns reduction or cessation of security provided and the arbitral tribunal decides otherwise.

Subclause (11) In cases concerning decisions about security provided, the rules laid down by the Danish Building and Construction Arbitration Board apply.

Clause 68. Speedy resolution

Subclause (1) At the request of a party, the Danish Building and Construction Arbitration Board appoints an umpire to make a speedy resolution regarding

a) the client's entitlement to withhold payments or offset amounts in the contractor's claims for payment;
b) the client's right to order variations and the contractor's right to execute such variations;
c) the contractor's right to additional payment for variations and the client's right to be credited for cost reductions in relation to variations;
d) the contractor's right to adjustment of the contract sum;
e) the composition of the detailed time schedule;
f) the contractor's and the client's right to extension of time;
g) the allocation of the risk of damage or the loss of work or materials;
h) the determination of work interfaces;
i) a refusal of approval of a designated subcontractor;
j) disputes with a monetary value of less than DKK 200,000; and
k) other disputes if agreed by the parties.

Subclause (2) Speedy resolution proceedings may not be initiated if there is a pending arbitral case about the same dispute.

Subclause (3) The Danish Building and Construction Arbitration Board appoints one or more umpires after having heard the parties, giving the parties a time limit of three working days.

Subclause (4) The opposing party or parties may submit a reply no later than ten working days after receipt of the request for speedy resolution, but may not include any other disputes in the proceedings. No later than at the time of issuing a reply, the opposing party or parties may join other parties in the proceedings by means of a thirdparty notice, following which the parties in question must submit a reply no later than ten working days after receipt of the thirdparty notice. Each party may then submit a pleading no later than five working days after receipt of the opposing party's pleading. If very special circumstances decisively support doing so, the Danish Building and Construction Arbitration Board may extend the time limits or allow submission of one additional pleading from each party.

Subclause (5) The umpire may ask the parties to submit supplementary information and material, the normal time limit for such submission being five working days.

Subclause (6) The umpire may carry out inspections after having called in the parties with a notice of five working days. No expert appraisal may be organised as part of the proceedings.

Subclause (7) No later than ten working days after the umpire's receipt of the last pleading and any supplementary information and material and after an inspection has been made, where applicable, the umpire makes a decision, including determination of who is to pay the costs of the proceedings.

Subclause (8) The umpire may refer the parties to mediation or conciliation in accordance with clause 65 or to initiate arbitral proceedings in accordance with clause 69 if the umpire is of the opinion that the dispute is not suitable for speedy resolution.

Subclause (9) A speedy resolution is binding on the parties to the case in the same way as an arbitral award. The decision must be complied with no later than eight weeks after it was made. The decision may be brought before an arbitral tribunal in accordance with clause 69 no later than eight weeks after it was made, and the dispute will then be finally settled in the arbitral proceedings. If no arbitral proceedings are initiated before the deadline, the decision is final. Initiation of arbitral proceedings does not have any suspensory effect unless the arbitral tribunal decides otherwise.

Subclause (10) In cases concerning speedy resolution, the rules laid down by the Danish Building and Construction Arbitration Board apply.

Subclause (11) When speedy resolution proceedings involve more than two parties, the provisions of clause 68, subclauses (1) to (10), also apply to the relationship between the various parties.

Clause 69. Arbitration
Subclause (1) Disputes between the parties are finally resolved by arbitration by the Danish Building and Construction Arbitration Board.

Subclause (2) Arbitral proceedings may not be initiated until four weeks after the conclusion of negotiations concerning the dispute as set out in clause 64. Furthermore, arbitral proceedings may not be initiated if mediation, conciliation, speedy resolution or a decision concerning security provided relating to the same dispute is pending.

Subclause (3) Arbitral cases are conducted in accordance with the rules on ordinary arbitration unless they are conducted in accordance with clause 69, subclause (4), on simplified arbitration.

Subclause (4) Arbitral cases are conducted in accordance with the provisions on simplified arbitration if

a) the parties agree on this; or
b) one of the parties so requests and the monetary value of the case does not exceed DKK 1 million.

Subclause (5) In ordinary arbitral proceedings the arbitral tribunal has three arbitrators unless the parties agree that there should be only one arbitrator or a party requests that the number of arbitrators be increased to five. In simplified arbitral proceedings, the arbitral tribunal has one arbitrator unless the parties agree that the number of arbitrators should be increased to two or three. Arbitrators may be technical arbitrators appointed by the Danish Building and Construction Arbitration Board or legal arbitrators appointed by the chair of the Danish Building and Construction Arbitration Board's Presidium. In all events, appointment is made after hearing of the parties.

Subclause (6) In arbitral cases, the rules laid down by the Danish Building and Construction

Arbitration Board apply.

Subclause (7) When arbitral proceedings involve more than two parties, the provisions of clause 69, subclauses (1) to (6), also apply to the relationship between the various parties.