

Corrections of editorial errors in the Danish general conditions for building and construction works and supplies

February 7, 2019

ABT 18

General conditions for design and build contracts

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 works, 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 works to the extent requested by the client in the handover protocol.

Subclause (4) 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 (5) 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 (6) If the contractor terminates the design and build 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 (7) If works have been postponed for later handover, the reduction relating to the postponed works in accordance with clause 9, subclauses (3) and (5), is made after the postponed works have been handed over.

Subclause (8) If the works are handed over in stages (see clause 43, subclause (4)), the reduction set out in clause 9, subclauses (3) and (5) to (6), is made proportionally according to the scope of the works stage handed over.

Subclause (9) 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

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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 65. 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 (10) 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 65.

Subclause (11) If the circumstances warranting a claim in accordance with clause 9, subclause (9) or (10), are already the subject of a dispute between the parties in pending proceedings as set out in clause 66 or clause 67, an introduction of the claim in the pending proceedings replaces the request for a decision on the security provided.

Subclause (12) 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 62.

Clause 32 Price and indexation

Subclause (1) The contract sum is a fixed price for the part of the work executed within twelve months of the date of tender (fixed-price period).

Subclause (2) For the part of the work 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 work. 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 work concerned is 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 work that is affected by the indexation and on the basis of a documented account provided by the contractor.

Clause 41 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) actionable 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 41, subclause (3);
- b) variations to the works ordered by the client under clause 23;
- c) public enforcement notices or prohibitions that are not due to circumstances of the client; or

- d) regulatory permits needed for the execution of the project not being available within thirty working days after adequate design material has been submitted to the relevant authorities,

unless some other time limit has been agreed; see clause 4, subclause (3), para g, and clause 5, subclause (6).

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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
- b) precipitation, low temperatures, strong winds or other weather conditions that prevent or delay the 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.

Clause 65 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 (9) and (10), and clause 10, subclauses (5) and (6)), unless a prior decision has been made under clause 66 or clause 67 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 66 or clause 67.

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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 public-sector 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 67.

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.

APP Design Development

Supplementary conditions for design optimization in building and construction works

Supplementary conditions relating to AB 18

Clause 1 Application

Subclause (1) The provisions of this appendix have been prepared for use in relation to contracts for building and construction works involving design development so that the provisions either supplement or deviate from AB 18. [The provisions apply when adopted by the parties to the contract.](#)

Supplementary conditions relating to ABT 18

Clause 3 The client's call for tenders

Subclause (1) The tender documents must contain information about the scope of and ascertainable targets for the contractor's participation in design development and must lay down the individual interim stages of the design development work and possibly guidelines for the work.

Subclause (2) The tender documents must also contain information about the budget applying to design development (target price).

Subclause (3) The tender documents must contain information about the [conditions](#) for and extent of compensation to which the contractor is entitled under clause 9, subclause (2) if the client cancels the remaining part of the contract under clause 9, subclause (1), after completion of the design development stage. This does not apply if the contractor is to compete on the magnitude of the compensation.

Subclause (4) The master programme must state the start and end dates of the design development stage and of its individual interim stages.

Subclause (5) The tender documents must contain information about the basis for design development, including the design brief and any outline design and draft proposals that exist, stating the scope and quality of the design.

Subclause (6) The tender documents must also contain information about the alternative time schedule for completion of the design in accordance with clause 9, subclause (5).

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APP Design Optimisation

Supplementary conditions for design optimization in building and construction works

Supplementary conditions relating to ABR 18

Clause 6 Design management

Subclause (1) The client **must** appoint a design manager to plan, organise, convene and manage design optimisation in order to ensure structured and interdisciplinary discussion of optimisation proposals. Optimisation meetings are conducted in accordance with the rules on design meetings laid down in clause 29 of ABR 18.

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AB Abridged

Abridged general conditions for building and construction works and supplies

Clause 7 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) 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 7 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 7, subclauses (3) and (4).

Subclause (3) 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 (4) Any direct claim 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 has been caused by an intentional or grossly negligent act of the subcontractor or supplier, the first and third sentences do not apply.

Subclause (5) The provisions of clause 7, subclauses (1) to (4), also apply where a subcontractor or a supplier entrusts others with the execution of the works.

Clause 37 Definition of defect

Subclause (1) If the works do not comply with clause 11, subclauses (1) and (2), there is a defect.

Subclause (2) If materials do not comply with the requirements set out in clause 11, 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 22.

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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 realizes 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 works suffer from defects, irrespective of whether they are latent or patent at that point in time.

ABR Abridged

Abridged general conditions for consultancy services for building and construction works

Clause 4 The consultancy contract

Subclause (1) A consultancy agreement is entered into once a consultancy contract is signed or a tender submitted by the consultant is accepted in writing.

Subclause (2) The contract must include provisions concerning the following:

- a) the scope of consultancy services, including the services to be provided by the consultant and any requirements concerning documentation;
- b) the consultant's fee, including fee type and rates;
- c) the financial framework for the consultancy services and the budgetary assumptions on which it is based;
- d) the decisions to be made by the client in connection with the provision of the consultancy services;
- e) the form of the consultancy services to be provided; and
- f) a time programme specifying the end and start dates for the provision of the services.

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Subclause (3) If the contract concerns building and construction works, the client and the consultant must decide in the consultancy contract whether and to what extent the consultant is to provide the following services:

- a) design management
- b) construction management
- c) supervision
- d) project follow-up

Subclause (4) If the contract is based on a tender submitted by the consultant following a call for tenders by the client, 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 consultancy contract;
- b) letters exchanged, minutes of meetings or written material containing agreed changes to, additions to or clarifications of the tender documents or the actual tender, and which are after the tender date;
- c) the consultant's tender;
- d) letters exchanged, minutes of meetings or other written material containing agreed changes to, additions to or clarifications of the tender documents which are after the date of the tender documents, but before the tender date;
- e) the client's tender documents;
- f) ABR Abridged.

Clause 5 The client's call for tenders

Subclause (1) The tender documents must contain information about the conditions that will apply to the consultancy contract.

Subclause (2) If the consultant is requested to submit a tender for a fixed fee, a fee based on construction costs or a fee based on hours spent with a maximum amount, the tender documents must provide information about all the matters stated in clause 4, subclause (2).

Subclause (3) If the services involve the design of building or construction works, the tender documents must also contain information about the following:

- a) The total financial framework for design and execution if such a framework has been determined;
- b) The time limit for the consultant's preparation of a service provision schedule in accordance with clause 11 and the expected end date for the execution of the contract; and
- c) the type of organisation in which the contract is to be executed.

Subclause (4) In addition, the tender documents must include information about other matters that are considered to be of significance to the consultant's tender.

Subclause (5) Tenders are submitted on the basis of the information contained in the tender documents. Depending on the level of detail of the documents, the fee type and the services to be provided, the documents must be drafted in such a way that both the services and the terms and conditions are clear.

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