

# ABR 89

## GENERAL CONDITIONS FOR CONSULTING SERVICES

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The General Conditions for Consulting Services of October 1989 (known as ABR 89 from their Danish title) have been drafted with a view to technical consultation and assistance in the field of building and construction. ABR 89 constitutes the general basis of consultation agreements for professional assistance by architects and engineers.

ABR 89 have been drafted on the basis of ABR 75 (revised in July 1978) and in consideration of the revocation of the special norms.

ABR regulate relations between client and consultant and lay down the principles on which agreements relating to a given assignment shall be based. It is provided that the regulations (left column) and the comments thereto (right column) should be regarded as a whole, since the text's character of technical regulations as well as of legal provisions concerning agreements has made it inexpedient to maintain the common distinction between regulations proper and the comments.

ABR 89 were prepared by a committee of technical experts appointed by:

The Danish Council of Practising Architects  
The Danish Society of Chemical, Civil, Electrical and Mechanical Engineers (DIF)  
The Federation of Danish Engineers (I-S)

in conjunction with a technical committee under the Ministry of Housing representing:

The State  
The Association of County Councils  
The Federation of Local Authorities  
The Municipality of Copenhagen  
The Municipality of Frederiksberg  
The Federation of Non-Profit Housing Associations.

ABR 89 have been subsequently approved by the Danish Council of Practising Landscape Architects/the Association of Danish Landscape Architects.

ABR 89 replaces ABR 75 of July 1978.

General Conditions for Consulting Services - ABR 89.

The translation of this English edition is managed by the National Building Agency/the Danish Ministry of Housing and the Danish Association of Consulting Engineers and published by the Danish Association of Consulting Engineers.

Translated from "Almindelige Bestemmelser for teknisk Rådgivning og bistand, ABR 89".

This English translation is provided for convenience only.

The original Danish text shall be controlling for all purposes, and in case of discrepancy *the Danish wording shall be applicable.*

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## 1. GENERAL

### 1.0 Application and aims of the rules

1.0.1 These conditions shall apply to technical consultation and assistance in the field of building and constructions, including architectural, engineering, landscaping and planning consultancy.

#### re. 1.0.1

The conditions have been prepared with special reference to application in the field of building and construction but are suitable for application to other forms of technical consultation.

1.0.2 In the context of these conditions the term "consultant" shall mean any party undertaking to solve a specific task within the scope of the conditions, and the term "client" shall mean the party engaging the services of the consultant to solve the assignment.

1.0.3 These conditions shall govern the legal relationship between the consultant and the client unless otherwise stipulated in the agreement between them. Deviations from the conditions shall not be valid unless it is clearly and explicitly stated for which points the deviations are valid.

#### re. 1.0.3

It is standard legal practice that the onus of proof that a deviation is valid rests with the person claiming the deviation. The claim that deviation takes place clearly and explicitly usually means, in details and in writing.

### 1.1 Work of the consultant

1.1.1 The consultant is the representative of the client and safeguards the interests of the latter inasmuch as these are not at variance with the requirements of his professional standards. In the event of such a conflict, he shall duly inform the client. The consultant is bound to observe discretion with regard to special circumstances and trade secrets of his client's enterprise which may come to his knowledge in the course of his work for the client.

#### re. 1.1.1

It is assumed that a consultant shall not accept an assignment which has previously been delegated to a colleague without first satisfying himself that the relationship between the colleague and the client has been concluded or has been duly and correctly submitted to legal assessment.

1.1.2 The consultant shall be remunerated by the client. He shall in no form whatsoever, directly or indirectly, accept or demand any payments such as commission or discount which are not passed on in full to the client.

1.1.3 Where the consultant has a business, family or other relationship to a contractor

or other party involved in the project and such a relationship can give rise to doubt with regard to the consultant's impartial function as representative of the client, he shall inform the client of such relationship and the significance thereof. The onus of proof that the client has received prompt and complete notification shall rest with the consultant.

- 1.1.4 Where the consultant holds a licence or similar right in respect of a building, building component, material, fixture component, etc. which it is planned for use in connection with solution of the assignment, he is bound to notify the client to this effect.
- 1.1.5 The consultant shall help to ensure that reasonable agreements are concluded between the client and those contractors whom the client appoints to execute the project.
- 1.1.6 Where in the course of his performance of an assignment the consultant becomes aware of matters which according to their nature may constitute a serious risk or danger to their surroundings, he shall duly inform the client thereof and, as the case may be, take such measures as are necessary in order to expose the risk or obviate the danger.

## 1.2 Work of the client

- 1.2.1 The client shall be responsible for the contractual study of drafts prepared by the consultant for tender documents, acceptances, contracts etc.

### re.1.2.1

This provision aims at sharing responsibility between client and consultant according to their capabilities. The consultant prepares and drafts tender documents, etc., but responsibility for the correct drafting of any part of a document, etc., which has a specific contractual significance (e.g. deviations from "General Conditions for Works and Supplies for Building and Civil Engineering Works") shall rest with the client.

1.2.2 The client shall nominate a person authorised to act on his behalf in relation to the consultants.

## 2. CONSULTANCY

### 2.1 Consultation agreement

2.1.1 The consultation agreement shall stipulate the extent of consultation and the form of fee; the basis (including the financial basis) which the client shall deliver to the consultant in which consultation shall take place; which decisions the client will be required to make in the course of the project, and the form in which the assignment shall be finally presented.

In the event that the client wishes one or more of the consultant's staff to be specially appointed for the provision of specific services, this must be explicitly stipulated in the agreement.

2.1.2 The agreement shall contain provisions for the financial framework fixed for the assignment.

#### re. 1.2.2

These conditions contain no rules governing powers of attorney relations between client and consultant. It has not been deemed advisable to attempt to expand upon the general provisions of the Contracts Act relating to powers of attorney. The question of powers of attorney must therefore depend on practices prevailing within the consultancy profession, or it may be settled by individual agreement.

#### re. 2.1.1

These conditions relate to matters which should always be settled in connection with the consultation agreement.

One example of specific applications of this condition would be circumstances in which the client wishes the assistance of the consultant in connection with the establishing of a programme for the assignment; the client would bear responsibility for furnishing the basic material for the draft programme expressing his wishes and ideas and for providing answers to questions put by the consultant relating to use of site, easements, etc. The client must in such circumstances bear the full responsibility for the exhaustive nature of such information.

Where the consultant's business enterprise is set up as a corporation, and in the case of major building projects which run for a number of years, it could be of interest to the client to have the agreement specifically state and identify that/those person(s) who supervise and contribute to the fulfilment of the contract and who are authorised to act on behalf of the consultant in relation to the client.

#### re. 2.1.2

Subject to their approval by the client, the estimates prepared by the consultant upon completion of the individual stages

in his performance of the assignment shall constitute the financial framework for the assignment.

Consultation agreements for the planing of building works shall stipulate what procedure to apply in case actual prices prove the estimate prepared by the consultant for the project plan to be too low due to factors of which the consultant was, or ought to have been, aware when preparing the estimate. In the drafting of the agreement due regard should be given to the quotation time of the prices involved.

2.1.3 Any amendment in factors mentioned under pts. 2.1.1 and 2.1.2 shall be explicitly agreed and stipulated.

2.1.4 The agreement shall specify the services to be provided by the consultant

re. 2.1.4

The individual consultation agreement must specify whether tendering is for the planning stage (main project) or for one of the preceding stages.

2.1.5 In the event that the consultant considers that the carrying out of the task will require special consulting services beyond those he undertakes to provide, he shall notify the client accordingly before entering into an agreement.

re. 2.1.5

This condition safeguards the client against circumstances in which it later becomes apparent that relevant external consulting assistance is required for fulfilling the assignment, thereby involving the client in extra consultation costs.

The term "special consultant services" refers here to such special assistance on the part of a consultant or specialist as the client is not normally in a position to recognise the need for. The conditions imply no duty to inform of the need for such consultants as the client may normally be assumed to know are necessary for carrying out the assignment (e.g. architect, landscape gardener, structural and mechanical engineering).

2.1.6 The client is at liberty to amend the assignment or the basis thereof. Where an amendment implies a not inconsiderable volume of extra work, the consultant shall be entitled to a corresponding adjustment of fee.

re. 2.1.6

The question of adjustment of time-limits is not mentioned in this condition, being dealt with under pt. 5.2.

The consultant's claim shall be forwarded

immediately after it is realised that the extra work is not inconsiderable.

## 2.2 Forms of consultation

### 2.2.1 Split-consulting services

The term "split-consulting services" shall mean a form of consulting services by which the total project is carried out by several consultants, each of whom has entered into an agreement with the client.

### 2.2.2 Total-consulting services

The term "total-consulting services" shall mean a form of consultation by which one consultant or a group of independent consultants in one single joint agreement with the client undertake to solve all, or the most important parts of, the consultation work involved in a given project.

## 2.3 Phases of consultation

2.3.1 The provision of consulting assistance for an assignment may be given in the following main phases:

1. Programme phase
2. Proposal phase
3. Planning phase
4. Execution phase
5. Operation phase

Description of contents and sub-divisions, if any, of the individual main phases shall be contained in the consultation agreement.

2.3.2 Each phase is conducted independently and concludes with explanatory documentation. On the basis of the latter the client shall decide whether to proceed to the next phase.

## 2.4 Conditions during consultation

2.4.1 The consultant shall be bound to cooperate with other consultants who may be associated with the assignment.

A project manager shall be appointed to undertake coordination of the work of the technical consultants and special consul-

### re. 2.3.1

The purpose of breaking the project down in a number of main phases is to provide a steplike structure by means of which the client, through his approval of the work in the individual project phases, is able to ensure that the basis for the more detailed work in the subsequent phase is in complete agreement with all requirements to the assignment.

### re. 2.4.1



tants and to attend to the contacts between the client and individual consultants.

A building manager shall be appointed to effect financial and temporal control of the execution work, including the coordination of all expert supervision effected by the consultants.

The scope and extent of the tasks to be performed by the building manager as well as his competence and responsibilities shall be determined on an individual basis. Also, it should be stipulated whether the client's coordination of safety work is to be handled by the building management.

In case the task of effecting expert supervising is transferred to another consultant than the one performing the contract, provisions must be made for the division of competence and responsibility between the latter's project follow-up and the expert supervision.

- 2.4.2 The project manager will normally be the consultant who in connection with the start-up of the assignment is responsible for the basic design work to which the other consultants each contribute within their special fields.

In case of split-consulting services the client appoints the project manager on the recommendation of those consultants who are associated with the assignment at the time of the appointment.

Agreements with consultants who join the project at a later stage shall be concluded by the client in consultation with the project manager.

The building management shall be handled by a consultant who is appointed by the client in consultation with the project manager and who may be one of the consultants involved in the project or an external consultant.

The project manager/building manager shall not assume liability for errors and omissions in the work of the individual consultants.

If during the planning phase a consultant considers that his views are being sub-

stantially ignored by the project manager, he and the latter shall submit the problem to the client.

If during execution a consultant considers that his views are being substantially ignored by the project manager/building manager, he and one of both of the latter shall submit the problem to the client.

Such submissions shall be in the form of written reports containing the views of all parties involved.

In the event that the client refers the decision to the consultants, the decision of the project manager shall be final.

2.4.3 By total-consulting service the function of the project manager is included in the consultation service and the appointment of project manager shall be an internal matter for the consultants.

2.4.4 The consultant shall participate in meetings and negotiations with authorities and others as required for carrying out the assignment.

The consultant shall keep the client informed of the progress of the assignment at all times and shall notify him without delay in the event of difficulties occurring which may prevent discharge of the assignment as agreed.

2.4.5 The consultant can engage outside assistance to help solving the assignment where this is customary or where the assistance is of minor importance.

Unless otherwise agreed with the client, the cost of such assistance shall be defrayed by the consultant, and the latter shall be liable for such assistance in the same way as for his own work.

### 3. FEES

#### 3.0 General

The consultant shall receive a fee for discharging the duties entrusted to him by

the client, the basis of calculation or amount of such fee being fixed in the agreement with the client.

- 3.0.2 The fee shall be reasonable for both the client and the consultant. The fee shall cover the proper completion of the assignment and full attention to the interests of the client.
- 3.0.3 The consultant shall be entitled to the fee for the entire consultancy work agreed on subject to the rules relating to determination, postponement, non-performance and termination (cf. sections 7 and 8). No reduction shall be made in the fee in case that certain services in a given phase have not been executed separately, provided that the agreed assignment has been solved satisfactorily.

### 3.1 Types of fees

#### 3.1.1 Principal types

##### re. 3.1.1

In any agreement on a fee it shall be a condition that the extent and substance of and time schedule for the work to be performed by the consultant is defined.

However, this condition does not apply in relation to fees as per account rendered and fees based on estimate, cf. 3.1.1.3 and 3.1.1.5 below.

##### 3.1.1.1 Fixed fee

A fixed fee means a fixed sum agreed between client and consultant.

A demand for revision of the fee can only be made, if charge occur in the basic circumstances of the agreement.

##### 3.1.1.2 Fee based on physical units

This means a fee calculated as the product of a unit rate and number of physical units.

##### re. 3.1.1.2

Physical units used as a basis for the agreement may be e.g. floorage (expressed in m<sup>2</sup>), building volume (expressed in m<sup>3</sup>), etc.

##### 3.1.1.3 Fee as per account rendered

This means a fee calculated on the basis of wage costs for the time spent on working on the assignment.

##### re. 3.1.1.3

If so arranged between the parties, the consultant shall prepare budgets for the individual stages of the assistance provi-

Where electrical data processing (edp) or other specialised equipment is used, the wage costs of employees and owners are calculated as described above, whereas reimbursement for the cost of using computer equipment and software shall be effected by arrangement between the parties.

**3.1.1.4 Fee based on construction costs**

This means a fee calculated as percentage of building costs.

**3.1.1.5 Fee based on estimate**

This means a fee that following agreement between client and consultant is fixed by the consultant in consideration of the nature and economic significance of the work.

**3.1.2 Combined types**

**3.1.2.1 Mixed fee**

This means a type of fee whereby the individual consulting services are paid for by a combination of various types of fees.

**3.1.2.2 Split fee**

This means a type of fee whereby different parts of the consultant's total work are paid for according to different types of fees.

**3.1.3 Fee in case of multiple application of designer documents**

This means a fee agreed upon the client and the consultant in the event that a project, or limited parts thereof, is copied directly into subsequent assignment for the same client. Such fee shall cover the application of the project as well as the

ded by him. The consultant shall inform the client of charges in the budget as soon as the necessity for such budgetary charges arises.

**re. 3.1.1.4**

The employment situation in the building trades and/or the geographical location of the place of work are both factors which may influence the result of the tender process to the effect that the overall building costs differ markedly from the estimate prepared by the client and the consultant. Whenever the influence of such factors may be envisaged, or where other factors may be expected to considerably influence the tender result, the client and the consultant may as a countermeasure agree upon a correction of the building costs.

**re. 3.1.1.5**

The type of fee can e.g. be used by fee calculation for development works, expert affrisement, consultations, etc.

**re. 3.1.3**

This provision shall not apply to major building projects in which construction takes place at one and the same time or in stages, the reason being that here the multiple application factor is assumed to be compensated for by the magnitude of the assignment.

responsibility which follows from the application of the directions and calculations contained in the designer documents.

"Limited parts" of a project means such project parts which may be easily separated from the rest of the project.

### 3.2 Expenses

3.2.1 The consultant's fee does not include expenses which the consultant authorised or incurs on behalf of the client in connection with the completion of the assignment.

#### 3.2.2 Expenses include:

a) Costs in connection with transportation by car, necessary travel, including any away-from-home allowance, and any costs in connection with the necessary stationing of personnel from the consultant's office as stipulated in the agreement.

re. a)

For the purpose of this condition it is assumed that the specific agreement specifies the extent of travel and method of travel (rail, sea, air, road), away-from-home allowance and out of station expenses.

Expenses for study-trips, if applicable, will be reimbursed by arrangement with the client.

b) Expenses for reproduction of drawings, exclusive of costs for reproduction of drawing for the consultant's own use up to the production of tender documents.

re b)

Expenses shall also be considered recoverable expenses when reproduction and printing take place at the consultant's office.

Expenses for reproduction of material for mutual information of consultants in the case of split-consultancy, unless otherwise agreed.

In the case of total-consultancy, the reproduction of material for the mutual information of the members of the consultant group is deemed reproduction of material for the consultant's own use.

Expenses for printing of specifications, account extracts, minutes of meetings, etc.

In the consultation agreement the parties may provide for reimbursement for reproduction costs to the consultants with a percentage of the consultant's fee or, as the case may be, with a fixed amount.

c) Expenses for models, photographs leased drawings and other material used for clarification of the assignment and produced by arrangement with the client.

d) Charges made for the certificates and other official documents etc. required for carrying out the assignment.

e) Expenses for special consultants engaged in accordance with a previous agreement with the client.

3.2.3 Invoices for expenses described in 3.2.2 b, c, d and e shall in normal circumstances be certified by the consultant.

In the event that the consultant by arrangement with the client pays the invoice on behalf of the client, he shall be reimbursed with an addition of 5%. This shall not apply to the consultant's own invoices.

For reimbursement of expenses, see 3.4 below.

3.2.4 Any expenses arising in connection with the consultant's work other than those stated in 3.2.2 shall be reimbursed by arrangement with the client.

### 3.3 Value-added tax

Fees, expenses, etc. due to the consultant shall be paid together with value-added tax as required by law.

### 3.4 Payment

Fees owing to the consultant for work performed by him shall become payable in accordance with the percentage distribution of the fee as specified in the consultation agreement.

The consultant shall be entitled to demand fee for the work performed by him paid on account in monthly instalments in arrears. A request for payment on account may not exceed the fee for work performed by him at any time within the single phase. In the case of a project in which the work of the consultant at all phases or parts thereof is linked to a design time schedule, the client or consultant can demand that the time schedule is supplemented by a stipulated monthly payment plan.

Where a consultant is subject to penalties for exceeding time-limits in conjunction with a previously established design time

### re 3.4

In the consultation agreement it shall be decided whether provisions arranging for a guarantee for the consultant's work and/or the client's payment, e.g. in the form of a bank guarantee or a holdback, ought to be established.

Where the consultant's guarantee is in the form of a right on the part of the client to retain part of the fee, the amount thus held back shall accrue interest of the rate provided by the Danish Interest Rate Act.

schedule, a payment plan must be drawn up to accompany the time schedule. The consultant is entitled to claim reimbursement of expenses monthly in arrears.

In the event that the client fails to pay the consultant's demand for an on account payment or reimbursement for outlay of expenses within 30 days of receipt of demand, or to pay the final statement within three months after receipt, interest shall accrue from that time onwards at the rate provided by the Danish Interest Rate Act.

#### 4. COPYRIGHT

- 4.1 The client, to the extent agreed or assumed in the agreement, shall be entitled to use the material, which has been worked out for carrying out the assignment. The consultant retains all rights to his ideas and the material prepared by him.
- 4.2 Unless with the consent of the client, the consultant shall not publish any material or part thereof which he has prepared until completion of the assignment. The client shall be bound to submit to the consultant the form of any publication of material prepared by the latter before such publication.
- 4.3 In public presentation of material or parts thereof prepared by the consultant and in public presentation of buildings or works where the material of the consultant has been used, the name of the consultants shall be displayed.
- 4.4 Where the consultant under the terms of the agreement undertakes interdisciplinary studies, major performance analyses, etc., the client is entitled to make dispositions concerning the material resulting from these surveys.

#### re. 4.1

The provisions contained in section 4 are largely similar to the relevant provisions of the Danish Copyright Act and the Danish Marketing Act.

#### re. 4.4

This condition aims at clarifying a situation in which, for example, public authorities conduct surveys, experimental work, etc.

## 5. TIME-LIMITS

5.1 The agreement may stipulate time-limits for the consultant's completion of the assignment or parts thereof, for decisions to be made by the client, for the client's provision of material necessary for carrying out the work, and for the client's own work in connection with the assignment.

### re. 5.1

Time-limits stipulated by agreement are not normally appropriate in the proposal phase.

5.2 The consultant is entitled to demand extension of agreed time-limits when the completion of the assignment is delayed:

a) in case of change in the assignment requested by the client,

b) because the client or one of his other consultants fails to make decisions or to present material or services within the agreed time-limits,

c) because the client's contractor fails to present material services within the agreed time-limits,

d) because the public authorities do not inform of approvals, decisions or replies or do not present material or services within the agreed time-limits,

e) by order of a public authority,

f) by events, beyond the control of the consultant, and which he could not have anticipated or be expected to anticipate.

### re. 5.2, f)

The aim of this provision is in a simple form to render the force majeure rule (cf. also the principles of §24 of the Sale of Goods' Act).

5.3 The consultant can resort to the provisions of 5.2 above only to the extent that he himself by virtue of reasonable action has attempted to prevent or limit the delay.

5.4 The consultant shall notify the client promptly and in writing when he considers he has a justified claim for extending a time-limit, and shall prove on demand that the delay is due to justifiable circumstances.



5.5 The client is entitled to demand extension of a time-limit when services or decisions for which he is responsible are delayed:

- a) because building, public-health, preservation or other public authorities do not inform approvals, decisions or replies or do not perform services within the agreed time-limits,
- b) by order of building, public-health, preservation or other authority,
- c) by other events beyond the control of the client, which he could not have anticipated or be expected to anticipate.

Where necessary, the provisions of 5.3 and 5.4 shall also apply to the client.

5.6 Where extension of a time-limit extends beyond two years, the consultant is entitled to consider the assignment as terminated (cf 7.1.3).

## 6. LIABILITY

### 6.1 Liability for exceeding time-limits

6.1.1 The agreement can stipulate a penalty which the consultant shall be bound to pay to the client in the event that the consultant exceeds the agreed time-limit without a justifiable claim for extension of the time-limit (cf. 5.2). No compensation for delay can be claimed beyond the amount of penalty. In the event that no penalty is fixed, the consultant shall be liable in the circumstances described for any losses in accordance with the provisions of Danish law concerning delay (cf. 6.2.2-6.2.8).

6.1.2 In the event that the client exceeds time-limits as stipulated in 5.1 above without a justifiable claim for extension of the time-limits (cf. 5.5), he shall be bound to make good the losses of the consultant in accordance with the provisions of Danish law concerning damages.

### re. 5.5

The difference in wording of 5.5 a and b compared with 5.2 d and e is due to the fact that the non appearance of appropriations or public subsidies, reductions in appropriations and the like, cannot give a public or public-subsidized client extension of time-limits.

6.1.3 Where a penalty has been agreed and the client wishes to claim that the consultant has exceeded a time-limit, the client shall be bound in writing to forward a claim for payment of the penalty, stating the amount of penalty, within 30 days of the date on which the work or relevant part of the work should have been performed. If the claim is not submitted as described, the client shall forfeit the right to claim a penalty.

## 6.2 Liability for errors and negligences

6.2.1 The consultant shall be liable under the provisions of Danish law concerning compensation for errors and negligences in the performance of the assignment.

### re. 6.1.3

This condition serves to safeguard the consultant against a situation in which the client submits a claim for penalty at a time when the consultant no longer has the opportunity to provide information in support of any claim he may make that he cannot be held liable. Where the claim for penalty has been submitted and the amount stated within the time stipulated, the amount of penalty can be set off against the consultant's claim upon the client, provided that the general terms for set-off have been respected.

### re. 6.2.1

This condition has been given the general wording of a "legal standard", and it is left to arbitration-court and the law-courts to evolve the detailed substance of this condition.

In the up till now existing Statutes for Danish Architectural practice and General Code of Practice for Consultant Engineers it is stressed:

- that the consultant shall be liable for damage occurring in connection with work assumed by him when such damage is the result of a lack of the necessary professional skill or care on the part of the consultant or his employees, and  
- that the consultant cannot thus be held liable for damage arising from conditions which cannot be considered generally known in professional circles, for accidental damages, or for errors committed by the client or by others engaged by the latter.

Technological developments in the field of building and civil works compared with the steadily increasing demand for lower costs have created a special liability problem arising from the use of new materials and methods occurs primarily at the risk of the client, and it is only where the consultant in advising on the choice of new materials and methods has acted negligently - including misinforming the client - that the consultant can be held li-

6.2.2 Agreement can be reached between the client and the consultant concerning the amount of the consultant's liability and the insurance coverage for the liability of the consultant.

6.2.3.1 The liability of the consultant shall cease 5 years after the completion of the consultation assignment in which the error or negligence occurs. However, in the case of consultancy provided for the execution of buildings and civil engineering works, the consultant's liability shall cease 5 years after the handing-over of the building or the works in which the error or negligence occurs.

6.2.3.2 If the client fails to submit a written complaint to the consultant as soon as he becomes, or ought to have become, aware of the possible liability of the consultant, he shall forfeit his right to raise claims against him.

able for damage arising from such consultancy.

As the remarks in the Statutes for Danish Architectural Practice and General Code of practice for consultant Engineers and the remarks relating to new materials follow from the general rules of compensation, no special remarks to this effect have been included in the text.

re. 6.2.2

In view of the heterogenous character of building and civil engineering works, it has been considered appropriate to leave it to the parties in the specific situation to negotiate the magnitude of any limitation of liability as well as the content and scope of the insurance coverage for the liability of the consultant. Where no agreement has been reached between the parties on the amount of the consultant's liability, the latter is settled by recourse to the general rules of Danish law concerning compensation (cf. 6.2.1).

re. 6.2.3.1

This provision relates primarily to hidden defects, visible defects being covered by the complaint rule provided by 6.2.3.2.

The term 'handing-over' refers to the rules for handing-over buildings and civil engineering works contained in General conditions governing Works and Supplies for Buildings and Civil Engineering Works. The provision for the limitation of liability ceases to apply in case of claims being raised, cf. the provisions of §54 of the Danish Sale of Goods Act. Whenever the consultant has acted fraudulently or with gross negligence, the general liability limitation rules of Danish law shall apply.

re. 6.2.3.2

The complaint rule corresponds to the provisions of §52 of Danish Sale of Goods Act and of Cond. §22(4) of General conditions for Works and Supplies.

6.2.4 The consultant shall not be liable for working deficits, loss of profits or other indirect losses.

6.2.5 Where the consultant shares with one or more other parties liability toward the client in respect of loss in connection with building or civil engineering work or preparations for such work, the consultant shall be liable only for that part of client's loss which corresponds to the share of the total guilt attributable to the consultant.

6.2.6.1 Where the consultant has agreed on behalf of the client to supervise that agreed work is according to contract, he shall be liable only for the loss the client may incur as a result of the consultant's not raising at the proper time, a complaint that a service were not in accordance with contract.

Unless otherwise provided, the liability of the consultant shall be limited to the amount of DKK 2.5 million.

6.2.6.2 Unless otherwise provided, liability for the inspection of buildings shall be limited to the amount of DKK 2.5 million.

6.2.7 No greater degree of liability can be brought against the employees of the consultant than can be brought against the consultant.

6.2.8 Where total-consultancy involves a group of consultants (cf. 2.2.2), the members of the group are jointly and severally liable to the client for per-

re. 6.2.5

This condition introduces into a situation where several parties are liable a pro rata liability in contrast to the general practice in Danish law concerning joint and several liability for the losses of the injured party (with subsequent recourse among the defendants).

The condition is not applicable to the individual consultants in the case of total-consultancy (cf. 6.2.8).

re. 6.2.6.1

This provision expresses that the consultant is only subsidiarily liable for supervision errors in relation to a contractor assumed to carry prime liability, and that a financial limit exists for such supervision liability.

re. 6.2.6.2

This provision applies e.g. to inspection prior to completion inspections due to change of ownership, energy audits, 5-year inspections and similar inspections.

re. 6.2.7

This condition is intended as a safeguard for the employees of the consultant who, under the general provisions of Danish law, are personally liable for errors committed by them, against being held liable in areas in which the consultant by these 'General Conditions', which constitute a special agreement between him and the client, in various respects has limited his liability.

re. 6.2.8

The condition makes it clear that in cases where a group of consultants are engaged in total-consultancy each is fully liable

forming the work and they shall act as one single consultant in relation to the client. The group shall nominate a leader, who shall act on behalf of the group in relation to the client.

for the work involved. This joint and several liability applies to the specific performance of the consultancy agreement as well as to the liability for errors and negligences and the possible exceeding of time-limits – all in accordance, however, with the provisions of sections 6. In cases where the total-consultancy is performed by a single consultant, he shall be liable for the consulting firms he may involve in the work.

## 7. POSTPONEMENT

### 7.1 Postponement of assignment

7.1.1 Where an assignment is postponed after work on the assignment has commenced, and such postponement is not caused by the consultant, the consultant is entitled to demand – in addition to a fee for work performed prior to the postponement – reimbursement for expenses he incurs as a result of the postponement of the assignment, including salaries for redundant labour and lease of redundant offices. The consultant shall be bound to keep such expenses to a minimum.

#### re. 7.1.1

It shall be a condition that the consultant has in fact incurred a loss, and the onus of proof rests with the consultant. 'Salaries' includes salary to employees and owners.

7.1.2 Where an assignment which was postponed is later resumed, the consultant shall be entitled to demand a fee for the extra work involved in resumption of the work.

#### re. 7.1.2

It rests upon the consultant to substantiate the extra work.

7.1.3 Where an assignment is postponed for a period of more than two years, the consultant is entitled to consider the assignment terminated.

### 7.2 Termination of assignments

7.2.1 If an assignment is terminated after work has commenced, the consultant shall be entitled to recovery of expenses as stipulated under pt. 7.1.1.  
If an assignment is terminated after design work has commenced, the consultant

#### re. 7.2.1

In the context of 7.2, design work is considered to have commenced when the consultant has been requested to continue working on the assignment after approval of the preliminary engineering.

is moreover entitled to a reasonable reimbursement for the client's use of all or any of the material prepared by the consultant (cf. 7.2.3).

7.2.2 If an assignment is terminated before commencement of design work, the client is entitled - in connection with continuation of the case - to use analyses, calculations and other material containing necessary information of performing the work.

7.2.3 If an assignment is terminated after design work has commenced, the client is entitled to use in connection with the work thus commenced all or part of the material prepared by the consultant.

7.2.4 In cases where the client (cf. 7.2.2 and 7.2.3) wishes to make use of the material prepared by the consultant, the latter is entitled to stipulate that his name shall not be used in connection with continued use of the material.

7.2.5 If an assignment is terminated before completion of design work and the client wishes to make use of material prepared by the consultant, the latter shall not be liable for the continued use of the material, irrespective of any errors or defects in material prepared before termination of the assignment.

7.2.6 Irrespective of the content of 7.2.3, the client shall not be entitled to permit the material prepared before the termination of the assignment to be used as the basis of production intended for sale. This shall also apply where the services of the consultant cf. 4.1 include development of products intended for production and sale.

## 8. NON-PERFORMANCE

8.1 Should the consultant be guilty of particularly non-performance of the contract with the client, or if his conduct is such that it would be improper for him to in-

### re. 7.2.3

It is a condition that the client has complied with the economic commitments incumbent upon him under 7.2.1. Payment for such use shall be agreed upon between the client and the consultant.

### re. 8.1

Examples are:

Gross breach of trust, cf. 1.1.1; bankruptcy or other serious financial insolven-

sist on continuing as consultant to the client, the latter shall be entitled to terminate the consultant agreement forthwith.

- 8.2 If the agreement is terminated in accordance with 8.1 the consultant can claim only a fee for that part of the work completed before termination of the agreement which the client can use for the solution of the total assignment.
- 8.3 In the event that the agreement is terminated in accordance with 8.1 the client shall be entitled to recover losses in accordance with the ordinary rules of Danish law. The provisions of 7.2.2, 7.2.3, 7.2.4 and 7.2.5 shall moreover apply.
- 8.4 In the event that the client is guilty of particularly non-performance of the contract with the consultant or is otherwise guilty of such conduct that it would be improper to insist on the consultant continuing his duties, the consultant is entitled to terminate the agreement. In such circumstances, the same procedure is followed as for termination of the assignment.

## 9. DISPUTES

- 9.0.1 Disputes between the client and the consultant in connection with solving of the assignment cf., however, 9.0.3 shall be settled with final and binding effect by the Court of Arbitration laid down in General Conditions for Work and Supplies (AB 72) in §31, according to the rules of procedure stipulated for that body.

cy on the part of the consultant. The consultant's lack of the technical qualifications required for the completion of the specific assignment.

### re. 9.0.1

This condition aims at making the court of Arbitration for Building and Civil Engineering Works competent in respects of disputes between the consultant and the client, such that all disputes within the building and civil engineering field belong under the competence of this Court of Arbitration.

In accordance with 9.0.3, concerning straight remuneration, disputes can be settled by a committee for rules, fees and opinions appointed by the organisations.

This exception has been included to avoid overloading the court of Arbitration with disputes concerning only the calculation of fees. The condition of 9.0.3 establishes that in disputes only concerning fees the

Court of Arbitration shall at least function as a court of appeal in relation to the committee of the organisations.

9.0.2 Within the areas of 9.0.1, inspection and survey of the work will take place in accordance with the provisions in AB 72 §30 in order to ascertain the extent and the nature of the work or part thereof carried out by the consultant.

9.0.3 Where a consultancy agreement (cf. 2.1) contains no provision for consideration of disputes concerning remunerations, these shall be settled by a permanent committee appointed by the organisations.

Disputes concerning remunerations settled by the committee can be appealed by client or consultant to the Court of Arbitration.

In the event that the consultant's fee is claimed set off against a claim for compensation by the client for delays, errors of defect in performing the work, disputes over remunerations can be settled only by the court of Arbitration.