

ABK 96

***1996 General Rules of Agreement for Architectural
and Engineering Consulting Services***



ARKITEKT & INGENJÖRSFÖRENINGEN
THE SWEDISH FEDERATION OF
ARCHITECTS AND CONSULTING ENGINEERS



BYGGANDETS KONTRAKTSKOMMITTÉ
CONSTRUCTION CONTRACTS COMMITTEE

ABK 96

1996 General Rules of Agreement for Architectural and Engineering Consulting Services (ABK 96¹)

These General rules with commentaries* are the result of negotiations between Föreningen Bygghandets Kontraktsskommitté, BKK (the Construction Contracts Committee)** representing Clients, and Arkitekt- och Ingenjörföretagen (the Swedish Federation of Architects and Consulting Engineers), representing Consultants.

* The commentaries form an integral part of "ABK 96" and shall be used as a guide in connection with the interpretation and application of the rules.

** Among the members of BKK are:

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FORTIFIKATIONSVERKET, LUFT-
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The Swedish Association of Building Proprietors
The Swedish Association of Local Authorities
The Federation of County Councils
The Government via the Swedish National Rail
Administration, the Fortifications Administration,
the Swedish Civil Aviation Administration,
the Swedish National Road Administration and the
National Property Board
The Swedish Federation of Rental Property Owners

The HSB National Federation
The Co-operative Housing Organization
of Swedish Trade Unions
The Swedish Association of Municipal
Housing Companies
The Swedish Construction Federation
The Swedish Association of Heating,
Water, Sanitation and Cooling System Contractors
The Swedish Electrical Contractors' Association

The Swedish Association of Air Handling
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The Association of Insulation
Contractors of Sweden
Refrigerating Contractors' Association



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¹ ABK 96 is the abbreviation (in Swedish) of "Allmänna Bestämmelser för Konsultuppdrag inom arkitekt- och ingenjörsvksamhet av år 1996".

Introduction

These general rules of agreement are intended to be used for assignments within the professional field of architects and consulting engineers.

Important prerequisites for a fully satisfactory result of the assignment are that the Client and the Consultant

- have a unanimous conception of the purpose, scope and level of quality of the assignment
- maintain a dialogue, before and during the performance of the assignment
- show each other confidence and openness in general.

§ 1 The relationship between the parties

1.1 The Consultant shall perform the assignment without undue influence from suppliers and others who might have an effect on his objectivity and also otherwise observe sound professional practice.

1.2 The Consultant may not, in connection with the assignment, accept payment from anyone but the Client without his consent.

Commentary:

Payment to the Consultant from others than the Client is sometimes met with in certain professions (e.g. royalties for interior designers). The Consultant shall obtain the Client's consent before he prescribes a product resulting in payment going to him. The demand in 1.1 for sound professional practice means that the Consultant shall always primarily look after the Client's interest when proposing a product.

1.3 The Client shall, at the request of the Consultant, provide the Consultant with the information, data and documents that are available to the Client and that the Consultant requires in order to be able to perform the assignment.

1.4 The Consultant shall, to the extent required by the Client, observe secrecy regarding the information received through the assignment concerning the business activities of the Client, the assignment, the result of the assignment and other circumstances.

§ 2 Scope of assignment

2.1 Unless otherwise agreed, the scope of the assignment is determined as follows.

2.2 The following applies to assignments defined in consultation between the parties.

Prior to the commencement of the assignment in other respects the Consultant shall, in consultation with the Client,

- a. define as far as possible the assignment as to scope and level of quality
- b. suggest the form and level of detailing for the presentation of the assignment
- c. in the case of variable fee, prepare a budget for the assignment.

The budget shall show the estimated remuneration for the assignment.

If, in consultation over the assignment, the parties cannot agree, either party has the right to break off the assignment with immediate effect without any other liability for the Client than reasonable remuneration of the Consultant for the work carried out.

2.3 The following applies to assignments defined in connection with a competitive tendering procedure.

The scope of the assignment is determined by the contract documents. The contract documents are mutually complementary, provided that circumstances do not give occasion for another procedure. In

case of discrepancies between data given in the contract documents their relative priority shall be as follows, provided that circumstances manifestly do not give occasion for another procedure.

1. The Contract agreement or a written order signed by both parties or any other corresponding document
2. ABK 96
3. Order(s)
4. The tender
5. Enquiry documents

2.4 Unless otherwise agreed, the assignment includes the obtaining of all statements of opinion, approvals and permits that are required for the assignment to be performed in accordance with existing statutes.

Commentary on § 2:

ABK 96 assumes that assignments defined in connection with a competitive tendering procedure are regulated by written contract documents. Naturally, customary interpretation of contract concerning the scope of the assignment may be called for, but the room for what is included in the agreement beyond what has been specifically agreed upon, is limited. Of importance to the interpretation are, among other things, the method of procurement, whether the enquiry documents can be deemed to have been drawn up in accordance with sound professional practice for clients in connection with this kind of assignments, and how the Consultant should understand the assignment in accordance with sound professional practice.

In the case of assignments subject to competitive tendering it is assumed that the tenderers receive as clear and unequivocal enquiry documents as possible. Should they contain unclear or mutually contradictory data, the so-called obscurity rule may become applicable to the interpretation of the contract documents. The obscurity rule means that obscure or incomplete wording is interpreted to the disadvantage of the party that has provided the data.

In the case of assignments defined in consultation between the parties a greater part of the obligation to define lies with the Consultant. Therefore, in these cases greater importance has been attached to the Consultant's insight in connection with the procurement. For that reason, the risk of obscurities lies mainly on the Consultant. However, as an ultimate protection against unreasonable agreements, from the point of view of either party, there is the possibility to break off the assignment if the parties cannot come to terms.

Clients who are obliged to follow the Law of Public Procurement shall normally provide written enquiry documents. The agreement is assumed to be in writing. In the case of this kind of procurement of consulting services the consideration of tenders should always be based on the alternative "economically most favourable considering all circumstances" in the sense of the Law of Public Procurement. In the enquiry documents the Client should try carefully to clarify the purpose of the assignment, the demands and expectations on the result of the assignment as well as as present the intended project organisation. The Client should also try to place in order of precedence the circumstances regarding the quality, form and content of the assignment, as well as other factors of importance to the presentation of the result of the work carried out, etc., which will be taken into consideration in connection with the evaluation of the tenders.

Also Clients who are not obliged to follow the Law of Public Procurement should, as far as possible with regard to their competence and experience, strive to provide a clear definition of the assignment when engaging a Consultant. However, experience shows that Consultants are often engaged rather informally and the assignment is defined afterwards in cooperation between the Client and the Consultant, in particular when the remuneration shall take the form of a variable fee. Also in the case of a variable fee, however, assignments are frequently defined already in the contract documents, i.e. the documents that reflect the agreement at the date of the signing thereof.

If the assignment also comprises delivery of computer files, the parties should agree upon the programmes and structures to be used as well as the format in which the files shall be delivered.

§ 3 Organization

3.1 Each party shall present the project organization which is of significance to the assignment. The agreed project organization may be altered only after consultation between the parties.

Unless otherwise agreed, the Client shall be responsible for the coordination with one another of his own works, the works of the Consultant and those of any other parties under contract with the Client. The Client's responsibility for coordination does not limit the Consultant's obligation to acquire the information required for his own work.

3.2 The Consultant shall, if agreed, draw up a quality plan for the assignment and attend to what he has taken upon himself according to the plan.

If, in spite of being requested, the Consultant fails to fulfil his obligations with regard to the quality plan, the Client may take reasonable action at the Consultant's expense.

3.3 In connection with the performance of the assignment the Consultant shall cooperate with other parties engaged by the Client. Other consultants shall be appointed after consultation between the parties.

3.4 The Consultant may not appoint a sub-consultant without the Client's consent, unless it is a matter of routine work or work of minor importance.

3.5 Neither party is entitled to transfer the agreement without the consent of the other party, if the transfer is of substantial importance to the other party.

3.6 Each party shall appoint a representative for the assignment. The representative is authorized to represent his principal - with binding effect - in economic and other matters concerning the assignment.

3.7 The Consultant may receive or acquire instructions regarding the assignment only from persons indicated by the Client.

3.8 Meetings shall be held and records be kept and checked and signed to the extent agreed between the parties. The parties are obliged to attend such meetings. Between the parties, a note in the records satisfies the demand for notification in writing.

§ 4 Performance

4.1 The Consultant shall perform the assignment in a professional manner and with due care.

4.2 The parties shall keep each other informed about conditions that may be considered of importance to the assignment.

4.3 The Consultant shall obtain the Client's consent before any documents are handed over to a third party for the execution of the project to which the assignment refers.

4.4 The Client's approvals or decisions in connection with examinations does not relieve the Consultant from his responsibility.

Commentary on 4.1 and 4.4:

The demand for professionalism and care may comprise an obligation for the Consultant, in consequence of circumstances appearing during the performance of the assignment, to check data and supplement investigations provided by the Client. In these cases the Consultant shall inform about the implications found as well as request a more exact definition of the assignment in the respect concerned. If the conditions for the assignment are changed, 9.3 may become applicable.

If the Consultant presents technical solutions which can be expected to involve special risks, it also follows from the demand for professionalism and care that the Consultant shall inform the Client of the advantages and disadvantages attached to different alternatives. This may, for instance, be a matter of untested technical solutions. If, after receiving such information, the Client has expressly approved a certain alternative, the Consultant cannot normally be deemed to have disregarded the demand for professionalism and care.

The approval referred to in 4.4 has in view the suitability only of the documents with regard to the Client's activities and does not mean that the Consultant's responsibility for the correctness of the documents is changed or that the Client has approved technical solutions that may involve special risks.

4.5 The Consultant shall, without delay and in writing, notify the Client of the need of work not included in the assignment, or the need of new or changed instructions. The Consultant is only entitled to compensation for work that has been so notified unless, with regard to the circumstances, it would be unreasonable if no compensation was paid.

4.6 If the Client is contemplating to deviate, in a substantial respect, from the Consultant's design and if this happens before the project has been executed, the Consultant shall be given the opportunity to express his opinion. The Consultant is not held responsible for changes made without his consent.

§ 5 Times

5.1 At the Client's request the Consultant shall draw up a proposal for the time schedule which, after agreement, shall apply for the assignment. The Client shall provide basic data for the proposal. The time schedule shall contain information about, inter alia, notices to the Client and times allocated for examination.

The Client shall provide basic data, examine documents received and give decisions so that the agreed time schedule can be adhered to.

5.2 The Consultant shall adhere to the time schedule. He is, however, entitled to an extension of time if he is delayed due to circumstances not caused by him and the effect of which he could not reasonably have been able to eliminate.

5.3 Each party shall notify the other party in writing, without delay, after becoming aware of any circumstance that may cause a modification of the time schedule.

If a party fails to notify the other party as aforesaid, the defaulting party is entitled to plead such a circumstance only insofar as the other party was aware or ought to have been aware of it and insofar as the circumstance affects the time schedule.

Furthermore, after having been able to assess the required modification of the time schedule, each party shall notify the other party of the modification in writing. The notification shall be made without delay.

5.4 If the Client requires a modification of the time schedule or a suspension or acceleration of the work, the Consultant is entitled to reasonable compensation for the additional costs that may arise.

5.5 Unless otherwise agreed, the assignment is completed when the result of the assignment has been presented in the manner agreed upon by the parties.

5.6 If the assignment has been delayed and the Consultant is not entitled to an extension of time, he shall pay the agreed liquidated damages.

If liquidated damages have not been agreed upon, the Consultant's liability to pay damages for the delay is limited to the size of the fee, but not to more than ten base amounts. By base amount in this clause is to be understood the base amount applying at the time of concluding the agreement. If

liquidated damages have been agreed upon, the Consultant is not obliged to pay any other damages for the delay.

Liquidated damages may also be agreed upon for exceeding the agreed time for the performance of a certain part of the assignment.

If a delay entitling to liquidated damages has occurred as an inevitable consequence of another delay entitling to liquidated damages, the total amount of liquidated damages shall be subject to reasonable modification.

5.7 The Client's right to damages or liquidated damages under this clause is forfeited unless a written claim has been made not later than three months after the assignment was completed or otherwise came to an end.

§ 6 Liability

6.1 Subject to the limitations specified below, the Consultant is liable for damage caused to the Client by negligence or omission.

Commentary:

The Consultant is liable to pay damages if the damage is a consequence of the Consultant having disregarded customary care or not having shown the professionalism that is assumed to be common within the industry. The damage does not have to be a damage to the project.

If the Client has shown that the damage is caused by an error in the Consultant's documents or a failure on the part of the Consultant and, by that, has shown probability that the damage is due to omission or negligence on the part of the Consultant, it rests with the Consultant, if he wants to free himself from liability, to show that the error or the failure cannot be held against him as omission or negligence.

The Client should not remedy defects or attend to damages, nor should he agree with a contractor or a supplier on a cost adjustment which may form the basis of claims for damages against the Consultant, without first consulting him. Otherwise possible damages may be affected.

6.2 The Consultant is liable for damages discovered within ten years of the date when the Consultant's assignment was completed or otherwise came to an end.

6.3 Unless otherwise agreed, the Consultant's total liability to pay damages in connection with the assignment is limited to 120 base amounts. This sum shall not include liquidated damages or other damages for delay.

Commentary:

The Consultant's total liability to pay damages in connection with the assignment should be agreed on the basis of what is reasonable with regard to the nature and scope of the assignment.

6.4 Unless otherwise agreed between the parties, the following shall apply.

The Consultant is not liable for a damage, the value of which is less than half a base amount. If, however, the total value of several such damages exceed one base amount, the Consultant is liable to pay damages for the excess amount.

6.5 For a damage, the existence of which is argued later than five years after the assignment was completed or otherwise came to an end, the Consultant is liable to pay damages only if the value of the loss exceeds two base amounts. For assignments which are to form the basis of contract work the above mentioned period is calculated from the date of the approval of the contract work; this period shall not, however, exceed ten years calculated from the date when the assignment was completed or otherwise came to an end.

6.6 The Consultant is liable to the Client for work carried out by his sub-consultants as for work of his own. The same applies to work carried out by other persons engaged by the Consultant.

6.7 During the period mentioned in 6.2 the Consultant is obliged, at his own expense, to rectify errors in documents provided by him, unless this causes him inconvenience and costs which are unreasonable in proportion to the importance of the error to the Client. Demands for rectification of the error shall be presented by the Client within a reasonable time after the error was discovered or should have been discovered. If the demand is presented later, the Consultant is not obliged to rectify the error.

The error shall be rectified within a reasonable time after the Consultant has been given the opportunity to do so by the Client. If the error is not rectified although the Consultant is obliged to do so, the Client is entitled to a reduction of the remuneration to the Consultant, if this is reasonable.

6.8 In order to give a right to compensation, claims for damages shall be made in writing as soon as possible after the loss was discovered, but not later than three months after the expiry of the time stated in 6.2.

6.9 Notwithstanding what is stated above, either party is entitled, by way of set-off, to make claims for liquidated damages or other damages in accordance with clauses 5 and 6 within one month after the other party has presented his claims for damages in connection with the assignment.

6.10 By base amount in this clause is to be understood the base amount applying at the time of the discovery of the loss.

§ 7 Right of use and Ownership

Right of use

7.1 The Client has the right to use the result of the assignment for the agreed purpose. Further use of documents or corresponding media produced within the scope of the assignment is subject to the Consultant's consent.

Commentary:

This stipulation emphasizes the importance of the parties carefully stating, in the agreement, the purpose of the assignment, including a definition of the Client's right to future use of the result of the assignment.

7.2 If, after the assignment has been completed, anyone in the capacity of owner or user of the project intends to make alterations to it or to take other action for the management of it, he may, without the Consultant's consent and without paying compensation, use the result of the assignment for such purpose. To the extent required by sound practice the Consultant's interests shall then be taken into consideration and his name be given.

7.3 The Client shall protect the result of the assignment from undue copying and circulation.

7.4 Each party ensures that the documents provided by him may be used for the agreed purpose. This does not apply, however, if the other party realizes or ought to realize that this is not the case.

7.5 Anyone receiving conceptual proposals or other documents submitted in connection with a tender or a negotiation concerning an assignment, may not use or otherwise circulate these documents without the consent of the party submitting them.

Commentary on 7.3 and 7.5:

Copying or circulation by virtue of the principle of public access to official documents can never be considered undue or otherwise prohibited. Documents shall, however, be kept in safe custody.

7.6 The Client shall state the name of the Consultant when the result of the assignment or the project is presented.

7.7 The Client may not transfer the right of use or any other rights to the result of the assignment, unless the Consultant has received payment according to the agreement or an acceptable surety has been provided.

Commentary:

This stipulation deals with the transfer of the rights to the result of the assignment. The transfer of the actual agreement concerning the assignment is regulated in 3.5. The stipulation regarding transfer of rights applies whether the result of the assignment is protected by copyright or not.

Ownership

7.8 Unless otherwise agreed, the following shall apply.

The Consultant is the owner of the original documents as well as the computer files and electronic configurations from which the documents have been produced.

The Consultant shall keep on file the original documents or copiable copies for at least ten years calculated from the completion of the assignment.

The Consultant shall keep on file the computer files and the electronic configurations from which the documents have been produced for at least three years calculated from the completion of the assignment and in their original form.

7.9 The Consultant is obliged, at the request of the Client, to furnish the Client with copies of documents and computer files kept on file for a reasonable fee.

Commentary on 7.8 and 7.9:

As a consequence of the use of computers and telecommunication systems as well as the utilization of software and common data bases, a large number of questions arise which are of importance to the application of these rules of agreement (ABK). Questions concerning the ownership of physical computer media and the right of use of the result of the assignment are of particular interest. To the extent possible, the regulation in these situations should correspond with what is otherwise applicable when the result of the assignment is presented on the physical media which were previously in common use.

If computer files or electronic configurations are to be kept on file for more than three years, the parties should agree, for instance on filing time, choice of media, software format, readability, etc.

7.10 Models and other demonstration material especially ordered and paid for by the Client shall be the property of the Client.

Reservation of ownership

7.11 The ownership of documents and computer media submitted by the Consultant to the Client passes to the Client as payment according to the agreement is made.

7.12 The Consultant shall inform the Client about the royalties and licence fees which, to the Consultant's knowledge, the Client may be called upon to pay as a consequence of the Consultant's work.

§ 8 Right to Invention

8.1 If an invention is mainly the result of an assignment involving research or development work or if the invention constitutes the solution to a task specified in the assignment, the Client is entitled to become, wholly or partially, the owner of the right to the invention. The Consultant shall inform the Client without delay when an invention has been made which gives the Client the right according to this clause. If the Client wishes to acquire this right he shall inform the Consultant thereof not later than three months after the date when he was informed by the Consultant that it is a matter of an invention. Immediately after such notification the Client and the Consultant shall consult with each other concerning the protection against the circulation of the invention to outsiders.

8.2 The Client has the right to use, for the project, inventions other than those mentioned in 8.1 and which are made in connection with the assignment.

8.3 If the value of the right to the invention which the Client receives clearly exceeds what could have been assumed considering to the Consultant's fee and other circumstances, the Consultant shall receive reasonable payment in addition to the fee.

Claims for such payment shall be made not later than one month after the Consultant received a valid claim for payment from an inventor in his employment, but not later than six months after the Consultant completed the assignment.

§ 9 Remuneration

9.1 The remuneration to the Consultant consists of a fee and, if so agreed, of special compensation. If so agreed, the remuneration shall be subject to index-linked adjustment.

9.2 The fee is either variable or fixed.

- a. The variable fee is paid on the basis of the time spent or on another agreed basis.
- b. The fixed fee is applicable to the assignment as defined in § 2.

9.3 If the scope of the assignment is changed, the remuneration shall be modified in the following cases.

- a. Additional assignments or changes of the assignment which have been notified in accordance with 4.5.
- b. Modifications of the time schedule which are due to circumstances for which the Client is responsible.
- c. Unforeseen decisions or actions by authorities which affect, to more than a small extent, the scope of the assignment.

When a fixed fee is modified, an agreement regarding a new fixed fee shall primarily be made. If such an agreement cannot be made, the fee shall be modified on the basis of an agreed or reasonable hourly fee.

9.4 If so agreed, special compensation for costs shall be payable for the following:

- a. instruments, field equipment and laboratory tests
- b. computers and/or computer programmes for calculations, drawing work, etc.
- c. copying
- d. model-making
- e. travelling and subsistence expenses
- f. sub-consultants
- g. other expenditures as specified in the agreement.

In the case of special compensation an additional charge calculated as a percentage of the Consultant's verified prime cost can be agreed upon.

9.5 In the case of variable fee the Consultant shall keep the Client informed regarding the accumulated fee and the expenses incurred on the assignment. If the agreed budget cannot be kept, the Consultant shall immediately notify the Client thereof in writing.

9.6 No compensation will be paid for the Consultant's rectifying of errors in documents which have been drawn up or provided by the Consultant. If, however, the error has been caused by incorrect information from an authority, from the Client or from someone engaged by the Client, the cost of rectifying the error shall be compensated by an agreed or otherwise reasonable amount, provided that the Consultant realized or should have realized that the information was incorrect.

§ 10 Terms of Payment

10.1 Payment shall be made in accordance with the agreed plan for payment and on submission of an invoice.

If no plan for payment exists, the Consultant is entitled to invoice the Client once a month, stating an amount corresponding to the value of the work carried out, unless otherwise agreed.

10.2 Unless otherwise agreed, the invoice shall specify the nature and scope of the work carried out. Unless otherwise agreed, the invoice shall be paid within one month of its receipt. If the parties disagree about part of the invoice amount, the undisputed amount shall be paid within the time specified.

In the event of late payment interest is payable at a rate specified in the Interest Act.

10.3 Over and above the remuneration the Client shall be responsible for the value added tax payable.

10.4 Invoicing and payment of variations and additions shall be made as they are carried out.

10.5 If a party has strong reasons to believe that the other party will not fulfil a substantial part of his obligations, the party may suspend the performance of his own duties. In such a case the other party shall be informed immediately. If that party provides an acceptable surety for the fulfilment of his obligations, the other party shall no longer have the right to suspend his performance.

10.6 For the Consultant's claims in respect of the assignment a period of limitation of four months shall apply, calculated from the completion of the assignment. This shall not apply, however, to the Consultant's claims insofar as they relate to an agreed fixed fee and the value added tax thereon.

If the Consultant is able to prove that he neither knew of nor ought to have known of his claim, the period of limitation of four months shall be calculated from the date when he first ought to have had such knowledge. However, the period of limitation shall never be more than ten years, calculated from the completion of the assignment.

§ 11 Cancellation, termination

11.1 The Client has the right to cancel such parts of the assignment that have not been performed.

If the cancellation is due to a decision by an authority over which the Client had no control, or if the prerequisites for the completion of the assignment have been changed to a substantial extent, beyond the Client's control and if, in view of this, it is not reasonable to finish the assignment, the Consultant is entitled to payment for work carried out, expenses incurred and reasonable costs for winding up which are not otherwise compensated.

In the case of cancellations for other reasons, the Consultant shall also have the right, with regard to the nature and scope of the assignment, to compensation for loss of reasonable profit on such part of the assignment which is not to be performed as a consequence of the cancellation.

11.2 The Client is entitled to terminate the agreement and be indemnified for loss if the Consultant

- has substantially mismanaged the assignment
- is guilty of a substantial breach of the agreement
- becomes insolvent and does not, immediately upon request, provide adequate surety for his undertaking
- transfers the agreement without the Client's consent and this is of substantial importance to the Client.

The Consultant is entitled to the payment corresponding to the value of the work carried out.

11.3 The Consultant is entitled to terminate the agreement if the Client

- is guilty of a substantial breach of the agreement
- maintains a request implying that the Consultant shall act contrary to sound professional practice
- becomes insolvent and does not, immediately upon request, provide adequate surety for his undertaking
- transfers the agreement without the Consultant's consent and this is of substantial importance to the Consultant.

In these cases, the Consultant is entitled to payment for the part of the assignment performed, for reasonable costs for winding up and for loss of reasonable profit on the part of the assignment which has not been performed.

11.4 Each party is entitled to terminate the agreement if the Swedish Emergency Organization for Building and Repairs is rendered operative, or when the use of the organization of the party is required by the authorities in the event of war or danger of war. The Consultant is then entitled to payment for the part of the assignment performed and for reasonable costs of winding up.

11.5 In the event of cancellation the result of the work performed shall be presented and be submitted to the Client, at the latest, when the Client has fulfilled his obligation to pay.

In the case of termination according to 11.2 the Consultant shall as soon as possible after notification of the termination, submit the result of the work carried out.

In the case of termination according to 11.3 and 11.4 the submission shall take place, at the latest, when the Client has fulfilled his obligation to pay.

After the submission, the result of the assignment may be used in the same way as if the assignment had been fully finished.

§ 12 Insurances

12.1 The Consultant shall maintain adequate insurance cover for the documents and data media in his custody.

12.2 Unless otherwise agreed, the Consultant shall take out and maintain a third party liability insurance for consultants with an insurance amount corresponding to the agreed liability to pay damages.

Unless otherwise agreed, the excess shall not be more than one base amount. By base amount in this clause is to be understood the base amount applying at the time of the discovery of the loss.

12.3 Upon request, the Consultant shall provide proof that such third party liability insurance for consultants exists.

Commentary:

The fact that the Consultant has an insurance corresponding to the liability assumed may be of very great importance. If the prescribed insurance is lacking, this is normally regarded as a substantial breach of contract which gives the Client the right of termination according to 11.2 unless, in view of the circumstances in the individual case, this would seem unreasonable.

12.4 If the Client has presented claims for damages, the Consultant shall without delay submit a damage report to his insurer.

§ 13 Disputes

Unless otherwise agreed, disputes shall be settled by an ordinary court of law.