

Simplified Norwegian building and civil engineering contract

Forenklet norsk bygge- og anleggskontrakt

This is a translation of NS 8406:2009. All reasonable measures have been taken to ensure the accuracy of this translation, but no responsibility can be accepted for any error, omission or inaccuracy.

The English translation was published in June 2010.

This translation has not been adopted as Norwegian Standard.

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Foreword

NS 8406:2009 was adopted in July 2009.

NS 8406:2009 replaces NS 8406, first edition, January 2006 (including correction sheet AC:2006). The changes largely concern the provisions in clauses 18 to 22.

This standard has been developed and unanimously recommended by a committee appointed by Standards Norway, based on proposals put forward by:

- Arkitektbedriftene i Norge (The Norwegian Association of Consulting Architects)
- Entreprenørforeningen – Bygg og Anlegg (The Norwegian Contractors' Association)
- Forsvarsbygg (The Norwegian Defence Estates Agency)
- Kommunenes Sentralforbund (The Norwegian Association of Local and Regional Authorities)
- Maler- og byggtapetsermestrenes Landsforbund (The Norwegian Association of Painting Contractors)
- Maskinentreprenørenes Forbund (The Norwegian Association of Heavy Equipment Contractors)
- NELFO (The Norwegian Electrical Contractors' Association)
- Norges Byggmesterforbund (The Association of Norwegian Master Builders)
- Norges Bygg- og Eiendomsforening (The Norwegian Society for Real Estate and Facilities Management)
- Norske Boligbyggelags Landsforbund (The Norwegian Federation of Co-operative Housing Associations)
- Norske Rørleggerbedrifters Landsforening (The Norwegian Association of Plumbing, Heating and Ventilating Contractors)
- Næringsdepartementet (The Ministry of Trade and Industry)
- Oslo kommune (Oslo Municipality)
- RIF – Rådgivende Ingeniørers Forening (Association of Consulting Engineers, Norway)
- Statens vegvesen – Vegdirektoratet (The Norwegian Public Roads Administration – Directorate of Public Roads)
- Statsbygg (The Directorate of Public Construction and Property)

This standard expresses what the aforementioned organisations and institutions have agreed on as simplified general contract terms for the execution of building and civil engineering works. It is the aforementioned organisations' intention that the standard be applied without alterations or deviations other than those for which the standard itself allows, except for those which are necessary on account of special circumstances pertaining to an individual project.

The standard shall not be used in consumer contracts.

1 Scope

This standard has been developed for use in contractual relationships in which one party (the contractor) undertakes to execute building or civil engineering work (including installations, new buildings, maintenance, repairs and alterations), for the other party (the client), and in which most of the drawings, descriptions and calculations are to be provided by the client.

The standard should not be used in cases in which many contractors are working on the construction site simultaneously. The standard is suitable for contractual relationships in which the circumstances are such that the client's financial, progress-related and quality-related controls and supervision can be implemented without formal notification procedures. In contractual relationships in which, due to the organisation or scope of the project, there is a need for more extensive obligations related to notification and coordination, NS 8405 Norwegian building and civil engineering contract (*Norsk bygge- og anleggskontrakt*) will be more suitable.

2 Definition

In this standard, the following definition shall apply:

contract sum

the originally agreed amount payable for the contractor's fulfilment of its contractual obligations, including value added tax. The contract sum shall also include the originally agreed estimate of payments which are to be calculated on the basis of unit rates or as daywork.

3 Passivity

A party that does not give notice or reply within the notification time limits specified in the contract may be liable to lose its rights (including the right to object) in accordance with the ordinary rules of Norwegian law.

4 Contract documents

Unless otherwise agreed, the following documents shall form part of the contract, and shall apply in the order in which they are listed:

- a) the contract document, if such a document has been prepared;
- b) any minutes or written materials from clarifying discussions or negotiations held after the tender was submitted and which have been approved by both parties;
- c) the contractor's tender;
- d) any minutes or written materials from inspections or meetings held before the tender was submitted;
- e) the basis for the tender or the competition;
- f) this standard (NS 8406:2009).

Work which is only shown in drawings, but which should also have been specified in the description or the quantity statement, shall not form part of the contract.

5 The representatives of the parties

Each of the parties shall appoint a person to represent it in questions relating to the contract (representative). Unless otherwise notified in writing to the other party, the representative shall have the authority to make all decisions relating to the contract.

6 Site meetings

Regular site meetings shall be held during the execution period.

Site meetings shall be called by the client. The contractor may call site meetings when it believes it to be necessary. At least seven days' notice shall normally be given of such meetings.

Those representing the parties at the site meetings shall be authorised to decide on ordinary issues. Clause 19.2 specifies those authorised to issue change orders.

Minutes shall be kept of site meetings.

7 Notifications and requests

All notifications and requests to be given and made pursuant to the provisions of this contract shall be submitted in writing to the parties' representatives, see clause 5, or sent to the agreed addresses. Notifications and requests that are recorded in minutes kept pursuant to clause 6 shall be deemed to be in writing. Notifications and requests communicated electronically shall only be deemed to be in writing if this has been agreed.

8 Provision of security

Unless otherwise agreed, the contractor shall provide adequate security for the fulfilment of its contractual obligations with 10% of the contract sum during the execution period, reduced to 3% of the contract sum during the first three years of the claims period. The client shall not be obliged to pay instalments until the contractor has provided the security.

Unless otherwise agreed, the client shall provide adequate security for the fulfilment of its contractual obligations with 15% of the contract sum. The contractor shall not be obliged to begin executing the works until the client has provided the security.

9 Insurance

Unless otherwise agreed, the contractor shall keep insured the part of the contract work that has been completed at any given time, materials for which the client has paid in advance, and materials which the client has delivered into the contractor's possession. The client shall be co-insured. The insurance contract shall take the form of a first-loss insurance policy.

Unless otherwise agreed, the contractor shall have a liability insurance. The insurance shall cover the liability in law for any damage caused by the contractor or its sub-contractors to the person or property of the client or a third party in connection with the execution of the contract work. The insurance sum shall not be less than 150 G.

Unless otherwise agreed, the insurance shall be issued subject to terms and conditions that are customary for the type of work the contractor and its sub-contractors are to carry out. Certificates for every insurance policy taken out shall be produced to the client on demand.

10 Risk of damage to the contract work during the construction period

Until taking over has taken place, the contractor shall bear the risk of damage to materials and the part of the contract work that has been completed at any given time. The same shall apply to materials that the client has obtained and delivered into the possession of the contractor.

The contractor shall, however, not be liable for damage caused by the client or any of its contract assistants during the performance of their contractual obligations, or for damage caused by other factors for which the client is liable.

Nor shall the contractor bear the risk of damage to the contract work or materials due to extraordinary and unforeseeable circumstances such as war, revolt, natural disasters, etc. (*force majeure*).

In the event of damage to the contractor's contract work that is covered by its insurance pursuant to clause 9, the contractor shall utilise the insurance fully.

11 The contractor's performance

The contract work shall satisfy the requirements stipulated in the contract.

If no requirements are stipulated in the contract as to the quality of materials or execution of the work, such quality requirements as are commonly applied to similar work shall apply.

12 Use of sub-contractors

The contractor shall be entitled to let some of its contractual obligations be performed by sub-contractors. Its contractual liability to the client shall not be altered by the use of sub-contractors.

Before entering into a contract with a sub-contractor, the contractor shall notify the client of which parts it wishes to let a sub-contractor perform, and of the sub-contractors it wishes to use.

Sub-contractors specified in the contract shall be regarded as approved. If alternative sub-contractors are specified, the contractor shall choose from among these. The contractor shall not be permitted to replace sub-contractors specified in the contract without the consent of the client.

The client may refuse to approve specifications of sub-contractors or requests for replacement of sub-contractors if the specifications or requests are made after the contract has been entered into and the client has reasonable grounds for doing so. The client shall notify the contractor of such refusal within a reasonable period of time.

13 Conditions at the construction site

13.1 Laws, public regulations and decisions

Both parties shall comply with the laws, public regulations and decisions that apply to their contractual obligations and to the conditions at the construction site.

The contractor shall be entitled to refuse to carry out work that would contravene public-law requirements stipulated in a law or pursuant to a law.

13.2 Measurement, survey

Measurement work in addition to the client's instructions pursuant to clause 18.1(d) shall be the responsibility of the contractor.

The contractor shall give reasonable notice to the client when important parts of the survey work are finished, so that the client may conduct controls if it wishes.

13.3 Clearing-up

The contractor shall keep the construction site in a tidy condition as regards the work it is to perform, and shall regularly clear up after its own work and remove all refuse resulting from it.

If the contractor fails to meet its obligations pursuant to the first paragraph, the client shall be entitled, upon giving written notice, to implement such clearing-up at the contractor's expense.

13.4 Use of working scaffolds and lifts

The contractor shall allow its working scaffolds and unmanned lifts to be used free of charge by other contractors and the client, provided that this does not disturb the contractor's work or otherwise constitute an unreasonable inconvenience. The person wishing to use working scaffolds, etc. shall give the contractor reasonable advance notice of this.

Other contractors and the client shall also be permitted to use cranes and manned lifts, provided that this does not disturb the contractor's work. Payment for such use shall be agreed in advance by the contractor and the user.

The contractor shall notify the client in good time before cranes, work scaffolds and lifts are dismantled.

14 Inspection and testing

The client shall be entitled to inspect materials, workmanship and the rest of the contract work. If the client becomes aware that the contract work does not accord with the contract, it shall immediately notify the contractor. If the contract work has not been carried out in accordance with the contract, the contractor shall not be entitled to invoke that the work was carried out under the supervision of the client.

Tests that are specified or presupposed in the contract shall be arranged and paid for by the contractor. If the client demands additional tests, it shall pay for these if they show that the contractual requirements have been met.

15 The client's duty of notification in connection with the contractor's design work

If the contractor undertakes design work, the client shall notify the contractor if it becomes aware that the contractor's design work is unsuitable, faulty or deficient, or contains discrepancies or errors that could result in the work not being in accordance with what has been agreed upon.

16 Site administration and progress control

The client may order the contractor to carry out, or be subject to, site administration and progress control if this is stipulated in the contract or subsequently agreed to separately.

If the contractor is ordered to carry out site administration and progress control, it shall, unless otherwise agreed:

- a) establish a combined progress schedule for its own work and that of administered parallel contractors;
- b) check that the progress schedules are complied with;
- c) notify the client within a reasonable period of time if the circumstances of an administered parallel contractor threaten to delay progress at the construction site;
- d) state the assumed cause of the delay and the expected effect on progress;
- e) if possible, specify measures to remedy or reduce the delay.

If these obligations are not fulfilled properly, the client may claim compensation for the loss it would otherwise have avoided.

Assumption by parallel contractors of the obligation to carry out site administration and progress control shall not mean that the contractor relinquishes its right to demand an extension of time limits and an adjustment of the amount payable in respect of circumstances caused by an administered parallel contractor.

17 Time limits and coordination

The contractor shall carry out the contract work within the agreed time limits.

The client may at any time demand that the contractor prepare and, if necessary, revise the progress schedule for the contractor's work. The progress schedule shall be based on the contract and information provided by the client pursuant to clause 18.1(f). It shall set out the main activities and which other activities these depend upon. The contractor shall regularly inform the client of the progress status.

The contractor shall have a duty to coordinate, at no extra charge, the execution of its work with parallel contractors, planners and other participants in the project, within the bounds of what was foreseeable at the time the contract was entered into.

18 The client's performance

18.1 The client's duty of contribution

Unless otherwise agreed, the client shall obtain, and bear the liability and risk in respect of:

- a) drawings, descriptions and calculations that are necessary and suitable as a basis for the execution of the contract work;
- b) the physical basis for the work, including other parties' work on the building or civil engineering works upon which the contractor is to build, being as the contractor had reason to expect based on the contract, the nature of the commission and the circumstances otherwise;
- c) the ground conditions being as the contractor had reason to expect based on the contract, the nature of the commission and the circumstances otherwise;
- d) permanent marks for height measurements, building lines, boundaries to neighbouring properties, etc.;
- e) necessary permits which, pursuant to laws and regulations, must be issued to the client or its contract assistants, such as framework permits, etc.;
- f) the progress-related coordination of the participants in the project that is necessary to enable the contractor to fulfil its contractual obligations, see the contractor's duty to coordinate in clause 17. The contractor is entitled to, prior to delivering the progress schedule pursuant to clause 17, demand that the client prepare and, if necessary, revise, a complete overview showing the building contracts and deliveries that form part of the project.

The client shall be liable for the quality and usability of materials and products it has supplied. It shall likewise be liable for the usability of materials and named products it requires to be used.

18.2 The contractor's duty to give notice of defects in the client's contribution

The contractor shall, in connection with its production planning, review the client's deliveries and other contributions with respect to production.

The contractor shall notify the client if it becomes aware that the contract documents, drawings, descriptions or calculations are incomplete, contain discrepancies or other errors, or otherwise do not provide adequate guidance for the execution of the work. The same shall apply if the contractor discovers unsuitable design work.

The contractor shall in the same way notify the client if it becomes aware that the physical basis for the work, permanent marks, ground conditions, materials supplied or any other contribution by the client does not satisfy the requirements the contractor is entitled to expect under the contract.

If the contractor wishes to demand an adjustment of the amount payable or an extension of time limits, the demand shall be notified and dealt with pursuant to the provisions in clauses 19.4 and 22.

19 Changes. Delays and defects in the client's contribution

19.1 The right to instruct the contractor to make changes

The client may, by means of a change order, to instruct the contractor to make changes.

A change may specify that the contractor is to do something in addition to or instead of the originally agreed performance, that the character, quality, nature or execution of the performance is to be altered, or that agreed performance shall no longer be provided.

A change shall be related to what the contract covers, and shall not be of a materially different nature to the originally agreed work. Unless otherwise agreed, the client shall not be permitted to instruct the contractor to make changes in excess of a 15% net addition to the contract sum.

A deviation with respect to the quantities stated in the contract for items that are to be calculated on the basis of unit rates (adjustable items), shall not constitute a change for the purpose of these provisions unless the deviation significantly exceeds that which the contractor ought to have taken into consideration when the contract was entered into.

If the contractor is entitled to the extension of a deadline, the maintenance in whole or in part of the time limits that are subject to a daily penalty may also constitute a change, as long as such maintenance can be achieved within the limits of reasonable progress and is practically possible without the contractor having to make unreasonable sacrifices.

The parties shall be entitled to adjustment of the amount payable and time limits occasioned by the change pursuant to clauses 22.1 to 22.5.

The contractor shall notify the client within a reasonable period of time of its entitlement to adjustment of the amount payable and time limits as a result of the change.

19.2 Change orders

A change order shall be in writing, and shall state that a change is required and what this change involves.

The change order shall be issued by the client itself, by its representative (see clause 5), or by a person holding written authorisation to issue change orders.

When the contractor receives a change order in accordance with the two preceding paragraphs, it shall be obliged to implement the change.

19.3 Changes in respect of which no change order has been issued

If the contractor receives an instruction relating to performance, and this instruction is not issued in the form of a change order, it shall implement the instruction even if it believes that the instruction constitutes a change, if:

- a) the instruction is given by a person who is authorised to issue change orders pursuant to clause 19.2, second paragraph, or
- b) the instruction is given by a person who is authorised to inspect the contractor's work and the instruction is given during the performance of the person's ordinary project work, or
- c) the instruction is apparent from working drawings, work descriptions, etc., prepared by the client's planners.

Should the contractor consider that the aforementioned represents a change, it shall notify the client within a reasonable period of time if it wishes to invoke this. The same shall apply if the contractor receives an order from a public authority to carry out work that in its view constitutes a change to the work.

When the client receives notice pursuant to this provision, it shall within a reasonable period of time either issue a change order or refuse the contractor's request. The contractor shall be obliged to implement a disputed change even if a request for a change order is refused. The same shall apply if the disagreement concerns the length of an extension of the time limit or an adjustment of the amount payable.

Unless otherwise agreed, the contractor shall be permitted to request, before the work is commenced, that the client provide security for the value of the disputed claim. If the client does not provide security within a reasonable period of time, the contractor shall be permitted at its own risk to discontinue the execution of the disputed work.

19.4 The contractor's entitlement in the event of a defect, etc. in the client's contribution

If the client's deliveries or other contributions are delayed or defective, and this causes the contractor to incur increased costs or hinders its progress, the contractor may be entitled to claim an adjustment of the amount payable and an extension of time limits pursuant to clauses 22.1, 22.2, 22.3 and 22.5. The same shall apply if other matters arise for which the client is liable. The contractor is obliged to limit and prevent the financial and progress-related consequences by reasonable means.

The contractor shall within a reasonable period of time notify the client of its entitlement to an adjustment of the amount payable or an extension of time limits pursuant to this clause.

The client shall within a reasonable period of time make a decision on the contractor's claim.

20 The parties' entitlement to an extension of time limits due to force majeure

The parties shall be entitled to an extension of time limits (see clause 22.5), but not to an adjustment of the amount payable (see clauses 22.1 to 22.4), if the progress of the fulfilment of their obligations is hindered by circumstances outside their control, such as extraordinary weather conditions, orders or prohibitions by public authorities, strikes, lockouts and agreements entered into at national level between employers' organisations and trades unions.

If the progress is hindered by a contract assistant, the party shall be entitled to an extension of time limits if the contract assistant is hindered by such circumstances outside its control as are stipulated in the first paragraph.

A party shall not be entitled to an extension of time limits in respect of hindrances which the party or its contract assistants should have taken into account when entering into their respective contracts, or whose consequences they could reasonably be expected to have avoided or to have overcome.

Moreover, a party shall be entitled to an extension of time limits if progress is hindered as a consequence of the other party being entitled to an extension of time limits pursuant to this provision.

The parties shall not be entitled to adjustment of the amount payable as a consequence of an extension of time limits pursuant to this provision.

The party shall within a reasonable period of time notify the other party of its claim for an extension of time limits pursuant to this provision.

The other party shall within a reasonable period of time make a decision on the claim.

21 Acceleration in the event of rejection of a claim for an extension of time limits

If the client rejects, in whole or in part, a justified claim for an extension of time limits, the contractor shall be entitled to deem the rejection an instruction to accelerate, given by way of change order. The contractor shall not have such a right to choose if the amount payable in respect of the acceleration must be deemed likely to exceed the daily penalty which would have accrued if the client's rejection had been justified and acceleration had not been implemented, with the addition of 30%.

Before acceleration pursuant to the first paragraph is implemented, the client shall be sent a notification, which shall also set out the expected cost of the acceleration.

22 Calculation of the adjustment of the amount payable and extension of time limits

22.1 Entitlement of the parties to an adjustment of the amount payable

The parties shall be entitled to such an adjustment of the amount payable as the change gives grounds for.

The contractor shall in addition be entitled to such an adjustment of the amount payable as delays or defects in the client's deliveries or other contribution give grounds for.

22.2 Adjustment of the amount payable in the case of applicable unit rates

If the claim for an adjustment of the amount payable relates to circumstances in which the contract's unit rates are applicable, these unit rates shall be used.

The unit rates shall also form the basis for the settlement if the basis for the adjustment of the amount payable derives from work that in general is like work for which unit rates have been stipulated. The parties shall in such a case be entitled to demand that the unit rates be adjusted to take account of the deviation. The adjustment shall reflect the price level of the original unit rates.

If the underlying conditions for applying the unit rates are altered, including as a result of the scope or number of changes, the date of the change, etc., the parties shall be entitled to demand that the unit rates be adjusted to take into account the increased costs or savings that this has occasioned.

The party that wants to demand an adjustment of the unit rates shall notify the other party within a reasonable period of time of a circumstance that provides grounds for such an adjustment. If the party fails to do so, it shall only be entitled to such an adjustment of the unit rate as the other party must have understood would be caused by the circumstance.

The party that receives notification of an adjustment shall respond within a reasonable period of time. If no reply is made within the deadline, the party shall lose its right to object to the demand.

22.3 Adjustment of the amount payable when there are no applicable unit rates

If no applicable unit rates exist, the amount payable shall be adjusted in accordance with the provisions relating to daywork in clause 23.4. In the case of a reduction in the amount of work performed, the amount payable shall be reduced by an amount equal to the savings resulting from the reduction in the amount of work, with a corresponding reduction in profit.

The contractor shall, before commencing the daywork, notify the client if the contractor believes that the amount payable must be adjusted in accordance with the provisions relating to daywork in clause 23.4.

The client shall within a reasonable period of time make a decision concerning the contractor's notification pursuant to the second paragraph.

Even if the client does not agree that the amount payable is to be adjusted pursuant to the provisions relating to daywork, the contractor shall comply with the provisions of clause 23.4.

The contractor shall be permitted to provide, or the client shall be permitted to demand that the contractor provide, a specified offer of adjustment of the amount payable.

The client shall make a decision with respect to the offer within a reasonable period of time.

22.4 Cancellation compensation for sub-contractors and suppliers

If the contractor has to pay cancellation compensation to a sub-contractor or supplier as a result of a change, the contractor may demand reimbursement of the compensation amount from the client.

22.5 Calculation of an extension of time limits

If the contractor is entitled to an extension of time limits due to the circumstances in clauses 19.2, 19.3, 19.4 or 20, the parties shall seek to reach agreement regarding the extension of time limits.

If agreement is not reached, the extension of time limits shall correspond to the effect on progress of the progress-hindering circumstance in question.

23 Payment of the contractor's remuneration

23.1 Index-linking. Changes to public fees and charges

Unless otherwise agreed, the contract sum shall be regulated in accordance with the provisions of NS 3405: *Rules for adjustment of contract sum for building and civil engineering works resulting from changes in wages, prices, social charges, etc.* – the total index method – using one calendar month as the calculation period.

This shall also apply to daywork and additional work that is to be executed at the contract's unit rates.

If tenders are submitted while the work is being executed, the prices in such tenders shall not be price-regulated unless otherwise agreed.

If public fees and charges that the contractor is to pay under the contract are changed after the contractor has submitted its tender, the amount payable shall be adjusted as a result of the change, without the addition of value added tax or a mark-up for indirect costs, risk or profit.

23.2 Quantity control

If the contract stipulates that the contractor is to undertake quantity controls, the contractor shall compare the quantities stated in the description with the corresponding quantities stated in the drawings in the tender package, within a stipulated and reasonable time limit.

The contractor shall lose the right to invoke errors in the quantities specified in the description that it has not notified to the client before the expiration of the time limit.

The client shall lose the right to invoke errors in the statement of quantities that it has not notified to the contractor within one month of the expiration of the contractor's time limit. If the client's demand for a quantity adjustment applies to other parts of the description than the contractor's requirements, the contractor shall be given an additional period of one month from the date it received the client's demand to submit further comments.

Even if the quantities have become binding pursuant to the above provisions, either party shall nonetheless be permitted to invoke errors that would lead to significant additions to or reductions in the contract sum, or errors that could not be expected to be discovered during a normal, careful inspection.

23.3 Invoicing and payment

Unless otherwise agreed, the contractor shall, as execution of the work proceeds, be permitted to demand payment of instalments on the basis of completed work.

Unless otherwise agreed, specified instalment invoices shall not be sent more frequently than once a month.

The contractor shall take the measurements and issue the instructions that are necessary for calculating instalments and the rest of the invoice basis. The client shall be entitled to participate, and shall be given reasonable advance notice by the contractor.

Payment of an instalment shall not constitute approval of the basis for the invoice in question.

A retention of 10% of the instalment basis shall be made in respect of the instalment invoices. The remaining amount shall constitute the invoice amount. The invoice amount shall be subject to value added tax. Once the total retained amount has reached 5% of the contract sum, subsequent invoices shall be issued without a retention deduction. The retained amount shall be invoiced on the final invoice.

Changes and daywork, etc. shall be invoiced by way of separate invoices once they are completed. The claims shall be invoiced in full.

Agreed changes in wages and prices may be settled each month, and shall be invoiced by way of separate invoices.

The client shall be obliged to pay within 28 days of receiving an invoice. In the event of overdue payment, overdue payment interest shall be paid pursuant to the Act of 17 December 1976 No. 100 relating to interest on overdue payments.

If a daily penalty has accrued, or if the client has other claims as a result of breaches of contract by the contractor, the client shall be entitled to retain enough of the payment to cover the specified claim. Moreover, the client shall be obliged to settle undisputed claims within the stipulated time limits for payment.

23.4 Detailed provisions regarding daywork

When work is to be carried out as daywork, the contractor shall be paid the necessary costs of executing the work, plus an agreed or customary mark-up to cover indirect costs, risk and profit. Daywork shall be carried out efficiently and properly.

The contractor shall, upon request by the client, provide the client with a written estimate of the probable cost of the work. The contractor shall notify the client in writing within a reasonable period of time if there is reason to believe that the cost estimate will be substantially exceeded.

Unless otherwise agreed, the contractor shall send the client specified statements each week of accrued costs, including specifications showing materials used and time usage related to staff and machinery. As regards costs and time usage that are due to delays or defects in the client's deliveries or contribution, etc., the contractor shall be entitled to demand that the statements not be sent more frequently than once a month. The statements shall be checked within 14 days of being received, unless the client, within the time limit, requests additional documentation and a more detailed specification of the circumstances which the contractor is invoking as the basis for its claim. The client shall, insofar as possible, specify its documentation requirement.

If the contractor fails to provide statements in accordance with the third paragraph, it shall only be entitled to coverage of the costs that were foreseeable for the client, plus a mark-up to cover indirect costs, risk and profit.

The client shall not be prevented from subsequently invoking that the total costs of the daywork have become unnecessarily high due to inefficient operation or other improper circumstances.

24 Taking over

24.1 Taking over proceedings

The contract work shall be taken over by the client through taking over proceedings. The contractor shall summon the client to taking over proceedings, giving reasonable notice prior to the completion of the contract work. The parties shall be obliged to attend the taking over proceedings. If one of the parties fails to attend without a valid reason, the other party shall be entitled to conduct the taking over proceedings alone.

All of the contract work shall be taken over together, unless a partial taking over has taken place. In the event of partial taking over, the provisions below concerning the taking over proceedings and taking over shall apply correspondingly.

24.2 Protocol

A protocol shall be kept of the taking over proceedings, specifying the following:

- a) who is present;
- b) any defects which may be discovered;
- c) a time limit for the rectification of discovered defects, and the date of any subsequent inspection;
- d) whether the contract work is taken over or taking over is refused.

The protocol shall be signed by the parties that have been present. The parties shall each receive a copy of the signed protocol.

24.3 The client's right to refuse to take over

The client shall be entitled to refuse to take over the contract work if, during the taking-over proceedings, defects are discovered that in themselves, or whose rectification, will prevent the expected use of the contract work.

If the client wrongfully refuses to take over the contract work, taking over shall be deemed to have taken place.

24.4 Effects of taking over

Taking over shall have the following effects:

- a) Any daily penalty ceases to accrue (see clause 26.2).
- b) Liability for the contract work passes from the contractor to the client (see clause 10).
- c) The contractor's obligation to keep the contract work insured ceases (see clause 9).
- d) The notification period for defects pursuant to clause 27.6 starts to run.
- e) The contractor shall send a final account and final invoice to the client (see clause 25.1).
- f) The security that the contractor has provided for its liability during the construction period is reduced in accordance with the provisions in clause 8.

24.5 Partial taking over

The client shall be permitted to take over parts of the contract work if this has been agreed separately.

The client shall also be entitled to take over parts of the contract work through taking over proceedings after discussing this with the contractor. If such partial taking over causes the contractor to incur extra costs, or if the contractor's progress is hindered, it shall be regulated in accordance with the provisions in clause 19.

Partial taking over shall take place through taking over proceedings. The provisions in clauses 24.1, 24.2 and 24.3 shall apply to partial taking over insofar as they are applicable. In the event of partial taking over, the parts of the building or civil engineering works that are to be taken over, and their contractual value or proportional value, shall be specified.

In the event of partial taking over, the provisions of clause 24.4 shall apply correspondingly to the part of the contract work that is being taken over, although the contractor shall continue to keep all of the contract work insured in accordance with clause 9 until all of the contract work has been taken over.

24.6 If the client wrongfully starts to use the contract work

In addition to what is stipulated in clause 24.5, the client shall not be entitled to start using the contract work prior to taking over without the contractor's consent. If the client nonetheless starts to use the contract work, this shall constitute a breach of the contract.

If the client or its contract assistants start to use parts of the contract work as provided in the contract or the progress schedule, this shall not be regarded as starting to use the contract work.

The risk relating to the parts of the contract work that are wrongfully taken into use shall be transferred when the use commences.

In the event that use is wrongfully commenced, the contractor shall give the client notice (subject to a short deadline), that the client is required either to request partial taking over pursuant to clause 24.5 or otherwise to rectify the matter.

If the client fails to rectify the matter, the risk relating to all of the contract work shall pass to the client as from the expiry of the deadline. Any daily penalties shall cease to accrue. As regards the work that was completed at the time that the use commenced, the period for notification of defects pursuant to clause 27.5 shall expire 14 days after the expiry of the deadline stipulated by the contractor.

The period for notification of defects pursuant to clause 27.6 shall begin to run on the same date.

25 Final account

25.1 Final account with final invoice

Unless otherwise agreed, the contractor shall send the client a final account enclosing a final invoice within two months of the taking over. Corrections to the submitted final invoice and final account shall be permitted until the time limit expires.

The final account shall contain a full overview of the parties' outstanding claims. It shall contain a specification of all of the contractor's claims relating to the contract. It shall therefore include:

- a) all invoiced and paid claims;
- b) all invoiced claims that have not been paid, irrespective of whether or not they have fallen due;
- c) claims that have been invoiced and have fallen due, but which the client has rejected and which the contractor is maintaining;
- d) all claims that the contractor believes it has which have not yet been invoiced, including retention money, see clause 23.3.

The contractor shall only be entitled to reserve the right to make subsequent changes to the final account if the basis for calculating a claim has not been available in time. Such a reservation shall only be permitted for a specifically stated basis of claim. The final invoice shall include the claims mentioned in sub-paragraph d) of the second paragraph.

The submission of claims that are not included in the final account shall not be permitted after the expiration of the time limit mentioned in the first paragraph. However, this shall not apply to claims related to work that is not to be performed until after taking over, claims for amounts retained pursuant to clause 23.3, outstanding claims for index-linking pursuant to clause 23.1, first to third paragraphs, and claims that have been submitted to the courts or for agreed arbitration.

If the contractor fails to comply with the time limit for submission of the final account and final invoice, the client shall be entitled to stipulate in writing a final time limit for submission. This time limit shall not be shorter than 14 days. After the expiry of the time limit, the contractor shall lose all claims relating to the contract that have not already been paid or that are mentioned in the second sentence of the previous paragraph.

25.2 Payment of final invoice. Objections and claims

Unless otherwise agreed, the client shall make payment within two months of receipt of the final account and enclosed final invoice. Unless otherwise agreed, objections the client has to the final invoice, or claims it has against the contractor in connection with the contract, shall be submitted within the payment time limit. Objections and claims that the client has submitted earlier shall be repeated to the contractor within the time limit if they are being maintained.

The subsequent submission of objections and claims that are not submitted within the time limit shall not be permitted. However, this shall not apply to objections and claims that have been submitted to the courts or for agreed arbitration.

Objections and claims that the client has as a result of defects in the contract work shall be regulated solely by the provisions in clause 27.

26 Delay

26.1 Time limits that are subject to daily penalties

The final time limit for the contract work shall be subject to a daily penalty. If the contract does not contain a final time limit, a final time limit shall be stipulated based on the contractor starting to execute the work as soon as possible after the contract has been entered into and carrying out the work efficiently and without undue delay. Time limits other than the final time limit shall only be subject to a daily penalty when this is expressly specified in the contract in relation to the time limit in question.

The client shall not be entitled to claim damages instead of a daily penalty in connection with the breach of time limits subject to a daily penalty unless intent or gross negligence is involved.

26.2 When does a daily penalty accrue?

The client shall be entitled to demand a daily penalty if the work is not completed within the time limits that are subject to a daily penalty, if necessary adjusted to take into account the contractor's extension of time limits. The daily penalty shall cease to accrue upon completion.

The work shall be regarded as completed on the date it is taken over by the client, or on the date the contractor demands taking over as long as the client is not entitled to refuse taking over in accordance with clause 24.3.

26.3 The size of the daily penalty

Unless otherwise agreed, the daily penalty per weekday shall comprise:

- 1‰ of the contract sum if the final time limit is exceeded, but not less than NOK 1,500.
- 1‰ of the contract sum for the part of the contract work that is to be completed within a partial time limit that is subject to a daily penalty, but not less than NOK 750.

"Weekday" shall mean every day apart from Sundays and public holidays.

The contractor's total daily-penalty liability shall be limited to 10% of the contract sum.

This limitation of liability shall not apply if the contractor has caused the delay wilfully or through gross negligence.

27 Defects in the contract work. Liability in damages

27.1 Defects

There is a defect if, at the time of taking over, the contract work is not in the state to which the client is entitled pursuant to the contract and this is due to circumstances for which the contractor is liable.

The definition of a defect shall include damage to the contract work that arises after taking over and which is an obvious and foreseeable result of the original defect.

27.2 Rectification

The contractor shall be entitled and obliged to rectify, at its own cost, defects in the contract work that the client has invoked in time, unless the costs of the rectification will be disproportionately large relative to the result achieved.

However, this shall not apply if the defect has caused damage to other parts of the contract work that are covered by insurance policies taken out by the client. The contractor shall in such cases only compensate the client for the loss that is not covered by the insurance. If the contractor has caused the defect intentionally or through gross negligence, however, the provision in the first paragraph shall apply.

If rectification is not undertaken within a reasonable time limit stipulated by the client, the client shall be entitled to demand that the contractor pay the client's reasonable costs connected to engaging others to undertake the rectification work. The client shall notify the contractor before the rectification work is sub-contracted to others.

27.3 Price reduction

If the client is not entitled to demand rectification pursuant to clause 27.2, first paragraph, it shall instead be entitled to demand a price reduction. The same shall apply in cases in which the client is only entitled to demand partial rectification.

The size of the price reduction shall be fixed on the basis of the reduction in the value of the building or civil engineering works that the defect represents. The price reduction shall at least be equal to the saving the contractor has achieved as a result of the work not being executed as provided in the contract.

27.4 Damages in the event of a defect

The contractor shall be liable for the costs of rectifying damage to parts of the building or civil engineering works that are not covered by the contract if the damage is a result of a defect that is due to negligence on the part of the contractor. The rectification work shall be carried out in a reasonable, proper manner.

If the defect has caused the client a financial loss that is not covered by the foregoing provisions, the client shall only be entitled to demand that this be covered if the contractor has caused the defect wilfully or through gross negligence.

27.5 Notification of defects on taking over

The client shall lose its right to invoke a defect if it does not report, at the latest by the end of the taking-over proceedings, any defects it has or ought to have discovered during the taking over proceedings.

The defect shall be specified in the protocol of the taking over proceedings or in an annex to it, see clause 24.2.

27.6 Subsequent notification of defects

The client shall lose its right to invoke a defect after taking over if it does not notify the contractor within a reasonable period of time after it has or ought to have discovered the defect.

Submission of a notification of defects shall not be permitted later than five years after taking over.

For the parts of the contract work that have been rectified pursuant to clause 27.2, a new five-year time limit shall begin to run upon completion of the rectification work on the part in question, but this new period shall not exceed the original time limit by more than one year.

If parts of the contract work are executed after taking over, the period for notification of defects shall begin to run upon completion of work on the part in question.

27.7 Exceptions to the provisions on notification of defects

Irrespective of the provisions on notification of defects in clauses 27.5 and 27.6, the client shall be entitled to invoke a defect that the contractor has caused intentionally or through gross negligence.

28 Cancellation

The client shall be entitled to cancel all or parts of the contract work.

Cancellation shall be notified in writing, as far in advance as possible.

If the contractor's total remuneration after deductions and additions in connection with changes is reduced by less than 15% of the contract sum, the reduction shall always be dealt with in accordance with the provisions relating to changes. If the reduction is 15% or more of the contract sum, the entire reduction shall be regarded as a partial cancellation.

In the event of cancellation, the contractor shall be entitled to compensation for the financial loss it suffers as a result of the cancellation.

The performance of contract work by other contractors shall not be permitted until taking over has occurred.

29 Rescission and stoppage due to breach

29.1 Rescission

A party shall be entitled to rescind the contract if the other party substantially breaches its contractual obligations, or if it is clear that a substantial breach will occur. A party shall likewise be entitled to rescind the contract if the other party goes bankrupt or becomes demonstrably insolvent.

Rescission pursuant to the first paragraph shall not be implemented before the party wishing to rescind has given the other party a reasonable time limit for rectifying the matter and a warning that rescission will occur if rectification does not take place.

29.2 The contractor's right to stop the work

The contractor shall be entitled, upon giving 24 hours' written notice, to stop the execution of work if the client substantially breaches its payment obligation or if it is clear that such a breach will take place.

In the event of a stoppage, the contractor shall be entitled to an adjustment of the amount payable and an extension of time limits in accordance with the provisions in clauses 22.1, 22.2, 22.3 and 22.5. The contractor shall give notice of its claim in accordance with clause 19.4, second paragraph.

30 Ownership of contract work and materials

30.1 Transfer of the right of ownership

The contract work shall become the property of the client as it is executed. Materials that are brought to the construction site and which are to be incorporated shall become the client's property once it has paid for them.

30.2 Ownership of materials

Materials that the client has supplied and which are not used in the contract work shall be the property of the client.

Used materials that are to be removed in connection with alteration, demolition or repair shall become the property of the contractor, except in the case of daywork.

31 Disputes

Any dispute between the parties relating to the contractual relationship that cannot be resolved amicably shall be resolved by means of ordinary court proceedings.

The legal venue of the building or civil engineering site shall be the legal venue for all proceedings that may arise from the contract.

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