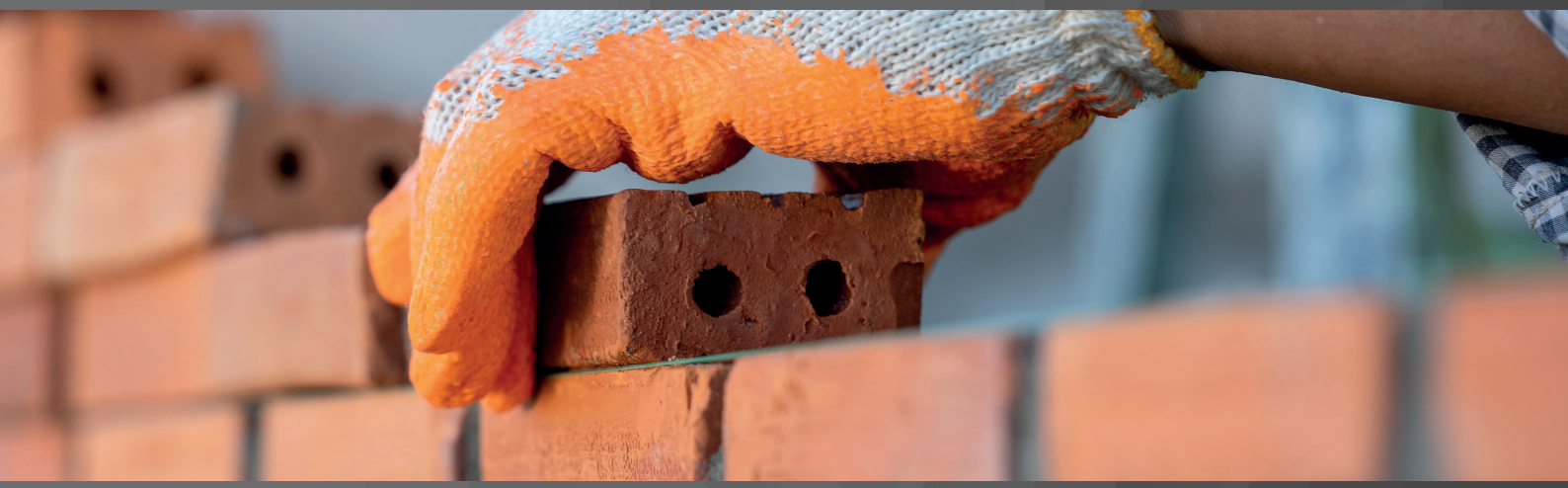
International Comparative Legal Guides



Construction & Engineering Law 2021

A practical cross-border insight into construction and engineering law

Eighth Edition

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1 Making Construction Projects

1.1 What are the standard types of construction contract in your jurisdiction? Do you have: (i) any contracts which place both design and construction obligations upon contractors; (ii) any forms of design-only contract; and/or (iii) any arrangement known as management contracting, with one main managing contractor and with the construction work done by a series of package contractors? (*NB* For ease of reference throughout the chapter, we refer to "construction contracts" as an abbreviation for construction and engineering contracts.)

Sweden has a long tradition of self-regulation regarding construction contracts and has no specific law concerning the contractual terms and conditions between the employer and the contractor within a construction contract. The Construction Contracts Committee (**BKK**) has therefore been given the responsibility of conceiving and administering a number of agreed documents, customised to meet the regulatory requirements of any form of construction contract. Since the BKK consists of representatives from across the construction industry, the following General Conditions are commonly accepted and their provisions are used in the vast majority of Swedish construction contracts:

- The General Conditions of Contract for Building and Civil Engineering Works and Building Services (**AB 04**), which place the responsibility for the performance of the works on the contractor, but with no obligations concerning the design. The General Conditions for Subcontractors (**AB-U 07**) are usually annexed as a supplement if the specific contract is between a contractor and a subcontractor.
- The General Conditions of Contract for Design and Construct Contracts for Building, Civil Engineering and Installation Works (**ABT 06**), which place the responsibility for both the design (or at least parts thereof) and the performance of the works on the contractor. The General Conditions for Subcontractors in Design and Building Contracts (**ABT-U 07**) are usually annexed as a supplement if the specific contract is between a contractor and a subcontractor.
- The General Conditions of Contract for Consulting Agreements for Architectural and Engineering Assignments for the year 2009 (**ABK 09**), which usually assign the responsibility for the design to a consultant.

These three agreed documents are harmonised regarding, e.g., liability and guarantee commitments, to function side by side in any constellation of parties by which the employer wishes to procure the needed works. Therefore, there is a wide possibility to assign obligations to either one or several contractors, based on expertise and/or working areas of the contractors and the needed works. Furthermore, the General Conditions allow alterations and additions to ensure an even better harmonisation in each specific construction contract.

1.2 How prevalent is collaborative contracting (e.g. alliance contracting and partnering) in your jurisdiction? To the extent applicable, what forms of collaborative contracts are commonly used?

The work method *collaborative contracting*, also commonly known as *partnering*, occurs relatively often in the Swedish market. We have seen an increased use of this alternative work method and contracting model from both private and public property owners/building proprietors over the last seven to 10 years. The BKK has not yet established any agreed document or formal instruction/guide for this type of contract, which is why the existing *collaboration or partnering contracts* (often with early contractor collaboration) are based on the existing General Conditions (see question 1.1), most commonly a combination of ABK 09 (consultancy services/design) and ABT 06 (design and build). To suit the alternative procurement and collaboration form, the General Conditions are, however, often amended/customised.

1.3 What industry standard forms of construction contract are most commonly used in your jurisdiction?

See question 1.1. International Federation of Consulting Engineers (**FIDIC**) and other international standard forms of contract are seldom used in Sweden.

1.4 Are there any standard forms of construction contract that are used on projects involving public works?

The General Conditions outlined in question 1.1 are frequently used in projects involving public works.

1.5 What (if any) legal requirements are there to create a legally binding contract (e.g. in common law jurisdictions, offer, acceptance, consideration and intention to create legal relations are usually required)? Are there any mandatory law requirements which need to be reflected in a construction contract (e.g. provision for adjudication or any need for the contract to be evidenced in writing)?

According to the Swedish Contracts Act, which applies to most forms of contract, no formal action, other than offer and acceptance, is necessary in order to achieve a legally binding contract.

This also applies to construction contracts. Therefore, oral contracts are acceptable. However, it is often strongly recommended to formalise any agreement in writing, since non-formalised agreements create legal uncertainty in the event of a dispute.

It is worth mentioning that a prerequisite for the inclusion of some terms, mainly relating to the delegation of the responsibilities of the building proprietor, is a written agreement.

1.6 In your jurisdiction please identify whether there is a concept of what is known as a "letter of intent", in which an employer can give either a legally binding or non-legally binding indication of willingness either to enter into a contract later or to commit itself to meet certain costs to be incurred by the contractor whether or not a full contract is ever concluded.

There are multiple pre-contractual arrangements, such as a *letter of intent*, which is commonly used between commercial parties in Sweden. These pre-contractual arrangements are also common when negotiating construction contracts. A construction contract is frequently divided into multiple phases, with separate contracts for each phase (commonly referred to as *early contractor collaboration*), which may or may not be subject to an even earlier pre-contractual arrangement. More often than not, liabilities and reimbursements are balanced after the scope of each such arrangement; however, each pre-contractual arrangement's status as legally binding must be determined on an *ad hoc* basis.

1.7 Are there any statutory or standard types of insurance which it would be commonplace or compulsory to have in place when carrying out construction work? For example, is there employer's liability insurance for contractors in respect of death and personal injury, or is there a requirement for the contractor to have contractors' all-risk insurance?

By default in the General Conditions, the contractor is obliged to have both third-party liability insurance covering potential claims for damages, as well as contractors' all-risk insurance covering potential damages on the construction works. Consultants who perform design work according to ABK 09 only need professional indemnity insurance. In addition to the requirements in the General Conditions, a certain standard negotiated between the BKK and the insurance industry – Appendix 1 to AMA AF 12 (the BKK's specification of minimum cover for all-risk insurance and liability insurance for construction projects) – is often referred to in construction contracts as the minimum level of insurance cover. There is also compulsory insurance by law that an employer shall hold in relation to its employees.

The employer is advised to obtain insurance that covers the liabilities ascribed through law to either the developer or the owner of a property, most commonly known as *developer insurance* (Sw. *byggherreansvarsförsäkring*).

1.8 Are there any statutory requirements in relation to construction contracts in terms of: (a) labour (i.e. the legal status of those working on site as employees or as self-employed sub-contractors); (b) tax (payment of income tax of employees); and/or (c) health and safety?

Even though each party has a wide range of statutory requirements to consider when entering into a construction contract, there is no statutory requirement that has to be stipulated directly in the construction contract. Statutory requirements that have to be complied with by each party are:

- Swedish labour law and collective agreements, including rules applicable to foreign employees.
- Swedish laws and other statutes, such as the Building Regulations – Mandatory Provisions and General Recommendations (**BBR**) provided by the National Board of Housing, Building and Planning (Sw. *Boverket*), concerning, *inter alia*, building permits, land use and environmental protection.
- Swedish laws concerning the work environment and other safety requirements.
- Swedish laws concerning reporting to the tax authorities. For example, developers are obliged to supply electronic attendance recorders that register entries to and from the construction sites. Personal information stored through the electronic attendance recorders must be treated in compliance with the General Data Protection Regulation (**GDPR**). At the start of each construction project, the Swedish Tax Agency must be informed.
- As of 1 January 2019, the Act on Contractor Liability for Wage Claims (Sw. *lag om entreprenörsansvar för lönefordringar*). A contractor may be obliged to pay wages to employees of sub-contractors. If an employee working on a construction project has not been paid by the responsible employer/sub-contractor, a corresponding liability arises for the contractor upon notification by the employee. The contractor may present the same objections to wage demands as the responsible employer/sub-contractor. The employer/sub-contractor has an obligation to remunerate the contractor when applicable. The law does not apply if the employer/sub-contractor is bound by a collective agreement that offers the employee equivalent protection.

Even though there are no statutory requirements to do so, the abovementioned responsibilities, such as the responsibility for the working environment and handling of electronic attendance recorders, are often stipulated through the construction contract in order to pass certain statutory responsibilities from the employer to the contractor.

1.9 Are there any codes, regulations and/or other statutory requirements in relation to building and fire safety which apply to construction contracts?

The Work Environment Act (Sw. *arbetsmiljölagen*) contains obligations for, *inter alia*, employers to prevent accidents and illness. Furthermore, the Act stipulates that a person who orders the execution of building or construction works is responsible for the coordination of the work environment. To comply with this obligation, the employer must prepare a work environment plan and appoint a work environment coordinator for the planning/design phase as well as the construction phase. It is common and possible to delegate the obligations. In addition to the above, the Work Environment Act provides that construction works shall be planned and executed with care, in order to make sure that persons or property are not damaged.

AMA AF 12 (the BKK's guidance for the preparation of particular conditions for building and civil engineering works and building services contracts) is often used as a basis for administrative regulations in Swedish construction contracts. According to AMA AF 12, the contractor is to appoint a person responsible for, amongst other things, coordinating fire protection in the workplace.

1.10 Is the employer legally permitted to retain part of the purchase price for the works as a retention to be released either in whole or in part when: (a) the works are substantially complete; and/or (b) any agreed defects liability period is complete?

As provided in AB 04 and ABT 06, the principal rule is that payment shall be made according to an agreed payment plan. In the absence of such a plan, the General Conditions stipulate that the employer may retain 10% of the invoiced amount as security for future costs for the rectification of defects. However, the total retained amount may not exceed 5% of the contract price.

After completion of the works, the employer may retain 5% of the total price until the contractor has rectified any defects that have been listed as such in the final inspection protocol. This right to retain is valid for two (AB 04) or four (ABT 06) months; thereafter the employer may only retain an adequate amount for the rectification of any remaining defects.

The employer may also retain reasonable amounts regarding potential claims for damages and/or liquidated damages that the employer has towards the contractor due to the contract or any other construction contract between the parties.

1.11 Is it permissible/common for there to be performance bonds (provided by banks and others) to guarantee the contractor's performance? Are there any restrictions on the nature of such bonds? Are there any grounds on which a call on such bonds may be restrained (e.g. by interim injunction); and, if so, how often is such relief generally granted in your jurisdiction? Would such bonds typically provide for payment on demand (without pre-condition) or only upon default of the contractor?

It is common to anticipate demands of performance bonds, provided by either banks or insurance companies, as well as private guarantees and sometimes parent bails. Such bonds are often stipulated to cover fulfilment of all of the parties' contractual obligations. The default rule regarding performance bonds in AB 04 and ABT 06 limits said bonds to 10% of the contract price during the total work period (up until the approved final inspection/handover). Regarding the guarantee in favour of the employer, it is reduced to 5% of the contract price during the initial two years of the guarantee period.

1.12 Is it permissible/common for there to be company guarantees provided to guarantee the performance of subsidiary companies? Are there any restrictions on the nature of such guarantees?

It is permissible and common to have company guarantees to guarantee the performance of subsidiary companies. There are no formal restrictions on the nature of such guarantees.

1.13 Is it possible and/or usual for contractors to have retention of title rights in relation to goods and supplies used in the works? Is it permissible for contractors to claim that, until they have been paid, they retain title and the right to remove goods and materials supplied from the site?

The transition of title rights for goods and supplies usually occurs once the employer has paid for them. However, once the goods and supplies have been used in the construction and integrated into the construction works, they are generally seen as added to the real property as property fixtures, and the title deeds thereof belong to the owner of the property.

2 Supervising Construction Contracts

2.1 Is it common for construction contracts to be supervised on behalf of the employer by a third party (e.g. an engineer)? Does any such third party have a duty to act impartially between the contractor and the employer? If so, what is the nature of such duty (e.g. is it absolute or qualified)? What (if any) recourse does a party to a construction contract have in the event that the third party breaches such duty?

Even though it is possible through the General Conditions, it is not common for employers to hire a third party to supervise the contractor's work. If a third party is hired, it has no duty to act impartially. Instead, the General Conditions stipulate that formal inspections need to be made, either partially after the completion of certain works, or after the complete fulfilment of the total works. However, the inspector in such formal inspections must act impartially and take careful account of both parties' interests.

2.2 Are employers free to provide in the contract that they will pay the contractor when they, the employer, have themselves been paid; i.e. can the employer include in the contract what is known as a "pay when paid" clause?

It is possible to stipulate through the contract that payment should be made according to a "pay when paid" clause, but this kind of agreement is rarely used.

2.3 Are the parties free to agree in advance a fixed sum (known as liquidated damages) which will be paid by the contractor to the employer in the event of particular breaches, e.g. liquidated damages for late completion? If such arrangements are permitted, are there any restrictions on what can be agreed? E.g. does the sum to be paid have to be a genuine pre-estimate of loss, or can the contractor be bound to pay a sum which is wholly unrelated to the amount of financial loss likely to be suffered by the employer? Will the courts in your jurisdiction ever look to revise an agreed rate of liquidated damages; and, if so, in what circumstances?

Liquidated damages are permitted and have a certain provision in the General Conditions. A prerequisite for the provision to come into effect is that the liquidated damages are stated in the contract documents. If liquidated damages apply, it is not possible to seek further compensation for damages due to late completion. However, the liquidated damages do not have to be proportionate in relation to the employer's actual damages. Nevertheless, as with any contractual agreement in accordance with the Swedish Contract Act, the damages could be adjusted if deemed unreasonable or, as provided in the General Conditions, if the employer has partially taken the construction in use or has, in any other way, had substantial economic gain despite the late completion.

3 Common Issues on Construction Contracts

3.1 Is the employer entitled to vary the works to be performed under the contract? Is there any limit on that right?

The employer has an almost unlimited possibility to vary the works as long as the alterations are directly connected and not essentially different in nature in relation to what is agreed in the contract.

3.2 Can work be omitted from the contract? If it is omitted, can the employer carry out the omitted work himself or procure a third party to perform it?

Works can be omitted from the contract and there is a certain mechanism for calculating the contractor's right to compensation if the value of the works omitted exceeds the value of the works added. If works are omitted, the contractor holds exclusive rights to perform the omitted contract works, should the employer choose to perform the omitted works while contract works are still ongoing. Therefore, the employer cannot perform the works himself or with the help of a third party. If the employer still performs the omitted works, the contractor has the right to claim for damages for loss of profit thereof. However, these conditions are often altered/customised in the specific contracts.

3.3 Are there terms which will/can be implied into a construction contract (e.g. a fitness for purpose obligation, or duty to act in good faith)?

In the absence of a Swedish statute regulating commercial services in general, and construction works in particular, courts have recently begun to imply and seek guidance in provisions from the Swedish Sales of Goods Act (Sw. *köplagen*) or the Swedish Consumer Services Act (Sw. *konsumenttjänstlagen*) when interpreting construction contracts.

If previous party practice between parties has seen usage of the General Conditions, it is possible that their previous provisions will be considered implied in later contracts where the General Conditions have not been explicitly applied. There is also a discussion as to whether the General Conditions could be regarded as implied solely on grounds such as standard business practice. However, no consensus regarding this has been reached.

3.4 If the contractor is delayed by two concurrent events, one the fault of the contractor and one the fault or risk of the employer, is the contractor entitled to: (a) an extension of time; and/or (b) the costs arising from that concurrent delay?

When there are several reasons for a delay, there is usually a conflict between the employer's right to a penalty charge and the contractor's right to additional time to complete. The General Conditions do not regulate in detail how such a conflict shall be resolved. In the light of the equal distribution of risk stipulated in AB 04/ABT 06, the closest answer to hand is that the responsibility, in a tort law-like manner, is shared equally between the parties. The share of responsibility could, however, vary depending on intent or who is responsible for prior delays.

3.5 Is there a statutory time limit beyond which the parties to a construction contract may no longer bring claims against each other? How long is that period and when does time start to run?

Limits in time depend on the claim in question. If the General Conditions AB 04 or ABT 06 are implied in the contract, all claims relating to the total works must be presented in writing within six months of the approved final inspection. This rule is, however, not applicable regarding the contract price, which instead has a separate time limit of two years.

Claims for liquidated damages due to delay must be presented in writing no later than three months after the expiry of the total works period (normally counted from the date of the approved final inspection).

Other claims for damages, if the damage has become apparent during the time for completion or the guarantee period, must be presented in writing to the other party within three months after the expiry thereof. If the damage has become apparent after the expiry of the guarantee period, the claim must be made within three months after the damage has become apparent.

Claims for damages based on claims from a third party with whom a party has an agreement concerning the total works are subject to the same time limitations as in the paragraph above (three months). If a claim for damages arises from a party other than those previously mentioned, it must be presented within three months from when the claim was received.

For claims not emanating directly from the contract or because of damages, the Swedish Act on Limitation (Sw. *preskriptionslagen*) is applicable. According to the Act, there is a general limitation period of 10 years.

3.6 What is the general approach of the courts in your jurisdiction to contractual time limits to bringing claims under a construction contract and requirements as to the form and substance of notices? Are such provisions generally upheld?

Swedish courts generally adhere to contractual time limits, form requirements and the substance of notices. As discussed in the previous question, time limits and other requirements for bringing claims are included in the General Conditions AB 04 and ABT 06, which are implied in most construction contracts.

3.7 Which party usually bears the risk of unforeseen ground conditions under construction contracts in your jurisdiction?

The contractor bears the risk for circumstances and conditions that reasonably could have been anticipated in a professional assessment (Sw. *fackmässig bedömning*) of the site and the tender documents during the tender period. The employer bears the risk for unforeseen ground conditions, unless otherwise stated in the contract.

3.8 Which party usually bears the risk of a change in law affecting the completion of the works under construction contracts in your jurisdiction?

Unless otherwise stated in the contract, the General Conditions provide that the employer bears the risk for a change in law, unless the contractor could or should have foreseen such change of law during the tender process.

3.9 Which party usually owns the intellectual property in relation to the design and operation of the property?

The main rule for all intellectual property emanates from the Swedish Act on Copyright in Literary and Artistic Works (Sw. *lag om upphovsrätt till litterära och konstnärliga verk*) and grants the creator all rights to the creation, unless otherwise agreed. However, the General Conditions contain specific rules concerning the passing of such rights.

Depending on how the works are procured, different agreed documents might be used. According to ABK 09, the employer is granted the right to use and copy any presented material within the scope of the consulting agreement.

According to ABT 06, the right to use intellectual property in relation to the design and operation is granted to whomever owns or uses the result of the works.

3.10 Is the contractor ever entitled to suspend works?

If a contractor has the right to terminate a contract according to AB 04 or ABT 06, it might in some cases be entitled to choose to suspend the works for up to one month instead. During this time, the contractor shall communicate whether it will resume the works or terminate the contract.

3.11 Are there any grounds which automatically or usually entitle a party to terminate the contract? Are there any legal requirements as to how the terminating party's grounds for termination must be set out (e.g. in a termination notice)?

Swedish contract law generally permits the legal ground to terminate a contract if any of the parties commits a fundamental or substantial breach of contract.

Furthermore, AB 04 and ABT 06 stipulate 11 specific grounds for the employer and nine specific grounds for the contractor, according to which the contract can be terminated. These usually emanate from a lack of fulfilment of the parties' obligations according to the construction contract, but also the occurrence of other significant inconveniences, such as bankruptcy or *force majeure*-like incidents.

3.12 Do construction contracts in your jurisdiction commonly provide that the employer can terminate at any time and for any reason? If so, would an employer exercising that right need to pay the contractor's profit on the part of the works that remains unperformed as at termination?

As stated at question 3.1, the employer has an almost unlimited possibility to vary the works, including to deduct/cancel works. If the value of deducted works exceeds the value of added works, the contractor shall be compensated with 10% of the difference. If the difference between the value of works added and works deducted exceeds 20% of the contract price, the contractor shall also receive compensation for loss of profit relating to the part of the difference in excess of 20% of the contract price. Among practitioners, it is generally disputed whether an employer may use this *alteration right* with the described compensation model in order to cancel all of the remaining contract works and then hire another contractor in order to complete the same works.

3.13 Is the concept of *force majeure* or frustration known in your jurisdiction? What remedy does this give the affected party? Is it usual/possible to argue successfully that a contract which has become uneconomic is grounds for a claim for *force majeure*?

Force majeure generally refers to hindrance due to unforeseen and exceptional events. Throughout the General Conditions, said circumstances could allow the contractor to extend the contract period, and in some rare cases even constitute a right for the parties to terminate the contract.

3.14 Is there any legislation or court ruling that has been specifically enacted or handed down to provide relief to parties to a construction contract for delay, disruption and/or financial loss caused by the COVID-19 pandemic? If so, what remedies are available under such legislation/court ruling and are they subject to any conditions? Are there any other remedies (statutory or otherwise) that may be available to parties whose construction contracts have been affected by the COVID-19 pandemic?

The General Conditions AB 04 and ABT 06 contain provisions that may grant contractors certain reliefs with regard to the pandemic. A contractor is entitled to a *necessary* extension of the contract period if he is prevented from completing the contract works due to, for example, an epidemic or a decision by an authority resulting in a limitation of the supply of labour. Furthermore, it is possible to adjust (raise) already-agreed prices for materials, due to increased commodity prices, according to AB 04 and ABT 06.

3.15 Are parties, who are not parties to the contract, entitled to claim the benefit of any contractual right which is made for their benefit? E.g. is the second or subsequent owner of a building able to claim against the contractor pursuant to the original construction contracts in relation to defects in the building?

The agreed documents do not contain a right for third parties to claim benefits of the contract. When occurring, such rights are specifically stipulated in each contract. Furthermore, if stipulated in the contract, it is possible for a third party to obtain such benefits by a transfer of the contract.

3.16 On construction and engineering projects in your jurisdiction, how common is the use of direct agreements or collateral warranties (i.e. agreements between the contractor and parties other than the employer with an interest in the project, e.g. funders, other stakeholders, and forward purchasers)?

These types of alternative arrangement, for example so-called *forward purchase* or *forward funding*, are rapidly increasing, most likely because traditional bank debt financing of development projects has become more restrictive. However, we rarely see direct agreements between the appointed contractor and stakeholders other than the employer. So-called *step-in rights* and transfer of guarantees (or extended guarantees to a third party/other stakeholder) are consequently sometimes incorporated into construction contracts.

3.17 Can one party (P1) to a construction contract, who owes money to the other (P2), set off against the sums due to P2 the sums P2 owes to P1? Are there any limits on the rights of set-off?

There is a general right in Sweden to set off debts and claims between two parties as long as the debt or claims are due for payment, which can be described as occurring through the scenarios below:

1) P1 has a claim with P2, and P2 has a claim with P1;
2) P1 has a debt to P2, and P2 has a debt to P1;
3) P1 has a claim with P2, but also a debt to P2; and
4) P2 has a claim with P1, but also a debt to P1.

Furthermore, the General Conditions withhold a right for the parties to set off debts caused within the construction contract, such as liquidated damages against costs and/or damages. This obligation applies regardless of the time limits stated above.

3.18 Do parties to construction contracts owe a duty of care to each other either in contract or under any other legal doctrine? If the duty of care is extra-contractual, can such duty exist concurrently with any contractual obligations and liabilities?

The preface to the General Conditions refers to a common duty of care and states that the parties are obliged to show each other trust and openness.

Furthermore, in the case that the price is based on the *prime cost* principle, the contractor has an explicit duty to perform the works rationally and in such a manner that the employer obtains the best possible technical and financial results.

3.19 Where the terms of a construction contract are ambiguous, are there rules which will settle how that ambiguity is interpreted?

In the event of ambiguity or discrepancy, the General Conditions contain a rule of priority, stipulating that a contract document with higher priority shall prevail over a contract document with lower priority.

If the ambiguity occurs in the same document that has also been part of the tender documents, the ambiguity shall be interpreted in favour of the least expensive alternative for the contractor.

3.20 Are there any terms which, if included in a construction contract, would be unenforceable?

There are no terms in a construction contract which are unenforceable *per se*. Even so, the Swedish Contracts Act stipulates formal grounds on which a contract can be deemed unenforceable. It is also possible to assess the fairness of specific terms on a case-by-case basis.

3.21 Where the construction contract involves an element of design and/or the contract is one for design only, are the designer's obligations absolute or are there limits on the extent of his liability? In particular, does the designer have to give an absolute guarantee in respect of his work?

ABK 09 is normally implied in "design only contracts" between an employer and a designer. While ABK 09 stipulates no strict responsibility for errors *per se*, the designer is liable for errors arising from negligence. There is, however, a limitation of the liability, calculated at 120 times the Swedish price base amount (1 × price base amount = SEK 47,600 for 2021).

Regarding *design and build contracts*, on the other hand, it is more common to imply ABT 06, which stipulates a strict responsibility for the contractor to achieve an agreed function. Moreover, the contractor has a strict responsibility to rectify errors; a responsibility that sees increasing limitations during the guarantee and liability periods. Lastly, the contractor has a strict liability to reimburse the employer for damages resulting from errors. This liability is, however, limited to 15% of the contract work's value regarding some damages that are not covered by the contractor's insurance.

3.22 Does the concept of decennial liability apply in your jurisdiction? If so, what is the nature of such liability and what is the scope of its application?

The concept of decennial liability, as it is understood in the French Civil Code, is not a statutory demand in Sweden. On 1 June 2014, the Act on Insurance for Construction Defects (Sw. *lag om byggfelsförsäkring*), which stipulated mandatory insurance for contractors erecting residential houses for consumers, with a scope similar to decennial liability, was suspended. However, it is worth mentioning that the Consumer Services Act (Sw. *konsumenttjänstlagen*) as well as the General Conditions AB 04 and ABT 06 stipulate a relatively far-reaching liability for defects arising during 10 years counting from the handover/completion. In contrast to decennial liability, this liability is neither strict in all situations nor connected to certain types of defect.

4 Dispute Resolution

4.1 How are construction disputes generally resolved?

If the General Conditions AB 04 or ABT 06 are applicable, claims under 150 times the Swedish price base amount (see question 3.21 above) shall be settled by court proceedings. If the claim exceeds said amount, the dispute will be resolved through arbitration instead. In ABK 09, disputes are, by default, always settled in public court proceedings.

4.2 Do you have adjudication processes in your jurisdiction (whether statutory or otherwise) or any other forms of interim dispute resolution (e.g. a dispute review board)? If so, please describe the general procedures.

The General Conditions all provide the possibility for the use of simplified dispute resolution, using only a single arbitrator.

In order to call upon simplified dispute resolution, the parties jointly appoint an impartial arbitrator. The process is in writing and each party is supposed to clarify its respective attitudes, claims and arguments in a specific matter of dispute. If necessary, the arbitrator may call for a hearing of the parties. Otherwise, the parties have to respond to each party's written clarification. The arbitrator thereafter has four weeks to present a ruling, which is legally binding between the parties unless a notice of exception is submitted by either party.

4.3 Do the construction contracts in your jurisdiction commonly have arbitration clauses? If so, please explain how, in general terms, arbitration works in your jurisdiction.

Yes; as stated above, the agreed documents contain arbitration clauses as a standard. When invoked according to the construction contract, the arbitration is regulated through the Swedish Arbitration Act (Sw. *lag om skiljeförfarande*) and may therefore differ in procedure from one dispute to another.

Most commonly, arbitration in these respects consists of multiple written pleas, ending after an oral hearing.

4.4 Where the contract provides for international arbitration, do your jurisdiction's courts recognise and enforce international arbitration awards? Please advise of any obstacles (legal or practical) to enforcement.

Sweden has ratified the New York Convention of 1958 and has not made any reservations as to the recognition and enforcement of international arbitration awards. Enforcement can be sought by applying to the Svea Court of Appeal in Stockholm.

Obstacles to enforcement could, for example, be if the parties did not have legal authority to commit to an arbitration clause, or if the parties were not duly represented. Further examples of obstacles include if the arbitration award could be deemed invalid or not created through due process.

4.5 Where a contract provides for court proceedings in your jurisdiction, please outline the process adopted, any rights of appeal and a general assessment of how long proceedings are likely to take to arrive at: (a) a decision by the court of first jurisdiction; and (b) a decision by the final court of appeal.

The Swedish court order starts with the District Courts as the first instance. Decisions from a District Court can be appealed to the Court of Appeal, if leave for such appeal is granted. The last instance is the Supreme Court, which can be appealed to after the Court of Appeal. Note that only about 2% of all appeals in this instance are granted a leave of appeal.

The time for proceedings in each court will vary depending on the complexity and magnitude of each litigation and could stretch between one and two years per instance.

4.6 Where the contract provides for court proceedings in a foreign country, will the judgment of that foreign court be upheld and enforced in your jurisdiction? If the answer depends on the foreign country in question, are there any foreign countries in respect of which enforcement is more straightforward (whether as a result of international treaties or otherwise)?

Foreign judgments will be upheld by Swedish courts after application and in accordance with international multi- and bilateral conventions and agreements and European Union (**EU**) regulations. Judgments from EU or European Free Trade Association (**EFTA**) jurisdictions are arguably the easiest to enforce.

Ola Ihse has 20 years of judicial experience. He joined AG Advokat as a partner in 2013 and focuses his practice on real estate development projects, construction law and real estate matters. He has extensive experience of complicated construction projects, including building permits, zoning, development agreements and dispute resolution relating to such matters.
Prior to joining AG Advokat, Ola worked at other leading Swedish law firms and as an in-house lawyer at Sweden's largest real estate company. Ola holds an LL.M. from Uppsala University and has experience working in the Stockholm District Court (2004–2005). He became a member of the Swedish Bar in 2012. For further information, please visit https://www.agadvokat.se/en/our-people/ola-ihse.

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