

# General Conditions for Product Development Consulting Assignments – ABP 12

Published by the Swedish Federation of Consulting Engineers and Architects  
(Svenska Teknik&Designföretagen) 2012 (Version 2)

These General Conditions for Product Development Consulting Assignments (ABP 12) have been drafted by the Swedish Federation of Consulting Engineers and Architects. ABP 12 is intended to be used in consulting assignments in which the main scope of the assignment is product development.

## 1 Scope of Application

- 1.1 These general conditions shall apply where the parties have in writing or otherwise agreed thereon. In the event the parties wish to deviate from the conditions herein, such deviations must be set out in writing in order to be valid between the parties.

## 2 Definitions

- 2.1 The following terms shall have the meanings set out below unless the circumstances or context clearly indicate otherwise.

Client

Purchaser of the Assignment.

Budget

An estimate of the costs for performing the Consultant's Assignment. A budget is not binding.

Actual Delivery Date

The day on which the Consultant has actually delivered the Result to the Client.

Tender Documents

Documents the Client delivers to the Consultant for the preparation of a tender. Such documents may include, for example, Technical Specifications, a preliminary time schedule and Test Specifications.

Construction Drawings

Drawings and/or other construction documents regarding the Product or Product Prototypes.

Consultant

The contractor.

Delivery Date

The contracted date for delivery of the Result.

Zero series (0 series)

The final Product Prototype with the objective to be used in tests.

The Product

The Product(s) that the Consultant is to develop in the Assignment.

Project Plan

Plan regarding how the Assignment is to be carried out including a time schedule with, for example, checkpoints, decision and meeting dates.

Prototype

A sample or model of the Product.

The Result

The final result of the completed Assignment. The Result can consist of the Product, Prototypes, Zero series and/or Construction Drawings together with other contracted technical documentation, or other contracted Result.

Technical Specifications

A detailed description of the Product the Consultant is to develop during the Assignment, containing for example, performance and/or functional requirements. The description can encompass all or a part of a development stage.

Test Specifications

Specification as to those tests that will be performed by the Client with respect to the Result or Prototypes, describing the test methods and parameters for acceptance on the basis of those criteria stemming from the Technical Specifications.

Non-performing Time

Time when the Consultant works for the Client without actually performing the Assignment; for example, when the Consultant, for reasons not due to the Consultant, has to wait at the Client's premises in order to gain access to the Client's equipment.

The Assignment

All the services to be performed pursuant to the agreement between the parties.

Modifications

Modifications as to the scope of the Assignment through additions or amendments to the Technical Specifications and/or the Project Plan.

## 3 Scope of the Assignment

- 3.1 The scope of the Assignment is determined by the contract documents. In the event the contract documents contain contradictory information, the documents shall apply in the following order, unless otherwise agreed:
- Contract
  - Assignment confirmation
  - Order
  - Tender
  - Tender Documents
  - ABP 12
  - Other documents.
- 3.2 The Consultant shall draft the Project Plan pursuant to Section 5 below, unless otherwise agreed, on the basis of the Technical Specifications designated by the Client and the preliminary time schedule. The Project Plan shall be approved by the Purchaser.

3.3 The Consultant shall, if so agreed, develop a manufacturing method for the Product. It is the responsibility of the Client to inform the Consultant of the Client's existing production methods, machines and other circumstances of importance to the Client in the development of a manufacturing method.

3.4 The Consultant shall, if so agreed, draft construction drawings for those tools that are necessary for the production of the Product.

3.5 The Consultant's Assignment includes drafting the technical documentation of the Result. It is the responsibility of the Client to provide instructions to the Consultant as to which Product information is to be included in the documentation.

## 4 Execution and Organisation

4.1 The Consultant shall comply with the Technical Specifications and the Project Plan in the execution of the Assignment. The Consultant shall carry out the Assignment professionally and with care.

4.2 The Parties shall consult and cooperate in the execution of the Assignment.

4.3 Each Party shall designate a contact person or contact persons for the Assignment. Such person(s) shall be entitled to represent the Parties with binding effect in financial and other issues related to the Assignment.

4.4 The Consultant has the right use sub-contractors. The Consultant is as liable for the work of any sub-contractors as for his own.

## 5 Project Plan

5.1 The Project Plan shall, unless otherwise agreed, state the checkpoint and decision dates.

5.2 It is the responsibility of the Client to ensure that the Consultant can adhere to the dates specified in the Project Plan by providing information and answers to the Consultant to the extent necessary and within reasonable time.

5.3 The Parties shall without delay inform the other Party in writing of any circumstance that may result in an extension of the times specified in the Project Plan. Based on such information, the Consultant shall submit proposals to modifications of the Project Plan within a reasonable time. In the event a Party fails to provide such information, that Party cannot invoke that circumstance unless the other Party realised or should have realised that this circumstance affect the time schedule.

5.4 The Consultant is entitled to an extension of time in the event the Consultant has been delayed due to circumstances that he did not cause nor reasonably could have avoided.

## 6 Modifications of the Assignment

6.1 If the Client wishes to modify the scope of the Assignment, the Technical Specifications and/or the Project Plan, the Client shall make any such request in writing to the Consultant. The Consultant may not refuse the Client's request, unless the Consultant can show reasonable grounds for such a refusal. Reasonable grounds include the Consultant lacking the skills or resources to carry out the Modifications.

6.2 If the Client requests a Modification to the Assignment pursuant to section 6.1, the Consultant is entitled to an extension of time and the right to adjusted remuneration pursuant to section 7.6 and costs pursuant to section 7.1.

## 7 Remuneration

7.1 The Consultant's remuneration consists of fees and compensation for travelling time, Non-performing Time and compensation for expenses as follows, unless otherwise agreed:

- a) Travel and per diem expenses
- b) Accommodation
- c) Model and/or prototype production
- d) Material purchases
- e) Other costs specified in the agreement.

An administrative surcharge shall be invoiced at ten per cent on incurred and verified expenses as above, unless otherwise agreed.

7.2 Unless otherwise agreed, the Consultant's fees are hourly.

7.3 The Parties may also agree on a fixed fee or other form of fee, such as an incentive-based fee and/or bonus.

7.4 In the case of hourly fees, the fees are paid for time spent and at the agreed hourly rate. It is the responsibility of the Consultant in the case of an agreed hourly fee to present a Budget in connection with the preparation of the Project Plan. The Consultant shall without delay notify the Client if there is a risk that the Budget cannot be kept for any reason.

7.5 In the case of a fixed fee, the agreed remuneration shall be paid for the Assignment.

7.6 The Consultant is entitled to an adjusted fee in the event of Modifications of the Assignment, Technical Specifications and/or the Project Plan pursuant to section 6.1.

7.7 When adjusting the fixed or hourly fees pursuant to section 7.6, the Parties shall apply the agreed hourly rates unless otherwise agreed. In the event that an agreement on the hourly rates has not been concluded, remuneration shall, unless otherwise agreed, be paid as per the Consultant's current price list for the services, provided that the fees are reasonable.

7.8 Unless otherwise agreed, the Consultant is entitled to an annual index regulation of the agreed fixed and/or hourly fee according to the Factor Price Index for consulting services, K84.

7.9 The Consultant is entitled to remuneration for overtime work ordered by the Client, unless otherwise agreed. For overtime work performed outside of normal working hours, but after 06:00 and before 20:00 on non-holiday weekdays, the agreed hourly rate as multiplied by a factor of 1.5 will be charged. Overtime work performed at other times will be charged at the agreed hourly rate multiplied by a factor of 2.0. In the case of a fixed fee, in the event that an agreement on an hourly rate has not been reached, remuneration will be paid as per the Consultant's current price list for the services concerned provided that the fees are reasonable, and otherwise in accordance with that which is herein stated.

7.10 The Consultant has, in addition to the above stated remuneration, the right to compensation for statutory Value-Added-Tax.

## 8 Payment

8.1 Payment is to be made pursuant to the payment plan agreed upon between the parties. In the event a payment plan has not been agreed upon, the Consultant has the right to receive payment once a month for work performed and presented and for costs incurred.

8.2 Payment shall be made against invoice, no later than thirty days from the invoice date.

- 8.3 In the case of late payment by the Client, the Client shall pay interest at the current reference rate as set by the Swedish Central Bank plus eight percentage points until full payment has been made.
- 8.4 The Consultant shall be entitled to cancel the Assignment in the event the Client is delayed with payment and payment has not been made within fourteen days after a written demand.
- 8.5 In the case of hourly fees, reporting of the work performed shall take place monthly and the Consultant shall specify the nature and scope of the work performed during the period of time the report concerns, including incurred expenses and the total billed fees for the Assignment. The number of hours worked and the hourly rate applicable for those persons involved in the Assignment shall also be stated.

## 9 Information

- 9.1 The Client shall provide those documents and information that the Consultant needs to carry out the Assignment. The Client is responsible for ensuring that such information is correct.
- 9.2 The Client shall provide written information about third-party software or other components (such as circuit boards or electronics) to be used in the Assignment and/or the Result and, where relevant, specify the supplier. The Client shall have all the rights to such software and/or components necessary for the execution of the Assignment.
- 9.3 The Parties shall keep each other informed of circumstances that may be of importance to the Project Plan, Technical Specifications or otherwise to the Assignment.
- 9.4 The Client's approval of modifications to the Technical Specifications does not discharge the Consultant from liability. The Consultant is discharged from liability, however, in the event the Consultant provides information regarding a particular risk with a specific proposed solution and the Client approves that solution.

## 10 Meetings

- 10.1 Status-meetings shall be held as often as agreed and shall be documented in writing. Each Party is responsible for ensuring that authorised persons participate in such meetings.
- 10.2 Unless otherwise agreed, the Parties shall discuss issues related to the project status and the possible coordination of the project with other projects at the status-meeting. When necessary, the parties shall also discuss issues related to modifications of the Project Plan and/or Technical Specifications, the fees incurred to date for the Assignment and modifications to the Budget.
- 10.3 The requirement of documented "in writing" is fulfilled between the parties by notes in the minutes of the meeting.

## 11 Rights to Use

- 11.1 The Consultant owns and retains all intellectual property rights, such as copyright, design protection and/or other intellectual property rights to the Result of the Assignment, including but not limited to computer programs, texts, models, construction drawings and/or Prototypes.
- 11.2 The Client receives a non-exclusive right, unlimited in time, to use the Result of the Assignment for the agreed purpose. The Client thereby has the right, for the agreed purpose, to freely transfer or assign this right to use to

any other party, and in his utilisation to modify, change or reproduce the Result.

- 11.3 As regards third-party rights to the software and/or other components included in the Result and/or Product, section 9.2 above shall apply.
- 11.4 The Consultant cannot be held liable for infringement of third-party rights to the Result delivered by the Consultant, unless the Consultant has been grossly negligent. It is not incumbent on the Consultant to perform an audit of existing patents or other rights unless the Parties specifically agree to this.
- 11.5 In the event a claim is brought against the Client for the infringement of third-party rights within the Result of the Assignment, it is incumbent on the Consultant on request to assist in return for reasonable remuneration in the defence of the Client. In the event an infringement has occurred due to gross negligence or intent on the part of the Consultant, he shall pay the Client for the costs associated with the claim and for such compensation that the Client must pay to the third party. The Consultant thereby has the sole right to decide as to the defence against such an action, and to negotiate for settlement or conciliation.
- 11.6 The Consultant is only liable pursuant to section 11.5 above if the Client within reasonable time notifies the Consultant of such claims in writing.
- 11.7 In the event an invention is made essentially as a result of the Assignment, the Client has the right to enter as the rights holder provided that the Consultant was given the Assignment under the Parties' agreement to develop a technical solution and the invention is a result of the Assignment. It is the responsibility of the Consultant to notify the Client without delay when such an invention has been made. It is the responsibility of the Client to without delay, and no later than three months after receipt of such notice, state whether the Client intends to exercise this right. The Parties shall thereby without delay consult with one other concerning safeguarding against the disclosure of the invention to third parties.
- 11.8 The Consultant owns all rights to inventions that have been made in connection with the Assignment other than those referred to in section 11.7 above.
- 11.9 The Client is entitled to freely use rights to the invention referred to in section 11.7 above. Unless otherwise agreed, the Client is entitled to freely use the rights to the invention referred to in section 11.8 above for agreed reasonable remuneration. The right to use referred to in this section 11.9 includes the right to modify, change, reproduce, grant the use of and assign the right to use.
- 11.10 Whether an invention has been made pursuant to sections 11.7 or 11.8 above, the Client shall pay the Consultant such reasonable remuneration that the Consultant may have to pay by reason of law or collective agreements to those employee(s) or contractors that have developed the invention, provided that the Client, with respect to the invention that has been made pursuant to section 11.8 above, chose to avail himself of the right to use the invention.

## 12 Delivery and Delays in Delivery

- 12.1 Delivery of the Result and other partial deliveries during the execution of the Assignment shall take place in accordance with the dates set out in the Project Plan.
- 12.2 The risk for the Result is transferred to the Client on delivery. Delivery is ex-works Client's premises in Sweden, unless otherwise agreed.

- 12.3 The Assignment is completed on the Actual Delivery Date.
- 12.4 A delay occurs in the event the Actual Delivery Date occurs after the Delivery Date, unless otherwise agreed.
- 12.5 The Consultant is entitled to an extension of time in the event he is delayed due to circumstances as stated in section 6.2, or due to circumstances for which others are responsible.
- 12.6 The Client has the right to damages for any delay for which the Consultant is responsible. The Consultant shall not be liable for indirect damage or loss, such as loss of profits or loss of information, unless caused by the Consultant's gross negligence or intent. In the case of a fixed fee, the Consultant's total liability for damages is limited to ten per cent of the fixed project fee. In the case of hourly fees, the Consultant's total liability for damages is limited to ten per cent of the agreed Budget for the Assignment.
- 12.7 In order to avoid being barred from making a claim, the Client shall make any claim for damages due to delay in writing at the latest three months after the day the Assignment is completed or otherwise terminated.

### 13 Testing and Acceptance

- 13.1 If agreed upon, the Consultant shall draft a Test Specification showing how the Result or partial delivery of the Result is to be tested, as well as other criteria as to acceptance, such as the margin of error that may occur when testing a certain number of Products. The Test Specifications shall be approved by the Purchaser.
- 13.2 It is the responsibility of the Client to perform the tests as specified in the Test Specifications within a reasonable time after the delivery or partial delivery of the Result. The Consultant shall be entitled to participate in such tests.
- 13.3 The result of the test shall be communicated to the Consultant in writing within one month from the Actual Delivery Date.
- 13.4 If the Consultant does not have the task of developing Test Specifications, the Client shall examine whether the Result or partial delivery of Result meets the requirements in the Technical Specifications on the basis of his own test as to acceptance. The Consultant shall approve in advance the Client's acceptance test and be given the opportunity to participate in such a test.
- 13.5 When the test result meets the conditions in the Test Specifications, delivery is approved. In the event the Client deems deviations to exist, this shall be communicated in writing and without delay to the Consultant.
- 13.6 The cost of the test shall be borne by the Client.
- 13.7 In the event the Client fails to communicate the result of the test in writing within one month from the Actual Delivery Date, the Result or partial delivery of Result will be deemed to have been approved.

### 14 Liability for Defects

- 14.1 Defect refers to a deviation from the Technical Specifications to the extent that the deviation is not insignificant.
- 14.2 The Consultant's liability for defects pursuant to section 14.1 above does not include
- a) Defect(s) in third-party software or other components or defects caused by third-party information as to such products, or

- b) defect(s) that are caused by information supplied by the Client by reason of this Assignment, or
- c) defect(s) caused by the Client, such as changes or interference regarding the Result, or the Client's incorrect use of the Result.

- 14.3 The Consultant has both the right and the obligation to rectify any defect(s) for which the Consultant is responsible. The defect(s) shall be rectified without cost to the Client if the Consultant has received remuneration for the improperly executed work. The responsibility to rectify defect(s) is incumbent on the Consultant only if notice of the defect(s) is given within one year from the date the Assignment was completed or otherwise terminated.

### 15 Liability for Damages

- 15.1 Subject to the limitations below, the Consultant is liable for damages caused to the Client due to negligence in the Consultant's execution of the Assignment.
- 15.2 The Consultant's total liability shall be limited to the fee for the Assignment, but with a maximum of 120 statutory price base amounts, unless otherwise agreed. The Consultant shall not be liable for indirect damage or loss, such as loss of profits or loss of information.
- 15.3 In order to avoid being barred from bringing a claim for damages, the Client shall make any claim for compensation for damages in writing at the latest three months after the Client discovered or should have discovered the damage, but no later than one year from the date the Assignment was completed or otherwise terminated.

### 16 Termination of the Assignment

- 16.1 The Client is entitled to terminate the agreement in respect of non-performed segments without needing to state any reason.
- 16.2 The Consultant is thereby entitled to remuneration for the executed Assignment, reasonable costs for winding up, incurred and verified costs pursuant to the agreement as well as loss of reasonable profit for such part of the Assignment that is not executed.
- 16.3 In the case of cancellation pursuant to section 16.1, the Consultant shall deliver the Result of work performed to the Client at the latest when the Client has completed his payment obligation.
- 16.4 The agreement can also be terminated with immediate effect as follows:
- a) In the event the other party has materially breached the commitments that follow from the agreement, and has not remedied the situation within thirty days after written request thereof with reference to this section 16.4.
  - b) In the event the other party is declared bankrupt, initiates debt renegotiations or is otherwise insolvent.
- 16.5 A notice of termination must be in writing in order to be valid.
- 16.6 In the event the Consultant terminates the contract on the basis of section 16.4(a) or (b), the Consultant is entitled to remuneration for work performed, reasonable costs for winding up, incurred and verified costs under the agreement as well as for loss of reasonable profit for such part of the Assignment that is not executed.
- 16.7 In the event the Client terminates the contract on the basis of section 16.4(a) or (b), the Consultant is entitled to remuneration equivalent to the value of the Result of the work.

- 16.8 In the case of termination pursuant to section 16.4, the Consultant shall submit the Result of work already completed to the Client, provided that payment is made pursuant to this section 16.

## **17 Insurance**

- 17.1 The Consultant shall hold the required professional indemnity insurance equal at least to the amount of liability arising from these general terms. At the request of the Client, the Consultant shall demonstrate that such professional indemnity insurance exists.

## **18 Force Majeure**

- 18.1 In the event a party is prevented from fulfilling its obligations under this agreement due to circumstances beyond the party's control, such as labour disputes, amended government regulations, government interventions, lightning, fire or defects or delays in service from the subcontractor or from a supplier as designated by the Client due to circumstances as herein specified, this shall constitute grounds for release that allow postponement of the date for completion of the Assignment and relief from damages and other penalties on account of such a delay. In the event the performance of the Assignment to substantial parts is delayed for longer than three months as a result of such circumstances as herein provided, a party has the right to terminate the contract in writing with immediate effect. Upon such termination, the Consultant is entitled to remuneration for work performed, reasonable costs for winding up, as well as incurred and verified costs pursuant to the agreement. Once payment has been made, the Client is entitled to the Result of the work completed to date.

## **19 Confidentiality**

- 19.1 During the execution of the Assignment and for a period of one year thereafter, each party undertakes not to divulge any information to third parties about the other party which may be considered as a business secret without the other Party's written consent. This is always the case with respect to information that a Party has specified as confidential.
- 19.2 Confidentiality does not apply to such information that a party can prove has become known to that party in ways other than through the Assignment, or information that is generally known. Nor does confidentiality apply when information is given to third parties who need the information to execute the Assignment or when a party is required by law or stock exchange regulations to disclose certain information.

## **20 Assignment**

- 20.1 The agreement between the parties may not be assigned to another party without the other party's consent.
- 20.2 However, the Consultant shall have the right to assign the right to receive payment on account of the Assignment without the Client's consent.

## **21 Governing Law and Dispute Resolution**

- 21.1 Swedish law shall apply to these general conditions.
- 21.2 Disputes shall be settled by a general court, unless the parties agree otherwise.
- 21.3 However, the Consultant shall always be entitled to apply to an authority for the payment of undisputed and past due claims regarding the Assignment.