



Consultancy Agreement of The Swedish Association of Electronics Industries

ELK 98

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1. Introduction and application

1.1 The Swedish Association of Electronics Industries is a trade organization for small and medium-sized electronics companies in Sweden which are engaged in business primarily involving development, design and manufacture of electronic equipment.

1.2 For the purpose of obtaining quality assurance in agreements both for members of The Swedish Association of Electronics Industries and for other consultants in the industry (hereinafter the Consultant) and for their customers (hereinafter the Client) these terms shall apply to assignments related to the development and design of electronic equipment (hereinafter the Solution) when the parties have agreed on this.

1.3 Departures from these terms must be agreed in writing in order to be valid.

1.4 A separate agreement exists for delivery of electronic equipment (EL 98).

2. Basis of order

2.1 Before the performance of the assignment the Client shall present the Consultant with a written Description of the Assignment which shall include all the requirements and functions which the Client expects of the Solution and state the type and scope of the documentation which the Consultant is to present.

2.2 The Consultant shall accept the Description of the Assignment before work begins. If the Consultant does not accept the Description of the Assignment and the parties are unable to agree on a Description of the Assignment the parties are no longer bound by quotations and acceptances given. The Consultant is in such cases entitled to payment for work done.

2.3 It is the duty of the Client during the development and designing of the Solution to assist to the extent required and to supply necessary information within such a time that the schedule under Clause 4.1 can be adhered to.

3. Performance of the assignment

3.1 The Consultant shall develop and design the Solution in

such a way that it complies with the Description of the Assignment. The Consultant shall also ensure that the assignment is carried out in a professional manner in accordance with sound trade practice.

3.2 The Consultant has a duty if requested by the Client to assist in providing information and training concerning the Solution. For this the Consultant is entitled to separate remuneration.

3.3 Should the Consultant intend to engage other consultants as advisers or to perform a certain part of the assignment the Client shall be informed of this unless the duties involved are of a routine nature or of minor importance.

3.4 The Client is not entitled without the written consent of the Consultant to order additions or adjustments to the Solution from a third party.

3.5 The Consultant shall notify the Client if it is necessary to carry out work which is not included in the Description of the Assignment but which is necessary to the development and design of the Solution. The Client shall approve such work in writing before it is begun.

4. Schedule

4.1 Before work begins, the parties shall in consultation agree in writing on a schedule which will state the final date for Delivery for Approval and the Agreed Date of Delivery of the Solution. Unless otherwise agreed in writing approval shall be considered to have been given thirty (30) days after delivery of the Solution, unless the Client has previously presented written objections to the Solution delivered.

4.2 The Consultant shall carry out the assignment in accordance with the schedule.

4.3 The Client shall supply information necessary for the performance of the assignment, inspect documents and report the result of the inspection in order to enable the agreed schedule to be adhered to by the Consultant.

4.4 The Consultant is entitled to an extension of time if he is delayed in or prevented from completing the assignment by circumstances which he has not caused by error or omission and which he has been unable to anticipate. The Consultant shall notify the Client without delay on learning of circumstances which may lead to more substantial adjustment of the schedule and also

calculate and state the required extension of time.

4.5 The Consultant is entitled to payment from the Client for those costs which he incurs as a result of the extension of time provided that the extension of time is due to the Client or to circumstances for which the Client is responsible or to a supplier or product which the Client has instructed the Consultant to use.

5. **Delivery and Client's Approval**

5.1 The Consultant shall deliver the solution not later than on the date of Delivery for Approval stated in the schedule. The Client shall then carry out an inspection at which the Consultant has a right to be present. Delivery shall be free ex-works at the premises of the Consultant (Incoterms 1994).

5.2 The Solution shall be considered approved if it satisfies the requirements at the Inspection of the Assignment (Effective Date of Delivery). The Solution shall satisfy the requirements in the Description of the Assignment not later than the Agreed Date of Delivery in accordance with the schedule. When these requirements are satisfied the Client shall notify approval of delivery. Non-conformance with the Description of the Assignment which is of no relevance to the use of the Solution or is otherwise to be regarded as minor non-conformance shall not affect the consideration of whether delivery has taken place on time.

5.3 Should the parties have agreed on a particular period within which delivery is to take place, instead of a fixed delivery date, this period shall run from the date of signing the agreement.

5.4 The period for delivery shall be extended by as much as is reasonable with regard to all the circumstances if after the time of approving the Description of the Assignment the Client desires adjustments or additions to the Solution.

5.5 Should the Consultant find that he cannot deliver within the agreed time he shall notify the Client of this as soon as possible and in this connection also state the reason for the delay and a new delivery date.

6. **Defects in the Solution**

6.1 Should the Solution not satisfy the requirements of the Description of the Assignment on the date of delivery the Consultant shall rectify the defect. Should rectification of the defect prove technically impracticable or particularly costly the Consultant is entitled instead to return payment received. The Consultant is entitled in such cases to credit himself as a deduction from the payment returned with the value which has been obtained by the Client. In such cases the Client is not entitled to damages under the conditions below.

7. **Liability**

7.1 The Consultant is liable - with the reservations set out below - for loss which he has caused the Client as a result of defect or delay. However the Consultant is in no case liable for indirect loss such as loss of production, loss of profits or consequential loss incurred by the Client. The Consultant shall not in any case be liable to pay compensation exceeding 10 % of the total contract price for defect or delay in the performance of the assignment.

7.2 The Client is not entitled in the event of defect or delay on the part of the Consultant to enforce any sanction other than as explicitly stated here in Clause 7. However this limitation of the Consultant's liability shall not apply in cases where he is guilty of gross negligence.

7.3 The Consultant is liable to rectify defects or return payment received only if the Client has complained of the defect in writing to the Consultant immediately after he has discovered or ought to have discovered it. The complaint shall contain a brief description of the nature of the defect. However the Consultant is liable only for defects of which the Client complains in writing not later than six (6) months after delivery should have taken place in accordance with the schedule.

8. **Cancellation**

8.1 Each party is entitled to cancel the agreement henceforth if

(i) the opposite party has become insolvent, is declared bankrupt, suspends payments, begins composition negotiations or goes into liquidation;

(ii) the opposite party is in material breach of his undertakings under this agreement and has neglected to rectify matters - if this is possible - within thirty (30) days from being called on in writing to do so. The parties are agreed that performances already exchanged at the time of cancellation shall not be reversed and that cancellation shall only be effective for the future. The cancellation does not eliminate the right of the cancelling party to demand damages for breach of contract; maximum damages shall however be 10 % of the total contract price.

9. **Documentation**

9.1 All documentation, such as drawings, technical documents, models and computer programs, concerning the Solution which has been made available by the one party to the other before or after the signing of the agreement remains entirely the property of the party making it available. Such documentation or technical

information must not without written consent in any part or in any way be duplicated, copied or divulged to a third party or otherwise brought to his notice nor used for any purpose other than that for which it has been made available.

10. **Payment**

10.1 Payment shall be made by the Client in the manner and at the time separately agreed between the parties and shall either be payment on current account or a fixed fee. In addition the Consultant shall be entitled to payment for travel and subsistence expenses. Where the parties do not agree separately on payment, the Client shall make payment in cash against an invoice of one-third on making the agreement, one-third on delivery and one-third on the date of Approval of the Solution.

Should the Consultant be entitled to extension of time under Clause 4.4 or 5.4 of this agreement the Consultant is nevertheless entitled to payment in accordance with the schedule.

10.2 The Consultant reserves the right to adjust the price as a result of requested additions or adjustments to the Solution and in the event of extension of time as specified in Clause 4.4 or 5.4 above. In addition the Consultant is entitled to adjust the price in the event of changes in currency exchange rates, raw material prices, taxes and public charges occurring after the date of the quotation, price list or signing of the agreement.

10.3 If the Client does not pay on time the Consultant is entitled to penalty interest from the due date under the Interest Act (1975:635).

10.4 The Consultant shall be entitled to demand satisfactory security for payment from the Client if there is reason to assume that the Client has or will have difficulty in paying. In cases where such security is not immediately provided the Consultant shall be entitled immediately to suspend work or to stop further deliveries to the Client without sanctions being enforced by the Client against the Consultant. However in such cases the Consultant shall be entitled to demand payment for work done but not yet paid for and also to present claims for damages under the Sale of Goods Act (1990:931).

10.5 The Consultant possesses an F-tax certificate and is registered for value added tax. The Consultant is an independent contractor with relation to the Client and all personnel who do work for the Client are employed or engaged by the Consultant. For this reason the Consultant is liable for all general charges (such as social security charges) for such personnel.

11 **Confidentiality**

11.1 All commercial, technical and other information which the parties receive from each other shall be treated as

confidential and no such information may be divulged to third parties. However this shall not apply if transfer of information to a third party is necessary for the development and design of the Solution. The duty to maintain confidentiality does not cover information which has become public knowledge.

12. **Copyright ownership etc.**

12.1 All copyright ownership and other intellectual property rights including proposals in documented form such as instructions for use, drawings, models and other technical documentation and pattern and patent rights which the Consultant creates in the course of the assignment belong to the Consultant unless otherwise agreed in writing between the parties.

12.2 Should the Client have supplied drawings, models or other originals to the Consultant for the performance of the assignment, all intellectual property rights with relation to these, including pattern and patent rights, shall belong to the Client.

12.3 The Client is liable for all infringement of the intellectual property rights of third parties, including pattern and patent rights, which is caused by the product ordered or by documents produced for or by the Client.

13. **Grounds for non-liability**

13.1 Circumstances which have arisen after the agreement has been signed and which mean that the performance of the agreement is prevented or rendered unreasonably burdensome and which could not reasonably have been anticipated by the party when entering into the agreement shall be considered grounds for non-liability, for example labour dispute, conflagration, war, currency restrictions, scarcity of transport, general scarcity of supplies, restriction of supplies of fuel and faults or delays in deliveries from sub-contractors which have not been caused by the party and which could not with normal caution have been avoided. Grounds for non-liability exist for as long as a circumstance under this Clause continues to prevent performance, subject however to a maximum of 6 months. Thereafter each party is entitled to renounce the agreement without sanctions being enforceable by the other party. However the Consultant shall always be entitled to payment for work done.

13.2 Grounds for non-liability may not be alleged unless a party can show that he has taken all reasonable measures to limit the effect of the obstacle and after the obstacle has ceased to exist tried to make up lost time. Nor may grounds for non-liability be alleged unless a party has without delay informed the other party in writing that such a circumstance has arisen and of the anticipated effect of the obstacle.

14. Disputes

- 14.1 Disputes arising from this agreement shall be finally settled by arbitration in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce on simplified arbitration procedure. However, in cases where the amount claimed in the action exceeds SEK five million the dispute shall be settled by arbitration in accordance with the rules on arbitration procedure of the Arbitration Institute of the Stockholm Chamber of Commerce.
- 14.2 Irrespective of what has been stipulated above a party may at a competent Swedish public court bring action which at the time of bringing the action clearly does not involve a sum higher than ten times the base amount under the National Insurance Act (1962:381).
- 14.3 Swedish law shall apply to this agreement.