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Construction Engineering

Comparative analysis between Finnish and Spanish
building contracts.

ABSTRACT

The idea of writing a thesis about an approach, study and comparison between the Finnish and the Spanish law regarding the contracts of building construction was proposed by Tampere University of Applied Sciences' Head of Degree Programme in Construction Engineering Mr. Jouko Lähteenmäki.

The following thesis is intended to describe the similarities and differences between the contracts of buildings used in Finland and Spain and the laws governing these contracts. Studying Finnish terms about building contracts and comparing it to the Spanish one.

To perform this task, I will base the Finnish legislation, trying to compare the points who are related and explaining the points that are not covered in Spanish legislation.



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LAWS ON WHICH BASE THIS THESIS.

This Thesis is based on the document “YSE1998 – General Conditions For Building Contracts”. These law directs and determines building contracts throughout Finland. In order to compare Finnish legislation with Spanish legislation, we should study several Spanish laws. The main Spanish law is Act 38/1999 of 5th November 1999, Update 27 June 2013, but also have to compare items of Spanish Civil Code, RD 1627/97 minimum provisions of safety and health in construction Works, RD 515/ 1989 of 21 April on consumer protection regarding the information provided in the sale and rental of housing, Act 32/ 2006 Regulating Subcontracting, Act 57/1968 Spanish Housing and Land Legislation and Technical Building Code.

PREAMBLE.

The building sector is one of the main economic sectors with obvious repercussions on society as a whole and on the cultural values involved in its architecture, before the advent of the law 38/1999 in Spain and the law YSE-1998 in Finland, the construction sector lacked regulatory standards as important as these.

This regulation also includes the identification, obligations and responsibilities of each of the actors involved in this process.

- Spanish law 38/1999 of the building management, aims to six scopes, these scopes are:

- 1. Regulate the building process establishing their obligations and responsibilities and cover the guarantees to users.
- 2. Establishes the basic requirements to be met by buildings so that the guarantee protecting users are based not only on technical building requirements but also on the establishment of surety and property damage insurance. In addition, the concept of project is established as a requirement for the development of the works affected by the provisions of this Act.
- 3. The Act also delimits the scope of the activity of the professionals, designer, the Works Director and the Director of Execution of the Works
- 4. The different agents will be personally and individually liable for property damages to the buildings caused by their own acts as well as by the acts of others for whom they are legally responsible under the Act.
- 5. The liability periods are established for terms of one, three and ten years, depending on the different damages caused to the buildings. The builder is responsible for all property damages derived from deficient construction for a period of



one year. The other agents are liable for all property damages caused to the building by faults or defects affecting its habitability for a period of three years, and for a period of ten years for the damages resulting from faults or defects which affect the building's structural safety.

- 6. The Act establishes the regulations governing such mandatory insurance as well as the minimum amounts guaranteed for the one, three and ten year terms, respectively.

In addition of these six main scopes, the Spanish law 38/1999 of the building management, contains seven additional provisions.

- Finnish law YSE 1998, General Conditions for Building Contracts, this law has been endorsed by The Finnish Association of Building Owners and Construction Clients and were drawn up in collaboration with The Confederation of Finnish Construction Industries, The Central Association of Earth Moving Contractors in Finland and The Association of Finnish Electrical and Telecommunications Contractors.

A draft of the General Conditions was circulated widely for comment, and various organisations were consulted, such as The Finnish Association of Heating, Plumbing and Ventilation Contractors, The Finnish Association of Construction Product Industries and The Finnish Constructional Steelwork Association Ltd.

These General Conditions for Building Contracts supersede the General Contract Conditions YSE 1983 (RT 16-10193) and the Amendments to the YSE 1983 Conditions Concerning Sub-Contracts and Nominated Sub-Contracts (RT 16-10205), which have been in use until now.

YSE 1998 does not, however, supersede the above conditions when the contract makes reference to earlier conditions.

These General Conditions apply to building contracts drawn up between business operators. These General Conditions also apply in their entirety to sub-contracts and nominated sub-contracts.

At first glance the main difference is that in The Finnish law the regulations on consumer protection are not considered here but the Spanish law this regulations are considered.



DIFFERENTS TYPES OF BUILDING CONTRACTS

1. The contract work with material supply, is that contract under which the builder not only undertakes to perform the work, but also to provide the necessary materials for implementation. (art. 1588 Civil Code).
2. The construction contract lump sum, is one in which the price is fixed in advance and can not be variation of the fixed price but raise prices for labor or materials used, unless there has been any change in the project to produce increased force and had given its consent the client. The characteristic features of this contract are: the stability of the price, the dissolution between the concepts of "price" and "cost" and the price is set based on a detailed initial plan. (art. 1593 Civil Code).
3. The contract of work per unit of measure, defined as the work unit purely longitudinal or cubicacle. (art 1592 Civil Code).
4. The works contract executed by piece, is one in which the price of the work is determined by unit prices. This type of contract is characterized in that the price is set for each piece executed and delivered, and there are two prices: "unit price" for parts and "inclusive price", which is to quantify the actual cost of all the pieces performed by the contractor. (art 1592 Civil Code).
5. The construction contract for administration, is one in which the builder agrees to perform the work and acquire the materials needed for implementation by custom or express delegation of the promoter, who agrees to pay the price of the materials used, the hand labor and other costs, plus compensation to the contractor assigned for homework.

Explanation how to read this text:

In each chapter, I start with Finnish text after that I continued with Spanish text and in the end I finish with my own text.

If in some chapter I can't found this kind of information in Spanish text, I write my own text after Finnish one.

Chapter 1; CONTENT AND SCOPE OF BUILDING CONTRACT.

• CONTRACTOR'S OBLIGATION TO RENDER SERVICES.

- YSE 1998. General Conditions for Building Contracts.

§1 Principal obligation to render services

1. *The contractor is obliged, in return for the agreed contract price or other payment principle, to carry out all the work, measures and procurement required by the contract and by the contract documents to be followed which are stipulated therein in order to achieve the finished result specified in those documents and to hand it over to the client in a form completed in accordance with the contract documents.*

2. *The building contract includes all the work required to achieve the agreed finished result. The contractor is thus not obliged to carry out demands of the client which are not based on the provisions set out in the contract documents and which a diligent contractor would not have been able to make allowance for within the contract price on the basis of generally observed practice in the construction sector.*

3. *The contractor must perform his duties under the contract in a professional manner observing the legislation in force on construction and following good building practice.*

§2 Further obligations

1. *Unless stated otherwise in the commercial documents referred to in these General Conditions, the following obligations concerning the work of the contractor also apply to the building contract of every contractor:*

a) *acquisition of permits for work undertaken by the contractor;*

b) *acquisition of the construction equipment needed for the building contract;*

c) *carrying out the measurements needed for the building contract;*

d) *drawing up of schedule for the contractor's own building contract;*

e) *in addition to protection of the contractor's own items, protection of building components not belonging to his contract and protection of the environment from damage and dirt caused by the work;*

f) *grading and removal of waste generated in the building contract to designated locations and keeping the building contract area tidy by cleaning it up as the work progresses and handing it over to the next stage contractor or the client in a tidied and cleared state after the contractor's work;*

g) *building and dismantling the roads and other structures necessary for completing the building contract;*

h) *submission for inspection in sufficient time of the plans and drawings that need to be acquired by the contractor; i) submission of operating and maintenance instructions;*

j) *obligations of the contractor in his capacity as an employer and his payment obligations to society due to his business activities:*

k) *the contractor's obligations based on his other contracts concerning this project.*

2. *As well as the obligations set out above, there are also other obligations to be met by the contractor which are indicated in the contract documents and incorporated in the contract price.*



§3 Site services

1. *The commercial documents state the name of the contractor responsible for site services and specify the building contracts and procurements covered by the site services. If the documents do not name a contractor responsible for site services, each contractor shall himself be responsible for the site services he requires.*

2. *Unless stated otherwise in the commercial documents, site services shall include the following obligations:*

a) *creation of the temporary structures and installations needed for shared use on site and which are specified in detail in other contract documents and installation of measurement devices serving a common need;*

b) *creation and maintenance of common access paths necessary for work purposes, and general traffic arrangements;*

c) *leasing of the street and road areas and any other area necessary for carrying out the work and fencing it off if necessary;*

d) *site security for the building project;*

e) *protection and care of the building under construction and the building components and construction materials connected with it, and protection of the environment from damage;*

f) *heating the building project and keeping it dry, and general lighting;*

g) *organisation of the site's internal waste management and transport of the waste away from the site, and keeping the building project and the staff facilities clean and tidy and carrying out snow clearance.*

3. *Unless stated otherwise in the commercial documents, the following services for other contractors also form part of the site services:*

a) *assistance in construction work to the extent agreed as part of the contract price, and otherwise at cost price;*

b) *organisation and equipping the necessary storage, office and work spaces and facilities for the employees as part of the contract price and to the extent required for the contractors' forecast of employee numbers and required storage space;*

c) *supply of water and the electricity needed for lighting, electrical equipment testing and manually operated machinery to other contractors without charge. Supply of energy and water necessary for trial use and flushing pipes, at cost price.*

§4 Site management duties

1. *Site management duties shall be the responsibility of the main contractor. These duties concern the building contracts and procurements named in the commercial documents. If no main contractor or other party responsible for site management duties is named in the commercial documents, the client shall be responsible for these duties.*

2. *Unless stated otherwise in the commercial documents, the site management duties shall include the following:*

a) *site administration, general management and appointment of a foreman;*

b) *the obligations of the main implementing party as referred to in the relevant legislation, such*

the obligations concerning health and safety at work set out under §57 paragraph 1;

c) drawing up of site construction schedule;

d) arrangement and co-ordination of work on the site;

e) site insurance in accordance with §38.

Spanish regulation is saying:

- Act 38/1999 Building Act.

- **Article 11.**

1. The Builder is the agent who enters into a contractual agreement with the developer wherein he undertakes to use his own human and material resources or those of third parties to execute the works or any part thereof according to the project and the contractual terms.

2. The Builder's obligations include:

a) Performing the works in compliance with all applicable legislation and following the instructions of the Director of the Works and the Director of the Execution of the Works in order to achieve the level or quality stipulated in the project.

b) Possessing the professional degrees or qualifications enabling him to meet the conditions established for acting as a builder.

c) Appointing a Construction Manager to act as the builder's technical representative and whose qualifications or experience enable him to act in such capacity based on the characteristics and complexity of the works in question.

d) Assigning the required human and material resources to the works.

e) Formalising the subcontracting of different parts or services with the limits specified in the contract.

f) Signing the ground plan or commencement document and the certificate of reception of the works.

g) Providing the Works Director with all of the information need to prepare the documentation on the executed works.

h) Subscribing the guarantees foreseen in article 19.



- **Article 19.**

a) *A property damage or surety insurance policy to guarantee for a period of one year the compensation of the property damages due to execution faults or defects which affect the finish works or elements, which can be replaced by the developer withholding 5 percent of the contractual price of the works.*

b) *A property damage or surety insurance policy to guarantee for a period of three years the compensation of the property damages due to faults or defects in constructive elements or services which result in the non-compliance of the habitability requirements set out in part 1, letter c) of article 3.*

c) *A property damage or surety insurance policy to guarantee for a period of ten years the compensation of the property damages caused to the building by faults or defects originating in or affecting the foundation, supports, beams, framework, load-bearing walls, or other structural elements and which directly jeopardise the building's mechanical resistance and stability.*

- **WORK PROGRESS AND CO-OPERATION.**

- YSE 1998. General Conditions for Building Contracts.

§5 Construction schedule

1. *The contractor responsible for site management duties shall draw up together with the other contractors and the client a site construction schedule which will present the progress and order of execution of the work stages and the procurements required to complete them so that all contractors and specialists can synchronise their tasks accordingly.*

2. *Each contractor must participate with the client and the other contractors in drawing up the construction schedule and work plan. The schedule must take into account the time required for operational tests and trial use, as well as the arrangement of the contractor's own work. The approved construction schedule will be followed by all parties and, with the exception of any slight refinements, the schedule may only be amended by joint agreement.*

§6 Site arrangements

1. *Use of the room spaces and areas of the building project during the contractor's completion time is permitted to the extent agreed separately with the client.*

2. *The contractor is entitled in accordance with the directions of the client to erect temporary buildings and structures on the site area for work purposes, and to bring and store construction goods and to move earth, provided that this does not create unnecessary inconvenience.*

3. *The contractor is obliged to follow the orders issued by the client on use of the site area and on storage and marking of materials.*

4. *The contractor must determine in good time the reservations and markings he requires, and these shall be entered on the reservation drawings which the contracting parties and specialists shall ratify with their signatures. Reservations that differ from the approved drawings can only be made at the expense of the party that desires the alteration.*

5. *The contractor is entitled in accordance with the directions of the client to erect his company sign boards in the site area. The client shall specify the use of spaces suitable for other advertising.*

§7 Co-operation

1. *The contractor must ensure the smooth and safe execution of building work by providing information, reaching agreement and engaging in other forms of co-operation with the client and the other contractors, and must organise and undertake his work so that it does not unnecessarily disturb the work of the client or the other contractors on the same construction site. Unless notification is given of this other work in the commercial documents, this work must be agreed separately with the contractor.*

2. *The contractor must comply with the directions issued by the party responsible for the site management duties concerning the organisation and co-ordination of work and with the obligations agreed under paragraph 1.*

3. *The contractor must put forward his most important sub-contractors and sub-suppliers for the approval of the client in sufficient time before engaging them. Approval can be refused only where there is good cause. Good cause can include the sub-contractor's failure to fully comply with the provisions on quality assurance under §10 paragraph 1 or neglect in payment of taxes or client's contributions.*

4. *Approval of a sub-contractor or sub-supplier on the part of the client does not diminish the liability of the contractor.*



5. *If requested, the contractor must provide the client with an estimate of the number of employees and the invoicing requirements, and with advance notice also of any sub-contractors and sub-suppliers other than those referred to in paragraph 3.*

§8 Client's obligation to collaborate

1. *Unless stated otherwise in the commercial documents, the building owner will fulfil the client's obligation to collaborate by:*

a) *acquiring permits from the authorities for construction of the building project, demolition or any other measure requiring a permit and*

b) *paying the costs of these and of inspections of his plans conducted by the authorities and of reviews and measurements by the authorities required for the above permits.*

2. *Unless stated otherwise in the commercial documents, the client's obligation to collaborate shall also include: a) drawing up a project schedule in co-operation with the contractor and delivery of the plans and other documents required by the contract to the contractor according to the agreed timetable as the building work progresses, so that the contractor has enough time to make the procurements and take the preparatory measures;*

b) *ensuring that the consistency and content of the plans supplied by him have been compared and verified and the plans dated prior to their delivery to the contractor and that they fulfil the requirements of the authorities, acts and decrees, building regulations and other relevant regulations, as well as good building practice;*

c) *supplying the contractor in good time with the construction goods whose procurement was agreed to be the task of the client;*

d) *ensuring that the other work carried out by the client or which he has commissioned another party to carry out during the period of building work does not unnecessarily disturb the work of the contractor and that the work proceeds so that the contractor can complete his own work unhindered.*

Spanish regulation is saying:

- Act 32/2006 Regulating Subcontracting.

1. *Subcontracting, as a form of productive organization, may not be limited, except under the conditions and in the cases provided in this Act.*
2. *With general character, the regime of the subcontracting in the construction sector will be as follows:*
 - a. *The promoter may contract directly with few contractors wish to either natural or legal persons .*
 - b. *The contractor may contract with workers subcontractors or autonomous execution of the works that have contracted with the promoter.*
 - c. *The first and second sub-contractors will be able to outsource the execution of the work , respectively , have contracted , except in the cases provided for in paragraph f) of this paragraph .*
 - d. *The third sub-contractor may not subcontract the work that had contracted with another subcontractor or autonomous worker .*
 - e. *The autonomous worker may not subcontract the work entrusted to the contractors or to other companies or other autonomous workers .*
 - f. *Nor will be able to outsource subcontractors, whose organization productively put to use in the work consists mainly in the labor contribution , being understood by this that for the realization of the contract activity does not use more that teams own hand tools including portable motorized, even have the support of other teams other than those specified, provided they belong to other companies, contractors or subcontractors of the work.*
3. *Notwithstanding the preceding paragraph, when unforeseen circumstances duly justified by the requirements of specialization of work, production techniques complications or force majeure for which can pass through the agents involved in the work necessary the opinion of the optional address, the hiring of a part of the work with third parties, may exceptionally extend the subcontracting established in the previous section on an additional level, provided that is stated by the optional address its prior approval and cause or reasons motivating it in the Book of subcontracting referred to in Article 7 of this Ley.No applied the exceptional expansion planned subcontracting in the previous paragraph in the cases referred to in points e) and f) of the previous section, unless the circumstances motivating force is the greater.*
4. *The Contractor shall make available to the health and safety coordinator and representatives of workers from different companies in the field of execution of the contract which it appears in the Book of the Subcontracting Subcontracting outstanding under the previous section. Also must disclose to the competent labor authority subcontracting exceptional indicated by referral, within five business days after its approval, a report indicating the circumstances of need and a copy of the annotation made in the Book of subcontracting.*

In Spanish law does not mention anything about construction Schedule work that the contractor together with the client and other contractors should to do it, but in practice, this task is necessary to carry it out, for the normal and orderly work of the various contractors and the supervision of the client.



Does not mention anything about the use of space within a work centre. But to store materials, jobsite or even toilets, it is necessary the use of space within the work centre, so that the client must agree with the contractor these spaces within the enclosure.

- **QUALITY ASSURANCE.**

- YSE 1998. General Conditions for Building Contracts.

§9 Client's quality assurance

1. *The client shall ensure compliance with his contractual obligations under §8 using his own quality assurance measures so that, as far as those contractual obligations are concerned, the contractor has the preconditions for fulfilling his obligations regarding completion of the work.*

2. *Supervision by the client is dealt with in §§ 59-62.*

§10 Contractor's quality assurance

1. *The contractor must comply with the quality assurance required in the contract documents. If requested, the contractor must indicate in writing no later than the start of the work, how he will ensure the quality of his work. The contractor must, in any case, proceed in such a manner that the quality defined in the contract is achieved.*

2. *The contractor is required to use construction products whose guarantee period corresponds at least to the contractor's guarantee period, unless otherwise stipulated in the commercial documents.*

3. *The client is entitled to obtain information on the quality assurance of the most important sub-contractors and construction good manufacturers used by the contractor before their approval under §7 paragraph 3.*

§11 Contractor's quality control

1. *The contractor shall himself examine the quality of the work which he is under obligation to carry out and shall correct any deficiencies and defects before handover to the client.*

2. *The contractor must notify the client's representative of any serious defects he may find in the course of executing his building contract and of the measures he will take to correct them.*

3. *Inspection of construction goods and building components must be carried out before they are begun to be used and continuously during the work. Operational inspections of systems and installations shall be carried out in the form of performance tests before taking into use or, at the latest, in connection with the handover inspection when the system is ready and functioning.*

4. *The contractor shall meet the cost of the necessary tests of construction goods and building components and for ascertaining the quality of work, which are specified separately in the contract documents and which must be performed regularly according to the regulations and legislation on construction, or that are considered customary.*

5. The contractor must remove from the construction site without delay any construction goods of his which are in violation of the contract.

6. The client is entitled with reasonable cause to demand that impartial tests of installations and equipment and tests other than those referred to above are carried out. The contractor has an equivalent right to demand that an impartial test is carried out if the client demands without justification that defective work be corrected. If the finished result was not in accordance with the contract, the contractor shall be responsible for the costs incurred from these tests; in other cases the client shall be responsible for the costs.

Spanish regulation is saying:

- Act 38/1999 Building Act.

• **Article 14.**

1. They are entities of quality control edification of those trained to provide technical assistance in the verification of the quality of the project, materials and the execution of the work and facilities in accordance with the project and the applicable regulations. To exercise their activity throughout the Spanish territory will be enough with the presentation of a responsible statement in the declaration that meets the technical requirements of the regulations to the competent body of the Autonomous Community in which it has its registered office or professional.

2. They are testing laboratories for quality control of edification trained to provide technical assistance, by performing service tests or tests of materials, systems or facilities of a work of edification. To exercise their activity throughout the Spanish territory will be enough with the presentation of a responsible statement for each of their physical establishments from providing their services in the declaration that they meet the technical requirements of the regulations, to the competent bodies of the Autonomous Community concerned.

3. The obligations of quality control entities and laboratories are as follows:

a) Provide technical assistance and deliver the results of its activity to author custom agent and, in any case, the technician responsible for the reception and acceptance of the outcomes of care, either the director of the execution of the works, or agent appropriate in the planning stages, the execution of the works and the useful life of the building.

b) Justify that have implemented a system of quality management that defines the procedures and methods of test or inspection that used in its operations and that have the capacity, personnel, means and equipment.



To ensure the quality of the materials used in the work, before the beginning work remember typing materials in the project. In this way the client or his supervisor can check that everything is correct.

Apart of this, for different materials used in Works is necessary tested, because of this the client should contract a Quality Control Entity for test different materials like concret or iron.

This kind of test should be done before put this elements into their site in the construction.

- **CONTRACT DOCUMENTS.**

- YSE 1998. General Conditions for Building Contracts.

§12 Contract documents complement each other

The contract documents are complementary to each other in a way that a provision concerning the building contract given in one document is considered to hold good even though it may not be contained in other contract documents.

§13 Order of validity of contract documents

1. If there is any conflict in the content of the contract documents, the order of validity concerning the provisions of the documents is as follows, unless stated otherwise in the contract:

A. Commercial documents a) contract;

b) minutes of the building contract negotiations;

c) these General Conditions;

d) invitation to tender and the additional written documents supplied prior to submission of the tender;

e) building contract programme or other building contract conditions per contract;

f) contract boundary annex;

g) tender;

h) bill of quantities and list of measurements;

i) unit price list for modification work.

B. Technical documents

j) job-specific quality requirements and reports;

k) contract drawings;

l) general quality requirements and job reports.

2. If the provisions of any of the above individual contract documents or group of documents are in conflict with each other, the most recently drawn up document of equal status shall be taken to be valid. If the order of validity cannot be determined on this basis, the client shall be entitled, having heard the views of the contractor, to decide which of the provisions must be complied with. Conflict of this nature does not, however, entitle the client to demand, without additional compensation, more than that which can be considered necessary to undertake the job in the manner of any other work.

3. If the contract document contains a specific reference to a provision in another document, that provision is as valid as the provision in the document containing the reference.

4. If the contract documents include plan documents for other building contracts alongside the plan documents for the contract of the party in question, the latter plan documents have a greater validity than the former.

5. If obligations defined elsewhere than in a document concerning execution of this particular contract are to be included in the building contract, this shall be done only in the event that the matter is indicated in the commercial documents.

6. If another contractor has also been ordered to undertake the same element of work, the contractor whose work is thereby reduced is obliged to refund the client the value of the work not carried out.

7. Measurements marked on a drawing take priority over measurements obtained by scaling from the drawings. If there is any conflict between the content of the drawings, the drawing with the most accurate scale shall be used.

8. A contracting party who notices provisions in the contract documents which are in conflict with each other is obliged to notify the other contracting party of this without delay.

§14 Obligations regarding alternatives

Unless the other contract documents state otherwise, the contractor is entitled to select from alternatives given in any of the contract documents the one he considers most appropriate. If different prices were requested for the alternatives and no mention is made in the commercial documents about which of the alternatives is included in the total price of the tender, the contractor must be considered to have included the cheapest alternative in his total price. If the client orders another of these alternatives to be used instead, the contractor shall be entitled to receive the difference between the prices of the alternatives.

§15 Observing good building practice

If the contract documents contain no mention of the requirements placed on the building work or a part of it, for instance in terms of quality, quantity or manner in which it is undertaken, the contractor must, after having consulted the client on the matter, observe the provisions given in the contract documents for the similar or comparable work or, if these do not exist, the practice generally observed in equivalent building work to achieve a good and proper finished result.

§16 Exceptional circumstances

If the actual circumstances differ from the information or research results notified in the contract documents, the contracting party who feels that his interests so require, must submit a written



request for a review in order to determine the deviation and its effect on the building contract. The review must attempt to define the effect of this circumstance on the contract price and the completion time. If a review is not requested in sufficient time to allow the deviation from the information or the research results to be determined, the right to make demands on the above grounds is forfeited.

In any point of different Spanish Acts and Official Documents, specifies the different documents that must contain a work contract. But as a general rule in private construction contracts, the contract contain:

Contractor data, client data, details of the work to be executed, total value of the work to be performed, conditions for the receipt and acceptance of the work, payment, delivery and finally, obligations and responsibilities of the parties involved.

Apart of this in construction contracts always have conditions that the builder can not leave the work but is for some reason that Spanish law allows or the customer is required to pay within a period of time, etc.

Chapter 2; PERIOD OF BUILDING CONTRACT.

- YSE 1998. General Conditions for Building Contracts.

§17 Completion time

1. *The building work required in the contract must be started, undertaken and brought to completion in compliance with the time provisions of the contract. If the contract does not contain any time provisions for carrying out the work, it must be started without delay and at the latest within two weeks of the date the contract is entered into and brought to completion as soon as is reasonably possible.*

2. *If the execution of the work requires that progress is made with other work on the building project and the specified time referred to in paragraph 1 above cannot be complied with, this work must be started as soon as the progress on the other work allows and carried out simultaneously with that work without delaying it, and brought to completion in accordance with the contract.*

3. *For the different work stages and handover procedure, a reasonable time must be reserved for the contractor either in accordance with the construction schedule drawn up in advance or otherwise in a manner agreed separately.*

§18 Penalty for delay

For each working day that the building contract remains uncompleted beyond the times agreed in the building contract, the client is entitled to receive a penalty for delay from the contractor in accordance with the provisions of the contract. Unless stated otherwise in the building contract, the penalty for delay is 0.05 per cent of the contract price exclusive of value added tax for each working day, but 0.1 per cent for sub-contracts and nominated sub-contracts. The penalty for delay shall be calculated for a maximum of 50 working days in the case of completion of the building contract, and a maximum of 75 working days if the intermediate targets are included. The client is not entitled to further compensation unless the contractor has acted wilfully or with gross negligence.



Spanish regulation is saying:

- Spanish Civil Code.

- **Art. 1100.**

Delinquent incur the obligation to deliver or to do something since the creditor judicially or extrajudicially requires them fulfill its obligation.

There is, however, necessary intimation of the creditor to delinquency exists:

1. ° When the obligation or the law expressly so declare.

2. ° When its nature and circumstances indicate that the designation of the time I had to surrender the thing or take the service was critical reason for establishing the obligation.

In none of the reciprocal obligations in default required if the other fails. Since one of the obliged to fulfill his obligations, start the default for the other.

- **Art. 1096.**

When to be delivered is a certain thing, the creditor may compel the debtor to make delivery.

If the thing be indeterminate or generic, he may ask that the obligation be fulfilled at the expense of the debtor.

If the obligor is in arrears, or is committed to delivering the same thing to two or more different, from his account will be fortuitous until delivery is made.

- **Art. 1182.**

The obligation is extinguished consisting deliver a certain thing when it is lost or destroyed without fault of the debtor, and before he had it in default.

- **Art. 1589.**

If who contracted the work was forced to put the material, must suffer the loss in the case of destroying the work prior to delivery, unless there had been default in receiving.

- **Art. 1590.**

The one that had to be put only his work or industry, can not claim any allowance if the work is destroyed before it was delivered, unless there has been default to receive it, or that the destruction has come from the poor quality of materials, provided there is timely noticed this circumstance the owner.

The effects that the delay in the completion of the work are:

1. The builder must compensate for those damages that he has caused promoter delays in the completion of the work (Article 1100 of the Civil Code). To come into play the compensation of damages is necessary for the promoter test the resulting damages and that such damages were a result of the delay, for reasons attributable to the constructor, as the breach of contract by itself does not give rise to compensation.

2. The builder is responsible for the loss or destruction, even in accident, of the work (articles, 1096, 1182, 1589, and 1590 of the Civil Code). (see articles in previous page).

In construction contracts is common that the parties stipulate a economic sanction (called "criminal or contractual penalty clause") to be paid by the builder to the promoter for each day of delay in completion of the work, when the termination date has been previously fixed in the contract.

The penalty clause that penalizes the completion of the work beyond the agreed date will not be required if there are changes or modifications to the original project or additional works were carried out.



- **LEGITIMATE GROUNDS FOR EXTENDING THE BUILDING CONTRACT PERIOD.**

§19 Neglect of client's obligation to collaborate

1. *If the actions of the client cause a delay in the work, e.g. he neglects to fulfil his obligation to collaborate under §8 in time in accordance with the contract, and if the contractor appears to have brought*

the matter to the attention of the client in sufficient time, the contractor shall be entitled to receive a reasonable extension to the building contract period.

2. *This same right may also be exercised by the contractor if another contractor or supplier under contract to the client should create an interruption causing a delay. However, the right to an extension to the building contract period requires that the contractor submits a notification to the client without delay and fulfils his own obligations to the extent possible at any given time.*

3. *The client's liability to compensate as a result of delay is defined in §35.*

§20 Force majeure

1. *The contractor is entitled to receive a reasonable extension to the building contract period if the obstacle to completion of the building contract in accordance with the contract is one of the following reasons:*

a) *an exceptional circumstance referred to in the State of Defence Act or the Readiness Act or a comparable circumstance which causes the contractor considerable difficulties in engaging employees and procuring construction goods or otherwise prevents execution of the building contract;*

b) *a strike, boycott or embargo preventing the work of the contractor, his sub-contractor or supplier, or a nominated sub-contractor, or a lockout approved or decided by employers' organisations, or other similar industrial action materially preventing the work from being carried out;*

c) *exceptional weather conditions seriously inconveniencing the contractor's work; d) other exceptional circumstance beyond the control of the contracting parties that creates significant difficulty in fulfilling the obligations of the contract and which the contracting party could not have taken into account beforehand and the inconvenience from which he could not reasonably be expected to have eliminated.*

2. *The contractor is not entitled to receive an extension to the building contract period if the obstacle concerns procurement of construction goods necessary to complete the building contract which the contractor could procure from elsewhere within the time required by the contract without any significant additional costs.*

3. *The contractor is not entitled to receive an extension to the building contract period on the basis of a strike, boycott or embargo that is caused by the contractor or his sub-contractor failing to fulfil his contractual or legal obligations to his employees, their employee organisations or employers' associations.*

4. *The contractor is not entitled to an extension to the building contract period if the obstacle concerns work which has already been delayed from the completion date under the contract for a reason due to the contractor, unless there are special grounds for an extension.*

§21 Calculating the extension

1. *If several reasons entitling the contractor to receive an extension to the building contract period take effect simultaneously, the contractor shall not be entitled to receive a full extension for each reason separately; instead, the building contract period can be extended only on the basis of the combined effect of these reasons.*

2. *In considering the extension to the building contract period to be granted to the contractor in the aforementioned circumstances, the time that the contractor could reasonably be expected to need to bring the work to a halt and to restart it must also be taken into account.*

§22 Limiting a delay

1. *Where an extension to the building contract period on the aforementioned grounds is appropriate, the contractor must complete the building project in all respects, if this is possible without significant additional costs, and with regard to the parts where the obstacle causes a delay, must take all measures in his power, as well as those indicated by the client, to prevent the delay, provided that these measures are not in violation of labour legislation, the provisions on health and safety at work or collective agreements.*

2. *In the event that the measures referred to in paragraph 1 lead the contractor to incur additional costs, the contracting parties must reach agreement on carrying out the measures and on the compensation for the costs incurred in doing so before taking the measures.*

§23 Regulations on procedure

1. *When there is a threat of a suspension of work or a delay on the site due to reasons stated in §§ 19-20, the contractor must notify the client of this without delay. If work is suspended or there emerges another reason on the basis of which the contractor believes he is entitled to receive an extension to the building contract period or compensation for his costs, he must notify the client of this in writing immediately, at the risk of forfeiting his right to do so in other cases.*

2. *If the obstacle does not appear to be of a short duration, the contractor must recommend to the client that negotiations are carried out and other measures taken that are necessary to reduce the amount of the loss or damage, to clarify the grounds for it and to calculate the extent of the loss or damage.*

3. *Notwithstanding the provision of paragraph 1, the contractor is entitled to receive an extension to the building contract period if several separate, minor reasons giving entitlement to an extension emerged during the building contract period. The contractor must present his demand for this no later than two months before the end of the building contract period. However, reasons which arose earlier than six months before presentation of the demand for additional time shall not be taken into account.*

4. *The contractor must substantiate the effect of the delay on completion of the building contract. The contractor must clarify the grounds for his additional costs and must substantiate the amount of these costs by means of the receipts or in another reliable manner.*

5. *The provisions of §§ 19-23 concerning delay to completion of the building contract also apply to the time provisions concerning the intermediate targets for the building contract which are stated in the contract.*



Be grounds for extension among others, the assumption stated in Article 52 of Civil Code and will be brought by the parties through the log to note specifying the causes that led to this extension, which is not in principle attributable to the contractor, and shall establish the dates when it starts and when it ends contingency.

The temporary suspension, in whole or in part of the work contracted to be formalized in principle with respective entries in the book of work, the client has signed the contract or his deputy is empowered to do so, and shall inform the contractor in writing the reasons for the suspension, in any case of suspension should be lifted detailed record.

Suspensions may result from:

- a) Lack of timely delivery of materials or equipment permanently installed by the contracting area when this will supply appropriate.
- b) No provision in their opportunity areas where work will be executed by any cause attributable to the area responsible for recruitment.
- c) Acts of God or force majeure preventing the completion of the work for a specified period.

Only non-recoverable expenses will be paid when the suspension has been ordered by the customer, upon request of the contractor accompanied by corresponding study. When the suspension is derived from a fortuitous event or force majeure, there will be no liability on the parties and shall only sign an agreement which recognizes the period of the suspension and resumption and completion dates of the work, without changing the term implementation determined in the contract, which will not be from the application of any contractual penalty to the contractor or the claim of non-recoverable expenses.

Chapter 3; LIABILITY.

- **LIABILITY OF CONTRACTING PARTIES**

- YSE 1998. General Conditions for Building Contracts.

§24 General liability

1. *Each contracting party shall be liable for the contractual fulfilment of all his obligations within the building contract.*

2. *The liability of each contracting party covers for example:*

a) the plans he has drawn up; b) the information and research results he has acquired and given notification of; c) the work he has undertaken and the construction goods and building components he has procured; d) the orders and directions he has issued; e) the immaterial goods supplied to the other contracting party, such as systems and data in the form of information technology; f) the positioning measurements he needs and the measures set by him; g) compliance, in respect of his own work, with the relevant acts and decrees and the comparable provisions under public law.

3. *Each contracting party shall be liable for the work and actions of his subordinates and specialists and any other parties he has used in completing the building contract, unless stated otherwise in these General Conditions or in the other commercial documents.*

§25 Nature of liability

1. *Unless otherwise provided for in the contract or in these General Conditions, each contracting party's liability shall include the obligation to compensate the other contracting party for all loss or damage caused by the obligations under the contract remaining to some extent unfulfilled, or which he otherwise causes to the other contracting party.*

2. *A contracting party is not, however, liable for loss or damage which he could not have avoided even by taking the utmost care.*

3. *In the case of liability for delay concerning a period for which a separate delay penalty has been agreed, the provisions covering penalty for delay shall apply.*



- **CONTRACTOR'S LIABILITY**

- YSE 1998. General Conditions for Building Contracts.

§26 Scope of liability

- 1. The contractor shall be liable for implementation of his own building contract in accordance with the provisions of the contract and to the extent referred to in §§ 24-25.*
- 2. The contractor shall be liable for modification work and additional work in the same way as for his other obligations under the contract.*
- 3. The contractor is expected to interpret the information and research results presented in the contract documents as a specialist in the field.*

§27 Liability for defects in the finished result

- 1. The finished result or any part of it which during the work is found to be at variance with the requirements of the contract must be repaired or replaced by the contractor.*
- 2. If a defect under paragraph 1 is such that its correction is not necessary and the cost of correction would be unreasonable, the contractor, instead of effecting a repair or replacement, is obliged to reimburse the loss in value, the amount of which is defined in accordance with the principles outlined in the contract documents or, where such principles do not exist, in a manner agreed separately.*

§28 Product liability

- 1. Under the Product Liability Act, product liability rests with the contractor either as product manufacturer or as the party putting the product into use.*
- 2. If the client has not been able to provide the party incurring the loss or damage with notification in a reasonable time of the identity of the party bearing the primary product liability or the party from whom the product was procured, the client shall be entitled to receive from the contractor bearing the primary product liability, within the liability period under §30, the compensation he paid to the party incurring the loss or damage.*
- 3. The contractor must provide notification, in the manner prescribed in the contract documents or on demand, of the party bearing the primary product liability for the product he has procured or of the party from whom the product was procured.*

§29 Liability during guarantee period

- 1. The contractor is liable for the conformity of his work with the provisions of the contract during the guarantee period, the length of which, unless specified otherwise in the contract, shall be two years. The contractor's work covered by the guarantee also includes additional and modification work.*
- 2. The contractor is obliged at his own expense to repair the defects that emerge in his building contract work during the guarantee period which he cannot demonstrate to have occurred for reasons beyond his control, for example by demonstrating that it is a question of normal wear and tear or damage caused through incorrect use or neglect of maintenance measures for which the client is liable. Defects that create difficulty in using the finished result or cause danger or disrepair must be corrected or removed by the contractor without delay. If the contractor delays in carrying out the work referred to above, the client shall be entitled to do the work at the expense of the contractor once he has given prior notice of this to the contractor in writing.*
- 3. For defects which do not essentially inconvenience the use of the finished result, agreement can be sought over reimbursement for the reduction in value.*

4. The guarantee period begins on the day that the building project or a part of it separately agreed for handover is approved for acceptance in the handover inspection, or if no handover inspection is held, on the day the building project is taken into use.

5. For building contract work handed over before completion of the building project, the guarantee period begins from the work completion inspection under §70, but continues for the agreed guarantee period as of the handover of the building project. If the handover of the building project is delayed for a reason due to the client or another contractor, the guarantee period is extended on account of this by a maximum of 3 months.

6. In those cases in which the contractor's subcontractor or supplier has a guarantee period longer than that of the contractor, the contractor is released from liability for the period in excess, provided that the client approves the commitment of the subcontractor or supplier to direct liability to him.

§30 Liability after guarantee period

The contractor is also liable after the guarantee period for defects which the client shows to have been caused by the contractor's gross negligence, work left uncompleted or to be the consequence of serious neglect of agreed quality assurance and which the client could not reasonably be expected to have noticed in the handover inspection or during the guarantee period. The contractor is also released from liability once ten years have elapsed from handover of the building project or, if a handover inspection is not held, from the day the building project is taken into use.

§31 Liability to a third party

The contractor is liable for any loss, damage or harm caused to a third party and to the third party's property during implementation of the building contract. The contractor is not, however, liable for loss, damage or harm which is an unavoidable consequence of the work that has to be carried out and which even by taking the utmost care he could not have avoided. The contractor is nevertheless liable for loss or damage which gives rise to liability for compensation by law, irrespective of negligence.

§32 Liability for information acquired on the construction site area

Prior to submitting his tender, the contractor is expected to have acquired information on the construction site area and on the circumstances affecting the work carried out there through site visits to the construction site area. This does not, however, diminish the client's rights or his liability referred to in §34.

§33 Effect on liability of fulfilling obligation to notify

1. If the contractor notices faults in the construction goods or building components specified for use in the building work, or in the orders given by the client, which might endanger completion of the building work in accordance with the contract, he must submit notification of this demonstrably and without delay to the client. If, in spite of this, the client demands compliance with the contract provisions, the contractor, in carrying out the work in accordance with the contract, is released from liability in respect of those matters about which he submitted notification in the said manner.

2. If the contractor has not noticed the said defects, which are nonetheless so obvious that he would reasonably be expected to have noticed them and submitted notification accordingly to the client in the manner described in paragraph 1, the contractor shall be liable for these faults to the extent of his own negligence. The obligation to furnish proof of the transfer of liability to the contractor lies with the client.



The responsibility of the constructor is very similar in both countries, the difference is in the length of periods of responsibility. In Spanish law three levels of responsibility, one year for defects in finished Works, three years for defects or damage to facilities and construction elements and ten years for defects or damage affecting structural elements of the building are distinguished. Meanwhile, the Finnish law says that unless otherwise specified in the contract will be two years guarantee and up to ten years of responsibility.

In Finland they have total freedom to make agreement, which can change the for example guarantee time.

- **CLIENT'S LIABILITY.**

- YSE 1998. General Conditions for Building Contracts.

§34 Scope of liability

1. The client shall be liable for the contractual fulfilment of his own obligation to collaborate to the extent laid down in §§ 24-25.

2. Unless stated otherwise in the commercial documents, the quantities given in unit price building contracts are approximations only. Any changes to the contract price caused by a deviation shall be determined in the manner referred to in §45.

§35 Liability for delay caused by client

1. If building contract work is completely or partially interrupted or delayed in relation to the completion date agreed in the contract for a reason due to the client, or if the guarantee period is extended for such a reason, the client is obliged to compensate the additional costs indicated by the contractor or to pay a contractual penalty agreed in advance.

2. Unless the contracting parties have entered into a contract concerning the mutual liability of contractors for coordinating the work, the client shall be liable for compliance with the schedule as far as his obligation to collaborate under §8 paragraph 2 is concerned.

3. The client shall not be liable for a delay to the schedule caused by force majeure, with the exception of his contribution towards the compensation of expenses under §50.

Spanish regulation is saying:

- Act 38/1999 Building Act.

• **Article 17.**

1. Without prejudice to their contractual responsibilities, the individuals or legal entities who intervene in the building process are liable to the owners and third party buyers of the building or any parts thereof, should the building be divided, for the following property damages caused to the building within the specified times, starting on the date of the reception of the works without reservation or starting on the date of the correction of such reservations:

a) For a period of ten years, for the property damages caused to the building by faults or defects affecting the foundation, supports, beams, framework, load-bearing walls, or other structural elements and which directly jeopardise the building's mechanical resistance and stability.

b) For a period of three years, for the property damages caused to the building by faults or defects in the constructive elements or services which result in the building failing to meet the habitability requirements mentioned in part 2, letter c) of article 3. The builder will likewise be liable for the property damages due to construction faults or defects affecting elements of the finish works for a period of one year.

2. Each agent will be individually liable for his own acts or omission and for those of the persons for whom he is legally responsible according to law.

3. Notwithstanding this, when the cause of the property damages cannot be individualised or when there is a concurrence of guilt but it is not possible to determine the influence which each agent involved may have had on the damage, they shall be held jointly liable. In any event, the developer will be jointly liable with all other agents involved to the buyers for the property damages to the building caused by construction errors or defects.

4. Without prejudice to the governmental intervention measures which may apply, the developer's liability as established hereunder shall extend to the individuals or legal entities which, based on their contracts or on their decision-making role in the development, act as the developers or managers of co-operatives or homeowners' associations or other analogous concepts.

5. When more than one designer are engaged to design the project, they will be jointly liable.

Draughtsmen who engage other professionals to prepare calculations, studies, expert reports or other reports shall be directly liable for the damages derived from the insufficiency, errors or inaccuracies contained therein, without prejudice to any recourse they might have against the authors of such works.

6. The builder will be directly liable for the property damages caused to the building due to faults or defects derived from lack of skill, lack of professional or technical qualification, negligence or non-compliance with the obligations of the Construction Manager and the other individuals or legal entities reporting to him.

When the builder subcontracts with other individuals or legal entities for the performance of certain parts or services, he shall be directly liable for the property damages due to faults or defects in the execution of such works, without prejudice to the recourse he might have against subcontractors.

The builder will likewise be directly liable for the property damages caused to the building by deficiencies in the construction products acquired or accepted by him, without prejudice to his legal recourse.



7. The Works Director and the Director of the Execution of the Works that sign the Final Certificate shall be liable for the veracity and exactitude of said document.

He who agrees to direct a building project for which he himself has not drawn up the project shall assume the liability derived from any omission, deficiencies or imperfections in the project, without prejudice to his right to recourse against the designer.

When the direction of the project is contracted jointly with more than one professional, they shall be jointly liable regardless of how they distribute their responsibilities amongst themselves.

8. The agents who intervene in the building process shall not be held liable if it can be proven that the damages were caused by a fortuitous event, force majeure, third party acts or by the very person or entity suffering the damage.

9. The responsibilities referred to in this article are understood without prejudice to the liability of the sellers of buildings or any parts thereof to the buyers under the pertinent purchase-sale agreement and pursuant to article 1.484 of the Civil Code and all other legislation applicable to purchase- sale arrangements.

When the delay is the fault of the promoter, will be promoter account all expenses of preservation and custody of the work, being obliged to indemnify the builder of all expenses would have paid, for this concept, from the constitution in arrears.

The risks of perishing of the work will be borne by the promoter.

Chapter 4; SURETY AND INSURANCE.

- **SURETY.**

- YSE 1998. General Conditions for Building Contracts.

§36 Contractor's surety for client

1. *The contractor is obliged to provide the client surety for compliance with the contract in all respects and for refunding of payments made in advance. The surety must also cover additional and modification work. Only an absolute suretyship provided by a financial or insurance institution, a deposit of money in a financial institution, or other security approved by the client shall be acceptable as surety. A deposit receipt or collateral for other moveable property must be accompanied by the pledger's pledge and the deposit receipt must also be accompanied by a bank commitment to retain the lien on the deposit for the client.*

2. *Unless stated otherwise in the contract, the surety for the construction period shall be 10%, and for the guarantee period 2%, of the contract price. Surety is calculated on the contract price exclusive of value added tax.*

3. *The client must be provided with surety for the construction period before the contractor is paid any part of the contract price, and no later than 21 days after the contract is signed. The surety for the guarantee period must be deposited without delay once the contractor's work or the building project has been accepted for handover under §70 or §71, and before the validity of the surety for the construction period expires.*

4. *With the consent of the client, the contractor may begin the work on his own account before the surety is deposited. If surety is not subsequently provided and the contract is thus terminated, the costs incurred from the work carried out shall be met by the contractor. The contractor must, however, be compensated for the benefit derived by the client.*

5. *If the contractor, before his work is brought to the corresponding stage, is paid part of the contract price in accordance with the contract as a special advance equal to an amount in excess of 5% of the contract price, an equivalent surety must be set for this advance. This surety must be returned after the advance has been deducted from the payment instalments.*

6. *If the value of the deposited surety changes, or if agreement is reached about undertaking additional or modification work to an extent that the surety no longer corresponds to the agreed surety sum, the surety must be adjusted accordingly on the request of the contracting party.*

7. *If part of the building contract work has been handed over, the surety for the construction period shall be reduced by an amount agreed between the contracting parties, providing that part of the contract price equivalent to the contractor's outstanding obligations has not yet been paid.*

8. *Unless stated otherwise in the commercial documents, the surety for the construction period must remain valid three months beyond the building contract period, and the surety for the guarantee period three months beyond the guarantee period. The surety must be returned immediately after the contractor has fulfilled his obligations covered by the surety.*

§37 Client's obligation to deposit surety

The client is obliged to present a reliable statement of his ability to fulfil his obligation to pay under the contract, on the basis of which the contractor is entitled, if necessary, to demand the surety required by the circumstances and subject to his approval. The statement must be presented before the contract is signed, and the surety required must be set when the contract is signed or at a time specified separately in the contract. Unless agreed otherwise, the amount of surety must be 10% of the contract price exclusive of value added tax.



- **INSURANCE.**

- YSE 1998. General Conditions for Building Contracts.

§38 Insuring the building project

1. Unless stated otherwise in the commercial documents, the contractor responsible for site management duties is obliged at his own expense to take out insurance for the replacement value of the building project and construction products and working materials procured for the purposes of the work undertaken. The insurance must also cover sub-contracts and nominated sub-contracts as well as procurement by the building owner and other insurance objects specified in the contract documents. If the project does not have a contractor responsible for site management duties, each contractor shall be responsible for insurance of his own work.

2. In the invitation to tender the client is obliged to notify the contractor responsible for site management duties of the estimated value of the nominated sub-contracts, procurement by the building owner and other objects of insurance.

If the value of an insurance object changes significantly, the insurance sum shall be adjusted in line with the value of the object. The corresponding change in the insurance premium must be covered or reimbursed to the contracting party.

3. The insurance shall be taken out as contractors' all risk insurance or other indemnity insurance that covers the insurance object for unforeseeable events such as loss due to a fire or malicious damage, including demolition and clearance costs. The insurance must remain in force until the entire insured building project is handed over, and must also cover loss or damage arising from guarantee work undertaken after the handover. Responsibility for taking out other insurance on the building project after the handover shall lie with the building owner.

4. Insurance must be taken out in the building owner's name from a financially sound insurance company that engages in general insurance activity in the country in which the building project is located. The sum insured must at all times correspond to the full value of the insurance object, including any additional and modification work. Unless stated otherwise in the commercial documents, the deductible of the insurance may not exceed 0.5% of the contract price applying to the contractor obliged to take out the insurance.

5. The insurance policy or the certificate issued by the insurance company pertaining to the insurance which is in force must be surrendered to the building owner before instalments payable on any work or procurement can be made.

6. Sub-contractors and nominated sub-contractors are obliged to insure the building project to an extent separately agreed.

7. Each contractor shall himself be responsible for insurance of his construction equipment and also for insurance of his construction products and working materials in repair work as referred to in paragraph 9.

8. The contractor must comply with the safety regulations concerning the insurance terms and conditions. The contractor who is obliged to take out the insurance must bring these safety regulations to the attention of the other contractors.

9. Unless stated otherwise in the commercial documents, the contractor's insurance obligation in repair work of older structures is confined, as far as the building project is concerned, to the value of the repair. The building owner must notify the contractor of any buildings insurance and must notify the insurance company of the repair work.

10. All contractors working on the site must be in possession of valid business liability insurance.

Spanish regulation is saying:

- Act 38/1999 Building Act.

• **Article 19.**

1. The guarantees required for building works as described in article 2 of this Act shall be made effective on the basis of the provisions of the second additional provision hereunder, taking the following guarantees as a reference:

a) A property damage or surety insurance policy to guarantee for a period of one year the compensation of the property damages due to execution faults or defects which affect the finish works or elements, which can be replaced by the developer withholding 5 percent of the contractual price of the works.

b) A property damage or surety insurance policy to guarantee for a period of three years the compensation of the property damages due to faults or defects in constructive elements or services which result in the non-compliance of the habitability requirements set out in part 1, letter c) of article 3.

c) A property damage or surety insurance policy to guarantee for a period of ten years the compensation of the property damages caused to the building by faults or defects originating in or affecting the foundation, supports, beams, framework, load-bearing walls, or other structural elements and which directly jeopardise the building's mechanical resistance and stability.

2) The property damage insurance policies will meet the following conditions:

a) The builder will be considered the policyholder in the case of part 1.a and the developer in the case of parts 1.b) and 1.c); the developer and the subsequent buyers of the building or any part thereof shall be considered the insured. The developer and builder may specifically agree that the builder will be the policyholder on the developer's behalf.

b) The premium must be paid when the works is received. Nonetheless, if the payment of the premium is broken down into instalments during periods subsequent to the date of reception, then the failure to pay the next premium instalment shall not entitle the insurer to cancel the contract, nor will the contract be cancelled, nor will the insurer's coverage be suspended, nor will the insurer be released from its obligations if the insured must call the guarantee.

c) The regulation of the coverage of extraordinary risks to persons and things contained in article 4 of the Act 21/1990 of 19 December shall not apply.

3. The surety insurance policies shall meet the following conditions:

a) Those indicated in parts 2.a) and 2.b) of this article. With regard to part 2.a), the insured will always be the buyers of the building or any part thereof.

b) The insurer undertakes to indemnify the insured on first demand.

c) The insurer may not object to paying the insured based on the exceptions which may apply against the policyholder.

4. Once the insurance coverage takes effect, it may not be cancelled or terminated by mutual agreement until the term foreseen in part 1 of this article has expired.

5. The minimum amount of insured capital shall be as follows:

a) 5 percent of the final cost of the material execution of the works, including professional fees,



for the guarantees under part 1.a) of this article.

b) 30 percent of the final cost of the material execution of the works, including professional fees, for the guarantees under part 1.b) of this article.

c) 100 percent of the final cost of the material execution of the works, including professional fees, for the guarantees under part 1.c) of this article.

6. The insurer may choose between paying a cash indemnity for the amount of the damages or repairing the damage.

7. The failure to comply with the preceding regulations on compulsory insurance policies shall imply responding personally to the obligation to provide such guarantees.

8. In respect of the guarantees referred to in part 1.a) of this article, clauses introducing deductibles or any limitation whatsoever of the insurer's responsibility towards the insured will not be admissible.

In the event that the insurance contracts referred to in parts 1.b) and 1.c) of this article establish a deductible, said deductible may not exceed 1 percent of the insured capital for each registered unit.

9. Except where otherwise agreed, the guarantees referred to in this Act do not cover:

a) Bodily injury or economic damages other than the property damages guaranteed by the Act.

b) The damages caused to neighbouring or adjacent property to the building.

c) The damages caused to movable property located in the building.

d) The damages caused by modifications or works on the building after its reception, except where such modification or works is done to remedy defects.

e) The damages caused by improper use or maintenance of the buildings.

f) The cost of maintaining the building once it has been received.

g) The damages caused by fire or explosion, except in the event of faults or defects in the building's services.

h) The damages caused by fortuitous events, force majeure, third party acts or by those affected by the damage.

i) The losses originating in parts of the building in respect of there are reservations noted on the reception document, until such time as the remedies have been made and which remedies are reflected in a new certificate signed by the signatories of the reception certificate.

In Spanish law does not talk about any kind of bonds have to provide contractor to the client, but in the same way in both countries the contractor must be secured, In this way the client is sure that if the contractor does not ended the work for any reason, contractor's insurance will indemnify the client.

Apart from this insurance, the builder must ensure the work during the period of warranty. As we have seen, the builder has three periods of warranty therefore must ensure the three periods, the first period should cover 5% of the total work for a year, the second period must cover 30% of the work for three years and the third period should cover 100% of the work for ten years.



Chapter 5; OBLIGATION TO PAY.

- YSE 1998. General Conditions for Building Contracts.

§39 Contract price

The contract price is the remuneration payable to the contractor agreed in the contract. The contract price must distinguish between the price exclusive of value added tax and the amount of the value added tax.

§40 Payment of contract price

1. Invoices based on the contract must be paid when the invoice is presented to the client and the corresponding work stage under the contract is found to be completed or the invoice has otherwise been found to be fit for payment.

2. If the contract does not include a payment schedule or other provision on the arrangements for payment, the client must pay the contract price to the contractor in the form of part-payments, the amount of which shall be determined on the principle that they are in proportion to the extent of the building contract work undertaken.

3. The final instalment of the contract price must be paid on the date defined in the provisions of the payment schedule. Unless defined otherwise in the payment schedule or the contract, this instalment must be paid after the handover according to §70 or §71, but no later than the time of the final settlement of the accounts under provisions set out below or the time when the financial relationship of the contracting parties has otherwise been settled.

4. If the contractor, for a reason that has emerged during the work and which is beyond his control, has for a fairly long period been unable to continue his work to a degree of completion at which the agreed payment would become due, and if the shortfall in relation to the agreed degree of completion is no more than 10%, the contractor shall be entitled to debit the agreed payment less the value of the work not yet carried out.

5. If the client, having agreed the matter in writing with the contractor and the guarantors, effects payments for building contract work on behalf of the contractor, he shall be entitled, after having effected such payments, to deduct these from the subsequent instalments payable or from instalments related to the said payments.

6. With the exception of cases referred to in paragraph 4 and other minor deviations, the payment instalments defined under the contract may not be altered by agreement without the written consent of the guarantors.

7. An increase in the contract price or, correspondingly, a reimbursement, on account of additional or modification work, must be paid to the contracting party in compliance with the method of payment and payment period stated in the contract documents, once the modification or additional work is completed and the invoice presented and found to the client's satisfaction to be correct. In the case of fairly extensive modification or additional work, agreement may be reached for paying the compensation in several instalments as the work progresses.

§41 Penalty interest

Unless agreed otherwise in the contract, the client is obliged to pay the contractor annual penalty interest under the Interest Act if the client does not fulfil his obligation to pay within 14 days of a legitimate invoice being presented to the client.

§42 Withholding

1. Notwithstanding the above conditions, the client is nonetheless entitled to withhold from the contract price not yet paid:

a) a sum corresponding to the repair work for a defect for which the contractor is liable, until the repair has been effected;

b) a penalty for delay or other contractual penalty which the client is entitled to receive from the contractor; c) a sum corresponding to the agreed surety for the guarantee period, until the said surety has been provided for the client;

d) a sum with which the contractor must adjust the value of the surety under §36 paragraph 6; e) compensation for loss or damage to be paid by the client to a third party if the contractor is legally or contractually liable for the loss or damage;

f) any other receivable of the client that falls due; g) an undisputed receivable of a subcontractor for approved work undertaken.

2. Before the client exerts his right to withhold under items e-g above, he must reserve an opportunity for the contractor to present his views on the justification for the withholding and the amount involved.

Spanish regulation is saying:

- Act 38/1999 Building Act.

- **First Additional Provision.**

The collection by developers or administrators of payments on account during the building process shall be guaranteed under an insurance policy which indemnifies the breach of contract in a similar way as foreseen in Act 57/1968 of 27 July on the collection of payments on account while homes are being built and sold. Said Act and its complementary provisions shall apply to all new homes, with the following modifications:

a) *The Act shall apply to the development of all types of housing, including those built under systems of homeowner's associations or co-operatives.*

b) *The guarantee established in said Act 57/1968 shall extend to the amounts paid in cash or by any other means, which amounts shall be deposited into a special account set up for such purposes as foreseen in the Act.*

c) *The guaranteed repayment will include all amounts paid plus the legal interest at the rate in force at the time of the repayment.*

d) *The fines for non-compliance referred to in paragraph 1 of article 6 of the Act will be imposed by the Autonomous Communities in amounts equalling up to 25 percent of the insured repayment amounts for each infraction, or according to the particular provisions of each Autonomous Community.*



- Act 57/1968 Spanish Housing and Land Legislation.

Article 1-The individuals and companies that promote housing that are not officially protected, intended for home or family residence, permanent or seasonal residence either accidental or circumstantial and seeking to obtain from the transferee deliveries money before construction begins or during it, comply with the following conditions:

First. Ensuring the return of the amounts paid over six percent annual interest by the insurance contract Insurance company awarded with registered and licensed in the Register of the General Department of Insurance or co-signers provided by Entity registered in the Register of Banks and bankers, or savings, in the event that the construction does not start or does not come to a good end for any reason within the agreed period.

Second. Perceiving the amounts advanced by the buyers through a Bank or Savings Bank, which shall be deposited in a special account with separation of any other kind of funds belonging to the promoter and which may only be for visits resulting construction of housing. For the opening of these accounts or deposits the Bank or Savings Bank, under its responsibility, demand the assurance referred to the previous condition.

Article 2-In a contract of sale of the property referred to the first article of this provision is agreed delivery to promoter advance payments must expressly:

a) The assignor is obliged to refund to the assignee of the amounts received on account plus six percent annual interest if construction is not started or completed within the agreed timeframe determined in the contract, or not obtain the Certificate of Occupancy.

b) reference to the guarantee or insurance contract specified in the previous Article first condition, indicating the name of the entity guarantor or insurer.

c) Designation of the Bank or Savings bank and the account through which delivery is to be made by the purchaser of the amounts involved would anticipate as a result of the contract.

At the time of execution of the contract will be given assignor to the assignee of the document evidencing the guarantee, based and individualized to the amounts that are to be anticipated on account of the price.

Article 3 - Expired initiation within the works or delivery of the property without one or the other had taken place , the assignee may elect to terminate the contract with refund of amounts paid on account , increased by six percent annual interest or granting the transferor extension, which shall be recorded in an endorsement to the contract awarded , specifying the new period with completion date of construction and delivery of housing .

In insurance contract or guarantee authentic document attached to it is certified notification of the works or delivery of the property shall be enforceable to the purposes stated in Title XV of Book II of the Civil Procedure Act to require the insurer or guarantor delivery of the amounts that the transferee was entitled , in accordance with the provisions of this Act

The provisions of the preceding two paragraphs shall be without prejudice to any other rights that may apply to the transferee in accordance with current legislation.

Article 4-Issued the certificate of occupancy for the office of the Ministry of Housing and accredited by the developer housing delivery to the buyer will cancel the guarantees granted by the Bank insurer or guarantor.

Article 5-It will be required for advertising and promotion of the transfer of property by levying amounts on account prior to the initiation of the works or during the period of construction, which is stated therein that the developer will adjust its contract performance and compliance with the requirements of this Act, by expressly stating the guarantor Bank and the Savings Bank or in which the amounts entered will advance in a special account. These ends are specified in the text advertising materials.

- RD 515/1989 Protection of consumers as to the information to be provided in the sale and rental of housing.

Article 1. 01. This Royal Decree is to supply application, promotion and advertising materials for the sale or rental of housing-over in the context of business, provided that such acts are directed at consumers.

Article 6. The information will be particularly detailed and clear as the sale price, whichever available to the public and competent authorities an explanatory note will contain the following information:

1. ° Total cost of the sale, which means, including where applicable, fees and VAT Agent, after the sale is subject to this tax. Otherwise their quota by the Transfer Tax and Stamp Duty is indicated.

2. ° Payment. In the event that additional delays the interest rate applicable and will correspond amounts of principal and interest payable and due date of each other is indicated.

3. ° Media allowable payment for the deferred amounts.

4. ° If surrogacy is anticipated consumer credit in any operation by unplanned, secured by the home itself will indicate clearly the authorizer Note Not in scripture, this date, your registration data in the registry Property and liability, mortgage corresponding to each dwelling, with expression of maturities and amounts.

5. ° Guarantees that must be the buyer for the price or part of it, postponed.

2. Stated in the explanatory note that the total amount of the sale any amount paid on account by the purchaser or on behalf of the purchaser prior to the formalization of the operation will be done will be deducted.

The legislation in both the Spanish and Finnish legislation, contract law in this general area includes the obligation of payment by the client to the contractor. It is a universal obligation regarding the payment comes to remunerate a service provided. in case of default, both laws provide for a sanction to the client.

Chapter 6; PLAN FOR MODIFICATIONS AND PRICE CHANGES.

- YSE 1998. General Conditions for Building Contracts.

§43 Obligation to carry out modifications

1. *The contractor is obliged to implement the modifications demanded by the client unless they would significantly alter the nature of the building contract work.*

2. *Modifications must be clearly indicated to the contractor. The contractor must submit a tender for the modification work, and the client must process it, without delay. Work on the modification may not proceed before agreement has been reached in writing on the nature of the modification and its effect on the building contract.*

3. *Notwithstanding the previous paragraph, an order may be issued for small and urgent modifications without the need for written agreement by a person duly authorised by the client in the manner stated in §59 paragraph 4. The order must be entered in the site diary. The effect of the modification on the contract price must be agreed in writing as soon as possible.*

§44 Effect of building plan modification on contract price and building contract period

1. *If a modification to the building plans leads to a rise in costs, taking into account the increase or decrease in the obligations of the contractor making the modification, the contractor must receive an increase equal to the change in the contract price. If, on the contrary, the modification leads to a reduction in costs, the client must receive a corresponding reimbursement. If the reduction in costs is due to an innovation on the part of the contractor, the reimbursement may be reduced by an amount agreed between the contracting parties.*

2. *The contractor must submit a detailed tender or itemised calculation of the effect of the building plan modification on the contract price. The prices specified in the contract documents or, in the absence of these, agreed on an equivalent basis shall be used in the modification work. If an equivalent price or principles for defining the price are not available from the contract documents and the price cannot otherwise be agreed, the work must be carried out at cost price, unless the client proceeds to carry out the work.*

3. *If the modification to the building plans is such that it would extend the building contract period, the contractor shall be entitled to receive a reasonable extension to the building contract period. The extension must be agreed in advance,*

and a demand for extending the building contract period must, once it has been considered, be presented in writing in conjunction with the tender for the modification work, and no later than the start of work on the modification to the building plans.

§45 Change in quantities in a unit price building contract

1. *Unless otherwise stated in the commercial documents, changes in quantities in unit price building contracts shall be compensated or reimbursed according to the unit prices in the contract, taking into account, however, the provisions of paragraphs 2-4.*

2. *The unit prices in a priced bill of quantities shall remain valid despite alterations in quantities if agreement was made in the building contract that fixed costs would be paid separately.*

3. *If fixed costs are included in the unit price, an increase or decrease of more than 25% in the quantity for the item in the bill of quantities compared to the quantity in the contract shall require an adjustment in the unit price of the item to ensure that the amount of fixed costs included in the item do not increase or decrease by more than one quarter of the amount of the original fixed costs included in the item. The adjustment is not made if the change in cost of the item caused by a change in the quantity is less than 1% of the contract price. Unless the amount of fixed costs in the unit price has been agreed, their proportion is assumed to be 12% of the unit price.*

4. If, in a case under paragraph 3, the quantity of an item increases or decreases by more than 50% compared to the quantity in the contract, and the change also represents at least 5% of the contract price, the contracting party shall be entitled to demand a justified adjustment in the unit price.

§46 Additional work

Increases payable for additional work, i.e. for further work other than under §43 paragraph 1, and the price, completion period and effect on the building contract period, must be agreed in writing before the work is begun.

§47 Cost price

1. Unless otherwise stated in the commercial documents, the cost price shall include:

a) the wages of immediate supervisors and employees together with their social security expenses, travel expenses and daily allowances based on legislation and collective agreements, and compensation for tools;

b) the prices and transportation costs of construction products and working materials; c) the costs paid to sub-contractors on the basis of a contract approved by the client;

d) the costs of construction equipment;

e) other specified costs directly concerned with the work;

f) a 12% overhead cost increment for costs other than those whose debit price already includes the increment. In sub-contracts and nominated sub-contracts the overhead cost increment percentage must be agreed separately;

g) value added tax calculated on pre-tax prices.

2. The contractor must provide the necessary information required by the client on wages, invoices and other comparable matters on a cost price basis.

3. Remuneration of the person responsible for the work carried out, referred to in §56 paragraph 1 below, and the expenses of the contractor's head office shall be included in the overhead cost increment. Unless agreement is otherwise reached in the contract documents about the wages of employees or the hiring of tools, the general wage level and tool-hire cost in the field in question at the time shall be used.

§48 Effect of index on contract price

1. If the contract links the contract price to an index, each instalment shall be paid according to the amount specified in the contract but shall be subsequently adjusted as soon as the index has been calculated for the month in which the work giving entitlement to the instalment or a part of it was completed. The adjustment shall be made by increasing or decreasing the payment instalment by the same proportion as the ratio of the index figure for the month of completion to the index figure for the month in which the contract price was index-linked.

2. Advance payments shall be adjusted according to the index for the month in which the due date falls, and the final payment instalment according to the index for the month in which the handover inspection is conducted. No index compensation shall be calculated on any advance payment clawback deducted from a payment instalment. No interest shall be calculated on an increase due to the contractor or a reimbursement due to the client on the basis of the adjustment.

3. When payment of an instalment or other contract-based payment due for the contractor is deferred for reasons which do not allow the contractor the right to receive an extension to the building contract period, adjustment of the instalment shall be made using the index for the



month in which the building contract stage giving entitlement to the said instalment would be considered to have normally been completed in the absence of the delay, provided that the index has risen during the period of delay. If, however, the index has fallen during the said period, the instalment shall be adjusted according to the index for the month of completion of the work stage.

4. If the calculation bases for the index are altered during the validity period of the contract, the new index shall be applied as soon as publication of the old index has ceased, and the index figure to which the contract price is linked shall then be revised in accordance with the new calculation bases.

§49 Effect of change in prices and wages on contract price

1. Unless otherwise specifically stated in the contract, changes in the level of prices and wages shall not increase or decrease the contract price.

2. Value added tax is calculated on the contract price as the actual tax payable at the time in question.

3. Unless otherwise stated in the contract, changes in costs caused by state legislative measures (act, decree, decision of the Council of State or a ministerial decision), other than those referred to in paragraph 2, shall be taken into account as a factor increasing or decreasing the contract price only if their combined effect is at least 0.5% of the contract price exclusive of value added tax. Taking such cost changes into account also requires that

- their justification arose after submission of the tender leading to the contract or, in other cases, after signing of the contract,
- they could not have been taken into account in preparing the tender or, likewise, in drawing up the contract, and
- they have a direct effect on the building contract work covered by the contract.

4. Demands concerning changes in costs must be presented with their justifications no later than the time of the contract inspection under §70 or §71. By providing the relevant receipts or using any other reliable method, the contractor must notify the client of the information necessary for calculating the changes in cost. 5. Neither party, however, shall have the right to a change in the contract price under paragraph 3 with the said justification in so far as the change may be compensated on the basis of the index clause of the contract or would be in excess of what is permitted by the legislation in force at the given time. If such a change in cost occurs at the end of the building contract period, the contracting party responsible for the delay shall not be entitled, on the basis of these provisions, to demand an increase or decrease in the contract price in his favour.

§50 Effect of force majeure on contract price

1. If building contract work is interrupted in whole or in part for a reason beyond the control of the contracting parties as referred to in §20, with the exception of the reason stated in item c of paragraph 1 of the said section, and loss or damage is incurred by the contractor as a result, the client shall compensate the contractor for the site security expenses, heating and other energy costs and the costs of protecting, servicing and maintaining the site as a consequence of the interruption.

2. Furthermore, the client shall contribute towards the other costs incurred by the contractor, the size of the contribution amounting to 2 per cent of the average daily cost of the building contract per working day for the first 5 working days of the period of interruption, and 1 per cent per working day thereafter, the average daily cost being calculated by dividing the contract price exclusive of value added tax by the number of working days in the building contract period.

3. Calculation of the costs caused by the interruption shall take into account the shifting of the building contract period to a less advantageous or more advantageous time of year.

4. The contractor is not entitled to receive from the client any other compensation for an interruption.

Spanish regulation is saying:

- Spanish Civil Code.

- **Article 1593.**

The architect or contractor who is responsible for elevation adjustment of the construction of a building or other work in view of a plane agreed with the owner of the land, can not ask for price increase although it has increased the wages or materials, but you can do when you have made any changes in the plane that produces increased work, provided that had given its own authorization.

- **Article 1594.**

The owner may give up, by his will alone, for the construction of the work although it has begun, indemnifying the contractor for all your expenses, utility work and I could get from it.

- **Article 1595.**

When commissioned some work to a person because of his personal qualities, the contract is terminated by the death of this person.

In this case the owner must pay to the heirs of the builder, a proportion of the agreed price, the value of work performed and materials prepared, provided that these materials produce a benefit.

Have the same meaning if they contracted the work can not finish it for some reason beyond its control.

- **Article 1124.**

The power to settle the obligations is implied in reciprocal understanding, for if one does not fulfill the obligation incumbent upon it.

The injured party may choose between demanding the fulfillment or termination of the obligation, with the payment of damages and payment of interest in both cases. You can also order the resolution, even after opting for compliance, when it proves impossible.

The Court shall order the resolution that is claimed to have no just cause authorizing him to point term.



The non-payment of any of the certification approved, authorizes the builder, under the “exceptio non adimpleti contractus” to suspend the execution of the realization of the work until it is paid, or to ask for the resolution of contract for failure the same (Article 1124 of the Civil Code), provided that the failure of the certification has the true and proper character failure, not of mere delay in payment.

It is possible that the developer does not fulfill its obligation to pay on the grounds that the work was not executed correctly. In this case, the exceptions that the client can claim in case of claim for payment of the price by the contractor are two:

1. The unfulfilled contract exception (exceptio rite adimpleti contractus).
2. The exception of properly unfulfilled contract (contractus adimpleti exceptio non rite).

When the promoter is opposed to the payment of the work because he understands that the constructor is executing or has executed incorrectly or faulty work, that this exception to be successful it is necessary that the defect or construction defects are of some importance or significance in relation to the aim pursued, making it inappropriate to meet the interest of the client.

The principle of invariance of the price has to be interpreted in its proper terms, since this principle contemplates the normal assumptions of increased salaries or materials, but unforeseen circumstances where there is an extraordinary increase in the cost of the work, may be reviewed prices offered and accepted.

The contract work, whatever the price fixing system, supports price review clause. This clause is intended to adjust the price of the work contracted to increases or decreases in the value of labor and materials.

The price review clause to be incorporated into a work contract should prevent both increases and decreases in salaries and materials.

Chapter 7; TITLE AND RISK.

- YSE 1998. General Conditions for Building Contracts.

§51 Effect of payment

The contractor's itemised construction goods and building components on the building site shall be transferred to the possession of the client in so far as the corresponding payment for them has been effected.

§52 Effect of fastening

Construction products fastened to the building project are, as part of the building project or real estate, the property of the building owner or other real estate owner.

§53 Removable materials, demolition waste and problem waste

1. Unless otherwise stated in the commercial documents, all earth, stone and wood removable from the building contract area and not needed for the building contract work, and demolition waste from the building, structures and other constructions, together with their transport from the site, waste taxes and refuse dump charges shall be the responsibility of the contractor.

2. The materials indicated in the contract documents for use in the building work or proposed for storage shall remain the property of the client.

3. Problem waste shall be transferred to the contractor, in respect of paragraph 1, only to the extent that its quality and quantity are evident in the contract documents or the matter is agreed separately in writing.

§54 Copyright

Each contracting party shall retain the copyright for his own drawings and other plan documents, and he may not use plan documents in his possession in other projects if these plan documents have been prepared by the other contracting party.

§55 Risk

1. If the building project or a part of it becomes damaged or destroyed before it is handed over to the client, the loss or damage, with the exception of loss or damage caused by force majeure which is considered a natural disaster, shall be the concern of the contractor, irrespective of whether he has been paid the contract price in part or in full. With regard to any property delivered to the building project by the client but which does not form part of the building contract work, the risk shall be borne by the client.

2. In repair work and in sub-contracts and nominated sub-contracts, the contractor's risk with regard to the building project shall be limited to the work he undertakes.

3. The risk of the building contract work shall be transferred to the client when the project is handed over to him in accordance with §70 or §71.

4. In so far as the loss or damage is covered by the insurance taken out in the name of the building owner, the building owner is obliged to pay the contractor compensation to cover the part of the building contract that was completed but not yet paid for. If the insurance sum is used to rebuild the damaged or destroyed building project or a part of it, the contractor shall receive payment for this work according to the progress made, in which case the original provisions on payment of the contract price shall apply to the extent appropriate.

5. If the loss or damage is caused by force majeure and is thus the concern of the contractor, he shall nevertheless bear no liability for a situation in which the building project cannot be



reconstructed using the insurance compensation because of a rise in construction costs.

I can't find any information about this in all of the Spanish laws or documents which I work in this thesis.

Depending on the type of contract work to be performed, the materials for construction will be provided by the builder or client.

However, as we have seen above the Spanish Act 38/1999, talks about the obligations of each of the participants in the construction process.

The waste problem is resolved the same way as in Finland, it is normal that this pickup locations in the specifications of the contract work, but, it must reach a written agreement.

The risk for each of the parties on the material and finish of the work, I've talked about it in Chapters 3 and 4.

Chapter 8; ORGANISATION.

- **MANAGEMENT.**

- YSE 1998. General Conditions for Building Contracts.

§56 Management by contractor

1. *The contractor responsible for site management duties must have a foreman in charge on the building site who manages the building work and is responsible for ensuring it is carried out in accordance with the Building Act, the Building Decree and the building regulations.*

2. *Each contractor must operate with management that is sufficient and competent for the demands of his building contract work and must appoint a person in charge of the work for the full period of implementation who is proficient at the job and to whom the client or his representative can issue orders concerning the building contract work as lawfully as if the order were given directly to the contractor. The contractor must notify the client in writing of the person appointed to this task, without delay. The client must be able to contact the contractor's representative, and the representative must always be free to meet on site as required.*

§57 Health and safety at work

1. *The contractor responsible for site management duties must appoint a person responsible for ensuring that the general management on the site is sufficient from the safety and health viewpoint and for organising co-operation and information flow between the parties, coordination of activities and the general tidiness and order of the construction site area.*

2. *If no contractor has been appointed responsible for site management duties in the project, the obligations under paragraph 1 shall be the responsibility of the building owner or other party that controls and supervises the building project.*

3. *Each contractor must appoint a competent and accountable person for the management and supervision of his work and who shall be responsible for observing the rules concerning health and safety at work.*

§58 Other regulations concerning the contractor's employees

1. *The contractor must have a sufficient number of skilled employees for the purposes of the building contract work.*

2. *The contractor must provide the client, on request, with information on the number of employees in his own employ and in the employ of his subcontractors for the purposes of the building work.*

3. *All persons on the site in the employ of the contractor must have an individual identifier indicating the individual in question and his client.*

4. *If a person in the employ of the contractor proves incompetent or unsuitable to the extent that the work performance suffers and the matter is not rectified with a written notice from the client, the person must be replaced with another person.*



Spanish regulation is saying:

- Act 38/1999 Building Act.
 - **Article 11.**
 - b) *Appointing a Construction Manager to act as the builder's technical representative and whose qualifications or experience enable him to act in such capacity based on the characteristics and complexity of the works in question.*
- RD 1627/97 minimum provisions of safety and health in construction works.
 - **Article 3. Appointment of coordinators for safety and health.**
 - 1.- *When developing the construction project involving several designers, the developer shall appoint a coordinator for safety and health during the elaboration of the project work.*
 - 2.- *When the execution of the work involving more than one company, or a company and various freelancers or self-employed, the developer, prior to the start of work, appoint a coordinator for safety and health during the execution of the work.*
 - 3.- *The appointment of coordinators for safety and health during the elaboration of the project work and during execution of the work may be held by the same person.*
 - 4.- *The appointment of coordinators shall not relieve the developer of its responsibilities.*

Both in Finland and in Spain the work management and workers by the contractor must be optimal according to the needs of the project and the contract. For this purpose, the contractor shall appoint a supervisor.

In Spain the health and safety coordinator of a work must be the client or a person designated by the client with the knowledge, qualifications and ability to develop this work into a work site.

Also in Finland, the contractor to designate as worker health and safety coordinator.

Both in Spain and Finland all workers of a work must be equipped with personal protective equipment and a visible identification.

- **SUPERVISION.**

- YSE 1998. General Conditions for Building Contracts.

§59 Client representatives and their authority

1. *The client must notify the contractor in writing of his competent representatives and their authority.*
2. *The contractor may turn to the client's competent representative in matters concerning the building contract work as lawfully as turning directly to the client in the matter.*
3. *Declarations of intent concerning a modification to the building plans may only be issued by persons specifically notified for this task to the contractor. Persons in the employ of the client or of the building owner do not have the right on the basis of their position to issue this kind of order, unless they are given special authorisation.*
4. *A person duly authorised by the client in the manner described in paragraph 1 may issue an order for small and urgent modifications without the need for written agreement.*

§60 Supervisors

1. *The building contract work shall be supervised on behalf of the building owner by competent supervisors appointed to this task by the building owner. A contractor from the same field or a person in his employ may not function as supervisor without the consent of the contractor.*
2. *The building project's planners shall undertake general supervision of the implementation of their plans and shall issue further and more detailed instructions regarding the plans. They are not entitled to order or agree on changes to the building contract.*

§61 Carrying out supervision

1. *The client's representative and supervisor are entitled to visit the building site and locations in which work forming part of the building contract is being undertaken, at any time. They are also entitled to carry out supervisory and inspection calls at places of manufacture of the construction materials and building components used by the contractor.*
2. *The client's representative and supervisor are also entitled, for the purposes of supervision, to use without charge any equipment, appliances and materials at the place of inspection which belong to the contractor, in order to carry out necessary tests, measurements and other tasks of this nature, and to receive the necessary assistance for this. The carrying out of other tests is prescribed in §11.*
3. *The client's representative and supervisor are entitled to have use of the measurement results that are required for the contractor's quality assurance and the contractor's other quality assurance information.*
4. *If the client's representative or supervisor notices a defect in the building contract work, he must report it to the contractor, who must correct the defect without delay.*
5. *If the client's representative or supervisor notices a serious defect in the building contract work which is not corrected immediately and which if left uncorrected would cause considerable additional cost, danger or loss or damage, he must notify the contractor of this in writing by an entry in the site diary, in the minutes of a site meeting or in another way. If the contractor considers the demand outlined in the notification as contrary to the contract or inappropriate, he must present his demand or counterdemand to the client in writing as soon as possible.*
6. *If it proves that the supervisor is incompetent or unsuitable to the extent that implementation*



of the building work is suffering, the contractor must notify the client of this in writing. If the matter is not rectified, this person must be replaced with another person.

§62 Effect of supervision on liability

1. Supervision undertaken at the behest of the client does not limit or diminish the contractual liability of the contractor.

2. If, however, the client has failed to notify a serious defect in the building contract work, which has been so obvious that he would reasonably be expected to have noticed it and given notification accordingly to the contractor in the manner described in §61 paragraph 5, the client shall be liable in as far as his own negligence is concerned for the additional costs and loss or damage caused by the defect. The liability is not transferred, however, if the defect is caused by serious neglect on the part of the contractor, by work left uncompleted by the contractor, or is a consequence of significant neglect of the agreed quality assurance. The obligation to furnish proof of the transfer of liability to the client lies with the contractor.

Spanish regulation is saying:

- Act 38/1999 Building Act.

- **Article 12.**

c) Solve the problems that occur in the work and record in the Book of Orders and Assists the instructions for the correct interpretation of the project.

d) Prepare, at the request of the developer or with its agreement, any adjustments to the project, to come required by the progress of the work provided they are adapted to the provisions referred to regulations and observed in the drafting.

- **Article 13.**

b) Verifying the reception of building materials at the works site and ordering the required test and trials to Quality Control Laboratories and Entities.

c) Directing the material execution of the works, confirming ground plans, materials and the correct execution and arrangement of the constructive elements and services according to the project and following the instructions of the Works Director.

d) Noting the pertinent instructions in the Book of Orders and Attendance.

- **Article 14.**

a) Provide technical assistance and deliver the results of its activity to author custom agent and, in any case, the technician responsible for the reception and acceptance of the outcomes of care, either the director of the execution of the works, or agent appropriate in the planning stages, the execution of the works and the useful life of the building.

b) Justify that have implemented a system of quality management that defines the procedures and methods of test or inspection that used in its operations and that have the capacity, personnel, means and equipment.

Both in Spain and Finland, there must be a representative of the client qualified to perform the work mentioned in both laws. The tasks of the client's representative or supervisor are the same in both countries, and these tasks are defined in both the Finnish and the Spanish laws.

Chapter 9; JOINT MEETINGS AND PROCEEDINGS.

- **MEETINGS AND INSPECTIONS.**

- YSE 1998. General Conditions for Building Contracts.

- ***Building contract negotiations***

- Minutes shall be taken of the building contract negotiations undertaken by the contracting parties prior to signing the contract, and these minutes shall be signed by the client and the contractor.*

- §64 Plan review**

- In the event that either of the contracting parties wishes, before the work begins, to subject an aspect of the content or conduct of the plans or the readiness of the plans with regard to the start of work to legal confirmation, a plan review shall be conducted, unless the matter can be otherwise clarified. For the review, the provisions of §65 paragraphs 2 and 3 shall otherwise apply.*

- §65 Reviews concerning execution of building contract**

- 1. In the event that either of the contracting parties wishes, either during the construction period or afterwards, to subject an aspect or circumstance of the construction work to legal confirmation, a review shall be conducted at the building project, unless the matter can be otherwise clarified.*

- 2. The review must be held at the time notified by the contracting party that requested it or at a jointly agreed time. The review may be held even if one of the contracting parties is absent, unless there is adequate reason for the absence.*

- 3. The review is held by the client and contractor together. Both contracting parties are entitled to invite specialists to the proceedings. The provisions of §§ 76-77 on inspections shall apply to the review, to the extent appropriate.*

- §66 Site meetings**

- 1. Minutes shall be kept of the site meetings held jointly between the contracting parties, and these shall be signed by the client and the contractor or their representatives. The site meeting shall be chaired by the client or his representative, and the minutes shall be taken by a person agreed separately.*

- 2. A notice or notification made at a site meeting and entered in the minutes of the meeting which would otherwise need to be made in writing is considered to be equivalent to such a written notification.*



§67 Measurements

The measurements necessary to establish quantities or to ascertain some other aspect of the work must be made in the presence of both contracting parties, unless otherwise agreed. The contractor must notify the client in good time of the need for the measurement. If either of the contracting parties neglects to participate in the carrying out of the measurement at the time agreed, the measurement made by the other party shall be binding, unless an obvious fault can be demonstrated in the measurement.

§68 Types of inspection

- 1. After completion of the building project or of a part of it agreed for handover separately, a handover inspection under §71 must be held at the building project, unless some other handover procedure has been agreed.*
- 2. Where building contract work, or a part of it to be handed over separately, is completed before completion of the building project, an inspection of this work must be carried out under §70.*
- 3. When the guarantee period expires, a guarantee inspection under §74 shall be carried out on the building.*
- 4. In the course of the above inspections, follow-up inspections may be prescribed.*

§69 Inspections required by law

- 1. The contractor is obliged to ensure that the reviews and inspections which must be made in accordance with legislation or on the orders of the authorities are actually carried out. The contractor shall pay for proceedings whose costs must be met by the building owner, with the exception of those mentioned in §8 paragraph 1.*
- 2. The contractor must notify the client of all inspections. If the presence of the client at an inspection is necessary, the notification must be given in sufficient time before the inspection.*
- 3. An inspection conducted by the authorities does not restrict the rights of the client under the contract.*

Contrary to Finland, Spain is no law regulating the meetings between the contracting parties. The meetings held in the workplace, in Spain are called site visits, which are to assist the contracting parties or any person authorized to represent them and the designer has. The most common is that these meetings be held once a week or every 15 days. These meetings continue to check the work schedule and corrected or change aspects that are not entirely clear on project. As in Finland, any changes you decide to take these meetings must be recorded in the minutes of meeting.

In Spain the competent authorities routinely conduct inspections of work without notice, therefore these inspections does not regulate any law. These inspections are performed by an inspector who works for the authorities, and inspects the work being done, the safety and health, working enclosure occupation etc.. After this inspection, the inspector takes a minute where errors are logged, if any, and then the authorities send a financial penalty and the obligation to fix errors in the workplace.



- **HANDOVER.**

- YSE 1998. General Conditions for Building Contracts.

§70 Work completion inspection

1. *If building contract work or a part of it has been agreed or will be agreed for completion before handover of the building project, a work completion inspection shall be carried out after completion of the work in order to hand it over to the client.*

2. *The provisions of §71 on handover inspections shall apply to the work completion inspection to the extent appropriate.*

§71 Handover inspection of building project

1. *Both the contractor and the building owner are entitled to request a handover inspection when the building project referred to in the contract is at the stage of completion where any work in progress or not yet carried out can be completed before the handover inspection.*

2. *The request must be made in writing, after which the inspection must be started within 14 days of receipt of the request at the latest, either on the agreed day or, if no such agreement is reached, on the day stipulated by the building owner.*

3. *Before the handover inspection, the contractor must himself ensure that the building work is complete and fulfils the requirements of the contract.*

4. *The handover inspection must state whether the finished result is in accordance with the provisions of the contract documents. Minor finishing touches not yet carried shall not prevent the handover, provided that they will not cause impediment or harm when the finished result is taken into use.*

5. *The inspection record must state whether any obligations of the building contract have been left unfulfilled or to what extent they have not been carried out in accordance with the contract. Further to this, the record must include at least the following points:*

a) whether or not the finished result is approved for handover, and to what extent; b) if the finished result is not approved for handover, the reasons for this decision; c) defects considered the contractor's liability and the date by which they must be corrected or removed, and the sum of money withheld from the part of the contract price not yet paid until the defects have been corrected or removed;

d) defects about which a reduction in value from the contract price can be agreed; e) defects which are not considered to have any implications for the contractor, and the reasons for this;

f) reminders which are not considered to require immediate measures, but which must be dealt with eventually at the guarantee inspection;

g) defects the requirements for which cannot be particularised in an inspection, and the date by which and the manner in which they will be clarified;

h) differences of opinion arising in the inspection; i) the date when the insurances taken out by the contractors and required by the contract may be terminated;

j) the date from which the building owner will be responsible for the maintenance and operating costs of the building project handed over;

k) the start and end dates of the guarantee periods;

l) provisions for conducting a follow up inspection and the defects to be examined in such an inspection; m) any lateness in the contractor's work; n) an account of the inspections required

by the authorities and under legislation and of the records held on these inspections, and of the surrender of these records to the building owner;

o) delivery to the building owner of the other transfer documents required by the building permit, by the drawings processed by the authorities and by the contract;

p) other demands made by the contracting parties directed at each other, and any rejoinders;

6. Before an entry is made in the record of any defect, the contractor must be reserved an opportunity to present his views on the matter, the content of which must be entered in the record.

7. Each contracting party must present any demands directed at the other party, together with the detailed justifications, no later than at the handover inspection, at the risk of otherwise forfeiting the right to make these demands. However, only those demands presented with justifications at the handover inspection can be discussed at the time of the final settlement meeting, as referred to below in §73.

§72 Measures remaining for contractor following inspection

The contractor must, within the agreed period or as quickly as possible, carry out the measures which were found in the inspection to be his responsibility. The contractor must, however, separately agree on correcting or removing, for a suitable charge, those defects for which he is not liable under the contract documents if the client, without delay, so demands.

§73 Final settlement of accounts

1. Unless all the accounts between the contracting parties have been finally settled in the inspection under §70 or §71, and unless time limits are otherwise agreed, the contractor must, within two weeks of receiving the inspection record, send the client an itemised final account of all the matters between the contracting parties that required clarification. The account and the client's response to be given to it shall be discussed at the final settlement meeting, which must be held within one month of the surrender of the accounts to the client.

2. Minutes must be kept of the final settlement meeting, and appointment of the minute taker and of the chairperson for the meeting shall comply with the provisions concerning the inspections given in §76. The following must be indicated in the minutes:

a) the final account drawn up by the contractor and the client's response to it; b) the client's demands which are not part of the above response;

c) other possible matters affecting the accounts.

3. The contracting parties, at the risk of forfeiting their right to be heard, must present their demands directed at each other no later than at the final settlement meeting. The sanction of forfeiture shall not, however, apply to demands which have earlier been agreed.

§74 Guarantee inspection

1. Unless otherwise agreed, the contracting parties must conduct a guarantee inspection of the building no earlier than one month before the termination date of the guarantee period notified at the handover inspection, and no later than the said termination date. If neither of the contracting parties has, in sufficient time, requested an inspection to be held within the time limit, the guarantee period shall continue for one more month, during which time the client shall remain entitled to present his demands concerning the contractor's liability for the guarantee period.

2. The provisions on handover inspections shall apply to the guarantee inspection to the extent appropriate.



Spanish regulation is saying:

- Act 38/1999 Building Act.

• **Article 12.**

1. *The reception of the works is the act whereby the builder, once the works is complete, delivers the works to the developer, who accepts the works. The reception may take place with or without reservations and shall apply to all completed works or phases, as agreed by the parties.*

2. *The reception will be recorded in a document to be signed by the developer and the builder which will indicate the following:*

a) The parties involved. b) The date of the final certificate of all of the works or phases completed. c) The final cost of the material execution of the works. d) The declaration of the reception of the works with or without reservations, specifying these, where applicable, objectively and the deadline by which any observed defects must be remedied. Once remedied, a separate certificate will be drawn up and signed by the parties involved in the reception of the works. e) Any guarantees required from the builder to insure the fulfilment of responsibilities.

In addition, the final building certificate signed by the Works Director and the Director of the Execution of the Works will be included.

3. *The developer may refuse to accept the works if he considers that it is incomplete or does not comply with the contractual conditions. In any event, the reasons for such refusal must be given in writing in the certificate along with a new date of the reception of the works.*

4. *Except where otherwise agreed, the reception of the works will take place within thirty days of the completion of the works, as accredited in the final building certificate, which period shall be determined starting with the written notification to the developer. The works shall be understood as tacitly received if the developer has not stated his reservations or given his reasons for refusing to receive the works in writing within said thirty-day period.*

5. *The liability and guarantee periods established in this Act shall commence on the date on which the reception document is signed or on the date of the tacit reception as described in the preceding part.*

- **RECORD KEEPING.**

- YSE 1998. General Conditions for Building Contracts.

§75 Site diary and notifications entered

1. Unless otherwise agreed, the contractor responsible for site management duties must ensure that a site diary is kept on the site, in which information and events concerning the work are entered daily.

2. A notification concerning the site presented by the client, an authority, a contractor from any site whatsoever, a specialist or a supplier must be entered, upon request, in the site diary.

3. The keeper of the site diary must demonstrate, by means of a receipt or in another way, that a notification shown in the diary concerning some other party has been brought to the attention of that party.

4. The site diary must be presented to the site supervisor, who shall indicate that he has received it for information by means of a receipt.

5. If the matter is separately agreed, other contracting parties shall also be obliged to keep a site diary.

§76 Inspection record

1. A record must be kept of all inspection proceedings, and this shall include at least the following points:

a) the type of inspection at issue and the object of the inspection;

b) when, where and at who's request was the inspection made;

c) a statement on the inspection's compliance with the contract;

d) the contracting parties present at the inspection, any representatives and specialists of these parties and, if necessary, other persons participating in the inspection;

e) result of the inspection;

f) demands and responses of those concerned;

g) measures ordered to be undertaken, and their time limits;

h) how the record is to be checked and signed.

2. The client or his representative shall chair the inspection proceeding, unless the contracting parties agree on the selection of an unchallengeable person for this task. The chairperson shall determine who keeps the record.

3. An inspection agreed or notified in advance may be held despite the absence of the contractor.

4. The contracting party that requested the inspection must supply the necessary parts of the inspection record within fourteen days of receiving it to the contracting party whose right or obligation is affected by the matter forming the object of the inspection.



§77 Checking records

At the demand of the contracting parties, the records must be handed over to them straight away at the inspection or other proceeding, allowing them to examine the necessary parts. In other cases, the client must ensure that the records are supplied to the contractor without delay, and no later than fourteen days after the completion of the inspection. If it is considered that the record in some respect does not correspond to the actual inspection, the contractor must supply the client with a justified objection within fourteen days of receiving the record.

Spanish regulation is saying:

- Royal Decree 1627/1997.

1- In every workplace will exist for the purpose of controlling and monitoring the safety and health plan a log book that consist of sheets in duplicate.

2- The logbook will be provided by:

- *The professional association to which he belongs the technician who has passed the safety and health plan.*

- *The Project Supervision Office or equivalent structure in the case of works of public administrations.*

3- Logbook, which should always be kept on site, will be held by the coordinator for safety and health during the execution of the work. A book that will have access the direction of the work, the contractors and subcontractors and autonomous workers, as well as persons or bodies with responsibilities for prevention in the companies involved in the work, the representatives of the workers and technicians organs specialized in safety and health at work of the competent public authorities, who will be able to annotate it, related to the purposes for which the book was recognized in paragraph 1.

4- Made an annotation in the logbook, the coordinator for safety and health during the execution of the work or the direction of the work, must notify the affected contractor and representatives of the workers of this. For the annotation refers to any breach of the warnings and observations previously recorded in this book by the person so authorized, shall send a copy to the Labour Inspection and Social Security within twenty four hours. In any case, you must specify whether the annotation made is a reiteration of a warning or previous observation or, on the contrary, it is a new observation.

Chapter 10; TERMINATION AND TRANSFER OF CONTRACT.

- **CLIENT'S RIGHT TO TERMINATE THE CONTRACT.**

- YSE 1998. General Conditions for Building Contracts.

§78 Contractor's breach of contract

1. *The client is entitled to terminate the contract:*

a) *if the contractor does not observe the agreed starting date for the work or if the work is carried out so slowly that it clearly would not be completed in accordance with the time specified in the contract, unless this is for reasons which would entitle the contractor to receive an extension to the building contract period;*

b) *if the building work develops into something which is essentially contrary to the contract in terms of construction goods, building components or work or otherwise, or if the contractor does not otherwise comply with the provisions of the contract documents;*

c) *if the contractor has not deposited the agreed surety within 21 days of the signing of the contract, or if the contractor has not deposited the additional surety referred to in §36 paragraph 6 within the time determined by the client.*

2. *Before the contract is terminated, the client must draw the contractor's attention to this in writing by notifying him of the threat to terminate the contract unless the neglect is corrected in the reasonable time demanded by the client.*

§79 Bankruptcy or incapacity of contractor

The client is entitled to terminate the contract if the contractor is declared bankrupt or if the contractor is otherwise observed to be in a situation where he cannot be expected to fulfil his contractual obligations and a reliable report to the contrary confirming fulfilment of these obligations is not received.

§80 Force majeure

The client is entitled to terminate the contract if it is necessary to interrupt the building work for a long and indefinite period on account of exceptional circumstances referred to in the State of Defence Act or the Readiness Act or similar force majeure.

§81 Death of contractor

If the person functioning as the contractor should die, the client shall be entitled to terminate the contract. The client must, however, offer the contractor's estate the opportunity to continue the work if the estate is considered to have the resources to bring the building contract work to completion. The deceased's estate must then give notification, without delay or at the latest within two weeks, of whether the estate intends to make use of this offer. The deceased's estate must also notify the client of the person who, as representative of the deceased's estate, will be supervising the contractual compliance of the building contract work and whom the client can reasonably be expected to approve. The arrangements necessitated by the death of the contractor shall not lead to any change in the agreed building contract period.

§82 Taking possession of site and compensating for use of materials and equipment

1. *If the client terminates the building contract in the cases referred to above in §§ 78-81, the client or, if the task of continuing the building contract is transferred to the contractor's guarantor, the guarantor shall be entitled to take the site into his possession immediately with all its buildings and construction goods, and to use these for continuing the work. The client or the guarantor continuing the work must pay the current rate of compensation to the contractor, his assignees or the bankrupt's estate for the use, to the benefit of the client, of property that belongs to the contractor, his assignees or the bankrupt's estate, either as the price of the construction goods used or as rent to the extent that this is not included in the contract price or taken into account in any other way. The client is entitled to use this compensation to set off the damage claims referred to in §83 paragraph 1 against each other.*

2. *After the client has terminated the contract in the above manner, a review must be conducted on the site, in which the site's other contractors can also participate. The review will state the stage of readiness of the work and a list will be drawn up, as circumstances allow, of the construction goods on the site and their owners. Notwithstanding the above, the work on site may continue prior to the review to the extent that it is necessary for technical or other reasons.*

3. *If agreement is not reached on the payments referred to in paragraph 1 before the continuation of work is started at the behest of the client or the guarantor, this difference of opinion shall not be permitted to delay the continuation of the work. Instead, the client or guarantor shall retain the said rights irrespective of whether agreement is reached on the payment matters.*

4. *If the contractor, his assignees or the bankrupt's estate prevent the work from continuing, the client or the guarantor shall be entitled to receive from that party compensation for all the additional loss or damage incurred by the client or the guarantor due to the delay in the continuation of the work.*

5. *The contractor, his assignees or the bankrupt's estate are also obliged to co-operate in ensuring the client or guarantor get to take possession of the plans drawn up on the order of the contractor and the contracts made by the contractor concerning the building contract work.*

§83 Settling accounts

1. *If the client terminates the contract in the cases referred to above in §§ 78-79 and §81, the contractor is obliged to compensate the client for all the expenses caused as a result of termination of the contract which are incurred beyond the contract price in bringing the building work to completion, as well as for all the other loss or damage caused to the client by terminating the contract and those which are due to the contractor's wilful or negligent practice.*

2. *Remuneration corresponding to all the work he has undertaken must be calculated in favour of the contractor, but taking into account as a deduction the expenses of bringing the work to completion and any loss or damage caused to the client from termination of the contract, as well as any penalty for delay that is payable.*

3. *The accounts of the client and the contractor shall be finally settled after completion of the building work, when the client reports on the costs he has incurred in carrying out the work, including all the relevant expenses and the loss or damage for which the contractor is liable. This report shall follow the above provisions on final settlement proceedings, to the extent appropriate. Until the accounts are settled, the client is entitled to withhold the contractor's defined share of the contract price in the manner referred to above. If, however, the work is not brought to completion in a reasonable time, both contracting parties shall be entitled to demand that the accounts between the contracting parties are finally settled on the basis of the results of review proceedings and considerations of equity.*

Spanish regulation is saying:

- Civil Code.

- **Article 1594.**

The owner may give up, by his will alone, for the construction of the work although it has begun, indemnifying the contractor for all your expenses, utility work and I could get from it.

- **Article 1595.**

When commissioned some work to a person because of his personal qualities, the contract is terminated by the death of this person.

In this case the owner must pay to the heirs of the builder, a proportion of the agreed price, the value of work performed and materials prepared, provided that these materials produce a benefit.

Have the same meaning if they contracted the work can not finish it for some reason beyond its control.

These are the only two items of the Spanish laws which speaks of when the client may terminate the contract. It can give for more reasons, but those reasons will be written in terms of the contract, so in each contract may be different depending on the parts of the building contract and the type of work being performed.



- **CONTRACTOR'S RIGHT TO TERMINATE THE CONTRACT.**

- YSE 1998. General Conditions for Building Contracts.

§84 Client's neglect of obligations

1. *The contractor is entitled to terminate the contract if the client does not fulfil his obligation to pay under the contract or any other obligations of his which materially affect the execution of the building contract, or if the client through his actions prevents completion of the building contract work in accordance with the contract. Before the contract is terminated, the contractor must draw the attention of the client to this in writing by giving notification of the threat to terminate the building contract unless the neglect is corrected in a reasonable time.*

2. *The contractor is entitled to terminate the contract if the client is declared bankrupt or if the client is observed to be in a situation where he cannot be expected to appropriately fulfil his contractual obligations and a reliable additional surety or report of the fulfilment of these obligations has not been given or will not be given within one week of it being demanded in writing.*

3. *In the above cases the contractor is entitled instead of termination to temporarily interrupt the work until it can be seen whether the obstacle will inevitably lead to termination of the contract. The contractor must notify the client of the matter in writing before the work is interrupted.*

§85 Force majeure

The contractor is entitled to terminate the contract if it is necessary to interrupt the building work for a long and indefinite period on account of exceptional circumstances referred to in the State of Defence Act or the Readiness Act or similar force majeure

§86 Effect of termination or interruption by contractor

1. *After the contractor has terminated the contract in the manner referred to above a review must be conducted on the building site, enabling the stage of completion of the work to be established and the proportion of the work contained in the building contract that has been carried out to be determined. The provisions of §82 paragraph 2 shall apply to this review.*

2. *If the contract is terminated in cases referred to in §§ 84-85, the contractor shall be entitled to receive remuneration corresponding to the proportion of the building contract undertaken, and in a case referred to in §84 also compensation for the demonstrable loss or damage incurred by him from termination of the contract, also including reasonable compensation for lost profits.*

3. *In the case that the contractor has interrupted the work in the manner referred to in §84 paragraph 3, but the interruption has not led to termination of the contract, the contractor is entitled to receive the necessary extension to his completion time on account of the interruption and compensation for the additional costs caused by interruption.*

In case it is the contractor who decides to interrupt or terminate the contract, there is no Spanish law regulating this action. The different causes of the contractor may interrupt or terminate with the contract must be written in terms of the contract. The most common causes are when the other party to the contract, the client does not meet its obligations

- **GUARANTOR'S RIGHT.**

- YSE 1998. General Conditions for Building Contracts.

§87 Completion of building contract at behest of guarantor

1. If the client, in the cases referred to in §§ 78-79 or in §81, terminates a contract which has security granted for its completion, the guarantor has the primary right to undertake the remaining building work to completion, provided that the work is carried out under management that the client can reasonably be expected to approve. In this case the guarantor must, however, assume direct liability for all the contractor's obligations under the contract which have remained unfulfilled, and if there are several guarantors continuing the work, each guarantor must additionally assume joint and several liability for the said obligations. Unless the client has received notification, at the latest within fourteen days of the client giving notification in writing of the termination of the contract to the guarantor at the address notified by the guarantor or otherwise known to the client, that the guarantor wishes under these conditions to bring the building contract to completion, this guarantor's right shall be forfeited.

2. The guarantor's aforementioned right shall not prevent the client from taking possession of the work in the manner referred to in §82 paragraph 1 as soon as he has terminated the contract

Spanish law does not have any rights of the guarantors specified. Normally the guarantor is a bank with which the client signs an endorsement, if the client breaks the contract, the work passes into the possession of the bank, which will invest that guarantee to finish the work and so to sell.



- **TRANSFER OF CONTRACT.**

- YSE 1998. General Conditions for Building Contracts.

§88 Transfer of contract

Neither of the contracting parties is entitled to transfer the contract without the consent of the other contracting party.

This rules are the similar in Spain, neither party to the contract may transfer the contract without the consent of the other party. The Spanish law only regulates the termination of the contract by one party of the contract with any sufficient cause as we have seen before in this chapter.

Chapter 11; DISAGREEMENTS AND THEIR RESOLUTION.

- YSE 1998. General Conditions for Building Contracts.

§89 General principle

In disagreements arising between the contracting parties a solution must be sought from the provisions of the contract documents and from the principles contained therein, even in cases where the documents do not provide a direct answer to the question at issue. Resolution should be sought to disputes and disagreements through mutual negotiation as they arise.

§90 Disputed work

If the contracting parties do not reach agreement over whether some particular work forms part of the building contract, or if they do not agree over the affect of modifications under §43 on the contract price, the contractor must nevertheless, at the demand of the client, complete this work at the right time. If it is found that the disputed work will bring about a change in the contract price or contract period, these changes shall be determined according to §44. The client, however, on the request of the contractor, must pay for the part of the disputed work regarded as undisputed, immediately upon its completion.

§91 Right to correct the contractor's neglect

1. If the contractor neglects to fulfil one of his obligations under the contract, the client shall be entitled to ensure that the obligation is fulfilled at the expense of the contractor, unless the contractor fulfils the obligation within the reasonable time limit imposed or agreed following the request of the client. The client may reclaim the expenses arising in this from the contractor either by setting off an equivalent amount of the contract price as being paid or by debiting the expenses separately from the contractor.

2. The liability to compensate as a result of neglect is defined in §25.

§92 Resolving disputes

1. Unless otherwise stipulated in the contract, disputes concerning the validity, interpretation and application of this contract or modification and additional work and their costs, about which the parties involved can not reach agreement, and matters concerning recovery of claims resulting from the contract, must be left to the decision of a district court.

2. If it has been agreed that arbitration proceedings will be used to resolve disputes, the parties may agree that the arbitration court will comprise one impartial arbitrator.



Disagreements between the developer and the contractor is not regulated in any Spanish law, nor the possible solutions to the different issues that may arise during a construction project.

Similarly, says Finnish legislation, the solution to disagreements between the parties to a construction contract should be in accordance with the dictates of the construction contract.

In case in which the reason for the disagreement is not contained in the construction contract, the parties to the contract of work must reach an agreement as favorable to all parties.

If the disagreement is whether a job is within the contract or not, should be to reach an agreement, where the builder do the work that the client asked, however the client must assume and pay the cost of labor when performed .

As in Finland, if the builder fails to meet its contractual obligations, the cost of the additional works will pay by the builder as well as some compensation for the delay.

CONCLUSIONS.

This study has focused on getting a comparison from a practical point of view, construction contracts, modifications, conservancies or rehabilitation of infrastructure in Finland, with the same contracts in Spain.

The legal framework for contracts for the execution of works by the Finnish state is much more concise, precise, and detailed than the Spanish legal framework. While in Finland all the legislation on this subject is contained in a law, YSE1998 General Conditions For Building Contracts, in Spain is contained in several laws.

Being less precise Spanish laws, and not having detailed all possible cases, as the Finnish case, they can be considered more flexible, and each contract new construction or rehabilitation varies adapting to the different needs of private companies and the client, facilitating agreement between parties of the contract.

Despite the differences between the laws of two countries in terms of content, there are many chapters and articles with a similar or even equal content. So in some ways they are very similar modes of carrying out contract work, despite the large differences between the two cultures, especially the weather, working methods and types of construction.

In my opinion, if I compare the laws of contract work, I think the law YSE1998 General Conditions For Building Contracts, is more complete. This law is more specific and contains more detail on many aspects and what I think is most important is that all the information is contained in a single document, this facilitates understanding by the parties forming the contract.

Moreover, the Spanish law is not as specified in many ways like the Finnish law, so the terms of the contracts can be much more specific to each contract, as the parties to the contract can decide for themselves many aspects of the contract.



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