



Ontario Association of Architects

The following supplementary conditions to the Stipulated Price Contract -- CCDC 2, 2008 have been developed in consultation and agreement with the Ontario General Contractors Association (OGCA) and are in alignment with supplementary conditions that have been established previously in consultation with specific owner groups and industry partners.

The OGCA has issued this same set of supplementary conditions to their members with the advice that they have been developed in consultation with the OAA.

RECOMMENDED SUPPLEMENTARY CONDITIONS FOR THE STIPULATED PRICE CONTRACT – CCDC 2, 2008

August 11, 2009 *(July 7, 2009 version revised to place all defined terms in italics)*

The Standard Construction Document for Stipulated Price Contract, 2008 English version, consisting of the Agreement Between *Owner* and *Contractor*, Definitions, and General Conditions of the Stipulated Price Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

ARTICLE A-6 – RECEIPT AND ADDRESSES FOR NOTICES IN WRITING

Delete Article A-6.1 and substitute new article 6.1:

6.1 *Notices in Writing* between the parties or between them and the *Consultant* shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier or if sent during normal business hours by fax and addressed as set out below. Such *Notices in Writing* will be deemed to be received by the addressee on the next business day if sent by fax after normal business hours or if sent by overnight commercial courier. Such *Notices in Writing* will be deemed to be received by the addressee on the fifth *Working Day* following the date of mailing, if sent by pre-paid registered post, when addressed as set out below. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

DEFINITIONS

Add the following definition:

- 19a. Submittals
Submittals are documents or items required by the *Contract Documents* to be provided by the *Contractor*, such as:
 - *Shop Drawings*, samples, models, mock-ups to indicate details or characteristics, before the portion of the *Work* that they represent can be incorporated into the *Work*; and
 - As-built drawings and manuals to provide instructions to the operation and maintenance of the *Work*.

1 GENERAL

- 1.1 Where a General Condition or paragraph of the General Conditions of the Stipulated Price Contract is deleted by these Supplementary Conditions, the numbering of the remaining General Conditions or paragraphs shall remain unchanged, and the numbering of the deleted item will be retained, unused.

GC 1.1 CONTRACT DOCUMENTS

- .1 Add to the end of subparagraph 1.1.2.2
- Except where the *Consultant* shall be indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4, 9.5.3.4 and in 12.1.3.
- .2 Add new subparagraph 1.1.7.5:
- 1.1.7.5 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.

GC 2.2 ROLE OF THE CONSULTANT

- .1 Add at the end of paragraph 2.2.9. "The *Owner* and the *Contractor* shall waive any claims against the *Consultant* arising out of the making of such interpretations and findings made in accordance with paragraphs 2.2.7., 2.2.8. and 2.2.9".
- .2 Delete the comma after the word "*submittals*" and add the words "which are provided" before the words "in accordance" in paragraph 2.2.14.

GC 2.4 DEFECTIVE WORK

- .1 Add new subparagraphs 2.4.1.1 and 2.4.1.2:
- 2.4.1.1 The *Contractor* shall rectify, in a manner acceptable to the *Owner* and the *Consultant*, all defective work and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*.
- 2.4.1.2 The *Contractor* shall prioritize the correction of any defective work which, in the sole discretion of the *Owner*, adversely affects the day to day operation of the *Owner*.

GC 3.1 CONTROL OF THE WORK

- .1 Add new paragraph 3.1.3:
- 3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or contradictions exist, or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

GC 3.4 DOCUMENT REVIEW

- .1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

GC 3.8 LABOUR AND PRODUCTS

- .1 Add new paragraph 3.8.4:

3.8.4 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors to be installed under the *Contract*) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Owner* and the *Consultant*. The *Owner* shall provide all relevant information on the *Products* to be supplied by the *Owner*.

GC 3.10 SHOP DRAWINGS

- .1 Add the words "AND OTHER SUBMITTALS" to the Title after SHOP DRAWINGS.
- .2 Add "and *Submittals*" after the words "*Shop Drawings*" in paragraphs 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11, and 3.10.12.
- .3 Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3
- GC.3.10.3 Prior to the first application for payment, the *Contractor* and the *Consultant* shall jointly prepare a schedule of the dates for submission and return of *Shop Drawings* and any *Submittals*.
- .4 Delete the words "with reasonable promptness so as to cause no delay in the performance of the *Work*" and replace with "within 10 working days or such longer period as may be reasonably required" in paragraph 3.10.12.

GC 3.14 PERFORMANCE BY CONTRACTOR

- .1 Add new General Condition 3.14.1

3.14.1 In performing its services and obligations under the *Contract*, the *Contractor* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The *Contractor* acknowledges and agrees that throughout the *Contract*, the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*.

- .2 Add new General Condition 3.14.2

3.14.2 The *Contractor* further represents, covenants and warrants to the *Owner* that:

- .1 The personnel it assigns to the *Project* are appropriately experienced;
- .2 It has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation.

GC 4.1 CASH ALLOWANCES

- .1 Delete paragraph 4.1.4 in its entirety and substitute new paragraph 4.1.4:

4.1.4 Where costs under a cash allowance exceed the amount of the allowance, unexpended amounts from other cash allowances shall be reallocated at the *Consultant's* direction to cover the shortfall.

- .2 Delete paragraph 4.1.5 in its entirety and substitute new paragraph 4.1.5:

4.1.5. The net amount of any unexpended cash allowances, after providing for any reallocations as contemplated in paragraph 4.1.4, shall be deducted from the *Contract Price* by *Change Order*.

- .3 Delete paragraph 4.1.7 in its entirety and substitute new paragraph 4.1.7.

4.1.7 At the commencement of the *Work*, the *Contractor* shall prepare for the review and acceptance of the *Owner* and the *Consultant*, a schedule indicating the times, within the construction schedule referred to in GC 3.5, that items called for under cash allowances and items that are specified to be *Owner* purchased and *Contractor* installed or hooked up are required at the site to avoid delaying the progress of the *Work*.

- .4 Add new paragraph 4.1.8:

4.1.8 The *Owner* reserves the right to call, or to have the *Contractor* call, for competitive bids for portions of the *Work*, to be paid for from cash allowances.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- .1 Add new subparagraph 6.4.5:

6.4.5 The *Contractor* confirms that, prior to bidding the *Project*, it carefully investigated the *Place of the Work* and applied to that investigation the degree of care and skill described in paragraph 3.14.1, given the amount of time provided between the issue of the bid documents and the actual closing of bids, the degree of access provided to the *Contractor* prior to submission of bid, and the sufficiency and completeness of the information provided by the *Owner*. The *Contractor* is not entitled to compensation or to an extension of the *Contract Time* for conditions which could reasonably have been ascertained by the *Contractor* by such careful investigation undertaken prior to the submission of the bid.

GC 6.5 DELAYS

- .1 Delete the period at the end of paragraph 6.5.1, and substitute the following words:

“, but excluding any consequential, indirect or special damages.”

.2 Add new subparagraph 6.5.6.

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor* directly or indirectly, or by any cause within the *Contractor's* control, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor*. The *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred by the *Owner* as the result of such delay, including all services required by the *Owner* from the *Consultant* as a result of such delay by the *Contractor* and, in particular, the cost of the *Consultant's* services during the period between the date of *Substantial Performance of the Work* stated in Article A-1 herein as the same may be extended through the provisions of these General Conditions and any later, actual date of *Substantial Performance of the Work* achieved by the *Contractor*.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

.1 Add the words “as noted in paragraph 6.6.3” after the words “of the claim” in paragraph 6.6.5 and add the words “and the *Consultant*”, at the end of paragraph 6.6.5.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

.1 Add the following new paragraphs 8.2.9, 8.2.10, 8.2.11, 8.2.12., 8.2.13., and 8.2.14.

8.2.9 Within five days of receipt of the notice of arbitration by the responding party under paragraph 8.2.6, the *Owner* and the *Contractor* shall give the *Consultant* a written notice containing:

- a) a copy of the notice of arbitration
- b) a copy of supplementary conditions 8.2.9 to 8.2.14 of this *Contract*, and;
- c) any claims or issues which the *Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* arising out of the issues in dispute in the arbitration

8.2.10 The *Owner* and the *Contractor* agree that the *Consultant* may elect, within ten days of receipt of the notice under paragraph 8.2.9, to become a full party to the arbitration under paragraph 8.2.6 if the *Consultant*:

- a) has a vested or contingent financial interest in the outcome of the arbitration;
- b) gives the notice of election to the *Owner* and the *Contractor* before the arbitrator is appointed;
- c) agrees to be a party to the arbitration within the meaning of the rules referred to in paragraph 8.2.6, and,
- d) agrees to be bound by the arbitral award made in the arbitration.

8.2.11 If an election is made under paragraph 8.2.10, the *Consultant* may participate in the appointment of the arbitrator and, notwithstanding the rules referred to in paragraph 8.2.6, the time period for reaching agreement on the appointment of the arbitrator shall begin to run from the date the respondent receives a copy of the notice of arbitration.

8.2.12 The arbitrator in the arbitration in which the *Consultant* has elected under paragraph 8.2.10 to become a full party may:

- a) on application of the *Owner* or the *Contractor*, determine whether the *Consultant* has satisfied the requirements of paragraph 8.2.10, and;
- b) make any procedural order considered necessary to facilitate the addition of the *Consultant* as a party to the arbitration.

8.2.13 The provisions of paragraph 8.2.9 shall apply mutatis mutandis to written notice to be given by the *Consultant* to any sub-consultant;

8.2.14 In the event of notice of arbitration given by the *Consultant* to a sub-consultant, the sub-consultant is not entitled to any election with respect to the proceeding as outlined in 8.2.10, and is deemed to be bound by the arbitration proceeding.

GC 9.1 PROTECTION OF WORK AND PROPERTY

- .1 Delete subparagraph 9.1.1.1 in its entirety and substitute new subparagraph 9.1.1.1:

9.1.1.1 errors in the *Contract Documents* which the *Contractor* could not have discovered applying the standard of care described in paragraph 3.14.1;

- .2 Delete paragraph 9.1.2 in its entirety and substitute the following new paragraph 9.1.2:

9.1.2 Before commencing any *Work*, the *Contractor* shall determine the locations of all underground utilities and structures indicated in the *Contract Documents*, or that are discoverable by applying to an inspection of the *Place of the Work* the degree of care and skill described in paragraph 3.14.1.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- .1 Add to paragraph 9.2.6 after the word "responsible", the following new words:

or whether any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,

- .2 Add "and the *Consultant*" after the word "*Contractor*" in subparagraph 9.2.7.4.

- .3 Add to paragraph 9.2.8 after the word "responsible", the following new words:

or that any toxic or hazardous substances or materials already at the *Place of the Work* (and which were then harmless or stored, contained or otherwise dealt with in accordance with legal and regulatory requirements) were dealt with by the *Contractor* or anyone for whom the *Contractor* is responsible in a manner which does not comply with legal and regulatory requirements, or which threatens human health and safety or the environment, or material damage to the property of the *Owner* or others,

GC 9.5 MOULD

- .1 Add “and the *Consultant*” after “*Contractor*” in subparagraph 9.5.3.4.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- .1 Delete from the first line of paragraph 10.2.5 the word, “The” and substitute the words:
“Subject to paragraph 3.14.1, the”.

GC 12.1 INDEMNIFICATION

- .1 Add new clause 12.1.1.3.

12.1.1. 3. The *Contractor* shall indemnify and hold harmless the *Consultant*, its agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to, the *Contractor's* performance of the *Contract*, provided such claims are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and caused by negligent acts or omissions of the *Contractor* or anyone for whose acts the *Contractor* may be liable, and made in writing within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work*, or within such shorter such period as may be prescribed by any limitation statute or the province or territory of the *Place of Work*.

GC 12.3 WARRANTY

- .1 Delete from the first line of paragraph 12.3.2 the word, “The” and substitute the words:

“Subject to paragraph 3.14.1, the...”.