

## SUMMARY OF IMPORTANT DIFFERENCES BETWEEN THE 2008 AND THE 1994 EDITIONS OF CCDC 2 – STIPULATED PRICE CONTRACT

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The following is a summary of differences between the 2008 and the 1994 editions of CCDC 2 – STIPULATED PRICE CONTRACT that are considered to have a significant impact on the rights and obligations of the parties, or are otherwise substantial or noteworthy.

### Article A-5 of the Agreement – PAYMENT

Interest rates on unpaid amounts shall be 2% above the prime rate for the first 60 days and 4% above the prime rate after the first 60 days. The prime rate shall be the rate of interest quoted by a chartered lending institution named in the *Contract Documents*.

### Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

Whenever the defined term “*Notice in Writing*” is specified in the *Contract Documents*, the parties shall follow the delivery and receipt process described in this Article. Methods of delivery of a *Notice in Writing* have also been expanded to address other forms of communication, including electronic.

### DEFINITIONS

All definitions have been rearranged in alphabetical order. New defined terms: *Construction Equipment*, *Drawings*, *Notice in Writing*, *Shop Drawings*, *Specifications*, and *Temporary Work*. The definitions for *Subcontractor* and *Supplier* have been revised to distinguish between the two based on whether or not they perform *Work* at the *Place of the Work*.

### GC 2.2 – ROLE OF THE CONSULTANT

New paragraph 2.2.4 that requires the *Consultant* to inform the *Owner* of the date that the *Consultant* receives the *Contractor*'s applications for payment.

### GC 2.3 – REVIEW AND INSPECTION OF THE WORK

New paragraphs 2.3.6 and 2.3.7 that clarify the *Contractor*'s responsibility for the cost of making tests and inspections and for samples required as designated in the *Contract Documents*.

### GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTOR

A clear distinction has been made between the *Contractor*'s responsibility to co-ordinate and schedule the *Work* with the work performed by the *Owner* or other contractors, depending on whether such work is specified in the *Contract Documents*.

### **GC 3.6 – SUPERVISION**

Paragraph 3.6.2 has been revised to clarify that the *Contractor's* appointed representative on site can represent the *Contractor* in receiving information and instructions from the *Consultant*. The only exception is *Notice in Writing*, which shall be delivered and received in accordance with Article A-6.

### **GC 3.10 – SHOP DRAWINGS**

This general condition has been revised for clarity. The *Contractor* shall be responsible for *Shop Drawings* that are required in the *Contract Documents*.

### **GC 4.1 – CASH ALLOWANCE**

This General Condition has been revised for clarity. Multiple cash allowances shall not be combined for the purpose of calculating the *Contractor's* overhead and profit.

### **GC 5.3 – PROGRESS PAYMENT**

The payment period specified in paragraph 5.3.1 has been increased from 15 calendar days (10 calendar days for the *Consultant* to certify and 5 calendar days for the *Owner* to pay) to 20 calendar days after the *Contractor's* application for payment.

### **GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK**

Paragraph 5.4.2 has been revised to allow the *Consultant* 20 calendar days to review the *Work* and verify the validity of the *Contractor's* application for *Substantial Performance of the Work*.

### **GC 5.5 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

New paragraph 5.5.5 that addresses the process in releasing holdback amounts in the Province of Quebec, which is governed by the Civil Code.

### **GC 5.6 – PROGRESSIVE RELEASE OF HOLDBACK**

New paragraph 5.6.2 that addresses the process in releasing holdback amounts retained for completed subcontract work in the Province of Quebec, which is governed by the Civil Code.

### **GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES**

New paragraph 6.1.1.2 that expressly requires that any change to *Contract Time* be made by a *Change Order*.

### **GC 6.3 – CHANGE DIRECTIVE**

This General Condition has been revised to include the following major changes:

- New paragraphs 6.3.2 and 6.3.3 restate that a *Change Directive* shall only be used to direct a change in the *Work* that is within the general scope of the *Contract Documents* (definition of *Change Directive*) and a *Change Directive* shall not be used only to change the *Contract Time*(paragraph 6.1.1.2).
- New paragraph 6.3.6.3 that makes reference to the *Contractor's* percentage fee for *Change Directives*.
- Paragraph 6.3.7 that lists the actual cost of the work attributable to the *Change Directive* has been revised.
- New paragraphs 6.3.8 to 6.3.10 that address the parties' intention and responsibilities with respect to the actual cost of work listed in paragraph 6.3.7.

### **GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS**

Paragraph 6.4.1.2 has been revised to expressly exclude weather related risk.

### **GC 6.5 – DELAYS**

- New paragraph 6.5.3.3 that expressly clarifies that abnormally adverse weather conditions are grounds for extension of *Contract Time*.
- Paragraph 6.5.3.4 has been revised to address “any cause beyond the Contractor's control other than one resulting from a default or breach of *Contract* by the *Contractor*”.
- The last sentence of paragraph 6.5.3 that states “The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*” has been expanded to include actions by the *Consultant* or anyone employed or engaged directly or indirectly by the *Owner* or the *Consultant*.

### **GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE**

New General Condition that addresses the process for the parties to claim for a change in *Contract Price*, which is based on the following principles:

- A “claim” may be made by either party against the other.
- A “claim” only becomes a “dispute” if the *Owner* or the *Contractor* does not accept the *Consultant's* initial finding.
- Claimant has a duty to give timely notice of intent to claim, mitigate loss or expense, keep records, and submit detailed account within a reasonable time.

### **GC 7.1 – OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT**

Paragraph 7.1.5.1 has been revised to clarify that the *Owner's* right to utilize the *Contractor's Construction Equipment* is subject to the rights of third parties.

### **GC 9.1 – PROTECTION OF WORK AND PROPERTY**

New paragraph 9.1.2 that requires the *Contractor* to determine, prior to commencing any work, the location of all underground utilities and structures that are indicated in the *Contract Documents* or are reasonably apparent in an inspection of the *Place of the Work*.

### **GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES**

- Paragraph 9.2.3 has been revised to tie the *Owner's* obligation to any toxic or hazardous substances that exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work*.
- New paragraphs 9.2.6 to 9.2.9 that address:
  - the process in the event the *Owner* and the *Contractor* do not agree on the existence or significance of toxic and hazardous substances, and
  - the obligations of the *Owner* and the *Contractor* in the event they agree or the expert referred to in paragraph 9.2.6 determine that the substances were pre-existing or brought onto site by *the Contractor*.

### **GC 9.3 – ARTIFACTS AND FOSSILS**

New General Condition that addresses the process and the rights and obligations of the parties in the event the *Contractor* discovers artifacts, fossils or things that are of scientific or historic interest.

### **GC 9.4 – CONSTRUCTION SAFETY**

This General Condition (GC 3.6 of the 1994 edition) has been relocated to this appropriate part of the *Contract*.

### **GC 9.5 – MOULD**

New General Condition that addresses the process and the rights and obligations of the parties in the event the *Contractor* or the *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*.

### **GC 10.2 – LAWS, NOTICES, PERMITS, AND FEES**

- Paragraphs 10.2.2 and 10.2.3 have been revised to address the procurement and payment of various types of regulatory and other approvals, permits, licenses, etc.
- New paragraph 10.2.7 that addresses the risk of unforeseen regulatory changes that come into force after the time of bid closing.

### **GC 11.1 – INSURANCE**

This General Condition has been substantially revised. The important changes include:

- General Liability Insurance: Minimum liability insurance coverages and maximum deductible have been increased to \$5,000,000 and \$5,000 respectively.
- “Broad form” Property Insurance: Minimum property insurance coverage and maximum deductible have been increased to “1.1 times *Contract Price*” and \$5,000 respectively.
- Insurance provisions that are anticipated to change periodically have been moved to the new CCDC 41 – CCDC INSURANCE REQUIREMENTS, e.g. insurance limits, deductibles and standard exclusions.
- If a new edition of CCDC 41 is published after the time of bid closing, the parties may wish to increase or decrease the insurance coverages accordingly.
  - In the case of a reduction, the time to agree on the reduced coverage must be before the *Contractor*’s policy is renewed.
  - In the case of an increase, the *Owner* may request the increased coverage from the *Contractor* by way of a *Change Order*, i.e. there may be cost implications.

### **GC 11.2 – CONTRACT SECURITY**

This General Condition has been revised to recognize other types of *Contract* security, e.g. certified cheque, letter of credit, etc. in addition to surety bonds.

### **GC12.1 – INDEMNIFICATION**

This General Condition has been substantially revised. The important changes include:

- Indemnification provisions shall be “mutual” between the *Owner* and the *Contractor*.
- The *Consultant* will no longer be indemnified by the *Contractor*.
- All indemnification related provisions have been consolidated under this General Condition.
- The limitations on the parties’ obligation to indemnify each other have been revised subject to the type of claims (direct vs. third party), limit of general liability insurance as per CCDC 41, and the *Contract Price*.

### **GC12.2 – WAIVER OF CLAIMS**

This General Condition has been substantially revised. The important changes include:

- Waiver provisions shall be “mutual” between the *Owner* and the *Contractor*.
- Primary waiver of claims shall be tied to expiry of lien period (5 days prior) instead of “final certificate for payment.”
- Waiver of claims arising out of warranty provisions shall be tied to 395 days after *Substantial Performance of the Work*.”
- The *Notice in Writing* of claim described under this General Condition has specific conditions.

### **GC12.3 – WARRANTIES**

This General Condition has been revised to address extended warranties beyond the normal one year warranty period.