



## **CCDC 2-2020 Stipulated Price Contract**

### **Overview of the Changes in the 2020 Version and Recommended Supplementary Conditions**

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#### **Summary**

*CCDC 2-2020 Stipulated Price Contract* became available in December 2020, after a number of years undergoing revision. The document includes a number of significant changes from the 2008 version, as well as some articles that have not changed from the previous version and continue to be of concern to Architects and Licensed Technologists, OAA.

Practices must familiarize themselves with the changes in content and procedures by means of a thorough review of *CCDC 2-2020 Stipulated Price Contract*, *CCDC Master Specification for Division 01 'General Requirements'*, *CCDC 41-2020 CCDC Insurance Requirements*, and the contents of this Practice Tip (PT) and the Ontario Association of Architects (OAA) *Recommended Supplementary Conditions for the Stipulated Price Contract – CCDC 2-2020*. (Refer to links provided under “References” section of this PT.)

#### **Background**

The Canadian Construction Documents Committee (CCDC) has completed an intensive review and extended revision process for CCDC 2 —the standard stipulated price construction contract used extensively on projects across Canada. Revisions reflect changing industry practice in some cases and improvements to existing articles for clarification in other cases.

The OAA supports and endorses the concept of standard industry documents as produced by CCDC and provides input through a representative acting on behalf of the Royal Architectural Institute of Canada (RAIC), which is a CCDC organization member.

The OAA was directly involved in the review process of the CCDC 2-2020 version and OAA Council endorsed its use on September 29, 2020 subject to the use of the Recommended Supplementary Conditions issued by the OAA.

The OAA *Recommended Supplementary Conditions for the Stipulated Price Contract – CCDC 2-2020* were 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 Recommended Supplementary Conditions to its members with the advice they were developed in consultation with the OAA.

It is unusual for CCDC contracts to be used without any supplementary conditions. The publishing of these recommendations does not preclude the incorporation of additional items in order to address specific project conditions.

This PT does not attempt to undertake an exhaustive analysis of all the changes from the 2008 version, but highlights the significant content or procedural changes which affect the profession. Therefore, practices should familiarize themselves with the CCDC documents in conjunction with PT.23.11 which identifies the differences through supplementary conditions and procedural cautions.

The suggested wording is not a substitute for involvement of legal counsel. Your client should be advised to discuss the specific wording and requirements of all supplementary conditions with legal counsel.

The explanation for the concerns are listed below and referenced as individual items or in groups where the concern relates to more than one location in the text of the contract. The actual wording of the supplementary conditions appears in the OAA document, [Recommended Supplementary Conditions for the Stipulated Price Contract - CCDC 2-2020](#) included here as part of Attachment A.

## Significant Changes From CCDC 2 - 2008 to CCDC 2-2020

### Shift From Contract to Specification

Construction Specifications Canada (CSC) and CCDC came to an agreement to place responsibility for Divisions 00 and 01 specifications with CCDC. This allows CCDC to coordinate the contractual requirements with the specification requirements. Prior to this agreement, in order to achieve greater consistency and standardization, the CCDC contracts included some clauses that dealt more with how the contractor was to perform than with what the contract required. Subsequent to this agreement, CCDC has started moving the how clauses out of the contracts and into Division 00. This can first be seen in CCDC 2-2020 and [CCDC Master Specification for Division 01-2020 'General Requirements'](#).

While this is philosophically cleaner, it means all specification Division 01s, whether written by practices or by clients, need to be reviewed and amended for use with CCDC 2-2020. Two versions of Division 01 will need to be maintained until all the CCDC contracts have been updated and reissued. It also means a likely reduction in standardization as boilerplate text from the contract is replaced with user-written specification clauses. The transition will need to be deliberate and considered. It does provide some impetus to review and update specification front ends in their entirety at the same time.

The following references are to clauses from CCDC 2-2008 that have been removed from CCDC 2-2020 and incorporated into CCDC Division 01-2020 and, in one case, Division 00-2020.

### DEFINITION

Provide definition moved to Section 01 11 00

### PART 3 EXECUTION OF THE WORK

GC 3.9 Documents at the Site – 3.9.1 moved to Section 01 11 00  
GC 3.10 Shop Drawings – 3.10.3, 3.10.4, 3.10.5, 3.10.7, and 3.10.11 moved to Section 01 33 00  
GC 3.11 Use of the Work – 3.11.1 moved to Section 01 11 00  
GC 3.11 Use of the Work – 3.11.2 moved to Section 01 73 00  
GC 3.12 Cutting and Remedial Work – 3.12.1, .2, .4 moved to Section 01 73 29  
GC 3.13 Cleanup – 3.13.1 moved to Section 01 74 00  
GC 3.13 Cleanup – 3.13.3, .3 moved to Section 01 77 00

### PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.2 Contract Security – 11.2.1, .2 moved to Section 00 73 63

### PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.3 Warranty – moved to Section 01 78 00

The CCDC issue of specification Divisions 00 and 01 are available for use in an editable format. They should be augmented by additional material from existing office standards, and should be reviewed and incorporated before the material is issued for tender.

## Introduction of “Ready-for-Takeover”

Lien legislation is a provincial responsibility and varies across Canada. Not all jurisdictions incorporate the concept of “Substantial Performance” in their legislation. In response to this and to decouple contractual requirements from legislative ones, the concept of “Ready-for-Takeover” has been introduced as a purely contractual milestone.

In Ontario, the legislative requirements in the *Construction Act* are unaffected by Ready-for-Takeover. Certification of Substantial Performance, release of basic holdback, determination of Deemed Completion, and release of finishing holdback requirements remain. Ready-for-Takeover creates additional workload. With CCDC 2-2020 comes the need to define any project-specific parameters for Ready-for-Takeover in the specifications or supplementary conditions; process contractor’s requests for the determination of Ready-for-Takeover; perform related site reviews; and issue declaration of Ready-for-Takeover documentation.

Practices should be sure that fees for the additional services are identified and included in any fee proposals.

The minimum requirements for achieving Ready-for-Takeover are predefined (GC 12.1.1). Altering the list of prerequisites requires a supplementary condition and should be avoided.

One significant change is basing the start of the contractor’s one-year warranty period on Ready-for-Takeover, which potentially occurs later in the project than Substantial Performance did. It is likely to occur closer to Deemed Completion than to Substantial Performance. This may be need to be addressed with equipment manufacturers and other warranty providers as it may mean equipment is in operation longer during the construction period than previously.

Ready-for-Takeover is mentioned in the following locations in CCDC 2-2020: A-1.3, definition of *Contract Time*, *Ready-for-Takeover*, GC 2.2.15, GC 6.5.2, GC 8.3.8, GC 11.1.1, GC 12.1, GC 12.2, GC 12.3.1, GC 13.1.1, and GC 13.2.

## Introduction of “Early Occupancy”

Occupancy of a project is expected to follow immediately upon the declaration of Ready-for-Takeover. The Owner may take occupancy of a part or the entirety of the Work prior to Ready-for-Takeover. If early occupancy occurs, the occupied portion shall be deemed to have been taken-over by the Owner. Responsibility for the care of such occupied portion passes from the contractor to the Owner. The warranty period of such occupied portion shall start on the occupancy date. Regardless of early occupancy, the contractor shall always be responsible for achieving Ready-for-Takeover status.

Early occupancy entails additional services for deficiency review of the portions to be occupied early and the administration of warranties for portions of the project rather than the project as a whole. Obtain appropriate fees for the extra services and risk.

Early occupancy is addressed in GC 12.2 EARLY OCCUPANCY BY THE OWNER.

## Other Changes to CCDC 2-2020

The information which follows is not exhaustive. It focuses on changes that may be of greatest interest to Architects and Licensed Technologists OAA. Members should review and familiarize themselves with all the changes. The best way to do this may be a side-by-side comparison between CCDC 2–2008 and CCDC 2-2020 contracts.

Note that many of the clauses have been renumbered, even those that have not otherwise been changed. Look first elsewhere in the same general condition for any clauses that are not where expected. Confirm all cross-references from Supplementary Conditions or the specifications and update as needed.

## Definitions

A definition has been added for *Payment Legislation* in recognition that prompt payment legislation is in place or being considered by jurisdictions in Canada.

A definition for the new concept of *Ready-for-Takeover* has been introduced.

The definition of *Substantial Performance* has been simplified.

## General Conditions

### GC 1.1 Contract Documents

- 1.1.5.5 “noted materials and annotations shall govern over graphic indications” has been added to the hierarchy of documents.

### GC 2.2 Role of the Consultant

- 2.2.5 Has been simplified. The last sentence of the former 2.2.6 has been deleted.
- 2.2.15 Requires the *Consultant* to review the work to determine both *Substantial Performance of the Work* and *Ready-for-Takeover*.

### GC 3.2 Construction by Owner or Other Contractors

- 3.2.2 The requirement for the *Owner* to assume the role of Constructor under the *Occupational Health and Safety Act* has been removed from the contract. Regardless, it may still be a requirement at law and should be addressed appropriately in Supplementary Conditions and specifications. See also GC 9.4.
- 3.2.5 and 3.2.6 Provide further clarification of roles and responsibilities relating to work by the *Owner* or Other Contractors.

The old GC 3.4 Document Review has been deleted. Refer to GC 1.1.3 and 1.1.4.

### GC 3.8 Shop Drawings

- 3.8.7 Care should be taken to avoid untimely late submissions of shop drawings putting the *Consultant* in contravention of this clause.

### GC 4.1 Cash Allowances

- 4.1.4 and 4.1.5 Incorporate provisions for the redistribution of funds among cash allowances that was in the Recommended Supplementary Conditions for the Stipulated Price Contract – CCDC 2 - 2008.

### GC 5.2 Application for Payment

- 5.2.1 Requires that applications for payment be submitted simultaneously by the *Contractor* to both *Owner* and *Consultant*.
- 5.2.6 This clause requires applications for payment to be compliant with any applicable payment legislation, such as the *Construction Act* in Ontario.
- 5.2.7 The requirement for Workplace Safety and Insurance Board (WSIB) certificates and statutory declarations is now located here.

### GC 5.3 Payment

### GC 5.4 Substantial Performance of the Work and Payment of Holdback

### GC 5.5 Final Payment

- 5.3.1 These general conditions have been rewritten to be in compliance with the prompt payment provisions of the *Construction Act* (CA) and similar legislation anticipated in other jurisdictions. They align with the requirement in the CA for the *Owner* to issue notices of non-payment to the *Contractor* among other provisions.

<p><b>Note:</b> A request for release of holdback is not an application for payment subject to the prompt payment provisions of the CA. The holdback amounts were originally part of the regular applications for payment and have already been determined to be payable for work previously completed. If the prompt payment provisions applied, the holdback would have to be paid by day 28 despite the lien period not having expired and the property still being subject to liens.</p>
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- GC 5.6 Deferred Work – This GC has been renamed from “Withholding of Payment” and broadens what work can be considered as deferred.

## GC 6.3 Change Directive

- 6.3.7 This clause clarifies that the itemized costs apply “in as much as it contributes directly to the implementation of the *Change Directive*.” Further, the items have been grouped for convenience. Some items have changed and the wording of others has been tweaked.

## GC 7.1 Owner's Right to Perform the Work.

- 7.1.2 This clause was revised to remove the requirement for the *Consultant* to make a determination of the sufficiency of cause; rather, the *Consultant* is to provide details of the contractor's neglect. It is up to the *Owner* (in consultation with their lawyer) to determine if sufficient grounds exist to declare the *Contractor* to be in default.

GC 8.2 Adjudication – This GC has been added to align with the adjudication requirements of the *Construction Act* and similar anticipated legislation in other jurisdictions.

GC 9.4 Construction Safety – This GC has been rewritten to define the health and safety responsibilities of the *Contractor* and the *Owner*, which impacts the *Consultant*, Other Contractors, and *Owner's* own forces.

GC 10.4 Workers' Compensation – Proof of compliance with workers' compensation legislation has been moved to GC 5.2.7.

GC 11.1 Insurance – This GC has been rewritten to tie the duration of insurance coverage to the *Ready-for-Takeover* date rather than to *Substantial Performance of the Work*.

GC 12.1 Ready-for Takeover – This is a new GC.

GC 12.2 Early Occupancy by the Owner – This GC establishes the criteria that apply if the *Owner* wants to take occupancy in whole or in part prior to *Ready-for-Takeover*. *Consultants* should pay attention to the scope of work that will be required of them should the *Client* exercise their right to early occupancy.

## GC 12.3 Warranty

- 12.3.1 The *Contractor's* standard one-year warranty is revised to start with *Ready-for-Takeover* rather than *Substantial Performance of the Work*. *Consultants* should pay particular attention to this until the industry gets used to the change.

## GC 13.1 Indemnification

- 13.1.2.3 and .4 These clauses address issues around consequential damages and third-party indemnification.

## GC 13.2 Waiver of Claims

- 13.2 This GC has been rewritten to replace *Substantial Performance of the Work* with *Ready-for-Takeover*, to adjust some of the stated time frames, and to clarify the distinction between contractual claims and lien claims.

# Overview of Recommended Supplementary Conditions to CCDC 2-2020

## Negotiation, Mediation and Arbitration (GC 8.2)

The Alternative Dispute Resolution (ADR) (negotiation-mediation-arbitration) amendments relate to the procedure for resolution of construction disputes. The OAA continues to have serious concerns that where the architect is excluded from the arbitration process, they may be unable to defend their position and in effect is tried in absentia.

The Recommended Supplementary Conditions provide that, in the event of arbitration between the *Owner* and contractor, the *Consultant* will receive notification, including any issues that may involve the *Consultant*. At that time, the *Consultant*, after consultation with their insurer and legal counsel, may elect to become a full party to the arbitration.

### **Indemnification of the Consultant (GC 1.1.2.2./9.2.7.4./9.5.3.4/ and 12.1.1.3)**

The requirement for the *Contractor* and/or *Owner* to indemnify the *Consultant* in situations that were caused by the actions of either of the two parties to the *Contract* has been deleted and may be detrimental to the interests of the *Consultant*. The indemnification provisions for the *Consultant* existed in previous versions of the CCDC contract, and the OAA recommends it continue to be included by means of supplementary conditions.

### **Contractor's Standard of Care (GC 3.4.1/3.14/6.4.5/9.1.1.1/9.1.2/10.2.5/12.3.2)**

To clarify the responsibilities of the *Contractor*, a Supplementary Condition GC 3.14 Performance by Contractor has been added and cross-referenced in the other paragraphs and sub-paragraphs noted above. The standard of care is the test currently utilized by the courts and the addition of this supplementary condition highlights its importance.

### **Other Concerns (listed in same order as in the *Contract*)**

- Article A-6: Article revised to delete “electronic communication” as an acceptable form of communication for *Notices in Writing* and to change the deemed date of receipt of such notices.
- Definitions: Added definition for Submittals that are not included under the new definition for *Shop Drawings*.
- Sub-paragraph 1.1.7.5: Added clarification of the priority of the *Contract Documents* in case of discrepancies.
- Paragraphs 2.2.4/5.3.1.1: Caution—Note the new requirement for *Consultant* to promptly inform *Owner* of the receipt of the *Contractor's* applications for payment.
- Paragraph 2.2.9: Added waiver by *Owner* and *Contractor* to protect *Consultant* against claims arising out of interpretations and findings consistent with intent of the *Contract Documents* and do not show partiality to either party to the *Contract*.
- Paragraph 2.2.10: Caution – *Consultant* should be aware interpretations and findings are to be made in writing within a reasonable time.
- Paragraph 2.2.11: The *Consultant* is required to make findings with regard to claims for a change in *Contract Price* regardless of the size, quantity, or number of claims. Caution—Negotiate the client/architect contract with the necessary provision to be able to obtain fees for making findings on claims where the size, quantity, or number are extensive. (See *Instructions for Completing “The Ontario Association of Architects Standard Form of Contract for Architect’s Services, Document 600, 2008.”*)
- Paragraph 2.2.14: Added the words “which are provided” to clarify that the *Consultant* will review and take appropriate action upon *Shop Drawings* and *Submittals* that have been provided in accordance with the *Contractor's* obligations as defined in the *Contract Documents*.
- Sub-Paragraphs 2.4.1.1/2.4.1.2: Added sub-paragraphs to emphasize that *Contractor* is responsible for all defective work and cannot rely only on the *Consultant* to identify such items. Also, the *Contractor* must schedule the corrective action so as not to affect the *Owner's* day-to-day operations.
- Paragraph 3.1.3: Added paragraphs to reinforce *Contractor's* responsibility to properly co-ordinate the *Work*.
- Paragraph 3.6.2: Caution: The paragraph now clarifies that information and instructions provided by the *Consultant* to the *Contractor's* appointed representation are deemed to have been received by the *Contractor*. The converse of this is that if instructions are provided to a person other than the appointed representation, the *Contractor* may argue that the instructions were never received. The *Consultant* must be careful that instructions given to others are followed up with written confirmation to the appointed representative to avoid any risks to the *Owner*. Such instructions should be confirmed by means of *Supplemental Instructions*, Site Visit Reports, Minutes of Meeting, Proposed Change, or other written format and copied to the appointed representative.
- Paragraph 3.8.4: Added new paragraph clarifying the *Contractor's* responsibility for safe on-site storage and protection of *Products*.
- Article 3.10: Added “*Submittals*” to the title and throughout the article as the process for handling *Submittals* is similar to *Shop Drawings*.

- Paragraph 3.10.3: Amended to state that the *Contractor* and *Consultant* shall prepare a schedule related to *Shop Drawing* review. The *Consultant* should review the schedule for completeness of all required *Shop Drawings* and *Submittals* and allotted review times for the *Consultant's* review.
- Paragraph 3.10.12: Deleted the reference to causing a delay and added a time period for the *Consultant's* review.
- Article 4.1: Amended Paragraphs 4.1.4 and 4.1.5 to clarify that unexpended funds from one cash allowance can be reallocated to avoid shortfalls in other cash allowances. This avoids mark-ups for overhead and profit on a shortfall while no credit for same is being offered where there are unexpended funds in some cash allowances.
- It is also important to note that the 2008 version has deleted the paragraph defining what nets costs are included under a cash allowance, thereby making it necessary to specifically define the scope of work or costs included in such cash allowance in the *Contract Documents*. If, as an example, it is not defined that freight, installation, and construction equipment, etc. are included, the cost of such items will be treated as a change to the *Contract Price* with overhead and profit mark-ups.
- Paragraph 4.1.7: Amended to clarify the procedure for establishing the schedule of procurement of cash allowance items.
- Paragraph 4.1.8: Added paragraph to confirm the *Owner's* right to obtain competitive bids for cash allowance items.
- Paragraph 5.4.1: Caution—It should be recognized that the requirement for the *Contractor* to deliver to the *Consultant* and *Owner*, within one working day, a comprehensive list of if items to be completed or corrected after considering the *Work* as being substantially performed may be unrealistic due to the scope and status of the *Project*.
- Paragraph 6.5.1: Amended to exclude the payment by the *Owner* to the *Contractor* of any consequential, indirect, or special damages in the case of delays caused by the *Owner* or anyone employed or engaged by them.
- Paragraph 6.5.6: Added to clarify that *Owner* shall be reimbursed by the *Contractor* for all reasonable costs incurred, including *Consultant's* fees for additional services that arise out of a delay caused by the *Contractor*. Caution—If the *Consultant's* fees for additional services become a matter of dispute between the *Contractor* and *Owner*, the *Consultant* must refrain from making a finding due to a conflict of interest.
- Article 6.6 & Paragraph 6.6.5: Amended to allow additional time for *Consultant* to make findings after receipt of detailed account(s) of claim if agreed by the *Owner*, *Contractor*, or *Consultant*. See reference to Paragraph 2.2.11 above for additional background information.
- GC 9.2 & Paragraphs 9.2.6 and 9.2.8: Amended to address the situation where toxic and hazardous substances already exist on the site and have been dealt with in accordance with legal and regulatory requirements, but subsequently threaten health and safety or the environment due to the actions of the *Contractor*.
- CG 12.3: Caution—Practices should clearly specify the scope of work to be covered by an extended warranty, as the warranty may relate only to materials or also include labour for installation of the replacement material plus the making good of the parts of the work affected by the replacement. In addition, the warranty may require more than one warrantor as the material supplier and installer may be two different entities.

## Suggested Procedure

1. Familiarize yourself in detail with CCDC 2-2020, especially the changes from the 2008 version, and with the CCDC support documents listed under "References" below.
2. It is a good practice to review the more significant changes with your client prior to using CCDC 2-2020 on their project. While you can appropriately share with your client your understanding and experience with CCDC 2-2020, remember to avoid giving legal advice.
3. Review CCDC Guide documents already issued relating to CCDC 2-2020, as well as those which will be issued in the future as more experience develops in the use of the new contract.

4. It is good practice to keep supplementary conditions to a minimum. Some of your old 'standards' may have been addressed in the development of the 2020 version, or by the OAA Recommended Supplementary Conditions for CCDC 2-2020.
5. Remember that because of the hierarchy of documents it is inappropriate to use supplementary conditions to amend Articles of the Agreement, or Definitions. Supplementary conditions are used to amend the General Conditions of CCDC 2-2020. See CCDC 20 for guidance on drafting amendments to Articles of the Agreement and Definitions.
6. The OAA supports and endorses the concept of standard industry documents as are produced by CCDC. Care is taken to attempt to co-ordinate CCDC and OAA/RAIC documents. For example, the role of the consultant in CCDC 2-2020 parallels the description of the architect's or Licensed Technologist OAA's services during construction in the standard OAA contracts except as noted herein and in the Recommended Supplementary Conditions. Recommend to your clients the use of industry recognized documents.
7. OAA 600-2021, *Standard Form of Contract for Architect's Services* is co-ordinated with CCDC 2-2020. For example, procedures for the use of *Ready-for-Takeover* status are included in OAA 600-2021. Use the latest version of OAA 600-2021, especially when your client intends to employ the CCDC 2-2020 Ready-for-Takeover concept. If using RAIC or other forms of contract which do not address the Ready-for-Takeover concept, include the procedures outlined in OAA 600 to coordinate with the use of the Ready-for-Takeover concept by the client in the owner/contractor contract.
8. Determine if CCDC 2-2020 is going to be utilized as the construction contract prior to finalizing the client/architect contract. If so, carefully review and identify all of the consultant's various defined responsibilities in the new CCDC 2-2020 version and coordinate with the client/architect contract so fair and reasonable fees are established for the CCDC 2 defined services and provisions are made for extra services that arise during construction and could not be previously determined. The defined role of the consultant in the new CCDC 2 version may have increased the level of your services in some areas due to the additions and clarifications, including timeframes established in some articles.

## Attachments

*Attachment A – CCDC 2-2020 Stipulated Price Contract – Introduction to Recommended Supplementary Conditions, and OAA Recommended Supplementary Conditions for the Stipulated Price Contract, CCDC 2-2020*

## References

[OAA 600-2013 Standard Form of Contract for Architect's Services](#)

[OAA 602-2013 Standard Form of Contract for Licensed Technologist OAA Services](#)

[CCDC 2-2020 Stipulated Price Contract](#)

[CCDC 20-2008 A Guide to the Use of CCDC 2 - 2008 Stipulated Price Contract](#)

[CCDC 41-2020 CCDC Insurance Requirements](#)

[CCDC Master Specification for Division 01 'General Requirements'](#)

CCDC documents can be purchased through [the OAA Website](#) or directly from [CCDC](#)

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