

## CCDC 17 – 2010 – Stipulated Price Contract Between Owner and Trade Contractor for Construction Management Projects

©2012 Ontario Association of Architects (OAA). OAA members in good standing may reproduce or distribute this Practice Tip provided this copyright notice is affixed to any reproduced or distributed copy. No rights are granted to any other person, except with express prior written consent from the OAA. The OAA reserves all other rights.

### Summary

CCDC 17 - 2010 *Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects* became available in late 2010, after a number of years of development by the Canadian Construction Documents Committee (CCDC). The document replaces the older Canadian Construction Association document (CCA 17, 1996) and includes a number of significant changes which affect the architect's services.

This Practice Tip (PT) provides an overview of CCDC 17 and identifies recommended amendments, supplementary conditions and procedural cautions.

### Background

In November, 2010, CCDC published a new suite of three standard contract forms for construction management:

- CCDC 5A Construction Management Contract – for Services” (replaces the old CCA 5-1988, also referred to as CM as Agent)
- CCDC 17 Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects” (replaces the old CCA 17-1996)
- CCDC 5B Construction Management Contract – for Services and Construction” (is brand new, also referred to as CM at Risk)

CCDC 17 is intended for use with CCDC 5A for projects where the construction manager (CM) is providing advisory services only and the owner is entering into direct contracts with various trade contractors, who would be the same as subcontractors under CCDC 2, 3 or 5B. The advisory services of the CM include advising and overseeing the trade contracts signed with the owner under CCDC 17.

This PT does not make an exhaustive analysis of the contract, but highlights content significant to architects and identifies recommended amendments, supplementary conditions and procedural cautions.

The Ontario Association of Architects (OAA) supports and endorses the concept of industry standard contracts as produced by the CCDC.

The OAA established a review process for the CCDC 17, 2010 version and the Council endorsed its use subject to recommended supplementary conditions issued by the OAA.

It is unusual for either architects and/or clients to utilize CCDC contracts without any supplementary conditions. The publishing of these recommendations does not preclude the incorporation of additional items by clients and/or architects in order to address specific project conditions. The wording suggested in PTs is not a substitute for involvement of legal counsel. Clients should be advised to discuss specific wording and the inclusion of amendments and supplementary conditions with their own legal counsel.

## Overview of Amendments and Supplementary Conditions

The concerns that the OAA has with the CCDC 17 contract fall into two categories. Firstly, the new CCDC 17 has split the role of making interpretations and findings, which rested with the *Consultant* only, in the 1996 contract, so that this role is now split between the *Consultant* and the *CM*.

Secondly the *Contract* is a stipulated price contract and thus the OAA Recommended Supplementary Conditions for CCDC 2 - 2008 apply as well to CCDC 17.

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 amendments and supplementary conditions is in the attachment to this PT.

## Roles of the Construction Manager and the Consultant

The wording of CCDC 17 assigns the ultimate decision-making (finding) in the case of a dispute to either the *CM* with respect to the performance of the *Work* or the interpretation of the *Contract Documents* while the *Consultant* is assigned the ultimate decision-making (finding) with respect to the requirements of the design or any and all architectural and engineering aspects of the *Work*. The OAA is of the opinion that matters related to the performance of the *Work* and the interpretation of the *Contract Documents* can be one and the same as matters related to the design or any and all architectural and engineering aspects of the *Work* and thus may cause considerable confusion as to the authority of each party and lead to disputes and ultimately litigation.

For this reason, the OAA recommended Amendments and Supplementary Conditions for CCDC 17 revise the responsibilities of the *CM* and the *Consultant* to be in keeping with the traditional roles of the industry and as prescribed in all other CCDC contracts. These amendments and supplementary conditions prescribe the following basic concept:

- (1) The *CM* fulfills the role that is traditionally carried out by the general contractor, with the exception that the trades are in direct contract with the *Owner*. The *CM* also carries out additional administration functions pertaining to clarification and/or changes to the *Work* and with regard to applications for payment by the trades.
- (2) While the *CM* may, in the first instance, give interpretations on matters in questions relating to the performance of the *Work* or the requirements of the *Contract Documents*, matters which are not resolved to the satisfaction of the *Owner*, *Trade Contractor*, *Consultant* or *CM* shall be referred to the *Consultant* to give an interpretation and finding in accordance with GC 2.2.2.2.
- (3) The *CM* will provide copies of the documentation related to all matters of compliance with the requirements of the *Contract Document* in order that the *Consultant* will be informed and will be able to give a finding which takes precedence over any interpretation related to differences between the parties to this *Contract* and which may become an unresolved dispute requiring the procedures prescribed in GC 8.1 and GC 8.2.
- (4) The *Consultant* carries out the general review of the *Work* and makes interpretations and findings where matters remain unresolved and not to the satisfaction of the *Owner*, *Trade Contractor*, *CM* or *Consultant*.
- (5) Whereas the *CM* is administering this *Contract*, the *Consultant* provides the necessary technical information to the *CM* as required for clarification and/or changes to the *Work* and with respect to application for payment.

The OAA recommended supplementary conditions modify GC 2.1.2 / 2.2.1.2 / 2.2.1.3 / 2.2.2.2 / 2.2.2.3 / 2.2.3.2 / 2.3.3 / 2.3.5 / 2.4.3 / 5.4.1 / 6.3.12 / 6.4.2 / 6.4.3 / 6.6.1 / 6.6.3 / 6.6.4 / 6.6.5 / 8.1.1 / 8.1.2 / 8.2.2 / 8.2.5 / 8.2.6 / 9.2.6 to reflect this basic concept.

## **Amendments and Supplementary Conditions similar to those recommended for CCDC 2.**

### **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, he/she may be unable to defend his/her position and in effect is tried in absentia.

These [Recommended Supplementary Conditions](#) provide that, in the event of arbitration between the *Owner* and *Trade Contractor*, the *Consultant* will receive notification, including any issues that may involve the *Consultant*. At that time, the *Consultant*, after consultation with his/her insurer and legal counsel may elect to become a full party to the arbitration.

### **Indemnification of the Consultant (GC 1.1.2.3 / 9.2.7.4 / 9.5.3.4 / 12.1.1.3)**

The requirement for the *Trade Contractor* and/or *Owner* to indemnify the *Consultant* in situations which were caused by the actions of either of the two parties to the *Contract* is not included and may be detrimental to the interests of the *Consultant*. The OAA recommends that it be included by means of supplementary conditions.

### **Trade 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)**

In order to clarify the responsibilities of the *Trade Contractor*, a Supplementary Condition GC 3.14 Performance by *Trade 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 the *Contract*)**

- Article A-7: Article revised to delete "electronic communication" as an acceptable form of communication for *Notices in Writing*.
- Definitions: Added definition for *Submittals* which are not included under the new definition for *Shop Drawings*.
- Sub-Paragraphs 2.2.2.2 / 2.2.2.3: The *Consultant* is required to make findings with regard to claims 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 is extensive. (See Instructions for Completing The Ontario Association of Architects Standard Form of Contract for Architect's Services, Document 600, 2008.)
- Sub-Paragraphs 2.4.1.1 / 2.4.1.2: Added sub-paragraphs to emphasize that the *Trade Contractor* is responsible for all defective work and cannot rely only on the *Consultant* to identify such items. Also, the *Trade 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 *Trade Contractor's* responsibility to properly co-ordinate the *Work*.
- Paragraph 3.6.2: Caution – The paragraph clarifies that information and instructions provided by the *Consultant* to the *Trade Contractor's* appointed representative are deemed to have been received by the *Trade Contractor*. The converse of this is that if instructions are provided to a person other than the appointed representative, the *Trade 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, contemplated change order, or other written format and copied to the appointed representative and to the *CM*.
- Paragraph 3.8.4: Added new paragraph clarifying the *Trade 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 *Trade Contractor*, *Consultant* and *CM* 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 3.10.13: Deleted the reference to causing a delay and added a time period for the *Consultant’s* return of *Shop Drawings* by the *CM*.
- 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.

Caution: It is 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 *Trade Contractor* to deliver to the *CM*, *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 *Trade 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 *Trade Contractor* for all reasonable costs incurred, including *Consultant’s* fees for additional services that arise out of a delay caused by the *Trade Contractor*.

Caution: If the *Consultant’s* fees for additional services become a matter of dispute between the *Trade Contractor* and *Owner*, the *Consultant* must refrain from making a finding due to a conflict of interest.

- Paragraph 6.6.5: In addition to modifying the basic responsibilities of the *Consultant*, the amendment allows additional time for *Consultant* to make findings after receipt of detailed account(s) of claim if agreed by the *Owner*, *Trade Contractor* or *Consultant*.
- 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 *Trade 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 Procedures

1. Familiarize yourself in detail with CCDC 17, 2010, and other documents listed under “References” below, as well as those which will be issued in the future as more experience develops in the use of the new contract.
2. Determine if CCDC 17, 2010 is going to be utilized as a 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 17, 2010 and co-ordinate with the client/architect contract so that fair and reasonable fees are established for the CCDC 17 defined services and provisions are made for additional services which arise during construction and which could not be previously determined. The defined role of the consultant in the new CCDC 17 version may have increased or decreased the level of your services in some areas due to the role of the *CM*.
3. It is a good practice to review the OAA recommended *Amendments and Supplementary Conditions* with your client prior to using CCDC 17, 2010 on their project. While you can appropriately share with your client information, your understanding and experience with construction management projects, remember to avoid giving legal advice.
4. OAA *Standard Form of Contract for Architect’s Services – Document 600, 2008* is co-ordinated with CCDC 17, 2010. For example, procedures for the use of ADR between client and contractor are included in OAA Document 600. Use the latest version of OAA 600, especially when your client intends to employ the CCDC 2 ADR process. If using other standard RAIC forms, include the procedures outlined in Document 600 for the use of ADR procedures by the client in the owner/contractor contract.
5. 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 as amended by the OAA recommendations parallels the description of the architect’s services during construction in the standard architect/consultant contract except as noted herein and in the recommended amendments and supplementary conditions. Recommend to your clients the use of industry recognized documents. It is good practice to keep supplementary conditions to a minimum.

## References

1. [CCDC website](#) – contracts and guides.
2. PTs 23.2, 23.3 & 23.4 re: CCDC 5A & 5B
3. PT.26 – Conflict of Interest Guideline
4. RAIC CHOP Chapter 2.3.2 Types of Construction Project Delivery, 2.3.7 & 2.3.8
5. The [AIA Website](#) (search for “construction management”)

## Attachments

1. Recommended Amendments and Supplementary Conditions for Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects

---

*The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.*

---



## **Recommended Amendments and Supplementary Conditions for *Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects, CCDC 17 – 2010***

---

### **CCDC 17 – 2010 - *Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects***

The following are recommended amendments and supplementary conditions for the CCDC 17, 2010 Contract. To incorporate their use you can copy/paste from the Word document into the front end of the project manual specifications with appropriate headings and footers with the project name, practice name, specification section, page numbers etc. utilizing the standard specifications section/page format. Coordinate the sequence and numbering with other amendments or supplementary conditions.

**Do Not Include This Cover Page In Your Specifications**

## Recommended Amendments and Supplementary Conditions for:

### ***Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects - CCDC 17 – 2010***

Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

---

#### **Amendments to Articles:**

##### **ARTICLE A7 – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

- 1 Delete the words “or other form of electronic communication” after the words “or by facsimile” in paragraphs 7.2 and 7.4.

#### **Amendments to Definitions:**

##### **Definitions**

Add the following definition:

##### Submittals

*Submittals* are documents or items required by the *Contract Documents* to be provided by the *Trade 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*.

#### **Supplementary Conditions**

##### **GC 1.1 CONTRACT DOCUMENTS**

- .1 Add to the end of sub-paragraph 1.1.2.3

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 12.1.1.3

##### **GC 2.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT**

- .1 Delete paragraph 2.1.2 in its entirety and substitute new paragraph 2.1.2

2.1.2: The duties, responsibilities and limitations of authority of the Construction Manager and the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of the Owner, Trade Contractor, Construction Manager and Consultant.

##### **GC 2.2 ROLE OF THE CONSTRUCTION MANAGER AND CONSULTANT**

- .1 Delete sub-paragraph 2.2.1.2 in its entirety and substitute new sub-paragraph 2.2.1.2

2.2.1.2 in the first instance, receive all questions in writing by the Owner or the Trade Contractor for interpretation of the Contract Documents except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER;

- .2 Delete sub-paragraph 2.2.1.3 in its entirety and substitute new sub-paragraph 2.2.1.3
  - 2.2.1.3 in the first instance, give interpretations on matters in question relating to the performance of the Work or the requirements of the Contract Documents, except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER;
- .3 Delete sub-paragraph 2.2.2.2 in its entirety and substitute new sub-paragraph 2.2.2.2
  - 2.2.2.2 in the first instance, give interpretations and make findings on matters in question relating to the requirements of the Contract Documents, except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER. The interpretations and findings will be given in writing to the parties within a reasonable time.
- .4 Add new sub-paragraph 2.2.2.3
  - 2.2.2.3. make interpretations and findings which are consistent with the intent of the Contract Documents. In making such interpretations and findings, the Consultant will not show partiality to either the Owner or the Trade Contractor. The Owner and the Trade Contractor shall waive any claims against the Consultant arising out of the making of such interpretations and findings made in accordance with paragraph 2.2.2.
- .5 Delete sub-paragraph 2.2.3.2 in its entirety

**GC 2.3 REVIEW AND INSPECTION OF THE WORK**

- .1 Add the words “and the Consultant” after the words “Construction Manager” in paragraph 2.3.3
- .2 Add the words “or Consultant” after the words “Construction Manager” in paragraph 2.3.5

**GC 2.4 DEFECTIVE WORK**

- .1 Add new sub-paragraphs 2.4.1.1 and 2.4.1.2:
  - 2.4.1.1 The Trade 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 Trade 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.
- .2 Delete the word “Construction Manager” and replace with “Consultant” in the first and second sentences of paragraph 2.4.3.

**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 Trade 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 Trade 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 Trade Contractor shall review the Contract Documents and shall report promptly to the Consultant any error, inconsistency or omission the Trade Contractor may discover. Such review by the Trade 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 Trade Contractor does not assume any responsibility to the Owner or to the Consultant for the accuracy of the Contract Documents. The Trade Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the Contract Documents, which the Trade Contractor could not reasonably have discovered. If the Trade Contractor does discover any error, inconsistency or omission in the Contract Documents, the Trade Contractor shall not proceed with the work affected until the Trade 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 Trade 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, 3.10.12 and 3.10.13

.3 Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3

3.10.3 Prior to the first application for payment, the Trade Contractor, the Consultant and the Construction Manager 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 3.10.13.

**GC 3.14 PERFORMANCE BY TRADE CONTRACTOR**

.1 Add new General Condition 3.14.1

3.14.1 In performing its services and obligations under the Contract, the Trade 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 Trade Contractor acknowledges and agrees that throughout the Contract, the Trade Contractor's obligations, duties and responsibilities shall be interpreted in accordance with this standard. The Trade 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 Trade 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 Trade Contractor and Construction Manager shall jointly 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 Trade 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 Trade Contractor call for competitive bids for portions of the Work, to be paid for from cash allowances.

**GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

- .1 Add "the Consultant" after the words "the Construction Manager" in paragraph 5.4.1

**GC 6.3 CHANGE DIRECTIVE**

- .1 Delete the word "Finding" in paragraph 6.3.12 and replace with "determination."

**GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

- .1 Delete the words "Construction Manager" in the first line in paragraph 6.4.2 and replace with "Consultant."
- .2 Delete the words "Construction Manager" in the first and second lines of paragraph 6.4.3 and replace with "Consultant" and also add the words "Construction Manager" after the word "Owner."

.3 Add new paragraph 6.4.5

6.4.5 The Trade 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 Trade Contractor prior to submission of bid, and the sufficiency and completeness of the information provided by the Owner. The Trade Contractor is not entitled to compensation or to an extension of the Contract Time for conditions which could reasonably have been ascertained by the Trade 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 paragraph 6.5.6

6.5.6 If the Trade Contractor is delayed in the performance of the Work by an act or omission of the Trade Contractor or anyone employed or engaged by the Trade Contractor directly or indirectly, or by any cause within the Trade Contractor's control, then the Contract Time shall be extended for such reasonable time as the Construction Manager may decide in consultation with the Trade Contractor. The Owner shall be reimbursed by the Trade 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 Trade 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 Trade Contractor.

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

.1 Add the words “and Consultant” after the words “Construction Manager” in paragraph 6.6.1

.2 Delete the word “finding” in the second line of paragraph 6.6.3 and replace with “interpretation.”

.3 Add the words “and Consultant” after the words “Construction Manager” in paragraph 6.6.4

.4 Delete paragraph 6.6.5 in its entirety and substitute new paragraph 6.6.5

If the *Construction Manager's* interpretation is not acceptable to the *Trade Contractor*, *Owner* or *Consultant*, the *Consultant* shall make a finding with respect to a claim made by either party and the finding will be given by Notice in Writing to both parties within 30 working days after receipt of the claim by the *Consultant*, or within such other time period as may be agreed by the parties.

## **GC 8.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT**

- .1 Delete the words “Construction Manager or the” in the third line of paragraph 8.1.1
- .2 Delete the words “neither the Construction Manager nor” in the first line of paragraph 8.1.2

## **GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

- .1 Delete the words “Construction Manager or the” in the first line of paragraph 8.2.2
- .2 Add the words “the Consultant” after “the Trade Contractor” in the last line of paragraph 8.2.5
- .3 Add the words “the Consultant” after “the party” in the first line of paragraph 8.2.6
- .4 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 Trade Contractor shall give the Consultant a Notice in Writing.
    - 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 *Trade Contractor* or the *Owner*, as the case may be, wishes to raise in relation to the *Consultant* or *Construction Manager* arising out of the issues in dispute in the arbitration.
  - 8.2.10 The Owner and the Trade Contractor agree that the Consultant or Construction Manager 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 or Construction Manager:
    - 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 *Trade 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 or Construction Manager 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 or Construction Manager has elected under paragraph 8.2.10 to become a full party may:
    - a) on application of the *Owner* or the *Trade Contractor*, determine whether the *Consultant* or *Construction Manager* has satisfied the requirements of paragraph 8.2.10, and;
    - b) make any procedural order considered necessary to facilitate the addition of the *Consultant* or *Construction Manager* 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 or Construction Manager to any sub-consultant;
  - 8.2.14 In the event of notice of arbitration given by the Consultant or Construction Manager 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 Trade 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 Trade 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 the words "the Consultant" after the words "the Trade Contractor" in the last line of paragraph 9.2.6
- .2 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 *Trade Contractor* or anyone for whom the *Trade 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,
- .3 Add "and the Consultant" after the word "Trade Contractor" in sub-paragraph 9.2.7.4
- .4 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 *Trade Contractor* or anyone for whom the *Trade 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 "Trade Contractor" in sub-paragraph 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 Trade 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 Trade 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 Trade Contractor or anyone for whose acts the Trade 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..."

~ END ~

---

*The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.*

---