

# Management of the Project - Article

## Use of Defined Terms

By: Project Administration Resource Committee

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### Introduction

This article will examine the standard definitions used in the Canadian Construction Documents Committee (CCDC) stipulated price contract, which is an industry standard in Canada. These definitions have been used widely and have undergone a rigorous vetting process. It will also advise on how to use the definitions when preparing Construction Documents and correspondences and identify some of the common vernacular used in the industry that should be avoided.

While this article is based on the definitions used in CCDC 2-2008, other CCDC contracts add, modify and/or delete some definitions. When using defined terms in contractual documents and in general communications, it is strongly recommended that the contract form used for the project be consulted.

### History

Formed in 1974, CCDC includes two construction owner representatives from each of the public and private sectors, as well as representatives from four national organizations (Association of Consulting Engineering Companies, Canadian Construction Association, Construction Specifications Canada and Royal Architectural Institute of Canada).

This organization was formed to create on a consensus basis, standardized contract forms as outlined on the CCDC website, and to provide balance, uniformity and standardization for bidding and contracting procedures. CCDC documents, prior to being published are reviewed and endorsed by the four national member organizations. As architects, we are represented by the RAIC/Architecture Canada and as such, these documents have been reviewed and endorsed.

The defined terms contained within the CCDC documents were established to identify and standardize the terms used in construction contracts. This provides clarity to the CCDC documents themselves and also, by association provides a guide to the language that should be used on the drawings, specifications, and the documents issued during the construction administration processes that form part of the Contract.

Undoubtedly we have all heard many terms used interchangeably and inconsistently on site and in the office however it is in the architect's best interest to make a habit of using the defined terms consistent with the definitions given in all aspects of our scope of work from schematic design through to project close-out to maintain standards and avoid any potential confusion or risk.

Furthermore, using such terminology on a regular basis will develop a better habit and will also act as a form of training for new graduates and interns. This cultivates a better understanding and appreciation for the legal and technical nature of what we as architects do as design and creativity are but two one of our many roles and responsibilities.

## **Guidelines to Using Defined Terms**

Terms capitalized and italicized in CCDC contract forms have a specific definition within that contract form. The terms used in CCDC 2 are commonly used throughout other CCDC documents and are noted herein. It should be understood that the terminology used throughout drawings, specifications and other construction documents should be in line with the contract form that is being used.

CCDC-20 "A Guide to the Use of CCDC 2–2008 Stipulated Price Contract states that "Bid and *Contract Documents* should consistently use these terms since they have a definite meaning and application under the contract. Other terms may have a different connotation."

Therefore it is not only important to implement the use of defined terms in bid and contract documents but that it is advisable to get into the habit of using the defined terms in day to day, informal correspondence such as email, minutes, site visit reports, etc., to reinforce the defined terms in the CCDC documents and the contract documents.

When preparing construction contract administration documents such as Supplemental Instructions, Proposed Changes, Change Orders, etc. ensure that the correct terminology is used throughout the document.

When using defined terms in documents and drawings, the first letter is always capitalized as shown in the defined terms list and should be italicized as well, exactly as shown in CCDC if the intent is to use the term according to its defined meaning. Using the term without capitalization and italicization means that the normal dictionary meaning will be used. Beware of this when reading and interpreting RFPs and other documents as well as when writing construction documents.

Defined terms are also referred to as the 'industry standard'. More often than not, even when contracts are signed on the backs of napkins, CCDC terminology is used as it forms the basis of industry standards.

## **Definitions**

The definitions provided in the list below are excerpted from CCDC 2 and the items in italics identify some of the vernacular commonly used in error. Every Architect should review the defined terms in CCDC 2 and implement the definitions as needed to suit the needs of their specific practice. However, by and large the defined terms should remain the same for most if not all practices. It is imperative that we as architects review the defined terms in the contracts that are being used – e.g. CCDC 2, CCDC 5A or 5B, etc.

## Definitions

The following Definitions shall apply to all *Contract Documents*.

1. **Change Directive:** A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.
2. **Change Order:** A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:
  - a change in the *Work*;
  - the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
  - the extent of the adjustment in the *Contract Time*, if any.

Note: A Proposed Change (PC), Contemplated Change Notice (CCN), Proposed Change Notice (PCN) or Contemplated Change Order (CCO) is specifically excluded in the defined terms as it is an instrument by which pricing for a change is requested and does not of itself effect a change in the Contract. Where used, the term Proposed Change is the currently preferred term.

3. **Construction Equipment:** *Construction Equipment* means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.
4. **Consultant:** The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.

Note: Authorized Representatives include Structural, Mechanical, Electrical, Landscape, Interior Design and other speciality consultants. We should always refer to ourselves as the *Consultant*. We should never refer to ourselves as architect(s), interior designer(s), designer(s), etc. Contractually, whoever is leading the team of consultants is referred to as the *Consultant*. Typically, this is the architect. Additionally, we never refer to the term engineer. For example, when referring to the Mechanical Engineer, we would refer to them as Mechanical Consultant. The terms 'Architect' and 'Engineer' are used widely in the United States but not in Canada. Example: "Submit Shop Drawings to *Consultant* minimum 30 Days prior to commencing the *Work*."

5. **Contract Documents:** The *Contract Documents* consist of those documents listed in the Agreement and amendments agreed upon between the parties.

Note: Typically these are the *Drawings* and *Specifications* at minimum. *Contract Documents* may also include addenda issued during the bid period, any contract negotiation documents, bonds and construction schedules.

6. **Contract Price:** The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
7. **Contract Time:** The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.
8. **Contractor:** The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.

Note: *We should not use the term 'GC' in any written document. 'GC' means General Condition, not General Contractor. Remember, when preparing notes on Drawings, you do not need to state "Contractor shall..." or "Contractor to site verify all dimensions." Given that contract documents are*

*inherently addressed to the Contractor*, you can simply write “Site verify all dimensions” or “Be responsible for site verifying all dimensions”. Of the two examples given, the former is preferred; being directive and in the active voice.

Neither the abbreviation GC nor the term General Contractor are defined. While commonly used in verbal discussions, they should be avoided in *Contract Documents*.

9. **Drawings:** The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

10. **Notice in Writing:** A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

11. **Owner:** The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.

Note: It is best to get into the habit of referring to your client as the *Owner*. The term client, or the official name of the client (i.e. their company name) should not be used or referenced in the *Contract Documents*.

Example: “Do not use any of permanent facilities and controls without obtaining written permission from the *Owner*” or “*Owner* will not be responsible for parking fines incurred by *Contractor*, *Subcontractor* or their employees.”

12. **Place of the Work:** *The Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

Example: “We visited the *Place of the Work* on 05 March, 2015...”

13. **Product:** *Product* or *Products* means material, machinery, equipment, and fixtures forming the *Work*, but does not include *Construction Equipment*.

14. **Project:** The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

15. **Provide:** *Provide* means to supply and install.

Note: This is a very important term. If we were to simply state: ‘Supply’ then the *Contractor* has no obligation to install the item. If we were to simply state: ‘Install’ then the *Contractor* can reasonably assume that the item will be given to them by the *Owner or another entity*. The term ‘*Provide*’ means to both supply and install.

Example: “*Provide* acoustic ceiling tiles.”

16. **Shop Drawings:** *Shop Drawings* are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Contractor* provides to illustrate details of portions of the *Work*.

Note: some practices use the term Submittals which they define to include both *Shop Drawings* and physical samples. While the term Submittals has not been formally defined by CCDC as yet, it is recommended that you define this and any other terms in a supplement to the contract entitled “Amendments to Definitions” and ensure that it is included with your *Contract Documents* and referenced in a supplementary condition to GC 1.1.7 modifying the hierarchy of documents.

17. **Specifications:** The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.
- Note:* *Specifications* can be issued as a bound document separate from the *Drawings* or be included on the drawings themselves. In the latter case, they are often referred to as sheet specs and are more commonly found on engineering drawings. The term Project Manual was used in the past but is typically not in use today. If it is used it should be referenced in a supplementary condition to GC 1.1.7
18. **Subcontractor:** A *Subcontractor* is a person or entity having a direct contract with the Contractor to perform a part or parts of the Work at the Place of the Work, or to supply Products worked to a special design for the Work.
- Note:* The term “trade” is often used in lieu of *Subcontractor* particularly in relation to construction management contracts where there is a direct contractual relationship with the *Owner*, but it has not been formally defined. It is best practice to avoid the use of terminology that is not defined.
19. **Substantial Performance of the Work:** *Substantial Performance of the Work* is as defined in the lien legislation applicable to the Place of the Work. If such legislation is not in force or does not contain such definition, or if the Work is governed by the Civil Code of Quebec, Substantial Performance of the Work shall have been reached when the Work is ready for use or is being used for the purpose intended and is so certified by the Consultant.
- Note:* In loose usage, the terms “substantial performance” and “substantial completion” are often interchanged. In reality, they refer to two very different events. For further information, refer to the peer article “Substantial Completion vs. Performance - What’s the Difference?” on the OAA Website.
20. **Supplemental Instruction:** A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the Consultant to supplement the *Contract Documents* as required for the performance of the *Work*.
- Note:* The terms Site Instruction, Supplementary Instruction, and Job Instruction are not defined and should be avoided. The American term Architect’s Instruction should also be avoided. *Supplemental Instructions* are not intended to be used to initiate or direct a change in the work. As *Consultants* we have no authority to direct a change to the *Contract* without the consent of the *Owner*. Changes (even if they are zero dollar changes) should be issued via *Change Order*.
21. **Supplier:** A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products*.
22. **Temporary Work:** *Temporary Work* means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the Work but not incorporated into the *Work*.
23. **Value Added Taxes:** *Value Added Taxes* means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Contractor* by the tax legislation.
- Note:* The term *Value Added Taxes* has been defined as a “blanket” or “umbrella” to cover off various taxes used throughout Canada. This includes GST, PST, QST and HST. The only time that *Value Added Taxes* should appear is on Certificates for Payment. Typically, *Change Orders* do not include *Value Added Taxes*.
24. **Work:** *Work* means the total construction and related services required by the *Contract Documents*.

25. **Working Day:** *Working Day* means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

*Note:* Some *Consultants* prefer to use the term Day oppose to *Working Day*. Should this be the case, the term Day must be defined in the “Amendments to Definitions”. It is also recommended that the time that demarcates the end and beginning of a day is defined, as it pertains to reasonable expectations and responsibilities of all parties with respect to required review periods. For example RFI or *Shop Drawings* are often due in 5 or 10 days, on large projects these may be received in large quantity at or after the end of a normal business day. If the “day” has not been defined as ending at 3 or 4 pm (as is common), the sender may claim these were submitted on a given day if sent before midnight, though clearly the work day was concluded several hours earlier and they were not in fact able to be received/processed until the following day.

## Examples / Precedents

Example:

There was an Interior Design project wherein all notes and specs were on drawings and noted “Supply new ceiling tiles to replace soiled or damaged ceiling tiles. New ceiling tiles to match existing.” The *Contractor* counted the number of soiled and damaged ceiling tiles, ordered new tiles from the same manufacturer and of the same model number, but refused to install them unless a *Change Order* was provided for the installation. Had the note stated “*Provide* new ceiling tiles...” the *Contractor* would have included such costs in the *Contract Price* and would have not only supplied, but also installed the tiles.

## Additional, Commonly Used Defined Terms

As noted above there are other terms commonly used in contract documents that should be referenced in a supplementary condition to GC 1.1.7. Some frequently defined terms are as follows:

1. **Day:** *Day* means a calendar day.

*Note:* as outlined in item 26 above it may be prudent to outline the start and end of the day.

2. **Supply:** *Supply* means completion of the following activities, including the associated labour, services, plant, construction machinery and equipment required to:

- .1 Fabricate or purchase Products,
- .2 Deliver Products to the Place of the Work,
- .3 Unload Products,
- .4 Store Products in accordance with manufacturers’ instructions.

3. **Install:** *Install* means completion of the following activities, including the associated labour, services, plant, construction machinery and equipment required to:

- .1 Remove Products from storage and locate for placement,
- .2 Position and adjust Products for final placement,
- .3 Affix and anchor Products in final placement, in accordance with manufacturers’ instructions and Contract Documents,
- .4 Commission and adjust Products for proper operation.

4. **Make Good, Made Good:** *Make Good, Made Good* means repairing, restoring, refurbishing, rehabilitating, or performing filling operation on any existing components disturbed due to work of this Contract, to at least the condition existing at the commencement of the Work, in terms of construction integrity, finishes, alignment

with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, fire separations, air/vapour barrier and thermal continuity.”

5. **Request for Information (RFI)**, *Request for Information* means the vehicle by which a Contractor submits questions to the Consultants for response during the bidding and construction process.

Note: Recently the term Request for Interpretation is being used for the same item in the same context. It should be noted that there are discussions within the industry to use Request for Interpretation over Request for Information. It has been argued that the use of the term information, by default could imply that the Contract Documents are not complete which by definition could lead to additional costs and delay claims. The use of interpretation could be seen as starting off a dialogue about a particular issue to determine if there is missing information and a formal change is required.

6. **Products**: *Products* means material, fixtures, equipment and machinery forming the Work but does not include construction machinery or equipment used to prepare, fabricate, convey, erect or perform the Work that is not incorporated into the Work.
7. **Subcontractor**: *Subcontractor* means a person, firm or corporation having a direct Contract with the Contractor to perform a part or parts of the Work at the Place of the Work, or to supply Products worked to a special design for the Work.
8. **Supplier**: *Supplier* is a person, firm or corporation having a direct Contract with the Contractor to supply Products for the Work.
9. **Work**: *Work* is the total construction, including but not limited to all labour, material, plant and services required by the Contract Documents.
10. **Hazardous Material**: *Hazardous Material* means collectively, any contaminant, waste or subject waste (as defined in the Environmental Protection Act (“based on the respective provincial legislation or authority having jurisdiction ”), as amended or re-enacted from time to time (the "EPA")), toxic substance (as defined in the Canadian Environmental Protection Act, as amended or re-enacted from time to time (the "CEPA")), dangerous goods (as defined in the Transportation of Dangerous Goods Act (Canada) as amended or re-enacted from time to time ("TDGA")) or pollutant (as defined in the EPA), or any other substance which when released to the natural environment is likely to cause in some immediate or foreseeable future time, material harm or degradation to the natural environment or material risk or harm to human health. Whenever the terms "toxic and hazardous substances" is used in the Contract, it shall be deemed amended to read "*Hazardous Material*".
11. **OHSA**: The *Occupational Health and Safety Act (OHSA)*(based on the respective provincial legislation or authority having jurisdiction where the work is being conducted)."
12. **Submittals**: *Submittals* means 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 Record Drawings and manuals to provide instructions to the operation and maintenance of the Work.
13. **Total Performance of the Work**: *Total Performance of the Work* means when the entire Work has been performed to the requirements of the Contract Documents and the Consultant has issued a written confirmation to the Owner confirming that the Work has been completed in accordance with the requirements of the applicable lien legislation in the jurisdiction of the Place of the Work.

Note: The term Deemed Completion is used in the *Construction Lien Act* and the *Construction Act* however some Owners require that Total Performance of the Work be used. It is important to discuss this item with the Owner to determine which term is to be used.
14. **WSIB**: The Workplace Safety & Insurance Board (*WSIB*) for Ontario or the Workplace Safety Agencies in the respective provinces and territories of Canada.

The preceding list is not meant to be exhaustive and only captures those familiar to the author. Individual projects and contracts will vary and may require additional definitions that should be captured in a supplementary condition to GC 1.1.7.

## **Conclusion**

Contractual interpretation involves no greater goal than to get the meaning right and more often than not, courts are obsessed with interpretive accuracy. In general, courts have also recognized that context is central to interpretive accuracy.

The contra proferentem rule states, broadly, that ambiguity in the wording of a contract can be used against you in a court of law, further emphasizing that the use of defined terms is an important aspect of our work. Using them in all aspects of our work and not just within the formal *Contract Documents* helps to align our work with the contract and strengthens the link between our documents and the *Contract*. In a profession where our creativity makes us unique in the work that we do, aligning with established standards such as defined terms, allows us to streamline the documentation process and can help reduce the added time and expense of legal claims and disputes.

## **References**

CCDC 2-2008 Stipulated Price Contract

CCDC 20 Guide to CCDC 2–2008

[Canadian Construction Documents Committee](#)

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*These articles do not represent OAA policy or guidance but rather are based on the opinions and experiences of members of the OAA and are prepared for the benefit of the profession at large.*

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