

OAA ISSUES SUPPLEMENTARY CONDITIONS TO CCDC 2-2008

Attached you will find an OAA Bulletin advising architects to add the list of supplementary conditions outlined.

The OGCA was not involved in the development of these conditions. While some came from previous negotiations, many have never been discussed, and several are unacceptable.

The CCDC 2 is a contract between the owner and the general contractor. The architect is identified as the owner's agent. The OAA has attempted to insert reward, penalty and condition clauses into a contract to which they are not a signing party.

Some of the proposed clauses can affect the owners' rights. In most cases, they belong in the architect's "client agreement" and should not be backdoored with ours.

The OGCA has asked for a meeting with the OAA as soon as possible to find a resolution to these issues. Until that is resolved, other than clauses already agreed to by the OGCA, members should refuse to allow any others to be inserted into the agreement. Notify to OGCA of any attempts to do this and raise strenuous objections with your client.

This is our contract – not the architects!

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Clauses that mirror the MOH and ORC agreements:

A6.1
General 1.1
GC.1.1.2
2.2.5
2.4.1
3.1.2
3.4.1
3.8.1
3.10.1 & .2
3.24.1
4.1.4
6.4.1
6.6.5.1 & .3
9.1.1 & .2
9.2.1 & .3
10.2.1
12.3.1
8.2 all clauses except 8.2.11.

Clauses not acceptable:

GC 2.2.1 & .4
3.10.3.5
4.1.3
5.3.1
6.6.1 & .2
8.2.1 & .2

Clauses requiring either a legal interpretation or more information as to why:

GC 1.1.1
2.2.2 & .3
2.2.6
3.1.1
3.7.1
4.1.1 & .2
6.5.2
9.2.2 & .4
9.5.1 & .2
12.1.1



Ontario Association of Architects

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

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

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

Delete Article A-6.1 and substitute new article 6.1:

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

DEFINITIONS

Add the following definition:

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

1 GENERAL

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

GC 1.1 CONTRACT DOCUMENTS

- .1 Add to the end of subparagraph 1.1.2.2

Except where the *Consultant* shall be indemnified as a third party beneficiary as provided in subparagraphs 9.2.7.4, 9.2.8.4, 9.5.2.4 and 9.5.3.4 and in 12.1.1.

- .2 Add new subparagraph 1.1.7.5:

1.1.7.5 In case of discrepancies, noted materials and annotations shall take precedence over graphic indications in the *Contract Documents*.

GC 2.2 ROLE OF THE CONSULTANT

- .1 Delete paragraph 2.2.4. in its entirety.
- .2 Add the word “schedules” after the word “techniques” in paragraph 2.2.6.
- .3 Add to the end of the second sentence of paragraph 2.2.6. “or to adhere to the construction schedule.”
- .4 Add at the end of paragraph 2.2.9. “The *Owner* and the *Contractor* shall waive any claims against the *Consultant* arising out of the making of such interpretations and findings in accordance with paragraphs 2.2.7., 2.2.8. and 2.2.9”.
- .5 Delete the comma after the word “submittals” and add the words “which are provided” before the words “in accordance” in paragraph 2.2.14.
- .6 Add new sentence to end of paragraph 2.2.11 “The Consultant’s obligation to make findings on a large claim or large number of claims is subject to the terms and conditions of the Owner/Consultant agreement.”

GC 2.4 DEFECTIVE WORK

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

GC 3.1 CONTROL OF THE WORK

- .1 Add the word “schedules” after the word “techniques” in paragraph 3.1.2.
- .2 Add new paragraph 3.1.3:
 - 3.1.3 Prior to commencing individual procurement, fabrication and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all relevant measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the affected work.

GC 3.4 DOCUMENT REVIEW

- .1 Delete paragraph 3.4.1 in its entirety and substitute new paragraph 3.4.1:
 - 3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall comply with the standard of care described in paragraph 3.14.1 of the *Contract*. Except for its obligation to make such review and report the result, the *Contractor* does not assume any responsibility to the *Owner* or to the *Consultant* for the accuracy of the *Contract Documents*. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the *Contract Documents*, which the *Contractor* could not reasonably have discovered. If the *Contractor* does discover any error, inconsistency or omission in the *Contract*

Documents, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

- .1 Delete the words “through the Consultant” in paragraph 3.7.6.

GC 3.8 LABOUR AND PRODUCTS

- .1 Add new paragraph 3.8.4:

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

GC 3.10 SHOP DRAWINGS

- .1 Add the words “AND OTHER SUBMITTALS” to the Title after SHOP DRAWINGS.
- .2 Add “and *Submittals*” after the words “*Shop Drawings*” in paragraphs 3.10.1, 3.10.2, 3.10.4, 3.10.7, 3.10.8, 3.10.8.2, 3.10.9, 3.10.10, 3.10.11, and 3.10.12.
- .3 Delete 3.10.3 in its entirety and substitute new paragraph 3.10.3

3.10.3 The *Contractor* shall prepare a schedule of the dates for provision, review and return of *Shop Drawings* and *Submittals* and submit it to the *Consultant* for review.
- .4 Delete the last sentence in paragraph 3.10.9
- .5 Delete the words “so as to cause no delay in the performance of the Work” in paragraph 3.10.12.

GC 3.14 PERFORMANCE BY CONTRACTOR

- .1 Add new General Condition 3.14.1

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

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

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

GC 4.1 CASH ALLOWANCES

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

4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, any unexpended amounts from other cash allowances shall be reallocated, at the *Consultant's* direction, to cover the shortfall, and, in that case, there shall be no additional amount added to the *Contract Price* for overhead and profit. Only where the actual cost of the *Work* under all cash allowances exceeds the total amount of all cash allowances shall the *Contractor* be compensated for the excess incurred and substantiated, plus an amount for overhead and profit on the excess only, as set out in the *Contract Documents*.

- .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* without any adjustment for the *Contractor's* overhead and profit on such amount.

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

4.1.7. The *Contractor* shall prepare a schedule that shows when the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the work.

- .4 Add new paragraph 4.1.8:

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

GC 5.3 PROGRESS PAYMENT

- .1 Delete subparagraph 5.3.1.1 in its entirety.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- .1 Add new subparagraph 6.4.5:

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

GC 6.5 DELAYS

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

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

- .2 Delete the period at the end of paragraph 6.5.2, and substitute the following words:

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

- .3 Add new subparagraph 6.5.6.

6.5.6 If the *Contractor* is delayed in the performance of the *Work* by an act or omission of the *Contractor* or anyone employed or engaged by the *Contractor*

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

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- .1 Delete paragraph 6.6.5. in its entirety and substitute new paragraph 6.6.5.

6.6.5. The *Consultant's* findings, with respect to a claim made by either party will be given by *Notice in Writing* by the *Consultant* to both parties within reasonable time after receipt of the claim information noted in paragraph 6.6.3.

- .2 Add new paragraph 6.6.7

6.6.7. The *Owner* may make claims arising out of the costs incurred for additional services provided by the *Consultant* resulting from the *Contractor's* failure to reasonably perform the Work in accordance with the terms and conditions of the Contract, including the *Contractor's* issuance of unnecessary Requests for Information. The *Consultant* will notify the *Owner* and *Contractor* where it has been determined that additional services will be required or have been provided in order not to cause a delay. The *Owner* shall make claims based on the *Consultant's* invoices.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- .1 Revise the heading, "**GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**" to read, "**GC 8.2 NEGOTIATION AND MEDIATION**".

- .2 Delete paragraphs 8.2.6, 8.2.7, and 8.2.8 in their entirety.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION ALTERNATIVE SUPPLEMENTARY CONDITION

To be used in lieu of GC 8.2 Supplementary Condition in situations where the Owner and Contractor sign a contract which contains Arbitration provisions.....*See final page of this document.*

GC 9.1 PROTECTION OF WORK AND PROPERTY

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

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

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

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

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

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

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

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

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

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

- .4 Add "and the *Consultant*" after the word "*Owner*" in subparagraph 9.2.8.4.

GC 9.5 MOULD

- .1 Add "and the *Consultant*" after "*Owner*" in subparagraph 9.5.2.4.

- .2 Add "and the *Consultant*" after "*Contractor*" in subparagraph 9.5.3.4.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

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

GC 12.1 INDEMNIFICATION

- .1 Add "and the *Consultant*" after the words "hold harmless the other" in paragraph 12.1.1.

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...".

ALTERNATIVE WORDINGS GC 8.2

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION ALTERNATIVE SUPPLEMENTARY CONDITION

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

- a) a copy of the notice of arbitration
- b) a copy of supplementary conditions 8.2.9 to 8.2.15 of this Contract, and;
- c) any claims or issues which the Contractor or the Owner, as the case may be, wishes to raise in relation to the Consultant arising out of the issues in dispute in the arbitration

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

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

8.2.11 If the Consultant is not given the written notice required under paragraph 8.2.9, both the Owner and the Contractor are estopped from pursuing an action, counter claim or other proceeding or making an application against the Consultant arising out of the issues in dispute in the arbitration between the Owner and the Contractor under paragraph 8.2.6.

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

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

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

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

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

Issued May 15, 2008