

Supplementary General Conditions to CCDC 2, 2008

SUPPLEMENTARY GENERAL CONDITIONS TO CCDC 2, 2008

ADD TO SECTION 9.2.14:

Occupational Health and Safety Regulations

- 2.1. Observe and enforce construction safety measures required by the National Building Code (1990) Part 8; the Provincial Government Workers' Compensation Board; and Municipal Authorities. In particular, the Occupational Health and Safety Act (Ont. Reg. 213/91), the Ontario Construction Safety Act, WHMIS, the regulations or the Ontario Ministry of Labour and Ontario Hydro Safety Requirements shall be strictly enforced.
- 2.2. Constructor shall ensure all copies of all applicable construction safety regulations, codes and standards are available on the job-site throughout the period of construction. All Workers are to be informed that these documents are available for reference any time.
- 2.3. The Constructor shall ensure that all supervisory personnel on the job-site are fully aware of the contents of the Occupational Health and Safety Act (Ontario Regulation 213/01 – Construction Projects), as amended, and the “Workers Compensation Act” and that they comply with all requirements and procedures prescribed therein including, but not limited to, the following construction safety requirements:
 - 2.3.1. Constructor to register with the Director of Occupational Health and Safety Division prior to commencement of Work on the project, and (O. Reg. 213/91, sec 5).
 - 2.3.2. File notice of project and commencement of the project, (O. Reg. 213/91, sec 6).
- 2.4. The Owner Designee will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 SUBSTANTIAL PERFORMANCE OF THE WORK.

ALREADY INCLUDED:

Insurance

- 11.1. Without restricting the generality of GC 12.1 – Indemnification, the contractor shall provide, maintain, and pay for the insurance coverages specified in GC 11.1 – INSURANCE. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the work until the date of the final certificate of payment. Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the contractor shall promptly provide the Owner with a confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

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ALREADY INCLUDED:

Indemnification

13.1. The contractor shall to the full extent permitted by the law defend, indemnify and save harmless the Owner and the Owner Designee or their respective directors, officers, partners, employees and agents, from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work, or out of the condition of the Work, the job site, adjoining land, driveways, streets or alleys used in connection with the performance of the Work.

ADD TO SECTION 12.1.3:

13.2. *The indemnification provided for in this paragraph shall specifically include, but shall not be limited to, all claims, demands, losses, costs, damages, actions, suites or proceedings directly or indirectly arising or alleged to arise as a result of or in connection with any scaffolding, structural Work or safe place law or any law with respect to the protection of adjacent landowners, but shall include any claims arising solely from negligence of the party asking to be defended, indemnified or saved harmless.*

ADD TO SECTION 12.1.4:

13.3. The contractor shall indemnify and hold harmless the Owner, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceeding (hereinafter called "claims"), by third parties that arise out of, or are attributable to, the contractor's performance of the contract provided such claims are:

- 13.3.1. Attributable to bodily injury, sickness, disease, or to injury to or destruction of tangible property, and
- 13.3.2. Caused by negligent acts or omissions of the contractor or anyone for whose acts the contractor may be liable, and
- 13.3.3. Made in writing within a period of 1 year from the date of Substance Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the Place of the Work.

ADD TO SECTION 12.1.5:

13.4. The Owner expressly waives the right to indemnity for claims other than those stated above.

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ADD TO SECTION 2.3.9:

Review and Inspection of Work

- 19.1. The Owner shall have access to the Work at all times. The contractor shall provide sufficient, safe, and proper facilities at all time for the review of the Work by the Owner and the inspection of the Work by authorized agencies.
- 19.2. The Owner may order any portion or portions of the Work to be examined to confirm that such work is in accordance with the requirements of the contract documents. If the work is not in accordance with the requirements of the contract documents, the contractor shall correct the work and pay the cost of correction. If the work is in accordance with the requirements of the contract documents, the Owner shall pay the cost of examination and restoration.

ADD TO SECTION 3.6.7:

Site Supervision

- 26.1. The contractor shall employ at all times a competent supervisor and necessary assistants who shall be in attendance at the Place of the Work during construction hours while work is being performed. The supervisor shall not be changed except for a valid reason.
- 26.2. The supervisor shall represent the contractor at the Place of the Work and notices and instructions given to the supervisor by the Owner and/or Owner Designee shall be held to have been received by the contractor.

ADD TO SECTION 3.7.3:

Subcontractor and Suppliers

- 27.1. The contractor shall preserve and protect the rights of the parties under the contract with respect to work to be performed under subcontract, and shall:
- 27.1.1. Enter into contracts or written agreements with subcontractors and suppliers to require them to perform their work as provided in the contract documents.
 - 27.1.2. Incorporate terms and conditions of the contract documents into all contracts or written agreements with subcontractors and suppliers; and
 - 27.1.3. Be as fully responsible to the Owner for actions and omissions of subcontractors, suppliers, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the contractor.
- 27.2. The Owner may, for reasonable cause, at any time before the Owner has signed the contract, object to the use of a proposed subcontractor or supplier and require the contractor to employ one as suggested by the Owner.
- 27.3. The contractor shall not be required to employ as a subcontractor and supplier, a person or firm whom the contractor may reasonably object.

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ALREADY INCLUDED:

Construction Safety

- 30.1. The contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations, and practices required by the applicable construction health and safety precautions and programs in connection with the performance of the Work.

ADD TO SECTION 9.2.12:

Toxic and Hazardous Substances and Materials

- 34.1. For the purposes of applicable environmental legislation, the Owner shall be deemed to have control and management of the Place of the Work with respect to existing conditions.
- 34.2. Prior to the contractor commencing work, the Owner shall:
- 34.2.1. Take all reasonable steps to determine whether any toxic or hazardous substances or materials are present in the Place of Work, AND
 - 34.2.2. Provide the contractor with a written list of any substances and materials.
- 34.3. The Owner shall take all reasonable steps to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substance or materials which were at the Place of the Work prior to the contractor commencing the Work.
- 34.4. Unless the contract expressly provides otherwise, the Owner shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store, or otherwise render harmless toxic or hazardous substances or materials which were present at the Place of Work prior to the contractor commencing the work.
- 34.5. If the contractor:
- 34.5.1. Encounters toxic or hazardous substances or materials at the Place of Work, or
 - 34.5.2. Has reasonable grounds to believe that toxic or hazardous substances or materials are present at the Place of Work, which were not disclosed by the Owner, as required under paragraph 34.2, or which were disclosed but have not been dealt with as required under paragraph 34.4, the contractor shall:
 - 34.5.3. Take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and
 - 34.5.4. Immediately report the circumstances to the Owner in writing.

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ADD TO SECTION 9.2.13:

34.6. **Asbestos** containing materials may have been used during the original construction or previous alteration of School Board facilities. If asbestos containing materials are discovered during the course of this project, stop work and immediately notify Board Designee. Do not remove existing material containing asbestos fibers.

ADD TO SECTION 9.1.6:

Protection of Work, Site and Property.

36.1. The contractor shall protect the Work and the Owner's property and property adjacent to the Place of the Work from damage which may arise as the result of the contractor's operations under the contract, and shall be responsible for such damage, except damage which occurs as a result of:

36.1.1. Errors in the contract documents;

36.1.2. Acts or omissions by the Owner, other contractors, their agents and employees.

ADD TO SECTION 6.4 AS ITEM 6.4.6:

Concealed or Unknown Conditions

38.1. If the Owner or the contractor discovers conditions at the Place of the Work which are:

38.1.1. Subsurface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the contract documents, or

38.1.2. Physical conditions of nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided in the contract documents;

38.1.3. Then the observing party shall notify the other party in writing before conditions are disturbed and in no event later than **5 Working Days** after the observance of the conditions.

ADD TO SECTION 6.5.9:

Delays

39.1. The parties acknowledge the construction of the Work is designed to accommodate the requirements of the Owner and failure to attain Substantial Performance by the date stipulated in the agreement between the Owner and the contractor shall result in inconvenience and expense to the Owner and its teachers, students, and others – the exact extent of which is virtually impossible to calculate. Consequently, the parties agree that their best estimate of costs involved in delay beyond the stipulated date for performance is **\$1000 (One Thousand Dollars) per day** and said sum shall be paid by the contractor to the Owner for each working day, and shall be deemed for all purposes as reasonable

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compensation to the Owner for delay costs only. This amount is not, and shall not be deemed to be a penalty, but is a fair estimate of the actual costs resulting from the delay, and shall be charged in addition to all other cost provided for in the contract documents.

Clarification: "Working day" shall mean a full or part of a day, from Monday to Friday, in which work is normally performed.

ADD TO SECTION 9.2.12:

- 40.6. The contractor shall comply with the requirements of the Workplace Hazardous Material Information System (WHMIS) and, for each product to be used on the job which is designated as controlled by the legislation, shall provide at the site a Material Safety Data Sheet for inspection by any employee of the Owner.
- 40.7. Contractors who use controlled products must ensure that their workers are properly trained in the safe use of handling of such products in compliance with the Workplace Hazardous Materials Information System (WHMIS).
- 40.8. Comply with all requirements with respect to controlled products labeling and Material Safety Data Sheets (MSDS) according to the requirements of WHIMS and the Hazardous Products Act.
- 40.9. For each product to be used on the project that is designated as controlled by the legislation, the Contractor shall provide at the site a Material Safety Data Sheet for inspection by any employee of the Owner.

ADD TO SECTION 2.4.5:

Defective Work

- 44.1. The contractor shall promptly remove from the Place of the Work and replace or re-execute defective work that has been rejected by the Owner as failing to conform to the contract documents whether or not the defective work has been incorporated in the Work and whether or not the defect is the result of poor workmanship, use of defective products, or damage through carelessness or other act of omission of the contractor.
- 44.2. The contractor shall make good promptly other contractors' work destroyed or damaged by such removals or replacements at the contractor's expense.
- 44.3. If in the opinion of the Owner it is not expedient to correct defective work or work not performed as provided in the contract documents, the Owner may deduct from the amount otherwise due to the contractor the difference in value between the work as performed and that called for by the contract documents.

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45. Damages and Mutual Responsibility

- 45.1. If either party to the contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the other party is responsible in law, then that party shall be reimbursed by the other party for such damage. The reimbursing party shall be subrogated to the rights of the other party in respect of such wrongful act of neglect if it be that of a third party.
- 45.2. If the contractor has caused damage to the work of another contractor on the project, the contractor agrees upon due notice to settle with the other contractor(s) by negotiation or arbitration. If the other contractor(s) make(s) a claim against the Owner on account of damage alleged to have been so sustained, the Owner shall notify the contractor and may require the contractor to defend the action at the contractor's expense. The contractor shall satisfy a final order of judgment against the Owner and pay costs incurred by the Owner arising from such action.
- 45.3. If the contractor becomes liable to pay or satisfy a final order, judgment, or award against the Owner, then the contractor, upon undertaking to indemnify the Owner against any and all liability for costs, shall have the right to appeal in the name of the Owner such final order or judgment to any and all courts of competent jurisdiction.

ALREADY INCLUDED:

46. Workers' Compensation

- 46.1. Prior to commencing the work, Substantial Performance of the work, and the issuance of the final certificate for payment, the contractor shall provide evidence of compliance with worker's compensation legislation at the Place of the Work, including payments due thereunder.

ADD TO SECTION 10.4.2:

- 46.2. At any time during the term of the contract, when requested by the Owner, the contractor shall provide such evidence of compliance by the contractor and subcontractors.

ADD TO SECTION 5.3.4:

47. Application for Progress Payments

- 47.1. The amount claimed shall be for the value, proportionate to the amount of the contract, of work performed and products delivered to the Place of Work as of the last day of payment period.
- 47.2. The schedule of values required by 46.1 shall provide for the establishment of a Reserve Fund equivalent to the value of 1% of the work performed, which fund shall be held in an interest-bearing trust account in the name of the Owner and paid to the contractor at the time of final completion of the work. This Reserve

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Fund shall be in addition to any required Construction Lien Holdback. The funds shall be subject to claims by the Owner and others as provided for under the terms of the contract documents.

- 47.3. An original invoice indicating project completion and amount owed (minus Release of Holdback and Reserve Fund).
- 47.4. No payment shall be allowed for materials stored on site, except as specifically Identified in the contract documents.
- 47.5. With the second and all subsequent applications for payment, except the final release of holdback applications, the contractor shall submit a Statutory Declaration to the effect that all payments due to sub-contractors and for wages and salaries for work done and materials furnished in connection with the job immediately preceding that covered by the current application, have been made. The Statutory Declaration shall be Standard CCDC Form 9B, 2001 (free download from www.ccdc.org).
- 47.6. The contractor must provide with each application, a current Certificate of Clearance from the Workplace Safety and Inspection Board.
- 47.7. Progress Payment
 - 47.7.1. In the event of construction lien action affecting the project, the contractor agrees to indemnify and compensate the Owner for any expenses incurred.
 - 47.7.1.1 The Owner reserves the right to secure the possible cost of construction liens by retaining from the amount of the next payment certificate a sum equal to the amount of any lien claim plus the sum the usual 25% increased amount for future possible claim expenses, plus the sum of \$5,000.00 to compensate the Owner for its legal and Owner Designee expenses, as may be necessary to protect the Owner's interest in having any liens removed from the Owner's project. Funds so retained, and not so expended, shall be released to the contractor upon the full discharge of all liens and dismissal of all actions against the Owner.

ADD TO SECTION 5.7.5:

48. Final Payment

- 48.1. Final application shall also include:
 - 48.1.1. An original invoice indicating project completion and final amount owed (minus Release of Holdback).
 - 48.1.2. An original Statutory Declaration that all materials and Work and services required by the contract have been paid in full and that no liens do or can exist.

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- 48.1.3. A current Certificate of Clearance from the Workplace Safety and Inspection Board.
- 48.1.4. Proof that all claims, including taxes and any liens, have been finally and conclusively satisfied and released.
- 48.1.5. A Certificate from the contractor to the Owner certifying that all work has been completed in accordance with the contract documents.

ADD TO SECTION 5.5.4:

Release of Holdback

- 49.1. After the issuance of the certificate of Substantial Performance of the Work, the contractor shall:
 - 49.1.1. Submit an application for payment of the holdback amount, including a declaration that no notices of lien have been received.
 - 49.1.2. Submit CCDC 9A "Statutory Declaration" to state that all accounts for labour, subcontracts, products, construction equipment, and other indebtedness which may have been incurred by the contractor in the Substantial Performance of the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute,
 - 49.1.3. Submit Workplace Safety and Insurance Board Certificate of Clearance,
 - 49.1.4. Submit written confirmation from the bonding company that it has been notified of the intent to claim release of holdback money.
- 49.2. After receipt of an application for payment from the contractor and the statement as provided in paragraph 48.1, the consultant will issue a certificate for payment of the holdback amount.
- 49.3. In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the Place of Work. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The Owner may retain out of the holdback amount any sums required by law to satisfy any liens against the Work or, if permitted by the lien legislation applicable to the Place of the Work, other third party monetary claims against the contractor which are enforceable against the Owner.
- 49.4. Failure by the contractor to publish the Substantial Performance Certificate places no onus on the consultant or Owner to do so. If the Certificate is not published, the Owner shall release the holdback to the contractor 45 days after the contract is deemed complete, again having satisfied themselves as above.

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50. Project Completion

- 50.1. Upon completion of the work, the Board Designee will issue a "Contractor's Performance Report" for each facility. These reports will describe the contractor's performance of the work, and the performance rating recorded will impact on future prequalification.
- 50.2. Contractor must submit the required documentation including Statutory Declarations, Workers' Compensation Certificates, and all assembled documents executed by Subcontractors,

END OF SUPPLEMENTARY GENERAL CONDITIONS TO CCDC 2, 2008

THIS DOCUMENT WAS PREPARED BY THE CONSTRUCTION DEPARTMENT AND FORMATTED BY
THEDESIGN DEPARTMENT

LATEST REVISION IS IN GREEN FONT

ISSUED: DECEMBER 2008

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