**AMENDMENT TO MTO GENERAL CONDITIONS OF CONTRACT, NOVEMBER 2016 - New Adjudication Process in the Construction Act**

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| Special Provision No. 100S55 October 2022 |

**GC 1.07 Definitions**

Subsection GC 1.07 of the MTO General Conditions of Contract is amended by the deletion of the following definitions:

**Notice of Protest**, **Referee**, and **Referee Roster Administrator**.

Subsection GC 1.07 of the MTO General Conditions of Contract is amended by deleting “**Claim**” in its entirety and replacing it with the following:

**Claim** means the submission of a dispute for review under the clause GC 3.15.01 Claim Review Process.

Subsection GC 1.07 of the MTO General Conditions of Contract is amended by the addition of the following definitions:

**Adjudication** means as defined under Part II.1 of the *Construction Act*.

**Compensation Request** means a request submitted to the Contract Administrator, in writing, for a modification in payment and/or Contract Time from the original tender.

**Decision** means a written response to a Compensation Request or a Claim issued to the Contractor, that includes the Rationale and any quantum.

**Information Request** means a request submitted to the Contract Administrator, in writing, seeking clarification of or information regarding the Contract Documents.

**Notice of Adjudication** means as defined under Part II.1 of the *Construction Act*.

**Rationale** means the reason(s) given to explain a Decision, response, or action.

**GC 3.06 Extension of Contract Time or Interim Completion Dates**

Paragraph GC 3.06.01 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

.01 An application for an extension of Contract Time or interim completion dates shall be made in writing by the Contractor on the Owner standard form PH-CC-756, Compensation Request, to the Contract Administrator, as soon as the need for such extension becomes evident. The application for an extension of Contract Time shall enumerate the reasons and impact on the critical path schedule and state the length of extension required.

**GC 3.10.01 Changes in the Work**

Paragraph GC 3.10.01.03 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

.03 If the Changes in the Work relate solely to quantities, payment for the work shall be made according to the conditions specified in clause GC 8.01.02, Variations in Tender Quantities. If the Changes in the Work do not solely relate to quantities, then the Owner or the Contractor shall negotiate upwards or downwards the adjustment of the Contract price in respect of the Changes in the Work, or payment may be made according to subsection GC 8.03, Payment on a Time and Material Basis.

Paragraph GC 3.10.01.04 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

.04 A Change Order price negotiation which remains unresolved more than 10 Days after the Contractor’s submission of the detailed cost estimate for the Work described in the Change Order shall be resolved by the Contractor submitting a Compensation Request according to subsection GC 3.14, Compensation Request.

.05 The undisputed value of Work performed as a result of a Change Order is eligible to be included in the progress payment certificate. The Owner shall compensate the Contractor for the direct cost of labour, Materials, Equipment and subcontracts. The interim payment shall be based on a mutually agreed lump sum pro-rated for the percentage of Work completed. In the case of a failure to reach agreement on the lump sum payment, the interim payment shall be calculated according to subsection GC 8.03, Payment on a Time and Material Basis.

**GC 3.10.04 Work Directive**

Clause GC 3.10.04 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

.01 When there is a dispute respecting a proposed Change in the Work, and the Contractor does not proceed with the Work, the Owner may issue an Owner standard form PH-CC-857, Work Directive. Upon receipt of a Work Directive the Contractor shall proceed with the Work. The Contractor may pursue resolution of the dispute according to subsection GC 3.15, Dispute Resolution.

**GC 3.14 Clarification and Claims**

Subsection GC 3.14 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

**GC 3.14 Compensation Request**

.01 The Contractor shall submit a Compensation Request, to the Contract Administrator, on the Owner standard form PH-CC-756, when the Contractor becomes aware of or ought to be aware of any of the following:

a) A Change in the Work;

b) A need for an extension of Contract Time, according to GC 3.06, Extension of Contract Time or Interim Completion Dates;

c) An unresolved Change Order price negotiation according to GC 3.10.01, Changes in the Work; or

d) Other compensation matters.

.02 Notwithstanding that the Compensation Request is not resolved; the Contractor shall proceed with the Work in accordance with GC 7.01.08.01.

.03 The Compensation Request shall include a description of the matter with specific references to the Contract Documents including the impacts to the Contactor.

.04 If a Compensation Request relates to a submitted Information Request, the original Information Request shall be included with the Compensation Request submission.

.05 If a Compensation Request is submitted as the result of an unresolved Change Order price agreement negotiation, the original Change Order shall be provided with the Compensation Request submission.

.06 After the Compensation Request is submitted, the Contractor shall immediately:

a) Begin to keep Daily Work Records relating to the Compensation Request as the Work is performed, according to clause GC 8.03.02, Daily Work Records.

b) Limit such Daily Work Records to the Work directly impacted by the Compensation Request.

c) Keep separate Daily Work Records for each individual Compensation Request.

.07 The keeping of Daily Work Records by the Contractor and any process to review or comment on those records shall not be construed to be the Owner's acceptance of the Compensation Request to which the Daily Work Records relate.

.08 Prior to the expiry of 60 Days from the date of receipt of the Compensation Request, the Contract Administrator shall issue a Decision.

.09 If the Owner requests additional information from the Contractor to justify a Compensation Request, then the calculation of time set out to render a Decision shall cease from the date of the request, until the Contractor has provided the information or a statement that it does not intend to provide the information. This waiting period is limited to 10 Days. If no further information is received within that time frame, the Owner shall proceed with the review and issue the Decision; with the Contractor accepting the risk of the Owner making an adverse Decision by reason of the lack of the requested information.

.10 If both parties mutually agree before the expiry of any time period specified for issuing a Decision, then the parties may extend such time to issue a Decision.

.11 Where a Compensation Request Decision is not issued within the specified time period as may be extended by mutual agreement, the matter shall be assumed to be concluded, whereupon the Contractor may proceed to subsection GC 3.15, Dispute Resolution.

.12 Upon receipt of a Compensation Request Decision, the matter shall be considered concluded, whereupon the Contractor may either accept the Decision or proceed to subsection GC 3.15, Dispute Resolution.

.13 If the Contractor does not accept the Compensation Request Decision and elects to proceed to subsection GC 3.15.01, Claims Review Process, the Compensation Request Decision becomes null and void for the purpose of the claim review process.

**GC 3.0 SECTION GC 3.0 - ADMINISTRATION OF THE CONTRACT**

Section GC 3.0 of the MTO General Conditions of Contract is amended by the addition of the following subsection:

**GC 3.15 Dispute Resolution**

**GC 3.15.01 Claim Review Process**

.01 In the event that a matter remains unresolved and the Contractor wishes to pursue a Claim through the claim review process, within 10 Days of receipt of the Contract Administrator’s Decision regarding a Compensation Request, the Contractor shall provide a written notice of its intent to submit a Claim to the Manager, Contract Claims Office, Provincial Highways Management, which notice shall be referred to as the “initial notice”.

.02 Within five Days of receipt of the “initial notice” of Claim, the Manager, Contract Claims Office, Provincial Highways Management, shall either begin the review of the Claim or submit a Notice of Adjudication.

.03 Both parties shall conduct, without prejudice, negotiations as part of the claim review process, and they agree not to disclose in any subsequent legal proceeding, any statements made, and documents or information obtained during the process that is not otherwise required to be disclosed by law.

.04 Notwithstanding the use of the claim review process to resolve a dispute, the Contractor shall proceed with the Work to completion with due diligence and in an expeditious manner and such action shall not prejudice the Contractor in respect of the Claim. The Contractor is not relieved from complying with any direction, order, Change Order, or Work Directive that relates to the Claim.

.05 In the event that a Compensation Request Decision is not accepted, and the Contractor wishes to pursue a Claim review, then within 20 Days of receipt of the Compensation Request Decision, the Contractor shall submit a notice of claim to the Manager, Contract Claims Office, Provincial Highways Management.

.06 The notice of claim shall contain, as a minimum, enough information under the headings described below to permit a detailed review by the Contract Claims Office, Provincial Highway Management:

a) Date on which the circumstances arose that gave rise to the Claim.

b) Detailed description of the nature of the Claim with dates, location, Materials, and Equipment involved and any other items relevant to the Claim.

c) Relevant provisions of the Contract which support the Claim and the reasons these provisions are relevant, including work affected by the Claim, areas of work incurring additional costs and the change from the tendered Contract.

d) Originally submitted Compensation Request and any additional information that was submitted in response to Contract Administrator requests.

e) A detailed summary of critical path schedule impacts shall be included along with supporting critical path schedule updates that have been previously submitted.

f) Summary of proven actual or estimated additional costs, including direct labour, Material, Equipment and Subcontractor costs.

g) Summary of proven indirect costs or estimated indirect costs, including standby, site overhead, and impact costs.

h) Copies of all supporting documentation and records of the Contractor applicable to the Claim, including:

i. Instruction notices.

ii. Change Orders.

iii. Daily Work Records as set out in clause GC 8.03.02, Daily Work Records.

iv. Email correspondence between the Contract Administrator/Owner and the Contractor

v. Production rates.

vi. Minutes of meetings.

i) Any other information deemed necessary or appropriate by the Contractor.

.07 After the Contractor has filed the notice of claim, they shall be permitted to submit the following:

a) Additional information that supports the Claim.

b) Updated, actual or additional cost information of items contained in the original notice of claim as those costs become available during the Claim review.

.08 When the Contractor completes the work associated with the Claim and the Claim remains unresolved, then the Contractor shall provide details of the actual costing of the items detailed in the notice of claim in writing to the Manager, Contract Claims Office, Provincial Highways Management within 30 Days after completion of the affected work.

.09 The Contractor is solely responsible for providing all the information required in the notice of claim.

.10 The Contractor's failure to provide any notices as required shall result in the waiver of any Claim and the loss of compensation to the Contractor in respect of such Claim. However, if the Contractor provides the Owner with an explanation for the delay in providing this notice, which the Owner, in its sole discretion, can accept or reject for any reason, then, if the explanation is accepted, the Owner shall review the Claim according to the procedures set out herein. This provision shall not be interpreted so as to compel the Owner to review every Claim of the Contractor or any other person that does not comply with the requirements of the Contract, but rather is intended to allow the Owner the ability to consider those Claims that have failed to comply with the procedures and where the Owner, at its sole discretion, desires to consider such a Claim.

.11 If the Manager, Contract Claims Office, Provincial Highways Management, elects to review the Claim then prior to the expiry of 75 Days from the receipt of a complete notice of claim, the Manager, Contract Claims Office, Provincial Highways Management, shall provide the Contractor with a written Decision.

.12 If the Owner requests additional information from the Contractor to justify a Claim, then the calculation of time set out to render a Decision shall cease from the date of the request, until the Contractor has provided the information or a statement that it does not intend to provide the information. This waiting period is limited to 10 Days. If no further information is received within that time frame, the Owner shall proceed with the review and issue the Decision; with the Contractor accepting the risk of the Owner making an adverse Decision by reason of the lack of the requested information.

.13 If both parties mutually agree before the expiry of any time period specified for issuing a Decision, then the parties may extend such time to issue a Decision.

.14 Where a Decision is not issued within the specified time period as may be extended by mutual agreement, the matter shall be assumed to be denied, whereupon the dispute may proceed to Adjudication.

.15 Upon receipt of the Claim Decision, the Contractor shall provide its written response to the Owner within 10 Days signifying a clear intention that they accept the Decision, disagree with the Decision and intend to pursue Adjudication or disagree with the Decision and intend to pursue further avenues of dispute resolution.

**GC 3.15.02 Adjudication**

.01 The parties agree that for the purpose of section 13.5(1) (1.) (2.) and (7.) of the *Construction Act*, a dispute does not arise in respect of those matters, and therefore a Notice of Adjudication shall not be given, until:

a) A Decision has been issued on a Compensation Request or;

b) Time to issue the Decision on the Compensation Request has expired.

.02 If the contractor initiated the claim review process after receipt of the Compensation Request Decision, the parties agree that the contractor shall not give a Notice of Adjudication until:

a) A Decision has been issued on a Claim or;

b) Time to issue the Decision on the Claim has expired.

.03 Pursuant to Section 13.7 of the *Construction Act*, a Notice of Adjudication posted to the website that is set up for adjudication purposes that is to be given to the Owner shall be immediately downloaded from the website and emailed to the Contract Administrator, the Areas Head of Claims,, and the Manager, Contract Claims Office. If an email is returned with an out of office reply, the Notice of Adjudication shall be immediately forwarded by email to the alternate named in the out of office reply.

.04 The parties agree that:

a) Further to Section 13.5 of the *Construction Act* the expiry of the Adjudication period shall be three months after Contract Completion.

b) Further to Section 13.11 of the *Construction Act*, the documents for Adjudication shall include the Compensation Request, and if applicable, the notice of claim. Any offer of compensation made in response to a Compensation Request or offer of settlement made in response to a notice of claim are made on a confidential and a without prejudice basis and shall not be mentioned in the Notice of Adjudication and shall be excluded from the documents for Adjudication and any further dispute resolution or legal proceedings.

c) Further to Section 13.13 of the *Construction Act*, the deadline for the adjudicator’s determination shall be extended by 20 Days.

**GC 3.15.03 Further Avenues of Dispute Resolution**

.01 If the parties fail in their efforts to resolve the Claim then the parties agree that prior to resorting to litigation they may explore further alternative dispute resolution methods that are acceptable to the Owner. The Contractor shall provide written notice to the Manager, Contract Claims Office, Provincial Highways Management, of the desire to explore further alternative dispute resolution methods within 20 Days of a Decision on a Claim. If the parties are unable to agree upon an alternative dispute resolution method and its terms within 75 Days of a request to explore alternative dispute resolution, then either party may resort to litigation.

**GC 7.01.08 Errors Relating to the Contract**

Clause GC 7.01.08 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

.01 Where the Contractor finds any errors, inconsistency, or omissions relating to the Contract, the Contractor shall not proceed with the activity affected until receiving direction from the Contract Administrator.

.02 The Contractor shall promptly report by an Information Request to the Contract Administrator on Owner standard form PH-CC-755, Information Request as soon as the Contractor becomes aware of the need for information or clarification of the following:

a) A situation that is different than represented in the Contract Documents;

b) A situation where the Contractor requires additional information; or

c) A situation where the Contractor believes the Contract Documents to be ambiguous.

.03 The Information Request shall include a clear description of the situation with specific references to the Contract Documents.

.04 Notwithstanding the submission of an Information Request, the Contractor shall proceed with the Work according to subsection GC 7.01.08.01.

.05 Prior to the expiry of 20 Days from the date of receipt of the Information Request or such longer time as the Contractor and the Owner may mutually agree, the Contract Administrator shall provide a written response to the Contractor.

**GC 8.02.04.05 Certificate of Substantial Performance**

Paragraph GC 8.02.04.05.01 of the MTO General Conditions of Contract is amended by deleting point b) in its entirety and replacing it with the following:

b) A release, on Owner standard form PH-CC-817, Application for Substantial Performance/Contract Completion, by the Contractor releasing the Owner from all further claims related to the Contract qualified by stated exceptions such as outstanding work or matter arising out of subsection GC 3.14, Compensation Request, or subsection GC 3.15, Dispute Resolution.

**GC 8.02.04.07 Certificate of Contract Completion**

Paragraph GC 8.02.04.07.01 of the MTO General Conditions of Contract is amended by deleting point b) in its entirety and replacing it with the following:

b) A release, on the Owner standard form PH-CC-817, Application for Substantial Performance/Contract Completion, by the Contractor to the Contract Administrator releasing the Owner from all further claims related to the Contract qualified by stated exceptions (e.g., outstanding submissions or matters arising out of subsection GC 3.14, Compensation Request, or subsection GC 3.15, Dispute Resolution).

**GC 8.03.03 Payment for Work**

Paragraph GC 8.03.03.02 of the MTO General Conditions of Contract is deleted in its entirety and replaced with the following:

.02 Payment for labour, rented Equipment, and operated rented Equipment intended for use on other Work but has been idled due to the circumstances giving rise to the Work on a Time and Material Basis shall be negotiated according to subsection GC 3.14, Compensation Request. Consideration shall be given to removing the labour and Equipment from the site until the idled Work can be resumed.

WARRANT: All contracts.