



**MTO GENERAL CONDITIONS OF CONTRACT**

**Table of Contents**

<b>SECTION GC 1.0 - INTERPRETATION</b> .....	<b>5</b>
GC 1.01 Captions.....	5
GC 1.02 Abbreviations.....	5
GC 1.03 Gender and Singular References.....	5
GC 1.04 Ontario Provincial Standards.....	5
GC 1.05 Ontario Traffic Manual.....	7
GC 1.06 Conflict of Interest.....	7
GC 1.07 Definitions.....	7
GC 1.08 Substantial Performance.....	13
GC 1.09 Interpretation of Certain Words.....	14
GC 1.10 Liens.....	14
<b>SECTION GC 2.0 - CONTRACT DOCUMENTS</b> .....	<b>15</b>
GC 2.01 Reliance on Contract Documents.....	15
GC 2.02 Order of Precedence.....	15
<b>SECTION GC 3.0 - ADMINISTRATION OF THE CONTRACT</b> .....	<b>16</b>
GC 3.01 Contract Administrator's Authority.....	16
GC 3.02 Working Drawings.....	17
GC 3.03 Right of the Contract Administrator to Modify Methods and Equipment.....	17
GC 3.04 Emergency Situations.....	17
GC 3.05 Working Area.....	17
GC 3.06 Extension of Contract Time or Interim Completion Dates.....	18
GC 3.07 Delays.....	18
GC 3.08 Assignment of Contract.....	20
GC 3.09 Subcontracting by the Contractor.....	20
GC 3.10 Changes in the Work and Additional Work.....	21
GC 3.10.01 Changes in the Work.....	21
GC 3.10.02 Additional Work.....	21
GC 3.10.03 Price Agreement Form.....	21
GC 3.10.04 Work Directive.....	21
GC 3.11 Change Proposals After Contract Award.....	22
GC 3.11.01 Definitions.....	22
GC 3.11.02 Sharing of Cost Savings.....	22
GC 3.11.03 Conditions of Change Proposals.....	22
GC 3.11.03.01 Processing, General.....	22
GC 3.11.03.02 Incomplete Change Proposals.....	23
GC 3.11.03.03 Proposals for Design Changes.....	24
GC 3.11.03.04 Design Changes.....	24
GC 3.11.03.05 Proposals for Method Changes.....	24
GC 3.11.03.06 Proposals for Alternative Types of Materials or Material Sources.....	25
GC 3.11.03.07 Proposal for a Combination of Design, Method, and Material Changes.....	25
GC 3.11.03.08 Ownership and Copyright.....	25

GC 3.11.03.08.01	Intellectual Property .....	25
GC 3.11.03.08.01.01	Ownership of Intellectual Property .....	25
GC 3.11.03.08.01.02	Presumption Governing Ownership .....	26
GC 3.11.03.08.01.03	Contractor's Grant of Licence .....	26
GC 3.11.03.08.01.04	No Restrictive Materials in Change Proposal .....	26
GC 3.11.03.08.01.05	Assurances Regarding Moral Rights .....	26
GC 3.11.03.08.01.06	Further Assurances Regarding Copyright .....	27
GC 3.11.03.08.01.07	Owner May Prescribe Further Compliance .....	27
GC 3.11.03.08.01.08	Survival .....	27
GC 3.11.03.08.02	Owner Rights .....	27
GC 3.11.03.09	Time Periods for Review .....	28
GC 3.11.03.10	Risk Sharing/Warranty .....	28
GC 3.11.04	Submission of Change Proposals .....	28
GC 3.11.05	Accepted Change Proposal Payment .....	29
GC 3.12	Notices .....	29
GC 3.13	Use and Occupancy of the Work Prior to Substantial Performance .....	30
GC 3.14	Compensation Request .....	30
GC 3.15	Dispute Resolution .....	31
GC 3.15.01	Claim Review Process .....	31
GC 3.15.02	Adjudication .....	33
GC 3.15.03	Further Avenues of Dispute Resolution .....	33
<b>SECTION GC 4.0 - OWNER'S RIGHTS AND RESPONSIBILITIES .....</b>		<b>34</b>
GC 4.01	Working Area .....	34
GC 4.02	Management of Excess Materials .....	34
GC 4.03	Construction Affecting Railway Property .....	34
GC 4.04	Default by the Contractor .....	34
GC 4.05	Notification of Default .....	34
GC 4.06	Contractor's Right to Correct a Default .....	34
GC 4.07	Owner's Right to Correct Default .....	34
GC 4.08	Termination of Contractor's Right to Continue the Work .....	35
GC 4.09	Final Payment to Contractor .....	35
GC 4.10	Termination of the Contract .....	35
GC 4.11	Continuation of Contractor's Obligations .....	35
GC 4.12	Use of Performance Bond .....	35
GC 4.13	Owner Audit .....	36
<b>SECTION GC 5.0 - MATERIAL .....</b>		<b>37</b>
GC 5.01	Supply of Material .....	37
GC 5.02	Quality of Material .....	37
GC 5.03	Rejected Material .....	38
GC 5.04	Owner Supplied Material .....	38
GC 5.04.01	Ordering of Excess Material .....	38
GC 5.04.02	Care of Material .....	38
<b>SECTION GC 6.0 - INSURANCE, PROTECTION, AND DAMAGE .....</b>		<b>40</b>
GC 6.01	Protection of Work, Persons, and Property .....	40
GC 6.02	Indemnification .....	40
GC 6.02.01	General .....	40
GC 6.03	Contractor's Insurance .....	41
GC 6.03.01	General .....	41
GC 6.03.02	Commercial General Liability Insurance .....	41

GC 6.03.03	Automobile Liability Insurance .....	41
GC 6.03.04	Payment for Loss or Damage .....	42
GC 6.03.05	Insurance Requirements and Duration .....	42
GC 6.04	Bonding .....	42
GC 6.04.01	General .....	42
GC 6.04.02	Performance Bond .....	43
GC 6.04.03	Labour and Material Payment Bond .....	43
<b>SECTION GC 7.0 - CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK .....</b>		<b>44</b>
GC 7.01	General .....	44
GC 7.01.01	Site Visit .....	44
GC 7.01.02	Commencement of Work .....	44
GC 7.01.03	Control and Responsibility .....	44
GC 7.01.04	Compliance with the Occupational Health and Safety Act .....	44
GC 7.01.05	Contractor's Representatives .....	46
GC 7.01.06	Assistance to the Contract Administrator .....	46
GC 7.01.07	Critical Path Schedule .....	46
GC 7.01.08	Errors Relating to the Contract .....	48
GC 7.01.09	Utilities .....	48
GC 7.01.10	Public Ceremony .....	48
GC 7.02	Layout .....	49
GC 7.03	Damage by Vehicles or Other Equipment .....	50
GC 7.04	Excess Loading of Motor Vehicles.....	50
GC 7.05	Use of Construction Equipment and Unlicensed Vehicles .....	51
GC 7.06	Carrier Safety Compliance.....	51
GC 7.06.01	Contractor Operation of a Commercial Motor Vehicle.....	51
GC 7.06.02	Subcontractor and Other Operation of a Commercial Motor Vehicle .....	52
GC 7.07	Condition of the Working Area.....	53
GC 7.08	Maintaining Roadways and Detours .....	53
GC 7.09	Access to Properties Adjoining the Work and Interruption of Utility Services .....	54
GC 7.10	Approvals and Permits.....	55
GC 7.10.01	General .....	55
GC 7.10.02	Water Taking.....	55
GC 7.11	Suspension of Work.....	55
GC 7.12	Contractor's Right to Stop the Work or Terminate the Contract .....	55
GC 7.13	Notices by the Contractor .....	56
GC 7.13.01	Advance Notice.....	56
GC 7.13.02	Environmental Incident Management Under Legislation Protecting the Environment and Natural Resources.....	56
GC 7.14	Obstructions .....	57
GC 7.15	Limitations of Operations .....	57
GC 7.16	Cleaning Up Before Contract Completion .....	57
GC 7.17	Record Drawings .....	57
GC 7.18	General Warranty .....	58
GC 7.19	Accounts Payable .....	58
GC 7.20	Stockpiling of Material.....	58
<b>SECTION GC 8.0 - MEASUREMENT AND PAYMENT.....</b>		<b>59</b>
GC 8.01	Measurement .....	59
GC 8.01.01	Quantities.....	59
GC 8.01.02	Variations in Tender Quantities .....	59
GC 8.02	Payment.....	60

GC 8.02.01	Non-Resident Contractor .....	60
GC 8.02.02	Price for Work .....	60
GC 8.02.03	Advance Payments for Material .....	60
GC 8.02.04	Certification and Payment.....	61
GC 8.02.04.01	Progress Payment Certificate .....	61
GC 8.02.04.02	Payment Adjustment for Changes in the Fuel Price Index .....	62
GC 8.02.04.03	Certification of Subcontract Completion .....	64
GC 8.02.04.04	Subcontract Statutory Holdback Release Certificate and Payment .....	64
GC 8.02.04.05	Certificate of Substantial Performance .....	65
GC 8.02.04.06	Substantial Performance Payment and Statutory Holdback Release Payment....	65
GC 8.02.04.07	Certificate of Contract Completion.....	66
GC 8.02.04.08	Interest .....	67
GC 8.02.04.09	Interest for Late Payment .....	67
GC 8.02.04.10	Interest for Compensation Requests and Claims .....	67
GC 8.02.04.11	Owner's Set-Off .....	67
GC 8.02.04.12	Contract Completion, Statutory Holdback Release and Final Payment.....	68
GC 8.03	Payment on a Time and Material Basis .....	68
GC 8.03.01	Definitions .....	68
GC 8.03.02	Daily Work Records .....	69
GC 8.03.03	Payment for Work .....	70
GC 8.03.04	Payment for Labour .....	70
GC 8.03.05	Payment for Material.....	70
GC 8.03.06	Payment for Equipment .....	71
GC 8.03.06.01	Working Time.....	71
GC 8.03.06.02	Standby Time.....	71
GC 8.03.06.03	Payment for Work by Subcontractors .....	71
GC 8.03.06.04	Mark-Up on Work on a Time and Material Basis .....	71
GC 8.03.06.05	Submission of Invoices .....	72
GC 8.04	Release from Warranty .....	72
GC 8.05	Records.....	72
GC 8.06	Taxes and Duties .....	72
GC 8.07	Liquidated Damages.....	73
<b>GC TABLES - List of Tables .....</b>		<b>74</b>
TABLE 7.02-1 Layout Intervals and Measurement Accuracy for Construction Survey - Layout .....		74
TABLE 7.02-2 Layout Intervals and Measurement Accuracy for Construction Survey - Cross-Sections .....		74
TABLE 8.02.04.02-1 Fuel Consumption Rates.....		75

## **SECTION GC 1.0 - INTERPRETATION**

### **GC 1.01 Captions**

- .01 The captions appearing in these MTO General Conditions of Contract have been inserted as a matter of convenience and for ease of reference only and in no way define, limit, or enlarge the scope or meaning of these MTO General Conditions of Contract or any provision hereof.
- .02 In the event of a conflict of a reference to the number and caption of a section, subsection, clause, or paragraph, reference shall be made to the caption.

### **GC 1.02 Abbreviations**

- .01 The abbreviations listed on the left below are commonly found in the Contract Documents and represent the organizations and phrases listed on the right:

AASHTO	- American Association of State Highway Transportation Officials
ANSI	- American National Standards Institute
ASTM	- ASTM International - formerly American Society for Testing and Materials
AWG	- American Wire Gauge
AWWA	- American Water Works Association
CGSB	- Canadian General Standards Board
CSA	- CSA Group - formerly Canadian Standards Association
CVOR	- Commercial Vehicle Operator's Registration
CWB	- Canadian Welding Bureau
DSM	- Designated Sources for Materials
GC	- MTO General Conditions of Contract
MECP	- Ministry of the Environment, Conservation and Parks
MOE	- Ministry of the Environment, now MECP
MOECC	- Ministry of the Environment and Climate Change (Ontario), now MECP
MTC	- Ministry of Transportation and Communications, now MTO
MTO	- Ontario Ministry of Transportation
MUTCD	- Manual of Uniform Traffic Control Devices, published by MTO
OPS	- Ontario Provincial Standards
OPSD	- Ontario Provincial Standard Drawing
OPSS	- Ontario Provincial Standard Specification
OTM	- Ontario Traffic Manual
PDF	- Portable Document Format
PEO	- Professional Engineers Ontario
SAE	- SAE International - formerly Society of Automotive Engineers
SSPC	- Structural Steel Painting Council
TRA	- The Road Authority
UL	- Underwriters Laboratories
ULC	- Underwriters Laboratories Canada

### **GC 1.03 Gender and Singular References**

- .01 References to the masculine or singular throughout the Contract Documents shall be considered to include the feminine and the plural and vice versa as the context requires.

### **GC 1.04 Ontario Provincial Standards**

- .01 Regardless of the publishing date on OPSSs and OPSDs contained in the OPS manuals and on a MTO website, the Standards applicable to this Contract are listed in the schedule of Provisions, Plans, Standard Drawings, Specifications, and MTO General Conditions of Contract, with the exception the version of OPSS 127 that is current at the time the work is carried out shall apply.

- .02 When an OPSS contains an appendix, the appendix is deleted in its entirety and is not invoked unless specified elsewhere in the Contract Documents. When an appendix is invoked, the information contained in the appendix shall form part of the specification.
- .03 When an OPS specification refers to the Canadian Highway Bridge Design Code; CSA Standard S6-00 or CSA Standard S6-06 or CSA Standard S6-14, it shall be deemed to mean CSA Standard S6:19.
- .04 When an OPS specification refers to the Ministry of the Environment (MOE) or Ministry of the Environment and Climate Change (MOECC), it shall be deemed to mean Ministry of the Environment, Conservation and Parks (MECP).
- .05 When an OPS specification refers to Material Safety Data Sheets (MSDS), it shall also be deemed to mean Safety Data Sheets (SDS).
- .06 When the Contract refers to an address listed in the left column of the following table; it shall be deemed to be the updated address:

Address	Updated Address
Room 15, 145 Sir William Hearst Avenue Downsview, Ontario, M3M 0B6	95 Arrow Road, Shipping Entrance Toronto, Ontario M9M 2L4
Room 15, Building C, 1201 Wilson Avenue Downsview, ON M3M 1J8	
Materials Engineering and Research Office, Ministry of Transportation of Ontario, Room 233, 145 Sir William Hearst Avenue Downsview, Ontario, M3M 0B6	Engineering Materials Office Ministry of Transportation 95 Arrow Road Toronto, Ontario M9M 2L4
Material Engineering and Research Office, 1201 Wilson Avenue, Downsview, M3M 1J8	
Concrete Section, Ministry of Transportation of Ontario, Room 235, 145 Sir William Hearst Avenue Downsview, Ontario, M3M 0B6	Concrete Section, Engineering Materials Office Ministry of Transportation 95 Arrow Road Toronto, Ontario M9M 2L4
Concrete Section Ministry of Transportation of Ontario 1201 Wilson Avenue Downsview, Ontario, M3M 1J8	
Purchasing and Supply Office Ministry of Transportation, 1201 Wilson Avenue, Downsview, Ontario, M3M 1J8	
Bituminous Section Ontario Ministry of Transportation Room 15, 145 Sir William Hearst Avenue Downsview, Ontario M3M 0B6	Bituminous Section, Engineering Materials Office Ministry of Transportation 95 Arrow Road Toronto, Ontario M9M 2L4

## GC 1.05

### Ontario Traffic Manual

- .01 All references in the Contract Documents to the MUTCD, including all Parts and Divisions thereof, or MTO Traffic Control Manual for Roadway Work Operations, or Traffic Control Manual for Roadway Operations Field Edition are hereby deleted and replaced by the following books of the Ontario Traffic Manual:
- Book 1 - Introduction to the Ontario Traffic Manual;
  - Book 1A - Illustrated Sign and Signal Display Index;
  - Book 1B - Sign Design Principles;
  - Book 1C - Positive Guidance Toolkit;
  - Book 5 - Regulatory Signs;
  - Book 6 - Warning Signs;
  - Book 7 - Temporary Conditions (and Temporary Conditions Field Edition);
  - Book 11 - Pavement, Hazard and Delineation Markings;
  - Book 12 - Traffic Signals.
- .02 Any reference in the Contract Documents to OTM shall be deemed to be the Ontario Traffic Manual Books 1, 1A, 1B, 1C, 5, 6, 7, 11, and 12.
- .03 The Contractor shall comply with the applicable requirements of the above OTM books.

## GC 1.06

### Conflict of Interest

- .01 The Contractor, any of the Subcontractors and any of their respective advisors, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services to the Minister where such activity or the provision of such services, creates a conflict of interest (actually or potentially in the sole opinion of the Minister) with the provision of services pursuant to this Contract. The Contractor acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Crown relevant to the services where the Minister has not specifically authorized such use.
- .02 The Contractor shall disclose to the Minister, without delay, any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- .03 A breach of this section by the Contractor shall entitle the Minister to terminate the Contract, in addition to any other remedies that the Minister has in this Contract, in law or in equity.

## GC 1.07

### Definitions

For the purpose of this Contract, the following definitions apply:

**Abnormal Weather** means an extreme climatic condition characterized by wind speed, air temperature, precipitation, or snowfall depth, that is less than or greater than 1½ standard deviations from the mean determined from the weather records of the 25 years immediately preceding the tender opening date.

**Access Road** means a private road built or existing road used by the Contractor to gain access to the Work or to a source of material.

**Actual Measurement** means the field measurement of that quantity within the approved limits of the Work.

**Addendum** means an addition to or a change in the Contract Documents issued prior to tender closing.

**Additional Work** means work not provided for in the Contract and not considered by the Contract Administrator to be essential to the satisfactory completion of the Contract within its intended scope.

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

**Aggregate** means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, or rock other than metallic ores, slag, and clinkers.

**Agreement** means the signed document between the Minister or delegated representative and the Contractor for the performance of the Work included in the Contract Documents.

**Base** means a layer of Material of specified type and thickness placed immediately below the Pavement, driving surface, finished grade, curb with gutter, or sidewalk.

**Basic Holdback** means the statutory holdback, equal to 10% of the services or Materials as they are supplied under the Contract, required to be retained pursuant to the *Construction Act*.

**Bonds** means both the Contract Bonds and the Statutory Bonds prescribed in the Contract Documents.

**Business Day** means any Day which is not:

- a) A Saturday or a Sunday; or
- b) A Day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable to the Province of Ontario.

**Certificate of Conformance** means a MTO form PH-CC-822 issued by an Engineer confirming that the specified components of the Work are in conformance with the Contract Documents.

**Change in the Work** means the deletion, extension, increase, decrease, or alteration of lines, grades, dimensions, quantities, methods, drawings, changes in the character of the work to be done, or Materials of the Work or part thereof, within the intended scope of the Contract.

**Change Order** means a written order to the Contractor covering contingencies, Extra Work, increase or decrease in Contract quantities, and additions or alterations to the plans or specifications, within the scope of the Contract and establishing the basis of payment. Also means, a written authorization covering Additional Work.

**Change Proposal** means a proposal by the Contractor for a modification to the Contract Documents that is expected to result in design improvement benefits or a reduction in costs or both, or Contract Time.

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

**Commercial Motor Vehicle** means as defined under Section 16 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended (*Highway Traffic Act*).

**Commercial Source** means a place where Aggregate or a product containing Aggregate is made available for sale.

**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.

**Construction Act** means the *Construction Act*, R.S.O. 1990, c.C.30, as amended.

**Construction Signs** means all traffic control devices and signs, including vehicles, trailers, and the like that are provided to support signs, and equipment to supply sign lighting, but excludes Contract identification signs and Highway number markers, all as may be described in the OTM.

**Constructor** means for the purposes of, and within the meaning of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, the Contractor who executes this Contract.

**Contract** means the undertaking by the Owner and the Contractor to perform their respective duties, responsibilities, and obligations as prescribed in the Contract Documents.



**Contract Bonds** means the surety bonds executed by the Contractor and its Surety prescribed in the Contract Documents but does not include Statutory Bonds.

**Contract Administrator** means the person, partnership, or corporation designated by the Owner to be the Owner's representative for the purposes of the Contract.

**Contract Bulletin** means a publication of MTO on the MTO's website [www.raqs.merx.com](http://www.raqs.merx.com).

**Contract Completion** means the Work has passed all inspection and testing requirements, the Contractor has rectified all deficient Work, and the Contractor has fulfilled all obligations under the Contract, except warranty obligations.

**Contract Completion Certificate** means the certificate issued by the Contract Administrator at Contract Completion.

**Contract Documents** means the Agreement, Tender, MTO General Conditions of Contract, Standard Specifications and Standard Drawings, Special Provisions, Contract Drawings, Addenda incorporated into any aforementioned document, documents referenced in the aforementioned documents, and subsequent amendments to any of these documents made pursuant to the provisions of the Agreement.

**Contract Drawings or Contract Plans** mean drawings or plans provided by the Owner for the Work and without limiting the generality thereof may include soil profiles, foundation investigation reports, reinforcing steel schedules, aggregate sources lists, quantity sheets, and cross-sections.

**Contract Time** means the time stipulated in the Contract Documents for completion of the Work, including any extension of Contract Time made pursuant to the Contract Documents.

**Contractor** means the person, partnership, or corporation undertaking the Work as identified in the Agreement.

**Contractor's Intellectual Property** means Intellectual Property owned by the Contractor prior to its performance under this Contract or created by the Contractor during this Contract independently of the performance of Contractor obligations under this Contract.

**Controlling Operation** means any component of the Work that, if delayed, will delay the completion of the Work.

**Cut-off Date** means the date up to which a progress payment shall be made for work performed.

**CVOR Abstract** means a level 1 Commercial Vehicle Operator's Registration (CVOR) abstract obtained from MTO.

**CVOR Certificate** means a Commercial Vehicle Operator's Registration certificate issued under the *Highway Traffic Act*.

**CVOR Holder** means a person or company to whom a CVOR Certificate was issued that has not been cancelled nor currently under suspension.

**Daily Work Records** means daily records for any part of the Work detailing the work in question, names, and categories of workers and hours worked or on standby; types and quantities of Equipment and number of hours in use and/or on standby; and description and quantities of Material used.

**Day** means a calendar day.

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

**Earth Grade** means the earth surface, whether in cut or fill, as prepared for the Base or Subbase.

**Engineer** means a professional engineer licensed by the Professional Engineers Ontario to practice in the Province of Ontario.

**Environmental Incident** means an event such as a spill, discharge, emission, release, or escape of a material, pollutant, contaminant, deleterious substance, or dangerous good as defined in the legislation referenced in paragraph .01 of clause GC 7.13.02, Environmental Incident Management Under Legislation Protecting the Environment and Natural Resources.

**Equipment** means all machinery and equipment used for preparing, fabricating, conveying, or erecting the Work and normally referred to as construction machinery and equipment.

**Estimate** means a calculation of the quantity or cost of the Work or part of it, depending on the context.

**Extra Work** means Change in the Work.

**Finishing Work** means the Work to be completed after certification of substantial performance and prior to and necessary to be supplied or performed to complete the Contract.

**Finishing Work Deficiency List** means a list of deficiencies and Work yet to be completed, identified independently by the Contractor and the Contract Administrator.

**Grade** means the required elevation of work.

**Grade Line** means a reference line representing the Grade in profile or longitudinal section established for the control of work.

**Hand Tools** means tools that are commonly called tools or implements of the trade and include small power tools. Individually, a tool shall be considered as a Hand Tool where the maximum cost is \$400.

**Haul Road** means any public road excluding the road under Contract that forms part of a Material haul route.

**Highway** means a common and public highway any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

**Holdback for Finishing Work** means the statutory holdback, equal to 10% of the Finishing Work, required to be retained pursuant to the *Construction Act*.

**Inclement Weather** means weather conditions or conditions that result immediately there from that prevents the Contractor from proceeding with the Controlling Operation.

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

**Inspector** means any person, partnership, or corporation appointed by the Contract Administrator to participate in the inspection of the Work and the Material to be used in the Work.

**Intellectual Property** means any intellectual, industrial, or other proprietary right of any type in any form protected under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial, or proprietary rights protected by legislation, by common law, or at equity.

**Labour and Material Payment Bond** means the type of security furnished to the Owner to guarantee payment of prescribed debts of the Contractor covered by the bond.

**Lump Sum Item** means a tender item indicating a portion of the Work for which payment shall be made at a single tendered price. Payment is not based on a measured quantity, although a quantity may be given in the Contract Documents.

**Major Item** means any tender item that has a value, calculated on the basis of its actual or estimated tender quantity, whichever is the greater, multiplied by its tender unit price, which is equal to or greater than the lesser of:

- a) \$200,000; or
- b) 5% of the total tender value calculated on the basis of the total of all the estimated tender quantities and the tender unit prices.

**Manufacturer's Certificate of Conformance** means a MTO form PH-CC-821 issued by an Engineer confirming that the fabrication and required testing has been carried out on a component or product in conformance with the Contract Documents.

**Material** means material, machinery, equipment, and fixtures forming part of the Work.

**Newly Created Intellectual Property** means any Intellectual Property created by the Contractor in the course of performance of the Contractor's obligations under this Contract.

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

**Notice to Proceed** means a MTO form PH-CC-702 issued by the Contract Administrator notifying the Contractor to proceed to the next operation.

**Owner** means the party to the Agreement for whom the Work is being performed, as identified in the Agreement, and includes, with the same meaning and import, "Authority."

**Pavement** means a wearing course or courses placed on the Roadway and consisting of asphaltic concrete, hydraulic cement concrete, or other bituminous surfaces.

**Performance Bond** means the type of security furnished to the Owner to guarantee completion of the Work according to this Contract and to the extent provided in the bond.

**Person** means an individual, corporation, partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission, or department and the heirs, beneficiaries, executors, legal representatives, or administrators of a person to whom the context can apply according to law.

**Plan Quantity** means that quantity as computed from within the boundary lines of the Work as shown in the Contract Documents.

**Profile Grade** means the required elevation of the surface of the Base.

**Proper Invoice** means as defined in the *Construction Act*, supported by quantity of Work completed sheets, and that complies with the requirements of the Contract Documents.

**Quantity Sheet** means a list of the locations, estimated design quantities, and other details of Work to be completed for tender items.

**Quarried Rock** means material removed from an open excavation made in a solid mass of rock that was integral with the parent mass prior to removal.

**Quarry** means a place where Aggregate has been or is being removed from an open excavation made in a solid mass of igneous, sedimentary, or metamorphic rock or any combination of these that was integral with the parent mass prior to removal.

**Rate of Interest** means the prejudgment interest rate determined according to subsection 127 (2) of the *Courts of Justice Act*.

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

**Record Drawings** mean marked-up Contract Drawings prepared by the Contractor that show all differences, design changes, and deviations from the original Contract Drawings.

**Records** mean any books, payrolls, accounts, or other information that relate to the Work or any Change in the Work or Claims arising there from.

**Regional Operations Office** means the Operations Office in the MTO Region administering the Contract.

**Release from Warranty Certificate** means the certificate prepared by the Owner releasing the Contractor from all warranty obligations at the end of the last expiring warranty period.

**Request to Proceed** means a MTO form PH-CC-701 issued by the Contractor notifying the Contract Administrator that a component or stage of the work has been completed in conformance with the Contract Documents.

**Road Allowance** means the lands acquired at any time for use as a Highway.

**Roadbed** means that part of the Work which is designed to support the Roadway.

**Roadway** means that part of the Highway designed or intended for use by vehicular traffic and includes the shoulders.

**Rock Grade** means the rock surface, whether in cut or fill, that has been prepared for the Base or Subbase.

**Shoulder** means that portion of the Roadway between the edge of the travelled lane and the top inside edge of the ditch or fill slope.

**Special Provision** means special direction within the Contract Documents containing requirements particular to the Work.

**Standard** means, when used alone, the generic term for Standard Specifications and Standard Drawings.

**Standard Specification** or **Standard Drawing** means a standard practice required and stipulated by the Owner for performance of the Work.

**Statutory Bonds** means the surety bonds executed by the Contractor and its Surety and required to be furnished by Part XI.1 of the *Construction Act*.

**Subbase** means a layer of material of specified type and thickness between the Subgrade and the Base.

**Subcontractor** means a person, firm, or corporation undertaking the execution of a part of the Work by virtue of a contract with the Contractor.

**Subgrade** means the Earth Grade or Rock Grade.

**Substructure** means all of that part of a structure, including backwalls, wingwalls, and wing protection railings, below:

- a) The bearings of single and continuous span bridges.
- b) Skewbacks of arches and tops of footings of rigid frame bridges.

**Superintendent** means the Contractor's authorized representative in responsible charge of the Work.

**Superstructure** means all that part of a structure, excluding backwalls, wingwalls, and wing protection railings, above:

- a) The bearing seat of single and continuous span bridges.
- b) Skewbacks of arches and tops of footings of rigid frame bridges.

**Surety** means the person, partnership, or corporation, other than the Contractor, executing a bond provided by the Contractor.

**Time and Material** means costs calculated according to subsection GC 8.03, Payment on a Time and Material Basis.

**Total Bid Price** means the price submitted by the Contractor at tender closing.

**Utility** means a facility maintained by a municipality, public utility authority, or regulated authority and includes sanitary sewer, storm sewer, water, electric, gas, steam, data, telephone, and cable television services.

**Work** means the total construction and related services required by the Contract Documents.

**Working Area** means all the land and all the easements owned or acquired by the Owner for the construction of the Work.

**Working Day** means any Day:

- a) Except Saturdays, Sundays, and statutory holidays.
- b) Except a Day as determined on which the Contractor is prevented by weather or conditions resulting immediately thereafter, from proceeding with a Controlling Operation. For the purposes of this definition, this shall be a Day during which the Contractor cannot proceed with at least 60% of the normal labour and equipment force effectively engaged on the Controlling Operation for at least 5 hours.
- c) Except a Day on which the Contractor is prevented from proceeding with the Controlling Operation by reason of:
  - i. Any breach of Contract or prevention by the Owner, by any other Contractor of the Owner, or by any employee of any one of them.
  - ii. Non-delivery of Owner supplied materials.
  - iii. Any cause beyond the reasonable control of the Contractor that can be substantiated by the Contractor.

**Working Drawings** or **Working Plans** means any drawings or plans prepared by the Contractor for the execution of the Work and may, without limiting the generality thereof, include falsework and formwork plans, roadway protection plans, shop drawings, shop plans, or erection diagrams.

**Written Notice of Lien** means a Written Notice of Lien in the prescribed form pursuant to the *Construction Act*, given by a Person with a lien that identifies the payer and identifies the premises, and states the amount that the Person has not been paid and is owed to the Person by the payer.

## **GC 1.08 Substantial Performance**

.01 The Work is substantially performed:

- a) When the Work or a substantial part thereof has passed inspection and testing and is ready for use or is being used for the intended purposes; and
- b) When the Work to be performed under the Contract is capable of completion or, where there is a known defect, correction, at a cost of not more than:
  - i. 3% of the first \$1,000,000 of the Contract price;
  - ii. 2% of the next \$1,000,000 of the Contract price; and
  - iii. 1% of the balance of the Contract price.

.02 For the purposes of this Contract, when the Work or a substantial part thereof is ready for use or is being used for the purposes intended and the Owner and the Contractor agree not to complete the Work expeditiously, the price of the services or Materials remaining to be supplied and required to complete the Work shall be deducted from the Contract price in determining substantial performance.

**GC 1.09****Interpretation of Certain Words**

- .01 The words "acceptable," "approval," "authorized," "considered necessary," "directed," "required," "satisfactory," or words of like import shall mean approval of, directed, required, considered necessary, or authorized by and acceptable or satisfactory to the Contract Administrator unless the context clearly indicates otherwise.
- .02 The words "Ministry of Transportation," "ministry," and "Owner" and the abbreviations "MTO" and "MTC" shall mean the Ontario Ministry of Transportation.

**GC 1.10****Liens**

- .01 A lien is preserved when the claimant has given the Owner a copy of the claim for lien before the lien has expired pursuant to the *Construction Act*.
- .02 A preserved lien is perfected when the claimant commences an action in the courts to enforce the lien prior to the end of the period according to Section 36 of the *Construction Act*.
- .03 A preserved lien becomes a perfected lien by sheltering under a perfected lien in accordance with the rules of sheltering according to Subsection 36(4) of the *Construction Act*.
- .04 The Owner shall retain an amount sufficient to satisfy the amount of a lien set out in a Written Notice of Lien Form 1 of Ontario Regulation 303/18 of the *Construction Act* in accordance with Subsection 24(2) of the *Construction Act*.

## **SECTION GC 2.0 - CONTRACT DOCUMENTS**

### **GC 2.01 Reliance on Contract Documents**

- .01 The Owner warrants that the information furnished in the Contract Documents can be relied upon with the following limitations or exceptions:
  - a) The location of all mainline underground Utilities that affects the Work shall be shown to a tolerance of 1.0 m horizontal and 0.3 m vertical.
- .02 The Owner does not warrant interpretations of data or opinions expressed in any subsurface report available for the perusal of the Contractor and excluded from the Contract Documents
- .03 The Owner does not warrant any other information specifically excluded from this warranty.

### **GC 2.02 Order of Precedence**

- .01 In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:
  - a) Agreement
  - b) Addenda
  - c) Special Provisions
  - d) Contract Drawings
  - e) Standard Specifications
  - f) Standard Drawings
  - g) Tender
  - h) MTO General Conditions of Contract
  - i) Working Drawings

Later dates shall govern within each of the above categories of documents.

- .02 In the event of any conflict among or inconsistency in the information shown on Contract Drawings, the following rules shall apply:
  - a) Dimensions shown in figures on a drawing shall govern where they differ from dimensions scaled from the same drawing.
  - b) Drawings of larger scale shall govern over those of smaller scale.
  - c) Detailed drawings shall govern over general drawings.
  - d) Drawings of a later date shall govern over those of an earlier date in the same series.
- .03 In the event of any conflict in the contents of Standards the following order of precedence shall govern:
  - a) Ontario Provincial Standard Specifications and Standard Drawings
  - b) Other Standards referenced by OPSSs and OPSDs (e.g., CSA, CGSB, ASTM, and ANSI)
- .04 The Contract Documents are complementary, and what is required by any one, shall be as binding as if required by all.

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

### **GC 3.01 Contract Administrator's Authority**

- .01 The Contract Administrator shall be the Owner's representative during construction and until the issuance of the MTO form PH-CC-895, Release from Warranty Certificate. All instructions to the Contractor including instructions from the Owner shall be issued by the Contract Administrator. The Contract Administrator shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- .02 All Claims, disputes, and other matters in question relating to the performance and the quality of the Work or the interpretation of the Contract Documents shall be referred to the Contract Administrator in writing by the Contractor. The Contract Administrator shall give a decision in writing within a reasonable time.
- .03 The Contract Administrator may inspect the Work for its conformity with the Contract Drawings and Standard Specifications and all drawings, and to record the necessary data to establish payment quantities under the schedule of tender quantities and unit prices or to make an assessment of the value of the work completed in the case of a lump sum price Contract.
- .04 The Contract Administrator shall approve the amounts owing to the Contractor under this Contract and shall issue certificates for payment in such amounts as provided for in section GC 8.0, Measurement and Payment.
- .05 The Contract Administrator shall, with reasonable promptness, review and take appropriate action upon the Contractor's submissions such as Working Drawings, product data, and samples according to the Contract Documents. Unless specified otherwise, the Contract Administrator shall respond to submissions requiring approval according to the Contract as soon as possible but not longer than 5 Business Days excluding any requests for extensions of Contract Time.
- .06 The Contract Administrator shall investigate all allegations of a change in the character of the Work made by the Contractor and issue appropriate instructions.
- .07 The Contract Administrator shall prepare and issue Change Orders.
- .08 The Contract Administrator shall be, in the first instance, the interpreter of the Contract Documents and the judge of the performance there under by both parties to the Contract. Interpretations and decisions of the Contract Administrator shall be consistent with the intent of the Contract Documents.
- .09 The Contract Administrator shall have the authority to reject work or Material which does not conform to the Contract Documents.
- .10 Defective work, whether the result of poor workmanship, use of defective Material, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, that has been rejected by the Contract Administrator as failing to conform to the Contract Documents shall be removed promptly from the Work by the Contractor and replaced or re-executed promptly according to the Contract Documents at no additional cost to the Owner.
- .11 Any part of the Work destroyed or damaged by such removals, replacements, or re-executions shall promptly be made good at no additional cost to the Owner.
- .12 If, in the opinion of the Contract Administrator, it is not expedient to correct defective work or work not performed according to the Contract Documents, the Owner may deduct from monies otherwise due to the Contractor the difference in value between the work as performed and that specified in the Contract Documents, the amount of which shall be determined in the first instance by the Contract Administrator.
- .13 Notwithstanding any inspections made by the Contract Administrator or the issuance of any certificates or the making of any payment by the Owner, the failure of the Contract Administrator to reject any defective work or Material shall not constitute acceptance of defective work or Material.



- .14 The Contract Administrator shall have the authority to temporarily suspend the Work for such reasonable time as may be necessary to facilitate the checking of any portion of the Contractor's construction layout or the inspection of any portion of the Work. There shall not be any extra compensation for this suspension of work.

**GC 3.02 Working Drawings**

- .01 The Contractor shall arrange for the preparation of clearly identified and dated Working Drawings as specified in the Contract Documents.
- .02 The Contractor shall submit Working Drawings to the Contract Administrator with reasonable promptness and in orderly sequence so as to not cause delay in the Work. If either the Contractor or the Contract Administrator so requests, they shall jointly prepare a schedule fixing the dates for submission and return of Working Drawings. At the time of submission, the Contractor shall notify the Contract Administrator in writing of any deviations from the Contract requirements that exist in the Working Drawings.
- .03 The Contractor shall make any changes in Working Drawings that the Contract Administrator may require consistent with the Contract Documents and resubmit, unless otherwise directed by the Contract Administrator. When resubmitting, the Contractor shall notify the Contract Administrator in writing of any revisions other than those requested by the Contract Administrator.
- .04 The Contractor shall keep one set of the Working Drawings at the site at all times.

**GC 3.03 Right of the Contract Administrator to Modify Methods and Equipment**

- .01 The Contractor shall, when instructed in writing, make alterations in the method, Equipment, or work force at any time the Contract Administrator considers the Contractor's actions to be unsafe or damaging to either the Work or existing facilities or the environment, at no additional cost to the Owner. The Contractor shall alter the sequence of operations on the Contract, when requested in writing, so as to avoid interference with other work.
- .02 Notwithstanding the foregoing, the Contractor shall ensure that all necessary safety precautions and protection are maintained throughout the Work.

**GC 3.04 Emergency Situations**

- .01 The Contract Administrator has the right to determine the existence of an emergency situation and when such an emergency situation is deemed to exist, the Contract Administrator may instruct the Contractor to take action to remedy the situation. If the Contractor does not take timely action or, if the Contractor is not available, the Contract Administrator may direct others to remedy the situation.
- .02 If the emergency situation was the fault of the Contractor, the remedial work shall be completed at no additional cost to the Owner. If the emergency situation was not the fault of the Contractor, the Owner shall pay for the remedial work.

**GC 3.05 Working Area**

- .01 The Contractor's sheds, site offices, toilets, other temporary structures, and storage areas for Material and Equipment shall be grouped in a compact manner and maintained in a neat and orderly condition at all times.
- .02 The Contractor shall confine construction operations to the Working Area so as not to interfere with public use. Should the Contractor require more space than that shown on the Contract Drawings, the Contractor shall obtain such space at no additional cost to the Owner.
- .03 The Contractor shall not enter upon or occupy any private property for any purpose, unless the Contractor has received prior written permission from the property owner.

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

- .01 An application for an extension of Contract Time or interim completion dates shall be made in writing by the Contractor on the MTO 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.
- .02 Circumstances suitable for consideration include the following:
  - a) Delays: See subsection GC 3.07, Delays.
  - b) Changes in the Work: See clause GC 3.10.01, Changes in the Work.
  - c) Additional Work: See clause GC 3.10.02, Additional Work.
- .03 The Contract Time shall be extended for such additional time as approved by the Contract Administrator.
- .04 The terms and conditions of the Contract shall continue for such extension of Contract Time.

**GC 3.07****Delays**

- .01 If the Contractor is delayed in the performance of the Work by:
  - a) War, blockades, or civil commotions; or
  - b) Errors in the Contract Documents; or
  - c) An act or omission of the Owner, Contract Administrator, other contractors, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents; or
  - d) A stop work order issued by a court or public authority, provided that such order was not issued as the result of an act or omission of the Contractor, or anyone employed or engaged by the Contractor directly or indirectly; or
  - e) The Contract Administrator giving notice under subsection GC 7.11, Suspension of Work; or
  - f) Abnormal Weather, provided that in the case of an application for an extension of Contract Time, due to the Abnormal Weather, the Contractor shall, with the Contractor's application, submit evidence from Environment Canada, together with detailed calculations in support of such application; or
  - g) Archaeological finds, or
  - h) The presence of species at risk as defined in the *Species at Risk Act* (S.C. 2002, c. 29) and/or the *Endangered Species Act*, S.O. 2007, c. 29 not otherwise identified in the Contract Documents,

then, the Contractor shall be granted an extension of Contract Time according to subsection GC 3.06, Extension of Contract Time or Interim Completion Dates, and shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.

- .02 To determine if the weather encountered during the term of the Contract constitutes Abnormal Weather, the weather records used for the calculation of the 25-year mean and standard deviation shall be from the Environment Canada weather station nearest to the location of the Work. The weather conditions measured in time periods of 3 consecutive Days within a 30-Day period, a calendar month, or 3 consecutive calendar months shall be used to determine the values for the calculations. No other time periods shall be considered.
  - a) For precipitation and snowfall, the values for each year shall be the total amount over the time period.
  - b) For wind and temperature, the values for each year shall be either the average highest or lowest value in the time period.
  - c) The same month or 3 month time period shall be used for each of the 25 years.

- d) For a consecutive 3-Day period within a 30-Day period, the 30-Day period shall begin 15 Days prior to the start of the weather event that is suspected to be abnormal. Only the highest or lowest 3-Day value within the same 30-Day period shall be used for each of the preceding 25 years.

- .03 If the Contractor is granted an extension of Contract Time, compensation for unabsorbed head office overhead shall be as follows:

$$HOOH = \left( \frac{Te(OCv \times 0.05)}{T} \right) - 0.05(FCv - OCv)$$

Where:

HOOH: means head office overhead payment

Te: means approved extension of Contract Time in Days less the Days between December 1 and May 15 inclusive (for Working Day Contracts elapsed Days for approved Working Days)

OCv: means Original Contract tender value in dollars

T: means original Contract Time less the Days between December 1 and May 15 inclusive (Days for completion date contracts or elapsed Days for Working Day Contracts)

FCv: means final Contract value in dollars excluding: incentive/disincentive payments, material bonus/penalty payments, asphalt cement index payments and fuel price adjustments

The head office overhead payment shall not be negative.

For the purposes of establishing the start date to calculate Contract durations, the date shown on the MTO form PH-CC-700, Permission to Start Work, shall be considered as the start date. No other payment shall be made for head office overhead.

Payment for unabsorbed head office overhead shall be made after the Contract Completion Certificate has been issued.

- .04 If the Work is delayed by labour disputes, strikes, or lock-outs, including lock-outs decreed or recommended to its members by a recognized contractor's association, of which the Contractor is a member or to which the Contractor is otherwise bound, which are beyond the Contractor's control, then:

a) Where an industry-wide strike delays the Work, the Contractor shall be granted an extension of Contract Time but not financial compensation (i.e., the strike is considered to be an excusable and non-compensable delay). The Contractor shall make application and shall document the extent to which Controlling Operations were delayed by the strike.

b) Incentives and disincentives shall apply to the revised interim and final completion dates.

- .05 If the Contractor's operations expose any items which may indicate an archaeological find, such as building remains, hardware, accumulations of bones, pottery, or arrowheads:

a) The Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator.

b) Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, according to subsection GC 7.11, Suspension of Work.

c) Any delay in the completion date of the Contract that is caused by such a cessation of construction operations shall be considered to be beyond the Contractor's control according to paragraph .01 of subsection GC 3.07, Delays.

d) Any increases in the cost of the work to be done that are caused by such a cessation of construction operations shall be considered as a Change in the Work according to paragraph .01 of clause GC 3.10.01, Changes in the Work.

e) Any work directed or authorized in connection with an archaeological find shall be considered as Changes in the Work according to clause GC 3.10.01, Changes in the Work.

- .06 If the Contractor encounters species at risk as defined in paragraph .01 of subsection GC 3.07, Delays, within the Working Area not otherwise identified in the Contract Documents, and that are likely to be impacted by the Contractor's operations:
- a) The Contractor shall immediately notify the Contract Administrator and suspend operations within the area identified by the Contract Administrator.
  - b) Work shall remain suspended within that area until otherwise directed by the Contract Administrator in writing, according to subsection GC 7.11, Suspension of Work.
  - c) Any delay in the completion date of the Contract that is caused by such a cessation of construction operations shall be considered to be beyond the Contractor's control according to paragraph .01 of subsection GC 3.07, Delays.
  - d) Any increases in the cost of the work to be done that are caused by such a cessation of construction operations shall be considered as a Change in the Work according to paragraph .01 of clause GC 3.10.01, Changes in the Work.
  - e) Any work directed or authorized in connection with the unexpected presence of species at risk shall be considered as Changes in the Work according to clause GC 3.10.01, Changes in the Work.

### **GC 3.08 Assignment of Contract**

- .01 The Contractor shall not assign the Contract, either in whole or in part, without the written consent of the Owner.

### **GC 3.09 Subcontracting by the Contractor**

- .01 The Contractor may subcontract any portion of the Work, but the total of all sublets shall not exceed 60% of the total tender value without the written consent of the Contract Administrator, subject to these MTO General Conditions of Contract and any limitations established by the Owner.
- .02 The Contractor shall notify the Contract Administrator, in writing on the MTO form PH-CC-742, Consent to Sublet, of the intention to subcontract where the subcontract comprises greater than 50% of the tender item value. Such notification shall identify the part of the Work, and the Subcontractor with whom it is intended.
- .03 The Contractor shall preserve and protect the rights of the parties under the Contract with respect to the work to be performed under subcontract and shall:
- a) Enter into agreements with the intended Subcontractors to require them to perform their work according to the Contract Documents; and
  - b) Be as fully responsible to the Owner for acts and omissions of the Contractor's Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.
- .04 Subcontracting shall not be construed to relieve the Contractor from any obligation under the Contract or to impose any liability upon the Owner. Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.
- .05 The Contractor shall not subcontract any part of the Work to a Subcontractor that has submitted the lowest tender for the Contract, and has subsequently failed to enter into a Contract with the Owner. The Owner shall not be responsible or liable for any costs or damages of the Contractor arising from the need of the Contractor to substitute a Subcontractor.

**GC 3.10 Changes in the Work and Additional Work**

**GC 3.10.01 Changes in the Work**

- .01 The Owner or the Contract Administrator, where so authorized, may, by order in writing, make Changes in the Work without invalidating the Contract. The Contractor shall not be required to proceed with a Change in the Work until in receipt of a Change Order. Upon the receipt of such written order the Contractor shall proceed with the work and shall provide the Owner with a detailed cost estimate of the work described in the Change Order. The estimate shall identify the costs of salaries and wages, payroll burden, Equipment, Materials, and payments to Subcontractors. Alternatively, and with the agreement of the Contract Administrator, the Contractor may provide a cost estimate based on actual or revised Contract prices. The Contractor shall also estimate the impact on any incentives or disincentives.
- .02 The Contractor may apply for an extension of Contract Time according to the terms of subsection GC 3.06, Extension of Contract Time or Interim Completion Dates.
- .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.
- .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 3.10.02 Additional Work**

- .01 The Owner or Contract Administrator, where so authorized, may request the Contractor to perform Additional Work without invalidating the Contract. If the Contractor agrees to perform Additional Work, the Contractor shall proceed with such work upon receipt of a Change Order establishing the basis of payment, the price, and the adjustment of Contract Time.

**GC 3.10.03 Price Agreement Form**

- .01 If the Contractor and Contract Administrator agree on the basis of payment and price when appropriate, a price agreement, on the MTO form PH-CC-856, Price Agreement for Change in the Work, Extra Work, or Additional Work, shall be signed by both parties.

**GC 3.10.04 Work Directive**

- .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 a MTO 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 3.11 Change Proposals After Contract Award**

### **GC 3.11.01 Definitions**

For the purpose of this subsection, the following definitions apply:

**Alternative Type of Material** means a substitute for a specified type of Material to be incorporated into a product and would involve a change that does not adversely affect the performance of the product.

**Design Change** means an alteration to a specified physical feature of a product or to the construction staging requirements that does not adversely affect the performance of the facility, and may include the use of an Alternative Type of Material that changes the physical dimensions of a product.

**Method Change** means an alteration to the specified means or process used to produce a product.

### **GC 3.11.02 Sharing of Cost Savings**

.01 The Contractor may propose cost-reducing Change Proposals after Contract award and gain a financial reward by receiving 50% of the savings resulting from a Change Proposal. If a Change Proposal is acceptable to the Owner, as determined by an Owner Change Proposal review team, the Contractor shall:

- a) Be reimbursed 100% for the agreed upon design/redesign cost as agreed upon at acceptance by the Owner in principle of a Change Proposal; and
- b) Receive payment of 50% of the net construction cost savings, as detailed in clause GC 3.11.05, Accepted Change Proposal Payment, resulting after preliminary design development at the Contractor's cost.

Items a) and b) are in addition to payment for the tendered cost for construction of a Change Proposal.

.02 Standard submission forms and guidelines for their completion are available from the Contract Administrator.

### **GC 3.11.03 Conditions of Change Proposals**

#### **GC 3.11.03.01 Processing, General**

.01 Change Proposals under this provision shall be considered after award and when all applicable conditions are met. Change Proposals need not necessarily be completely equivalent to or meet specified requirements, except as otherwise specified in subsection GC 3.11, Change Proposals After Contract Award. Change Proposals shall be submitted on the applicable MTO forms and shall duplicate all the original text provided in the original standard forms.

.02 Acceptance or rejection of the Change Proposal shall be at the sole discretion of the Owner. The Owner shall advise the Contractor of the reasons for rejection of a Change Proposal according to clause GC 3.11.03.09, Time Periods for Review.

.03 Each proposed Change that affects a different set of Contract items shall be documented as a separate Change Proposal.

.04 Ongoing costs and future life costs shall be evaluated, as detailed and explained on the MTO forms, and shall be noted considering, as a minimum, a perpetual/infinite life cycle using present worth value analysis, using a constant dollars concept, and a discount rate of 6%.

- .05 Change Proposals that take advantage of any errors or omissions in the plans for the as-designed project, or discrepancies between the as-designed project and the Special Provisions covering alternate designs, shall not be accepted. In the event that any error, omission, or discrepancy is discovered, the Contractor shall immediately notify the Contract Administrator. Failure to notify the Owner shall constitute a waiver of all claims for misunderstandings, ambiguities, or other situations resulting from the error, omission, or discrepancy.
- .06 The Contractor shall be responsible for all costs arising in connection with errors in the quantities related to the Change Proposal.
- .07 The Owner shall not be liable to the Contractor for failure to accept or act upon any Change Proposal nor for any delays attributable to any such Change Proposal.
- .08 No extension of Contract Time shall be permitted unless detailed in a Change Proposal and accepted by the Owner.
- .09 The Contractor shall be responsible for obtaining all regulatory approvals resulting from any Change Proposal.
- .10 The Owner shall be the sole judge of whether any Change Proposal is consistent with Owner design policies and basic design criteria for the project.
- .11 The Contractor shall have no Claim against the Owner for any costs or delays due to the Owner's review or rejection of a Change Proposal, including but not limited to review for approval of designs, development costs, anticipated profits, or increased material or labour costs resulting from delays in the review of such Change Proposals.
- .12 If a Change Proposal is acceptable to the Owner, the Contractor shall construct the Change Proposal, and shall do the construction for the price bid for the Change Proposal identified by MTO as acceptable.
- .13 If the Change Proposal is acceptable in whole or in part, such acceptance shall be clarified by the Owner by means of a Change Order that shall specifically state that it is executed pursuant to subsection GC 3.11, Change Proposals After Contract Award.
- .14 Subcontractors may not submit a Change Proposal, except through the Contractor.
- .15 If the Owner accepts a design change, the Owner shall not give permission to proceed with such a Change Proposal until an agreement has been reached on the estimated value of the cost savings and on the Change Proposal design or redesign costs, or until there is a written agreement on a dispute resolution procedure to resolve any disagreement over the values. If a Change Proposal is rejected, no compensation shall be made for any costs associated with the Change Proposal, other than those accepted as part of a Change Proposal and/or other costs found to be acceptable to the Owner.
- .16 If the Owner already has under consideration certain revisions to the Contract or has approved certain changes in Standard Specifications or Standard Drawings for general use that are subsequently incorporated into a Change Proposal, the Owner shall reject the Change Proposal and shall proceed with such revisions, if the Owner so desires and without any obligation to the Contractor. At the Owner's discretion, such changes may be made under subsection GC 3.10, Changes in the Work and Additional Work.

#### **GC 3.11.03.02                      Incomplete Change Proposals**

- .01 The Owner reserves the right to reject any Change Proposal if the Change Proposal does not contain all required information or is not presented clearly. Without prejudice to this right, the Owner may request clarification when the intent of a Change Proposal is unclear. If supporting data is insufficient or unclear, this shall also be grounds for rejection of a Change Proposal.

**GC 3.11.03.03 Proposals for Design Changes**

- .01 When the Contract Documents do not contain a provision for a design change for a tender item, the Contractor's bid for the tender item shall be based on the specified/tendered design exclusive of any Change Proposal. Alternative designs presented under this provision may be proposed only after award. The Owner shall review the design Change Proposal and if the Change Proposal is acceptable to the Owner, the Contractor shall be responsible for the cost of all impacts on other construction item costs that are not included in the Change Proposal and for the schedule resulting from the Change Proposal.

**GC 3.11.03.04 Design Changes**

- .01 The situations described below are covered in OPSSs, and shall be used by the Owner to determine how a Change Proposal shall be handled:
  - a) When the Contract contains provisions for acceptable alternative designs (e.g., pipe sewers, cast-in-place vs. precast maintenance hole, and culverts), the Contractor may proceed with any one of them with no need to negotiate cost savings after award based on this provision.
  - b) When the Contractor is specifically permitted in the Contract Documents to design an alternative to the design specified in the Contract (e.g., track protection, work sequence, or staging requirements), the Contractor shall perform the design, and the associated cost shall be deemed to be included in the related Contract prices. The design shall be subject to Owner review and, if the alternative design is not acceptable, it shall be changed to meet the Owner's requirements at no additional cost to the Owner or revert to the original design as directed by the Owner.
  - c) When the Contractor is responsible for the design of temporary work and no design has been provided in the Contract Documents, or the design provided by the Owner is not sufficiently detailed to permit construction (e.g., formwork and falsework, dewatering, trench shoring, and roadway protection), it shall be understood that the costs for such work were included in the Contractor's original tendered bid, and the Contractor shall assume all the risk associated with bidding and constructing the design.

**GC 3.11.03.05 Proposals for Method Changes**

- .01 When the Contract Documents do not contain a provision for a method change for the tender item, or when the Contractor proposes an alternative method to the specified method, the Owner shall, under this provision, receive, review, and accept or reject an alternate method only after award of the Contract. The Contractor shall assume all of the risk in bidding the tender item with an alternate method and in using the alternate method. If the alternative method is acceptable to the Owner, or is acceptable with modifications, the Contractor shall be paid according to the payment conditions of subsection GC 3.11, Change Proposals After Contract Award. If a Change Proposal is rejected, no additional compensation shall be made.
- .02 The Contractor shall not start work with a proposed method change until the Owner has given written permission.
- .03 When the Contractor proposes to change the construction staging scheme identified in the Contract Documents, and where these changes are deemed by the Contract Administrator to be a significant departure from the Contract Documents, the Contractor shall submit four copies of a traffic management plan that:
  - a) Includes, as appropriate, the following documents:
    - i. Plan, profile, and cross-section drawings indicating the proposed changes to the horizontal and vertical alignment and any changes to the drainage; electrical; environmental; Pavement; structural; over-winter; work zone safety; and public safety, including pedestrian access, schemes for all affected construction and traffic stages.
    - ii. Revised signing and Pavement marking schemes.
    - iii. Revised detour, lane, or ramp closure schemes.
    - iv. A revised critical path schedule for the duration of the project.



- b) Maintains the minimum standards as used in the Contract Documents for:
  - i. Highway geometrics.
  - ii. Pavement structures (i.e., type, depth and granular depths).
  - iii. Illumination and traffic signals needs.
  - iv. Seasonal shutdown conditions.
  - v. Environmental protection (i.e., design measures, construction constraints and requirements and commitments in environmental documentation which may not be referred to in the Contract Documents).
- c) Clearly identifies geometric design criteria used for:
 

i. Design speed.	viii. Shoulder widths.
ii. Vertical grades.	ix. Grades for side slopes.
iii. Stopping sight distance.	x. Hazard offsets.
iv. Vertical curves.	xi. Barrier warrants.
v. Horizontal curves.	xii. Pavement crossfalls.
vi. Superelevation.	xiii. Shoulder crossfalls.
vii. Lane widths.	
- d) Identifies any changes to the construction staging or traffic operations affecting municipal roadways to the Contract Administrator who shall notify the affected municipality. A minimum of 10 Business Days shall be provided to the municipality for their response.
- e) Complies with the pavement marking and signing standards of the OTMs.
- f) Complies with permitted time periods for lane and ramp restrictions and closures as specified in the Contract Documents.
- g) Complies with environmental constraints and requirements specified in the Contract Documents.
- h) Meets current MTO Standards.

**GC 3.11.03.06 Proposals for Alternative Types of Materials or Material Sources**

.01 The Contractor's Change Proposal for alternative types of Materials or Material sources shall include evidence that the Material or Material source meets the Owner's requirements in place at the time the Change Proposal is submitted.

**GC 3.11.03.07 Proposal for a Combination of Design, Method, and Material Changes**

.01 When the Contract Documents do not contain a provision for a design change for a tender item, other than that permitted by a Change Proposal, and the proposed design change requires a different method from that specified in the Contract Documents, the Change Proposal including the proposed method shall be considered a design change, and all the requirements of clause GC 3.11.03.03, Proposals for Design Changes, shall apply.

**GC 3.11.03.08 Ownership and Copyright**

**GC 3.11.03.08.01 Intellectual Property**

**GC 3.11.03.08.01.01 Ownership of Intellectual Property**

.01 The Owner shall be the sole proprietor of any Newly Created Intellectual Property. The Contractor irrevocably assigns to and in favour of the Owner, and the Owner accepts every right, title, and interest in and to all Newly Created Intellectual Property in the Change Proposal, immediately following the creation thereof, for all time and irrevocably waives in favour of the Owner all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Change Proposal, immediately following the creation thereof, for all time. To the extent that the Change Proposal includes, in whole or in part, the Contractor's Intellectual Property, the Contractor grants to the Owner a licence to use that Contractor's Intellectual Property in the manner contemplated in clause GC 3.11.03.08.01, Intellectual Property, of these MTO General Conditions of Contract, the total consideration for which shall be a portion of the payment of the lump sum tender item price to the Contractor by the Owner.

**GC 3.11.03.08.01.02            Presumption Governing Ownership**

.01 The presumption governing the Contract shall be that the Owner shall be the sole proprietor of any Intellectual Property in any form contained in the Change Proposal. If the Contractor's Intellectual Property forms any part of the Change Proposal, the Contractor shall notify the Owner in the Change Proposal. In the absence of any such notice, the presumption shall remain that the Owner is the sole proprietor of any Intellectual Property contained in the Change Proposal.

**GC 3.11.03.08.01.03            Contractor's Grant of Licence**

.01 For those parts of the Change Proposal that are the Contractor's Intellectual Property, the Contractor grants to the Owner for the sole purposes of resolving or remedying any breach of the Contract Documents or this warranty by the Contractor or for the Owner to undertake maintenance, rehabilitation, reconstruction, or construction work, a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty-free, fully-paid-up right and licence to:

- a) Use, modify, reproduce, and distribute, in any form, the identified Intellectual Property; and
- b) Authorize other Persons, including agents, contractors, or Subcontractors, to do any of the former on behalf of the Owner.

.02 The Owner acknowledges and agrees that the Contractor's Intellectual Property is the property of the Contractor and is highly valuable, confidential, and material to the interests, business, and affairs of the Contractor and that disclosure thereof would be detrimental to the interests, business, and affairs of the Contractor. The Owner agrees to maintain the confidentiality of the Contractor's Intellectual Property and that, subject to a court order or except as specifically permitted by the terms of these provisions, the Owner shall not disclose the Contractor's Intellectual Property to any person for any reason whatsoever other than to those persons who actually need to have knowledge of the Contractor's Intellectual Property for the sole purposes of resolving or remedying any breach of the Contract Documents or this warranty or for the Owner to undertake maintenance, rehabilitation, reconstruction, or construction work. The confidentiality obligation of the Owner shall not apply to those elements of the Contractor's Intellectual Property that are currently or hereafter become generally available to the public, provided such public availability has not occurred as a result of the disclosure by the Owner in contravention of this provision.

**GC 3.11.03.08.01.04            No Restrictive Materials in Change Proposal**

.01 The Contractor shall not incorporate into any Change Proposal anything that would restrict the right of the Owner to modify, further develop, or otherwise use the Change Proposal in any way that the Owner deems necessary, or that would prevent the Owner from entering into any contract with any contractor other than the Contractor for the modification, further development, or other use of the Change Proposal.

**GC 3.11.03.08.01.05            Assurances Regarding Moral Rights**

.01 At the request of the Owner, at any time or from time to time, the Contractor shall execute and agree to cause its directors, officers, employees, agents, partners, affiliates, volunteers, or Subcontractors to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Change Proposal in favour of the Owner. Such waiver to be in the form provided by the Owner, and which waiver may be invoked without restriction by any person authorized by the Owner to use the Change Proposal.

.02 The Contractor shall deliver such written waivers to the Owner within 10 Business Days of the receipt of the request from the Owner.

**GC 3.11.03.08.01.06 Further Assurances Regarding Copyright**

- .01 At the request of the Owner, at any time or from time to time, the Contractor shall execute and agree to cause its directors, officers, employees, agents, partners, affiliates, volunteers, or Subcontractors to execute a written assignment of copyright in the applicable Change Proposal to the Owner in the form provided by the Owner. The Contractor shall deliver such written assignments to the Owner within 10 Business Days of the receipt of the request from the Owner. The Contractor shall assist the Owner in preparing any Canadian copyright registration that the Owner considers appropriate. The Contractor shall obtain or execute any other document reasonably required by the Owner to protect the Intellectual Property of the Owner.

**GC 3.11.03.08.01.07 Owner May Prescribe Further Compliance**

- .01 The Owner reserves the right to prescribe the specific manner in which the Contractor shall perform its obligations relating to the Intellectual Property.

**GC 3.11.03.08.01.08 Survival**

- .01 The obligations contained in clause GC 3.11.03, Conditions of Change Proposals, shall survive the termination or expiry of the Contract.

**GC 3.11.03.08.02 Owner Rights**

- .01 In submitting a Change Proposal under this provision, the Contractor agrees to the following:
- a) All plans, drawings, design reports, procedures, and programs prepared, conceived of, or produced or caused to be prepared, conceived of, or produced and delivered by or on behalf of the Contractor as part of an acceptable Change Proposal (the "Proposal") shall be the sole property of the Owner, except as otherwise provided below. The Contractor covenants that the Owner shall be the sole owner of the Proposal, and that none of such Proposal shall infringe the copyright, patent, or other right of any other Person.

For the purposes of the *Copyright Act (Canada)*, the Contractor acknowledges that all Proposal shall be deemed to have been prepared under the direction and control of the Owner, and the copyright, except as otherwise provided below, shall belong to the Owner. The Contractor waives any moral rights it may have under the *Copyright Act (Canada)*, concerning the Proposal.

All patents, copyrights, and other industrial and Intellectual Property rights, including trade secrets, arising in relation to the Proposal, if any, are hereby assigned to the Owner for its use, excepting any third-party proprietary products, any licensed procedures, and any products licensed to a third-party. Change Proposals shall clearly identify any third-party proprietary products and licensed products and procedures to be used as a part of a Change Proposal. The Contractor shall take all reasonable steps, including the steps the Contractor takes to protect information, data, or other tangible and intangible property the Contractor owns and regards as proprietary or confidential, to ensure that such proprietary rights of the Owner are not violated.

The Contractor shall obtain all required assignments and releases of interest, acknowledgments, or waivers that the Owner considers necessary or advisable to transfer title and publication rights in and to the Proposal to the Owner, unless accepted otherwise.

- b) The Owner hereby grants the Contractor a non-exclusive, royalty-free licence to use the Proposal for any and all purposes.
- c) Without limitation, the Owner acknowledges that the Contractor shall have the right to use for the Contractor's own purposes outside of this Contract, any novel ideas and concepts developed by the Contractor.

- d) The Contractor shall not be liable in any manner whatsoever for the claims arising as a result of the use by the Owner of the Proposal in connection with projects other than this Contract. Further, the Contractor cannot warrant the fitness of or be responsible or liable for any Proposal that are only partially completed due to early termination or suspension of this Contract by the Owner, or if same have been altered, revised, modified, or amended without the written consent and knowledge of the Contractor or if such Proposal have been provided to the Owner on computer devices with removable storage and used on improper or incompatible computer processing equipment.
- e) The rights and privileges of the Owner, and the licence in favour of the Contractor provided for in these MTO General Conditions of Contract shall survive and shall not merge on the termination or other expiry of this Contract.

**GC 3.11.03.09 Time Periods for Review**

- .01 Any Change Proposal shall include/document the anticipated change in the construction schedule and shall account for and clearly indicate the desired and reasonable time period for review of same by the Owner. When there is no time period specified with the Change Proposal for review of designs, methods, or Working Drawings in the Contract Documents that are applicable to the Change Proposal, the Owner shall, unless it accepts the times suggested in the Change Proposal, review the Change Proposal expeditiously. The actual duration shall depend on the complexity of the Change Proposal; however, within 5 Business Days of receipt of the Change Proposal, the Owner shall notify the Contractor in writing:
  - a) If the Change Proposal requires clarification or further supporting information; and
  - b) Of the expected time period for review.
- .02 The Contractor shall be notified in writing of the acceptance or rejection of the Change Proposal not more than 20 Business Days after a fully documented and supported Change Proposal is received. If the Change Proposal is rejected, the reasons for the rejection shall be stated.
- .03 If the Owner fails to respond to the Change Proposals within the desired review time suggested in the Change Proposal or within the time stated in the notification in paragraph .01, b) of clause GC 3.11.03.09, Time Periods for Review, the Contractor shall consider the Change Proposal rejected, and shall have no claim against the Owner as a result thereof.

**GC 3.11.03.10 Risk Sharing/Warranty**

- .01 As part of a Change Proposal, the Contractor shall outline and thoroughly explain warranties and other measures offered to reduce the Owner's risks, thus encouraging adoption of a Change Proposal. Shared risks and all risks that the Contractor is not prepared to accept shall also be outlined.

**GC 3.11.04 Submission of Change Proposals**

- .01 The Contract Administrator shall be notified of the Contractor's intention to submit a Change Proposal at least 5 Business Days before a Change Proposal is submitted.
- .02 Change Proposals shall be identified as Change Proposals submitted under subsection GC 3.11, Change Proposals After Contract Award, and shall include a completed standard cover sheet, the MTO forms, and the following:
  - a) A description of the proposed Change Proposal, and the related design or redesign costs;
  - b) A detailed list of the Contract requirements that change, if the Change Proposal is adopted;
  - c) The tender items affected by the proposed changes, including any quantity variation, and any new items, applicable Standards, Special Provisions, and quantities;
  - d) A detailed estimate of the Contractor's cost of performing the work under the existing Contract, and under the proposed Change Proposals;
  - e) A description of the comparative advantages and disadvantages of the Change Proposals;
  - f) A revised construction schedule and an application for extension of Contract Time, if applicable; and

- g) Completed Owner's Standard Change Proposal Forms and procedures shall be used, and shall document and support, for acceptance/review purposes, any Change Proposals.
- .03 Any aspect of a Change Proposal that involves or may involve (e.g., preliminary Change Proposal designs prepared for approval in principle) doing work or an act that is within the practice of professional engineering shall be designed by an Engineer and shall bear the seal and signature of the Engineer. Whatever the Contract specifies regarding stamp occurrences for such design work, the same requirement shall apply to designs or redesigns for a Change Proposal.

**GC 3.11.05 Accepted Change Proposal Payment**

- .01 If a Change Proposal is acceptable to the Owner, the changes and payment related to the savings thereto shall be authorized by means of a Change Order to the Contract. Compensation to the Contractor shall be made as follows:
- a) The Contractor's costs for development work (i.e., any preliminary work up to Owner acceptance in principle of a Change Proposal related to the Change Proposals) shall not be eligible for reimbursement.
  - b) The items for a Change Proposal shall become guaranteed maximum price items. Change proposal savings sharing shall be calculated as outlined in paragraph .01, c) of clause GC 3.11.05, Accepted Change Proposal Payment, and be shared equally between the Contractor and Owner; the Change Proposal design or redesign cost as agreed with MTO as acceptance in principle of the Change Proposal shall be fully reimbursed to the Contractor.
  - c) Change Proposal net construction cost savings change sharing payment shall be based on the following: the original directly related tendered construction price minus the price proposed (bid) to construct the Change Proposal and minus the cost of the Change Proposal design or redesign accepted by the Owner as a Change Proposal approval in principle. In addition to the shared savings payment total and the tendered price payment for the construction of redesigned Change Proposal work, the Contractor shall be reimbursed 100% for the price of the new Change Proposal design or redesign as agreed upon as acceptance of a Change Proposal in principle.
  - d) Unless otherwise specified in writing by the Contractor and agreed upon with the Owner, the Contractor's share of the change sharing savings shall be paid according to the following schedule: 50% of the Contractor's share of the agreed change sharing savings shall be paid as a part of the Owners progress payment following the Owner's acceptance of a Change Proposal in principle; the remaining Change Proposal costs shall be paid according to the percentage of Change Proposal work completed over the duration of the work of the Change Proposal. The Contractor shall indicate, as a part of the Change Proposal, what items shall be used for each Change Proposal, shall get agreement with the Owner regarding such items, and shall outline, in the Change Proposal, any payment schedule that differs from clause GC 3.11.05, Accepted Change Proposal Payment.
  - e) The Contractor may submit any Change Proposals for an approved Subcontractor provided that reimbursement shall be made by the Owner to the Contractor; the terms of the pass through to the Subcontractor shall have been satisfactorily negotiated between the Contractor and the Subcontractor, and be accepted by both before the Change Proposal is submitted to the Owner.

**GC 3.12 Notices**

- .01 The Contractor and the Owner shall provide each other with the mailing addresses, telephone numbers, facsimile terminal numbers, and email addresses for the Contract Administrator and the Superintendent at the commencement of the Work.
- .02 Any notice permitted or required to be given to the Owner or the Contractor shall be given according to the notice provision of the Agreement.
- .03 In the event of an emergency situation or other urgent matter the Contract Administrator or the Superintendent may give a verbal notice, provided that such notice is confirmed in writing.

- .04 Any document permitted or required to be given to the Contract Administrator or the Contractor in respect of the Work shall be deemed to have been given to and received by the addressee on the date of delivery, if delivered by hand or by electronic transmission, and on the third Business Day after the date of mailing, if sent by mail.

**GC 3.13 Use and Occupancy of the Work Prior to Substantial Performance**

- .01 Where it is not contemplated elsewhere in the Contract Documents, the Owner may use or occupy the Work or any part thereof prior to substantial performance, provided that at least 30 Days written notice has been given to the Contractor.
- .02 The use or occupancy of the Work or any part thereof by the Owner prior to substantial performance shall not constitute an acceptance of the Work or parts so occupied. In addition, the use or occupancy of the Work shall not relieve the Contractor or the Contractor's Surety from any liability that has arisen, or may arise, from the performance of the Work according to the Contract Documents. The Owner shall be responsible for any damage that occurs because of the Owner's use or occupancy. Such use or occupancy of any part of the Work by the Owner does not waive the Owner's right to charge the Contractor liquidated damages according to the terms of the Contract.

**GC 3.14 Compensation Request**

- .01 The Contractor shall submit a Compensation Request, to the Contract Administrator, on the MTO form PH-CC-756, Compensation Request, 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 subsection GC 3.06, Extension of Contract Time or Interim Completion Dates;
  - c) An unresolved Change Order price negotiation according to clause 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 paragraph .01 of clause GC 7.01.08, Errors Relating to the Contract.
- .03 The Compensation Request shall include a description of the matter with specific references to the Contract Documents including the impacts to the Contractor.
- .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 clause GC 3.15.01, Claim Review Process, the Compensation Request Decision becomes null and void for the purpose of the claim review process.

### **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, Capital Program Delivery Branch (CPDB), Transportation Infrastructure Management Division (TIMD), which notice shall be referred to as the "initial notice".
- .02 Within 5 Days of receipt of the "initial notice" of Claim, the Manager, Contract Claims Office, Capital Program Delivery Branch, Transportation Infrastructure Management Division, 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, Capital Program Delivery Branch, Transportation Infrastructure Management Division.
- .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, Capital Program Delivery Branch, Transportation Infrastructure Management Division:
  - 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, Capital Program Delivery Branch, Transportation Infrastructure Management Division 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, Capital Program Delivery Branch, Transportation Infrastructure Management Division, 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, Capital Program Delivery Branch, Transportation Infrastructure Management Division, 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 Area 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 3 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 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, Capital Program Delivery Branch, Transportation Infrastructure Management Division, 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.

## **SECTION GC 4.0 - OWNER'S RIGHTS AND RESPONSIBILITIES**

### **GC 4.01 Working Area**

- .01 The Owner shall acquire all property rights which are deemed necessary by the Owner for the construction of the Work, including temporary working easements, and shall indicate the full extent of the Working Area on the Contract Drawings.

### **GC 4.02 Management of Excess Materials**

- .01 The Owner shall identify in the Contract Documents the materials to be moved within or removed from the Working Area, and any characteristics of those materials which shall necessitate special materials management and disposition.
- .02 The Owner shall be responsible for any additional costs of removal, management, and disposition of any material not identified in the Contract Documents, or where conditions exist that could not have been reasonably foreseen at the time of tendering.

### **GC 4.03 Construction Affecting Railway Property**

- .01 When construction affects railway property, the Owner shall pay the costs of all flagging and other traffic control measures required and provided by the railway company within the Working Area.

### **GC 4.04 Default by the Contractor**

- .01 The Contractor shall be in default of the Contract if:
- a) The Contractor fails to commence the Work or execute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree; or
  - b) If the Contractor is adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency.

### **GC 4.05 Notification of Default**

- .01 The Owner shall give written notice of a default to the Contractor as soon as the Owner becomes aware of the alleged default, but failure to give such notice in a timely way shall not constitute acceptance of the default. The notice shall include instructions to correct the default within 5 Business Days.

### **GC 4.06 Contractor's Right to Correct a Default**

- .01 The Contractor shall have the right within the 5 full Business Days following the receipt of a notice of default to correct the default and provide the Owner with satisfactory proof that appropriate corrective measures have been taken.
- .02 If the correction of the default cannot be completed within the 5 full Business Days following receipt of the notice, the Contractor shall not be in default if the Contractor:
- a) Commences the correction of the default within the 5 full Business Days following receipt of the notice;
  - b) Provides the Owner with an acceptable schedule for the progress of such correction; and
  - c) Completes the correction according to such schedule.

### **GC 4.07 Owner's Right to Correct Default**

- .01 If the Contractor fails to correct the default within the time specified in subsection GC 4.06, Contractor's Right to Correct a Default, or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may correct such default and deduct the cost thereof, as certified by the Contract Administrator, from any payment then or thereafter due to the Contractor.

#### **GC 4.08 Termination of Contractor's Right to Continue the Work**

- .01 Where the Contractor fails to correct a default within the time specified in subsection GC 4.06, Contractor's Right to Correct a Default, or subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may terminate the Contractor's right to continue the Work in whole or in part by giving written notice to the Contractor.
- .02 If the Owner terminates the Contractor's right to continue with the Work in whole or in part, the Owner shall be entitled to:
- a) Take possession of the Working Area or that portion of the Working Area devoted to that part of the Work terminated;
  - b) Use the Contractor's Material within the Working Area which is intended to be incorporated into the Work, the whole subject to the right of third parties;
  - c) Withhold further payments to the Contractor with respect to the Work or the portion of the Work withdrawn from the Contractor until the Work or portion thereof withdrawn is completed;
  - d) Charge the Contractor the additional cost over the Contract price of completing the Work or portion thereof withdrawn from the Contractor, as certified by the Contract Administrator, and any additional compensation paid to the Contract Administrator for such additional service arising from the correction of the default;
  - e) Charge the Contractor a reasonable allowance, as determined by the Contract Administrator, to cover correction to the Work performed by the Contractor that may be required under subsection GC 7.18, General Warranty; and
  - f) Charge the Contractor for any damages the Owner may have sustained as a result of the default.

#### **GC 4.09 Final Payment to Contractor**

- .01 If the Owner's cost to correct and complete the Work in whole or in part is less than the amount withheld from the Contractor under subsection GC 4.08, Termination of Contractor's Right to Continue the Work, the Owner shall pay the balance to the Contractor as soon as the final accounting for the Contract is complete.

#### **GC 4.10 Termination of the Contract**

- .01 Where the Contractor is in default of the Contract, the Owner may, without prejudice to any other right or remedy the Owner may have, terminate the Contract by giving written notice of termination to the Contractor, the Surety, and any trustee or receiver acting on behalf of the Contractor's estate or creditors.
- .02 If the Owner elects to terminate the Contract, the Owner shall provide the Contractor and the trustee or receiver with a complete accounting to the date of termination.
- .03 If the Contract is terminated, the Owner shall publish the statutory notice of termination prescribed by Form 8 of Ontario Regulation 303/18 of the *Construction Act*, in the *Daily Commercial News* and the date of the termination of the Contract shall be the date specified in the statutory notice of termination for the Contract.

#### **GC 4.11 Continuation of Contractor's Obligations**

- .01 The Contractor's obligation under the Contract as to quality, correction, and warranty of the Work performed prior to the time of termination of the Contract or termination of the Contractor's right to continue with the Work in whole or in part shall continue to be in force after such termination.

#### **GC 4.12 Use of Performance Bond**

- .01 If the Contractor is in default of the Contract and the Contractor has provided a Performance Bond, the Owner may rely upon the Performance Bond and its conditions along with the Contract Documents.

**GC 4.13****Owner Audit**

- .01 The Owner may inspect, review, and audit all Records associated with the Contract, including the Contractor's and Subcontractor's Records relating to the Work and Changes in the Work and Claims, at any time up to 24 months after releasing payment of the final holdback. The Contractor shall complete and submit to the Contract Administrator, the MTO form PH-CC-762, Subcontractor's Consent to Audit, for each Subcontractor employed by the Contractor.
- .02 The Contractor shall supply certified copies of any part of the Contractor's Records whenever requested by the Owner.
- .03 Where the inspection, review, and audit reveals discrepancies in payment, the Contractor shall be advised immediately. The Contractor shall have the opportunity to dispute these discrepancies by immediately submitting a MTO form PH-CC-750, Request for Clarification.
- .04 Upon agreement with the results, any monies payable to the Contractor shall be payable within 28 Days. Interest back to the time the amount became payable shall not be paid.
- .05 Upon agreement with the audit results, any monies due to the Owner shall be payable within 28 Days together with interest due from the time the amount was over paid.

## **SECTION GC 5.0 - MATERIAL**

### **GC 5.01 Supply of Material**

- .01 All Material necessary for the proper completion of the Work, except that listed as being supplied by the Owner, shall be supplied by the Contractor. The Contract prices for the appropriate tender items shall be deemed to include full compensation for the supply and delivery of such Material.

### **GC 5.02 Quality of Material**

- .01 All Material provided by the Contractor shall be new, unless otherwise specified in the Contract Documents.
- .02 Material shall be supplied from sources identified in the MTO DSM available on TRA website <http://www.roadauthority.com> that is current at the time of supply of the product. If there are revisions to the DSM, these shall be posted on TRA website on the first Business Day of the months of February, April, June, August, October, and December. Material for which there is no category in the DSM shall be supplied according to the Contract Documents. Material which is not specified shall be of a quality best suited to the purpose required and the use of such Material shall be subject to the approval of the Contract Administrator.

Sources in the DSM have demonstrated their ability to produce material according to specified material specifications. However, the MTO does not warrant that these sources shall produce acceptable or sufficient Material for any contract. The Contractor shall make such independent investigation and examination as the Contractor deems necessary, to satisfy the Contractor as to the quality and quantity of the Material available from these sources, and to ensure that all Material supplied by them satisfies the requirements of the Contract Documents.

- .03 When specified in the Contract Documents or requested by the Contract Administrator, the Contractor shall make available for inspection or testing a sample of any Material to be provided by the Contractor.
- .04 The Contractor shall obtain for the Contract Administrator the right to enter upon the premises of the Material manufacturer or supplier to carry out such inspection, sampling, and testing as specified in the Contract Documents or as requested by the Contract Administrator.
- .05 The Contractor shall complete and submit, on MTO form PH-A-106, List of Materials from Designated Sources, to the Contract Administrator indicating where the Contractor intends to obtain the designated source materials for the Contract. The Contractor shall notify the Contract Administrator of the sources of supply of all Material sufficiently in advance of the Material shipping dates to enable the Contract Administrator to perform the required inspection, sampling, and testing.
- .06 The Owner shall not be responsible for any delays to the Contractor's operations where the Contractor fails to give sufficient advance notice to the Contract Administrator to enable the Contract Administrator to carry out the required inspection, sampling, and testing before the scheduled shipping dates.
- .07 Where the Standards require the Contractor to supply a Material designated by a trade or other name, the tender shall be based only upon supply of the Material so designated, which shall be regarded as the standard of quality required by the Standard.
- .08 Prior to the commencement of Work, the Contractor shall provide to the Contract Administrator a list of those products controlled under the Workplace Hazardous Material Information System (WHMIS) that the Contractor expects to use on the Contract. Related Material Safety Data Sheets shall accompany the submission. All containers used in the application of products controlled under WHMIS shall be labelled. The Contractor shall notify the Contract Administrator of changes to the list in writing and provide relevant Material Safety Data Sheets.

- .09 When a Material or Material source is deleted from the DSM list of pre-qualified Materials or Material sources after the tender opening date, the Owner shall be responsible for the extra costs of Material supply only, unless the Material production or Material source is controlled by the Contractor or Subcontractor. If the type of Material or Material source is pre-qualified after the date of tender opening, permission to use the Materials or Material sources shall not be given until an agreement has been reached on the estimated value of the cost savings to the Owner.
- .10 Within 24 hours written notice, the Contractor shall provide the Owner and/or the Contract Administrator full access to quality control laboratories at any time, and copies of all original inspection records, test results (including but not limited to, all supporting readings, measurements, laboratory worksheets and calculations), and other quality control documents.

**GC 5.03 Rejected Material**

- .01 Rejected Material shall be removed from the Working Area expeditiously after the notification to that effect from the Contract Administrator. Where the Contractor fails to comply with such notice, the Contract Administrator may cause the rejected Material to be removed from the site and disposed of in what the Contract Administrator considers to be the most appropriate manner, and the Contractor shall pay the costs of disposal and the appropriate overhead charges.

**GC 5.04 Owner Supplied Material**

**GC 5.04.01 Ordering of Excess Material**

- .01 Where Material is supplied by the Owner and where this Material is ordered by the Contractor in excess of the amount specified to complete the Work, such excess Material shall become the property of the Contractor on completion of the Work and shall be charged to the Contractor at cost plus 10% for administration.

**GC 5.04.02 Care of Material**

- .01 The Contractor shall, in advance of receipt of shipments of Material supplied by the Owner, provide adequate and proper storage facilities acceptable to the Contract Administrator; and, on the receipt of such Material, promptly place it in storage except where it is to be incorporated forthwith into the Work.
- .02 The Contractor shall be responsible for acceptance of Material supplied by the Owner, at the specified delivery point and for its safe handling and storage. If such Material is damaged while under the control of the Contractor, it shall be replaced or repaired by the Contractor at no expense to the Owner, and to the satisfaction of the Contract Administrator. If such Material is rejected by the Contract Administrator for reasons which are not the fault of the Contractor, it shall remain in the care and at the risk of the Contractor until its disposition has been determined by the Contract Administrator.
- .03 Where Material supplied by the Owner arrives at the delivery point in a damaged condition or where there are discrepancies between the quantities received and the quantities shown on the bills of lading, the Contractor shall immediately report such damage or discrepancies to the Contract Administrator who shall arrange for an immediate inspection of the shipment and provide the Contractor with a written release from responsibility for such damage or deficiencies. Where damage or deficiencies are not so reported, it shall be assumed that the shipment arrived in good order and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.
- .04 The full amount of Material supplied by the Owner in each shipment shall be accounted for by the Contractor and such Material shall be at the risk of the Contractor after taking delivery. Such Material shall not be used by the Contractor for purposes other than the Work under the Contract.
- .05 Empty reels, crates, containers, and other types of packaging from Material supplied by the Owner shall become the property of the Contractor when they are no longer required for their original purpose and shall be disposed of by the Contractor, unless otherwise specified in the Contract Documents.

- .06 The Contractor shall provide the Contract Administrator, immediately upon receipt of each shipment, copies of bills of lading, or such other documentation the Contract Administrator may require, to substantiate and reconcile the quantities of Material received.
- .07 Where Material supplied by the Owner is ordered and stockpiled prior to the award of the Contract, the Contractor shall, at no extra cost to the Owner, immediately upon commencement of operations, check the Material, report any damage or deficiencies to the Contract Administrator, and take charge of the Material at the stockpile site. Where damage or deficiencies are not so recorded by the Contractor, it shall be assumed that the stockpile was in good order when the Contractor took charge of it and any damage or deficiencies reported thereafter shall be made good by the Contractor at no extra cost to the Owner.

## **SECTION GC 6.0 - INSURANCE, PROTECTION, AND DAMAGE**

### **GC 6.01 Protection of Work, Persons, and Property**

- .01 The Contractor, the Contractor's agents, and all workers employed by or under the control of the Contractor, including Subcontractors, shall protect the Work, persons, and property from damage or injury, and shall be responsible for all losses and damage which may arise as the result of the Contractor's operations under the Contract unless indicated to the contrary below.
- .02 The Contractor is responsible for the full cost of any necessary temporary provisions and the restoration of all damage, where the Contractor damages the Work or property in the performance of the Contract. If the Contractor is not responsible for the damage that occurs to the Work or property the Contractor shall restore such damage, and such work shall be administered according to these MTO General Conditions of Contract.
- .03 The Contractor shall immediately inform the Contract Administrator of all damage and injuries which occur during the term of the Contract.
- .04 The Contractor shall not be responsible for loss and damage that occurs as a result of:
  - a) War;
  - b) Blockades and civil commotion;
  - c) Errors in the Contract Documents;
  - d) Acts or omissions of the Owner, the Contract Administrator, the Owner's agents, officers, and employees, or others not under the control of the Contractor but are within the Working Area with the Owner's permission.
- .05 The Contractor and the Contractor's Surety or Sureties shall not be released from any term or provision of any responsibility, obligation, or liability under the Contract or waive or impair any of the rights of the Owner, except by a release duly executed by the Owner.

### **GC 6.02 Indemnification**

#### **GC 6.02.01 General**

- .01 The Contractor shall indemnify and hold harmless the Owner and the Contract Administrator, the Owner's agents, officers, and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits or proceedings by third parties, hereinafter called "claims", directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work, provided such claims are:
  - a) Attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property;
  - b) Caused by negligent acts or omissions of the Contractor or anyone for whose acts the Contractor may be liable; and
  - c) Made in writing within a period of 6 years from the date of substantial performance of the Work as set out in MTO form PH-CC-799, Certificate of Substantial Performance or, where so specified in the Contract, from the date of the Contract Completion Certificate.
- .02 The Contractor shall indemnify and hold harmless the Owner from all and every claim for damages, royalties, or fees for the infringement of any patented invention or copyright occasioned by the Contractor in connection with work performed or Material furnished by the Contractor under the Contract.
- .03 The Owner expressly waives the right to indemnity for claims other than those stated in paragraphs .01 and .02 of clause GC 6.02.01, General (Indemnification).



- .04 The Owner shall indemnify and hold harmless the Contractor, their agents, officers, and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract that are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Working Area.
- .05 The Contractor expressly waives the right to indemnity for claims other than those stated in paragraph .04 of clause GC 6.02.01, General (Indemnification).

**GC 6.03 Contractor's Insurance**

**GC 6.03.01 General**

- .01 Without restricting the generality of subsection GC 6.02, Indemnification, the Contractor shall provide, maintain, and pay for the insurance listed in these MTO General Conditions of Contract and specifically described under clause GC 6.03.02, Commercial General Liability Insurance, and clause GC 6.03.03, Automobile Liability Insurance, and such other insurance as may be specified in the Contract Documents.

**GC 6.03.02 Commercial General Liability Insurance**

- .01 Commercial general liability insurance on an occurrence basis for third-party bodily injury, personal injury, and property damage shall have an inclusive limit of not less than \$5,000,000 per occurrence with \$2,000,000 products and completed operations aggregate. The policy is to include the following:
- a) The Owner and the Contract Administrator as additional insured's with respect to liability arising in the course of performance of the Contractor's obligations under or otherwise in connection with the Contract Documents.
  - b) Contractual liability coverage.
  - c) Cross-liability clause.
  - d) Employer's liability coverage.
  - e) 30 Day written notice of cancellation, termination, or material change.
  - f) Non-owned automobile coverage, including standard contractual liability endorsement, with blanket coverage for hired automobiles.
- .02 The Contractor shall provide the Owner with proof of insurance required by these MTO General Conditions of Contract in the form of valid certificates of insurance acceptable to the Owner that references the Contract and confirms the required coverage, on or before the commencement of this Contract, and any renewal replacements on or before the expiry of any such insurance.
- .03 The Contractor shall submit annually on the anniversary of the execution of the Agreement to the Owner the proof of the continuation of the insurance as described in these MTO General Conditions of Contract or elsewhere in the Contract Documents in the form of valid certificates of insurance acceptable to the Owner that references the Contract and confirms the required coverage.
- .04 If the Contractor decides not to employ Subcontractors for operations requiring the use of explosives for blasting, pile driving or caisson work, or removal or weakening of support of property building or land, the certificate of insurance shall include the appropriate endorsements.
- .05 "Claims Made" insurance policies shall not be permitted.

**GC 6.03.03 Automobile Liability Insurance**

- .01 Automobile insurance in respect of licensed vehicles as per statutory requirements in Ontario shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, including accident benefits in the standard owner's form automobile policy providing third-party liability and accident benefits insurance and covering licensed vehicles owned or operated by the Contractor and endorsed to provide the Owner with not less than 30 Days written notice in advance of any cancellation, change, or amendment restricting coverage.

**GC 6.03.04 Payment for Loss or Damage**

- .01 The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount at which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds and according to the requirements of section GC 8.0, Measurement and Payment. In addition, the Contractor shall be entitled to receive from the payments made by the insurer the amount of the Contractor's interest in the restoration of the Work.
- .02 The Contractor shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the Contractor's responsibility by the terms of this Contract.
- .03 In the event of loss or damage to the Work arising from the action of others, the Owner shall pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and according to the requirements of section GC 8.0, Measurement and Payment.

**GC 6.03.05 Insurance Requirements and Duration**

- .01 Unless specified otherwise, the insurance shall be maintained continuously from the commencement of the Work until 10 Days following the date of Contract Completion Certificate, and with respect to completed operations coverage for a period of not less than 24 months from the date of Contract Completion Certificate, and thereafter to be maintained for a further period of 4 years.
- .02 The Contractor shall provide the Owner, on a form acceptable to the Owner, proof of insurance prior to commencement of the Work, signed by an officer of the Contractor and either the underwriter or the broker.
- .03 The Contractor shall, on request of the Owner, promptly provide the Owner with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the insurer to determine the cost of the insurance. The certified true copy shall include a signature by an officer of the Contractor and in addition, a signature by an officer of the insurer or the underwriter or the broker.
- .04 Unless specified otherwise the Contractor shall be responsible for the payment of deductible amounts under the policies.
- .05 If the Contractor fails to provide or maintain insurance as required in these MTO General Conditions of Contract or elsewhere in the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence thereof to the Contractor. The Owner's cost thereof shall be payable by the Contractor to the Owner on demand.
- .06 If the Contractor fails to pay the cost of the insurance placed by the Owner within 30 Days of the date on which the Owner made a formal demand for reimbursement of such costs, the Owner may deduct the costs thereof from monies which are due or may become due to the Contractor.

**GC 6.04 Bonding**

**GC 6.04.01 General**

- .01 If the Total Bid Price is \$500,000 or more, the Contractor shall furnish the Owner with Statutory Bonds, being a Performance Bond and Labour and Material Payment Bond in accordance with the *Construction Act*.
- .02 Such Statutory Bonds shall be obtained from a Surety that is an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.
- .03 The Contractor shall furnish the Owner with Contract Bonds as prescribed in the Contract Documents and satisfactory to the Owner.

- .04 Such Contract Bonds shall be obtained from a Surety that is an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.

**GC 6.04.02 Performance Bond**

- .01 With respect to the Statutory Bond for a Performance Bond, the Contractor shall furnish a Performance Bond using Form 32 of Ontario Regulation 303/18 of the *Construction Act* that is conditioned on the due performance of the terms of the Contract for the amount of 50% of the Total Bid Price.

**GC 6.04.03 Labour and Material Payment Bond**

- .01 With respect to the Statutory Bond, the Contractor shall furnish a Labour and Material Payment Bond using Form 31 of Ontario Regulation 303/18 of the *Construction Act* that extends or guarantees payment protections to the Subcontractor and Persons supplying labour and Material to the Contract for the amount of 50% of the Total Bid Price.

## **SECTION GC 7.0 - CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK**

### **GC 7.01 General**

#### **GC 7.01.01 Site Visit**

- .01 The Contractor warrants that the site of the Work has been visited during the preparation of the tender and the character of the Work and all local conditions which may affect the performance of the Work are known.

#### **GC 7.01.02 Commencement of Work**

- .01 The Contractor shall not commence the Work nor deliver anything to the Working Area until the Contractor has received written permission, on MTO form PH-CC-700, Permission to Start Work, duly signed by the Contract Administrator.

#### **GC 7.01.03 Control and Responsibility**

- .01 The Contractor shall have complete control of the Work and shall effectively direct, supervise, and undertake quality control activities for the work so as to ensure conformity with the Contract Documents. The Contractor shall be responsible for construction means, methods, techniques, sequences, and procedures and for coordinating the various parts of the Work.
- .02 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.
- .03 Notwithstanding paragraph .02 of clause GC 7.01.03, Control and Responsibility, where the Contract Documents include designs for temporary structures and other temporary facilities or specify a method of construction in whole or part, such facilities and methods shall be considered to be part of the design of the Work, and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- .04 Any Notice to Proceed by the Owner or its Contract Administrator of the Work and Materials of the Contractor does not relieve the Contractor from any responsibility or obligation for the proper performance of the Work in conformity with the requirements of the Contract Documents. As well, the Notice to Proceed imposes no liability upon the Owner or its Contract Administrator and is not to be interpreted as an approval or acceptance of the Work or the Materials by the Owner that the Work and Materials was completed or supplied in conformance with the Contract Documents.

#### **GC 7.01.04 Compliance with the Occupational Health and Safety Act**

- .01 The Contractor shall execute the terms of the Contract in strict compliance with the requirements of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (*the Act*) and Ontario Regulation 213/91 (*Construction Projects*) and any other regulations under *the Act (the Regulations)* which may affect the performance of the Work, as the Constructor or employer, as the case may be. The Contractor shall ensure that:
- a) Worker safety is given first priority in planning, pricing, and performing the Work;
  - b) The Contractor's officers and supervisory employees have a working knowledge of the duties of a Constructor and employer under the Act and the provisions of the Regulations applicable to the Work, and a personal commitment to comply with them;
  - c) A copy of the most current version of the Act and the Regulations are available at the Contractor's office within the Working Area or, in the absence of an office, in the possession of the Superintendent responsible for the performance of the Work;

- d) Workers employed to carry out the Work possess the knowledge, skills, and protective devices required by law or recommended for use by a recognized industry association to allow them to work in safety;
  - e) The Contractor's supervisory employees carry out their duties in a diligent and responsible manner with due consideration for the health and safety of the workers; and
  - f) All Subcontractors performing part of the Work and their employees are properly protected from injury while they are at the work place.
- .02 When requested, the Contractor shall provide the Owner with a copy of its health and safety policy and program at the pre-start meeting and shall respond promptly to requests from the Owner for confirmation that its methods and procedures for carrying out the Work comply with *the Act* and *the Regulations*. The Contractor shall cooperate with representatives of the Owner and Ministry of Labour inspectors appointed to enforce *the Act* and *the Regulations* in any investigations of worker health and safety in the performance of the Work. The Contractor shall indemnify and save the Owner harmless from any additional expense that the Owner may incur to have the Work performed as a result of the Contractor's failure to comply with the requirements of *the Act* and *the Regulations*.
- .03 The Contractor shall immediately, upon receipt, provide the Owner a copy of all correspondence from the Ministry of Labour including but not limited to Project Forms, Stop Work Orders, or Certificates of Offence.
- .04 For work inside confined spaces, including box girder bridges, detailed written procedures addressing the confined space requirements of *the Act* and *Construction Projects*, shall be clearly posted at the project site and available to all personnel, including the Contractor's workers, the Contract Administrator, MTO personnel, and Ministry of Labour inspectors. The procedures shall include the rescue procedures to be followed during a rescue or evacuation of all personnel from an unsafe condition or in the event of personal injury. The Contractor shall have personnel trained in rescue procedures readily available on site.
- .05 Whenever the Contractor proposes to suspend a multi-support point work platform system from a permanent structure, the Contractor shall retain an Engineer to evaluate the structural adequacy of the permanent structure taking into account the loadings imposed by the work platform system and the actual condition of the structure during construction. The Engineer retained by the Contractor shall be deemed responsible for the structural integrity of the permanent structure in fulfilling the requirements of *the Act* and *the Regulations*.

Structural evaluation shall be according to CSA S6:19 and all Owner policies and standards. The design and operation of the multi-support point work platform system shall not have an adverse impact on the long-term durability of the structure and shall meet all operational constraints specified in the Contract Documents.

Two weeks prior to the installation of the multi-support point work platform system, the Contractor shall submit the following to the Contract Administrator for information purposes only:

- a) Three sets of Working Drawings of the work platform system signed and sealed by two Engineers. The loading imposed by the work platform system on the permanent structure shall be clearly shown on the Working Drawings.
- b) Three copies of the evaluation report of the permanent structure bearing the seal and signature of two Engineers. The evaluation report shall include a letter from the Engineers certifying that the permanent structure can safely carry the load imposed by the work platform system together with any other dead and live load that the structure is carrying during construction.

The Contractor shall not make any permanent alterations to the structure as part of the work platform system installation without written permission from the Owner.

**GC 7.01.05****Contractor's Representatives**

- .01 The Contractor shall have an authorized representative on the site while any work is being performed, to act for or on the Contractor's behalf. Prior to commencement of construction, the Contractor shall notify the Contract Administrator of the names, addresses, positions, and telephone numbers of the Contractor's representatives who can be contacted at any time to deal with matters relating to the Contract.
- .02 The Contractor shall designate a person to be responsible for traffic control and highway work zone safety. The designated person shall be a competent worker who is qualified because of:
  - a) Knowledge, training, and experience to perform the duties;
  - b) Is familiar with Book 7 of the OTM; and
  - c) Has knowledge of all potential or actual danger to workers and motorists.

Prior to the commencement of construction, the Contractor shall notify the Contract Administrator of the name, address, position, and telephone number of the designated person. The designated person may have other responsibilities, including other construction sites, and need not be present in the Working Area at all times.

- .03 The Contractor shall maintain a daily, hard bound diary of the signs in use for temporary and long-term traffic control. The diary shall be submitted with the final payment documents. For the duration of the Contract and within 24 hours of a request by the Contract Administrator, the Contractor shall provide the Contract Administrator full access to the diary. The following information shall be included in the diary:
  - a) A schematic of the location of each existing sign by station, offset, and height above pavement.
  - b) A schematic of the placement and re-location of all construction signs by station, offset, and height above pavement.
  - c) Traffic accidents, including time of inspection, location of incident, and photographs.
  - d) Time and date of daily sign inspections.

**GC 7.01.06****Assistance to the Contract Administrator**

- .01 The Contractor shall, at no additional cost to the Owner, furnish all reasonable aid, facilities, and assistance required by the Contract Administrator for the proper inspection and examination of the Work or the taking of measurements for the purpose of payment.
- .02 The Contractor shall submit quantities of Work completed to the Contract Administrator on a weekly basis, as a minimum, to facilitate reconciliation of quantities of Work completed.

**GC 7.01.07****Critical Path Schedule**

- .01 Initial and updated critical path schedules shall be prepared and submitted as detailed below:
  - a) Two paper copies and one electronic copy in the format of the scheduling software and readable by the scheduling software of the initial construction schedule shall be submitted to the Regional Operations Office within 7 Business Days of receipt of the acceptance of the tender.
  - b) One hard copy of the initial construction schedule shall also be submitted to the Contract Management Office, St. Catharines, with the executed copies of the Contract.
  - c) Where the Contractor has revised the initial construction schedule prior to the first site meeting, the revised construction schedule shall be submitted to the Contract Administrator at least 3 Business Days prior to the meeting.

- d) Two paper copies and one electronic copy in the format of the scheduling software and readable by the scheduling software of an updated schedule shall be prepared and submitted to the Contract Administrator not less than 3 Business Days prior to all regularly scheduled site meetings. All revisions shall be highlighted on the updated schedule. Updated schedules submitted shall reflect actual progress of the Work and any additions, deletions, or revisions to the Work that have arisen since the previous update. At regularly scheduled site meetings, the Contractor shall explain the revisions and any increase or decrease in resources required to complete the Work on time. At the Contract Administrator's request, and at no additional cost to the Owner, the Contractor shall submit an updated schedule within 7 Business Days of any major increase or decrease in quantities, or major change in the staging or perceived change in character of the Work.
- e) All copies shall be legible and shall show the date the schedule was prepared.

.02 The requirements for the construction schedule are detailed below:

- a) The critical path method shall be used to prepare and update the construction schedule. The initial and updated construction schedules shall consist of a time scaled network diagram with its related bar charts or a time scaled linear diagram.
- b) For Contracts with a specified number of Working Days, the construction time shown on the initial schedule shall not exceed the specified number of Working Days. The activities on the critical path shall assist the Contract Administrator in determining the Controlling Operation for the purpose of the charging of Working Days. The construction schedule shall include all non-working periods and appropriate allowances for Inclement Weather.
- c) For Contracts which specify a Contract Completion date, the construction time shown on the initial construction schedule shall not extend beyond the specified Contract Completion date. The construction schedule shall include all non-working periods and appropriate allowances for Inclement Weather.
- d) The construction schedule shall reflect operational constraints, interim completion dates, and other scheduling requirements specified in the Contract Documents.
- e) A delay for an activity shall be deemed to have occurred when the activity is not complete on its late finish date established by the construction schedule or it exceeds the specified number of Working Days or specified Completion Date for the Contract.

.03 The requirements for diagrams and bar charts are detailed below:

- a) The Contractor may select to submit initial and updated construction schedules in either logic diagram format with accompanying time scaled bar charts or time scaled linear diagrams.
- b) The Contractor shall select the activities so that the Work is identifiable and the progress of each activity can be determined. The Owner reserves the right to limit or increase the number of activities on the diagram.
- c) Each activity in the initial and updated construction schedules shall include a description of the operation and the number of Days allocated or actually used for it. When the duration of an activity is dependent on weather conditions, the number of Days allocated shall include an allowance for normal frequency of Inclement Weather. In addition, for Contracts which specify the number of Working Days for the Contract Time, the expected number of Working Days shall be shown for the activities on the critical path that may be subject to Working Day charges. When the activity has an associated tender item quantity, the approximate quantity shall also be shown.
- d) The construction schedule shall show the sequence and interdependence of all activities required to complete the Work under the Contract, including time for review of Working Drawings and mix design submissions, early start date, early finish date, and float times. All network connections used to create a logical schedule and the corresponding durations shall be shown. Activities on the critical path shall be identified clearly on the diagram.
- e) The time scale of the construction schedule may be divided into Days or weeks.

.04 The Contractor shall not be permitted to start work until a construction schedule, conforming to clause GC 7.01.07, Critical Path Schedule, is received by the Contract Administrator.

- .05 If, for any reason, the Contractor cannot produce an acceptable construction schedule within 30 Business Days of initial submission of the construction schedule, the Contractor shall be in default of the Contract.

**GC 7.01.08 Errors Relating to the Contract**

- .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 MTO 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 paragraph .01 of clause GC 7.01.08, Errors Relating to the Contract.
- .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 7.01.09 Utilities**

- .01 The Contractor shall arrange with the appropriate Utility authorities for the stake out of all underground Utilities and service connections that may be affected by the Work. For ministry owned Utilities, the Contractor shall arrange with the Contract Administrator to have locates completed by the ministry or its agents at the start of the Work, and on Contracts lasting more than one construction season, at the end of seasonal shutdown periods. Locates of ministry owned Utilities at other times shall be the responsibility of the Contractor and at the Contractor's cost. The Contractor shall be responsible for any damage done to the underground Utilities by the Contractor's forces during construction. The Contractor shall also be responsible for any damage done to the service connections. The Contractor shall attend such meetings with the Contract Administrator to ensure coordination of activities among the Contractor and the Utility authorities for each Utility affected by the Contract.
- .02 In the case of damage to, or interference with any Utilities, pole lines, pipe lines, conduits, farm tiles, or other public or privately owned works or property, the Contractor shall immediately notify the Owner and the Contract Administrator of the location and details of such damage or interference.

**GC 7.01.10 Public Ceremony**

- .01 Only the Owner shall be permitted to make the first public announcements or hold the first public ceremonies about the award or acceptance of the Contract, project milestones, and Contract Completion. The Contractor shall not hold any public ceremony or make any public announcements about the above matters prior to the Owner doing so, without first obtaining the prior written approval of the Owner. The Contractor shall refer all media inquiries regarding such initial announcement and ceremonies to the Owner.
- .02 In paragraph .01 of clause GC 7.01.10, Public Ceremony, "project milestones" means any significant event in the completion of the Work, which includes the completion of a major component of the Work; the opening or closing of lanes, ramps, and structures; and any Work associated with incentives and disincentives described in the Contract Documents.



**GC 7.02****Layout**

- .01 Prior to commencement of construction, the Contract Administrator and the Contractor shall locate on site those property bars and benchmarks that are necessary to delineate the Working Area and to lay out the Work, as shown on the Contract Drawings.
- .02 The Contractor shall be responsible for the preservation of all property bars while the Work is in progress, except those property bars that require removal to facilitate the Work. Any property bars disturbed, damaged, or removed by the Contractor's operations shall be replaced under the supervision of an Ontario Land Surveyor, at no cost to the Owner.
- .03 The Contractor shall provide qualified personnel to layout and establish all lines and grades necessary for construction. The Contractor shall notify the Contract Administrator of any layout work carried out.
- .04 The Contractor shall assume full responsibility for alignments, elevations, and dimensions of each and all parts of the Work.
- .05 All stakes, marks, and reference points provided by the Contract Administrator shall be carefully preserved by the Contractor. In the case of their destruction or removal, such stakes, marks, and reference points shall be replaced by the Contractor at no cost to the Owner.
- .06 The Contract Administrator shall provide a grading report to establish grading cross-sections. During the progress of the work the Contractor shall notify the Contract Administrator forthwith of any errors, omissions, or inconsistencies in the geometric information and the controls provided by the Owner. This report contains all necessary information relating to distance and elevation for each station necessary for the construction of the Work.
- .07 Certification shall be required for the layout of the following components of the Work:
  - a) Bridges;
  - b) Retaining walls;
  - c) Culverts having a span of 5 m or more;
  - d) Tunnelling, excluding augered tunnels;
  - e) Sewers of 2 m diameter or more.

For each of the identified components above, the Contractor shall provide to the Contract Administrator, on MTO form PH-CC-811, Certification of the Component, over the seal and signature of either an Engineer or an Ontario Land Surveyor, the following:

- a) Certification of the final pile location before proceeding with footings.
  - b) Certification that the footings have been constructed to the designated lines and grades before proceeding with any work above the footings.
  - c) Final elevations of bridge seats and certification of span dimensions before proceeding with any work on the superstructure of each bridge.
  - d) Actual profiles on the beams before proceeding with any work on the deck of each bridge.
  - e) Certification of the final screed rail elevations before proceeding with the deck placement.
  - f) Certification that each of the identified components of the Work has been constructed to the designated lines and grades before the Contract Completion Certificate.
- .08 The Contractor shall supply the Owner with all as-constructed horizontal and vertical data related to the layout of the Work before the Contract Completion Certificate.
  - .09 The Contractor shall advise the Contract Administrator of the intended layout schedule at the weekly meeting by identifying the survey activities planned for the following week, including any miscellaneous surveying items.



## **GC 7.05**

### **Use of Construction Equipment and Unlicensed Vehicles**

- .01 Unlicensed vehicles and construction equipment, with the exception of rock trucks, shall not travel, work, or stop within 4 m of a lane carrying traffic, except where construction operations necessitates the Working Area be less than 4 m from the traffic in which case, the Contractor shall erect delineators along the edge of the travelled lane, according to paragraph .01 of subsection GC 7.08, Maintaining Roadways and Detours.
- .02 The use of unlicensed rock trucks on facilities open to public traffic shall be permitted only when hauling rock material within the construction zone and subject to the following:
  - a) For unlicensed rock trucks that are less than 3.2 m wide and equipped with foot operated brakes, headlights, and front and rear turn signals, flagging is required at entrance and exit points to warn public traffic.
  - b) For all other unlicensed rock trucks, flagging is required at entrance and exit points and either pilot vehicles or flagging is required along the route to warn public traffic and control movement.
- .03 The use of unlicensed vehicles and construction equipment on bridges under construction and bridges within the Working Area shall be subject to the following requirements:
  - a) Loading shall not exceed the limits specified elsewhere in the Contract Documents.
  - b) Unlicensed vehicles and construction equipment that comply with the legal load limits specified in the *Highway Traffic Act* may be used. Except as noted in paragraph .03, c) of subsection GC 7.05, Use of Construction Equipment and Unlicensed Vehicles, the Contractor shall not cause or permit such vehicles to be loaded beyond the legal limit specified in the *Highway Traffic Act*, including bridge postings and load restrictions. The Contractor shall provide proof of load weight to the Contract Administrator for any disputed loads.
  - c) Unlicensed vehicles and construction equipment that is overloaded in terms of the *Highway Traffic Act* or track propelled equipment greater than 30 tonnes, which the Contractor proposes to drive over bridges under construction and bridges within the Working Area shall be subject to approval. The Contractor shall submit to the Contract Administrator a description and detailed configuration of every such equipment and a certificate, signed and sealed by an Engineer. The certificate shall list the site numbers of every bridge that may be traversed by the subject equipment and state that each Engineer has evaluated, according to the requirements of CSA S6:19, every bridge listed, and that each bridge can safely support all loads.
- .04 Unless specified otherwise in the Contract Documents, pile driving equipment shall not be permitted to operate on bridges.

## **GC 7.06**

### **Carrier Safety Compliance**

#### **GC 7.06.01**

#### **Contractor Operation of a Commercial Motor Vehicle**

- .01 Where the Contractor is a Commercial Vehicle Operator's Registration (CVOR) Holder who intends to operate a Commercial Motor Vehicle in the performance of the Contract or in the haulage of Materials to, on, or from the Working Area, the Contractor shall provide to the Owner a copy of the Contractor's CVOR Abstract as follows:
  - a) The first CVOR Abstract shall be provided to the Owner before the Contractor operates a Commercial Motor Vehicle in the performance of the Contract or in the haulage of Materials to, on, or from the Working Area, and
  - b) CVOR Abstracts shall be submitted to the Owner:
    - i. Annually in October.
    - ii. Periodically upon request anytime during the period of the Contract.

The search date recorded on any CVOR Abstract shall not exceed 30 Days from the date that it is provided to the Contract Administrator.

- .02 If at any time the Contractor holds an unsatisfactory or conditional CVOR rating, the Contractor shall advise the Contract Administrator within 72 hours:
- a) The Contractor's Commercial Motor Vehicles shall not operate in the performance of the Contract or in the haulage of materials to or from the Working Area while the Contractor holds an unsatisfactory CVOR rating.
  - b) The Contract Administrator may permit a Contractor with a Conditional CVOR rating to operate their vehicles in the performance of the Contract or in the haulage of materials to or from the Working Area, subject to the following performance criteria:
    - i. Within 10 Days of having a Conditional CVOR Rating, the Contractor produces an approved plan confirming that drivers and vehicles safety programs are in place to ensure compliance with the safety rating requirement, the *Highway Traffic Act*, and *National Safety Code*; and
    - ii. Achieve a satisfactory, satisfactory unaudited, or excellent safety rating under the MTO Carrier Safety Rating Program and have a violation rate of under 70% within 12 months of the date the plan is submitted to the Owner, or show improvement in the Carrier's Safety Performance over the term of the Contract by reducing the Carrier's pointable accidents, pointable convictions and out of service inspections.

Where a Contractor fails to achieve the performance criteria outlined above, the Contract Administrator may require the Contractor to subcontract all work requiring a CVOR Certificate and the Contractor's bidding privileges on future work with the Owner may be affected.

Paragraph .02, b), i. and ii. of clause GC 7.06.01, Contractor Operation of a Commercial Motor Vehicle, are in addition to any carrier interventions or sanctions imposed through the MTO CVOR program.

#### **GC 7.06.02 Subcontractor and Other Operation of a Commercial Motor Vehicle**

- .01 Prior to any CVOR Holder operating a Commercial Motor Vehicle in the performance of the Contract or in the haulage of material to, on, or from the Working Area, the Contractor shall examine the CVOR Abstract of every CVOR Holder with whom the Contractor intends to subcontract, directly or indirectly, to operate a Commercial Motor Vehicle in the performance of the Contract or in the haulage of materials to, on, or from the Working Area. The Contractor shall provide the Contract Administrator with the CVOR Holder's name and CVOR Certificate number of all Subcontractors.

The search date of any CVOR Level 1 Abstract shall not exceed 30 Days from the date that it is provided to the Contractor.

The Contractor shall retain copies of all CVOR Abstracts for examination by the Owner, upon request.

- .02 The CVOR Holder shall not hold a dormant or inactive CVOR certificate at any time during the period of the Contract.

The Contractor shall, at all times throughout the duration of the Contract, ensure that no CVOR Holder with an unsatisfactory CVOR rating works, directly or indirectly, for the Contractor in the operation of a Commercial Motor Vehicle in the performance of the Contract or in the haulage of materials to, on, or from the Working Area. The Contractor shall require Subcontractors, in turn, to require compliance with subsection GC 7.06, Carrier Safety Compliance, from any Person with whom they contract.

If a CVOR Holder holds an unsatisfactory CVOR rating at any time during the period of the Contract, the Contractor shall inform the Contract Administrator, in writing, within 72 hours of becoming aware, having exercised all due diligence, of such CVOR Holder having an unsatisfactory CVOR rating.

The Contract Administrator may permit a Subcontractor with a conditional CVOR rating to operate their vehicles subject to the following:

- a) Within 10 Days of having a conditional CVOR record, the Subcontractor produces an approved plan confirming that drivers and vehicles safety programs are in place to ensure compliance with the safety rating requirement, the *Highway Traffic Act*, and *National Safety Code*; and

- b) Achieve a satisfactory, satisfactory unaudited, or excellent safety rating under the ministry's Carrier Safety Rating Program and have a violation rate of under 70% within 12 months of the date the plan is submitted to the Owner, or show improvement in the Carrier's Safety Performance over the term of the contract by reducing the Carrier's pointable accidents, pointable convictions, and out of service inspections.

Where a Subcontractor fails to achieve the performance criteria above the Contractor shall within 1 month replace the Subcontractor or CVOR Holder and the Contractor's bidding privileges on future work with the Owner may be affected.

Paragraph .02, a) and b) of clause GC 7.06.02, Subcontractor and Other Operation of a Commercial Motor Vehicle, are in addition to any carrier interventions or sanctions imposed through the MTO CVOR program.

#### **GC 7.07 Condition of the Working Area**

- .01 The Contractor shall maintain the Working Area in a tidy condition and free from the accumulation of debris, other than that caused by the Owner or others.
- .02 During night work, the Contractor shall ensure that the work zone is adequately illuminated to the Contract Administrator's satisfaction for work operations and inspections and the advance warning to traffic.
- .03 The Contractor shall take such steps as may be necessary to control dust resulting from the Contractor's operations or by public traffic, where it is the Contractor's responsibility to maintain a road through the Work, such that it does not:
  - a) Affect traffic;
  - b) Enter surface waters; or
  - c) Escape beyond the right-of-way to cause a nuisance to residents, businesses, or Utilities.

#### **GC 7.08 Maintaining Roadways and Detours**

- .01 Where an existing Roadway is affected by construction, it shall be kept open to traffic, and the Contractor shall, except as otherwise provided in subsection GC 7.08, Maintaining Roadways and Detours, be responsible for providing and maintaining a road through the Work for the duration of the Work, whether along an existing Highway, including the road under construction, or on detours within or adjacent to the Highway according to the OTM.
- .02 The Contractor shall not be required to maintain a Roadway through the Working Area before the Contractor has commenced the Work, or during seasonal shutdown or within any sections of the Roadway where a 12-month general warranty period has commenced. Responsibility for maintenance shall be transferred between the Contractor and the Owner at the commencement of the Work, and the start and end of each seasonal shutdown period. A MTO form PH-CC-771-A, Highway Maintenance Transfer Agreement - Ministry to Contractor and MTO form PH-CC-771-B, Highway Maintenance Transfer Agreement - Contractor to Ministry, prepared by the Contract Administrator, which identifies the date and time that responsibility for maintenance shall be transferred between parties shall be executed by both the Contract Administrator and Contractor prior to the actual turnover date. The Contractor shall not be required to commence any maintenance activities until the turnover date identified on the executed Highway Maintenance Transfer Agreement.

If there is an emergency situation within the Working Area, the Owner may request a third-party maintenance Contractor to provide traffic control and other work necessary to allow reopening of the Roadway to traffic. The Contractor shall coordinate work with the maintenance Contractor and assist as needed.

A minimum of 5 Business Days prior to an anticipated transfer date of responsibility for maintenance, the Contract Administrator, Contractor, and a representative of the Owner's maintenance contractor shall perform a pre-turnover field inspection. The pre-turnover field inspection shall identify deficiencies within the right-of-way and the anticipated timeframe for correction. The Contract Administrator shall be the sole judge on whether or not the noted deficiencies require correction prior to, or after, the turnover date. Provided that the Contractor was given advance written notice of the pre-turnover inspection date, the Contractor shall not delay commencement of the Work or the assumption of responsibility for maintenance because of the existence of deficiencies.

Where work under the Contract is discontinued for any extended period including seasonal shutdown, the Contractor shall, when directed by the Contract Administrator, open and place the Roadway and detours in a passable, safe, and satisfactory condition for public travel. The Contractor shall not be responsible for snow, ice, and frost control on the travelled lanes of the Highway. The Contractor shall be responsible for any snow or ice removal necessary to proceed with the work including behind temporary barriers or other devices, and accumulations that are a result of the Ministry's snow, ice, and frost control measures. The Contractor agrees that snow, ice, and frost control activities of the Ministry's maintenance contractors shall take precedence over the construction within the work zone and agrees not to obstruct any snow, ice, and frost control activities of the Ministry's maintenance contractors.

- .03 The Contractor shall ensure that the Roadway affected by construction is clear of debris. All debris on the travelled portion of the Roadway shall be removed as soon as possible after detection. Debris on the Shoulder shall be removed within 24 hours.
- .04 Where only localized and separated sections of the Highway are affected by the Contractor's operations, the Contractor shall not be required to maintain intervening sections of the Highway until such times as these sections are located within the limits of the Highway affected by the Contractor's general operations under the Contract.
- .05 The Owner shall bear the cost of maintaining, in a satisfactory condition for public traffic, a Roadway through the Working Area. The Contractor shall bring any defects to the attention of the Contract Administrator as soon as they are identified. Such defects include potholes, distortions, pavement edge loss, washouts, drop-offs, and soft or wet areas. Compensation for all labour, Equipment, and Materials to address such defects shall be at the Contract prices appropriate to the work and, where there are no such prices, at negotiated prices. Notwithstanding the foregoing, the cost of providing an operated grader, required to maintain the surface of such Roadways, shall be deemed to be included in the prices bid for the various tender items and no additional payment shall be made.
- .06 Compliance with the foregoing provisions shall in no way relieve the Contractor of obligations under subsection GC 6.01, Protection of Work, Persons, and Property, dealing with the Contractor's responsibility for losses and damage.
- .07 The Contractor shall ensure that earth, mud, aggregate, and other construction debris are not tracked onto the Roadway by construction vehicles.

**GC 7.09 Access to Properties Adjoining the Work and Interruption of Utility Services**

- .01 At all times, the Contractor shall provide the following to properties adjoining the Working Area at no additional cost to the Owner:
  - a) Pedestrian and vehicular access; and
  - b) Continuity of Utility services.
- .02 At all times, the Contractor shall provide access to fire hydrants and water and gas valves located in the Working Area at no additional cost to the Owner.
- .03 Where any interruptions in the supply of Utility services are required and are authorized by the Contract Administrator, the Contractor shall give the affected property owners notice according to subsection GC 7.13, Notices by the Contractor, and shall arrange such interruptions so as to create a minimum of interference to affected property owners.

**GC 7.10 Approvals and Permits**

**GC 7.10.01 General**

- .01 Except as specified in paragraph .02 of clause GC 7.10.01, the Contractor shall obtain any permits, licenses, certificates, and registrations required for the performance of the Work that are in force at the date of tender closing.
- .02 The Owner shall obtain and pay for the necessary plumbing and building permits.
- .03 The Contractor shall arrange for all necessary inspections.

**GC 7.10.02 Water Taking**

- .01 The Owner has obtained from the Ministry of the Environment, Conservation and Parks (MECP) one or more draft Permits to Take Water required by the *Ontario Water Resources Act*, R.S.O 1990, c O.40, and these shall be posted under "Contract Attachments" in the Registry, Appraisal and Qualification System (RAQS) listing of the Contract, as applicable.
- .02 When water taking activities are eligible for registration on the MECP Environmental Activity and Sector Registry (EASR) in accordance with O. Reg. 63/16 - Registrations under Part II.2 of the *Environmental Protection Act - Water Taking*, required supporting technical reports shall also be posted under "Contract Attachments" in the RAQS listing of the Contract, as applicable. Some water taking activities eligible for registration on the MECP EASR may have been included in draft permit(s) and as such no supporting technical reports shall be required or provided.
- .03 No later than 5 Business Days after the pre-work meeting, the Contractor shall submit all information required by MECP according to the cover letter attached to draft permit(s) to the attention of the applicable MECP Regional Office Water Resources Supervisor.
- .04 MECP will issue the permit(s) and Director's Orders under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, exempting water taking activities from registration when they have been included in a permit, as applicable, within 15 Business Days of receipt of all required information from the Contractor.
- .05 The Contractor shall be responsible for the registration of any other water taking activities on the EASR, the acquisition of additional Permits to Take Water, and any required supporting technical reports not provided by the Owner, except when required due to a Change in the Work.
- .06 No later than 2 Business Days prior to the commencement of water taking, the Contractor shall submit a copy of the appropriate Permits to Take Water and Director's Orders, as applicable, and shall provide confirmation of registration of any water taking activities, to the Contract Administrator.

**GC 7.11 Suspension of Work**

- .01 The Contractor shall upon written notice from the Contract Administrator, discontinue or delay any or all of the Work. The Work shall not resume until the Contract Administrator issues such written direction. Delays in these circumstances, shall be administered according to subsection GC 3.07, Delays.

**GC 7.12 Contractor's Right to Stop the Work or Terminate the Contract**

- .01 If the Owner is adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency, the Contractor may terminate the Contract, without prejudice to any other right or remedy the Contractor may have, by giving the Owner or receiver or trustee in bankruptcy written notice.

- .02 If the Work is stopped or otherwise delayed for a period of 30 Days or more under an order of a court or other public authority and provided that such order was not issued as the result of an act or fault of the Contractor or of any Person directly employed or engaged by the Contractor, the Contractor may terminate the Contract, without prejudice to any other right or remedy the Contractor may have, by giving the Owner written notice.
- .03 The Contractor may notify the Owner in writing, with a copy to the Contract Administrator, that the Owner is in default of contractual obligations if the Owner fails to comply with the requirements of the Contract to a substantial degree.
- .04 The Contractor's written notice to the Owner shall advise that if the default is not corrected in the 7 Days immediately following the receipt of the written notice the Contractor may, without prejudice to any other right or remedy the Contractor may have, stop the Work or terminate the Contract.
- .05 If the Contractor terminates the Contract under the conditions set out in subsection GC 7.12, Contractor's Right to Stop the Work or Terminate the Contract, the Contractor shall be entitled to be paid for all work performed according to the Contract Documents and for any losses or damage as the Contractor may sustain as a result of the termination of the Contract.

**GC 7.13 Notices by the Contractor**

**GC 7.13.01 Advance Notice**

- .01 Before any or all of the Work is carried out that may affect the property or operations of any owner or agency of government or any individual, company, partnership or corporation, including a municipal corporation or any board or commission thereof, and in addition to such notices of the commencement of specified operations as are prescribed elsewhere in the Contract Document, the Contractor shall give at least 48 hours advance written notice of the date of commencement of such work to the individual person, company, partnership, corporation, board, or commission so affected.

**GC 7.13.02 Environmental Incident Management Under Legislation Protecting the Environment and Natural Resources**

- .01 The Contractor shall be in strict compliance with the requirements of the following legislation, as amended, regarding Environmental Incidents under the control of the Contractor or that are a result of the Contractor's operations:
  - a) *Environmental Protection Act*, R.S.O. 1990, c. E.19
  - b) *Fisheries Act*, R.S.C. 1985, c. F.14
  - c) *Technical Standards and Safety Act*, 2000, S.O. 2000, c. 16
  - d) *Pesticides Act*, R.S.O. 1990, c. P.11
  - e) *Ontario Water Resources Act*, R.S.O. 1990, c. O.40
  - f) *Transportation of Dangerous Goods Act*, 1992 (S.C.1992, c. 34)
- .02 The requirements of the legislation listed in paragraph .01 of clause GC 7.13.02, Environmental Incident Management Under Legislation Protecting the Environment and Natural Resources, include but are not restricted to:
  - a) Immediate containment of the material, pollutant, contaminant, deleterious substance, or dangerous good;
  - b) Immediate notification of the Environmental Incident to the proper authority; and
  - c) Cleanup and restoration of the environment to preconditions.
- .03 The Contractor shall possess a plan demonstrating that Environmental Incidents shall be managed to satisfy the requirements of paragraphs .01 and .02 of clause GC 7.13.02, Environmental Incident Management Under Legislation Protecting the Environment and Natural Resources.





- .02 Record Drawings shall show all differences, design changes, and deviations from the original Contract Drawings in red with references to the Contractor's survey and quality control inspection records beside each entry.

**GC 7.18 General Warranty**

- .01 Unless otherwise specified in the Contract Documents for certain Materials or components of the Work, the Contractor shall be responsible for the proper performance of the Work only to the extent that the design and specifications permit such performance. The onus is on the Contractor to show through engineering analysis that the design and specifications are deficient for the proper performance of the Work.
- .02 Subject to the previous paragraph, the Contractor shall correct promptly at no cost to the Owner, defects or deficiencies in the Work that appear during the period of 12-months after the date of substantial performance as set out in the Certificate of Substantial Performance or such longer periods as may be specified for certain Materials or components of the Work. The Owner shall promptly give the Contractor written notice of observed defects or deficiencies. The Contractor shall submit a comprehensive repair proposal, including traffic control measures, to the Owner within 15 Days of receiving written notification of the defects or deficiencies.

Notwithstanding the above, on Contracts lasting more than 1 construction season, the Owner shall allow the 12 month general warranty period to commence prior to the date of substantial performance for complete sections of Roadways that have been completed in their entirety, have a value of greater than \$5,000,000, and are in use by public traffic. In such cases, the Contractor shall apply in writing to the Owner for approval of the start dates of the general warranty for the selected sections of completed Roadways. The written request shall be submitted to Contract Administrator no later than 10 Days prior to the proposed general warranty start dates and include details as to the limits, location, and start date requested. If a request is granted, the Contractor shall correct promptly at no cost to the Owner, defects or deficiencies in the completed section of Roadway, which appear during the period of 12-months after the date of commencement of the warranty on the completed section of Roadway

- .03 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph .02 of subsection GC 7.18, General Warranty.

**GC 7.19 Accounts Payable**

- .01 The Contractor shall pay the Rate of Interest after 28 Days on accounts payable to the Owner at the Rate of Interest.

**GC 7.20 Stockpiling of Material**

- .01 The Contractor shall not stockpile material weighing more than 1.5 kPa on spans of bridges in which concrete removal has commenced for rehabilitation.
- .02 In cases other than stipulated in paragraph .01 of subsection GC 7.20, Stocking of Material, the Contractor shall not stockpile material weighing more than:
  - a) 5 kPa on decks of highway bridges unless specified otherwise in the Contract Documents.
  - b) 2 kPa on decks of pedestrian bridges unless specified otherwise in the Contract Documents.

## **SECTION GC 8.0 - MEASUREMENT AND PAYMENT**

### **GC 8.01 Measurement**

#### **GC 8.01.01 Quantities**

- .01 Quantities for progress payments shall be construed and held to be approximate. The final quantities for the issuance of the Contract Completion Certificate shall be based on the measurement of the Work completed.
- .02 Measurement of the quantities of the Work shall be either by Actual Measurement or by Plan Quantity as indicated in the Contract Documents. Adjustments to Plan Quantities shall normally be made by modifying boundary lines and grades of the work on the plans to calculate new adjusted Plan Quantities but may, where appropriate, be made using Actual Measurements. Those items identified on the tender by the notation (P) in the unit column shall be paid according to the Plan Quantity. Items where the notation (P) does not occur shall be paid according to Actual Measurement or lump sum.

#### **GC 8.01.02 Variations in Tender Quantities**

- .01 When it appears that the quantity of work to be done or Material to be supplied by the Contractor or both under a unit price tender item may exceed or be less than the tender quantity, the Contractor shall proceed to do the work or supply the Material or both required to complete the tender item and payment shall be made for the actual amount of work done or Materials supplied or both at the unit prices stated in the tender except as provided below:
  - a) In the case of a Major Item, when the quantity of work performed or Material supplied by the Contractor or both exceeds the tender quantity by more than 15%, either party to the Contract may make a written request to the other party to negotiate a revised unit price for that portion of the Work performed or Material supplied or both which exceeds 115% of the tender quantity. The negotiation shall be carried out as soon as reasonably possible. Any revision of the unit price shall be based on the actual cost of doing the work or supplying the Material or both under the tender item plus a reasonable allowance for profit and applicable overhead.
  - b) In the case of a Major Item, when the quantity of work performed or Material supplied by the Contractor or both is less than 85% of the tender quantity, the Contractor may make a written request to negotiate payment for the portion of actual overheads and fixed costs applicable to the amount of the underrun in excess of 15% of the tender quantity. For purposes of the negotiation, the overheads and fixed costs applicable to the item are deemed to have been prorated uniformly over 100% of the tender quantity for the item. Overhead costs shall be confirmed by a statement certified by the Contractor's senior financial officer or auditor and may be audited by the Owner.

Alternatively, where both parties agree, an allowance equal to 10% of the unit price on the amount of the underrun in excess of 15% of the tender quantity shall be paid. Written requests for compensation shall be received no later than 180 Days after Contract Completion.
- .02 When it appears that the amount of work to be done or Material to be supplied by the Contractor or both under a lump sum concrete item may exceed or be less than the amount shown in the Contract Documents, the Contractor shall proceed to do the work or supply the Material or both required to complete the tender item and payment shall be made on the basis of the lump sum price shown in the tender except as provided below:
  - a) Where the theoretical quantity as determined from the design dimensions of the structure components exceeds the estimated quantity of concrete stated in the Contract Documents by more than 3% and when such increase does not result from a change in design made according to paragraph .01 of clause GC 3.10.01, Changes in the Work, then the Contractor may make a written request to the Contract Administrator to negotiate the compensation payable for that portion of the concrete that exceeds 103% of the estimated quantity. The negotiation shall be carried out as soon as reasonably possible. Any increase in the compensation shall be based on the actual cost of supplying and placing that portion of the concrete which exceeds 103% of the estimated quantity plus a reasonable allowance for profit and overhead.

b) Where the theoretical quantity as determined from the design dimensions of the structure components is less than 97% of the estimated quantity of concrete stated in the Contract Documents and where such difference does not result from a change in design made according to paragraph .01 of clause GC 3.10.01, Changes in the Work, then the Contract Administrator may make a written request to the Contractor to negotiate the compensation payable for the item to reflect the change in quantity. The negotiation shall be carried out as soon as reasonably possible. Any decrease in compensation shall be based on the estimated value of the amount of underrun in excess of 3% of the estimated quantity and shall include a reasonable allowance for profit and overhead.

.03 The Contractor or the Contract Administrator may dispute the quantity that is specified for payment on a Plan Quantity basis. The dispute shall be supported by calculations, drawings, and any other evidence indicating why the Plan Quantity is believed to be in error. If the Plan Quantity is found to be in error, payment shall be made according to the adjusted Plan Quantity.

## **GC 8.02 Payment**

### **GC 8.02.01 Non-Resident Contractor**

.01 The Contractor shall obtain all necessary approvals, consents, permits, licences, certificates, registrations, and other authorizations prior to execution of the Contract.

.02 The Contractor shall ensure that all Subcontractors the Contractor proposes to use for carrying out any of the Work required by the Contract and who are non-resident in Ontario have obtained all necessary approvals, consents, permits, licences, certificates, registrations, and other authorizations prior to execution of the subcontract.

### **GC 8.02.02 Price for Work**

.01 Prices for the Work shall be full compensation for all labour, Equipment, and Material required to do the work. The term "all labour, Equipment, and Material" shall include Hand Tools, supplies, and other incidentals.

.02 Payment for work as shown or detailed in the Contract Documents not specifically detailed as part of any one item and without specified details of payment shall be deemed to be included in the item with which it is associated.

.03 Payment adjustments determined according to the Contract Documents shall be applied to the payment due to the Contractor.

### **GC 8.02.03 Advance Payments for Material**

.01 The Owner shall make advance payments for Material intended for incorporation in the Work upon the written request of the Contractor and according to the following terms and conditions:

a) In advance of receipt of the shipment of the Material, the Contractor shall, arrange for adequate and proper storage facilities and notify the Contract Administrator of the location of the facilities.

b) The value of Aggregates, processed and stockpiled, shall be assessed by the following procedure:

#### **i. Sources Other Than Commercial**

(A) Granular A, B, and M shall be assessed at the rate of 60% of the tendered unit price.

(B) Coarse and fine aggregates for hot mix asphalt and surface treatment shall be assessed at the rate of 25% of the tendered unit price multiplied by the tonnage of each Aggregate in stockpile. Prior to payment, the Contractor shall provide test results and mix designs to demonstrate that the materials are capable of producing a mix design conforming to the Contract Documents.

ii. **Commercial Sources** - Payment for separated coarse and fine aggregates shall be considered at the same rate as sources other than commercial, when such Materials are stockpiled at a commercial source. Advance payments for other materials located at a Commercial Source shall not be made.

- c) Payment for all other Materials, unless specified otherwise elsewhere in the Contract Documents, shall be based on an invoice identifying the Contract and marked as "paid" and signed by the Material supplier. In the event of Materials supplied by a Subcontractor, the Contractor shall provide the original Material supplier invoice marked as paid and signed by the Material supplier and an invoice from the Subcontractor marked as paid and signed by the Subcontractor.
- d) The payment for all Materials shall be prorated against the appropriate tender item by paying for sufficient units of the item to cover the value of the Material. Such payment shall not exceed 80% of the tendered unit price for the item.
- e) All Materials for which the Contractor wishes to receive advance payment shall be placed in the designated storage location within the Province of Ontario, immediately upon receipt of the Material and shall thenceforth be held by the Contractor in trust for the Owner as collateral security for any monies advanced by the Owner and for the due completion of the Work. The Contractor shall not exercise any act of ownership inconsistent with such security or remove any Material from the storage locations, except for inclusion in the Work, without the consent of the Contract Administrator, in writing. The Contractor shall arrange for a lease agreement with any private property owner where such Material is to be stored on MTO form PH-CC-733, Owner Tenancy and Access Agreement, granting the Owner tenancy and access for any storage location on private property for the sum of \$1.
- f) Such Materials shall remain at the risk of the Contractor who shall be responsible for any loss, damage, theft, improper use, or destruction of the Material, however so caused.

**GC 8.02.04 Certification and Payment**

**GC 8.02.04.01 Progress Payment Certificate**

- .01 The Contractor shall submit an application for progress payment monthly after starting the Work on the Contract. The application for progress payment shall be for Work completed at the agreed to monthly Cut-off Date.

Within 7 Days following the agreed to monthly Cut-off Dates, the Contractor shall submit an updated application to the Contract Administrator.

The updated application shall contain two parts as follows:

**Part 1 - A Proper Invoice** which shall contain:

- a) Contractor's name and address;
- b) Date of the Proper Invoice and the period for Work performed;
- c) Information identifying the Owner and Contract number for Work performed;
- d) A description, including quantity where appropriate, of Work performed;
- e) The amount payable for the Work performed and the payment terms;
- f) The name, title, telephone number, and mailing address of the Person to whom payment is to be sent; and
- g) Tender item numbers, description, unit of measurement, original tender quantity, agreed upon changes to the tender quantity, total quantity completed to date, quantity completed previous Proper Invoice, quantity completed this period, unit price, dollars this period, and total dollars to date.

Subtotals shall be detailed for tender items, approved Change Orders, and payment adjustments as specified in the Contract Documents.

The tender item information appearing on the Proper Invoice shall conform exactly with those as shown in the bid tender document.

**Part 2 - Quantity of Work Completed Sheets** detailing:

- a) Tender item numbers, sub-item numbers, unit of measurement, location description, original tender quantity, agreed upon changes to the quantity, total quantity completed to date, quantity completed previous Proper Invoice, quantities completed and reconciled with the Contract Administrator for this period.

The tender item information appearing on the quantity of Work completed sheets shall conform exactly with those provided in the bid tender document. The quantity of Work completed sheet information shall be sufficient to allow the Contract Administrator to verify and confirm the Work on the Proper Invoice for payment.

Proper Invoices and quantity of Work completed sheets shall be submitted in hard-copy or digital format. For payment purposes, the Contract Administrator shall review the updated application for progress payment within 7 Days of receipt for completeness and to verify the quantities of Work have been completed as specified in the Contract Documents.

Applications for progress payments containing deficiencies, errors, or non-compliance with the Contract Documents shall be deemed to contain an invoice that does not meet the requirements of a Proper Invoice and shall be returned to the Contractor for correction.

The Owner shall pay the Proper Invoice no later than 28 Days after receiving the Proper Invoice.

**GC 8.02.04.02 Payment Adjustment for Changes in the Fuel Price Index**

- .01 The Owner shall adjust the payment to the Contractor based on changes to the Owner's fuel price index. The fuel price index shall be calculated by the Ontario Ministry of Energy and shall be based on the rack price, including taxes, of diesel fuel. The fuel price index shall be published monthly in the Owner's Contract Bulletin for each calendar month and shall reflect the previous month's prices. The Contractor shall use this index when calculating flow through to truckers, Subcontractors, and shippers and suppliers.
- .02 A payment adjustment, excluding any payments for Changes in the Work and Additional Work, shall be calculated monthly and applied to the monthly progress payment.
- .03 It is agreed by the parties to the Contract that it is impracticable and difficult to ascertain actual fuel consumed on the Contract, and the parties hereto agree that for the purpose of calculating the total fuel price adjustments, the amount of fuel consumed shall be determined using the rates in Table 8.02.04.02-1. The payment provided for the items listed in Table 8.02.04.02-1 shall be deemed to be for all Work.
- .04 Payments provided under clause GC 8.02.04.02, Payment Adjustment for Changes in the Fuel Price Index, shall be used to compensate all trucks, Subcontractors, and shippers and suppliers performing any Contract Work or delivering material for the Contract including items not listed in Table 8.02.04.02-1.
- .05 The compensation provided through this provision shall also be used for the purpose of providing fuel price adjustment compensation to suppliers and shippers. Should the Contractor be required by a supplier to negotiate and provide fuel price adjustment compensation to any party providing Materials to the Contract, the Owner shall not provide any compensation for this purpose in addition to that provided through these MTO General Conditions of Contract.
- .06 Fuel Price Adjustment Calculation
  - a) The Contractor's payment adjustment for each month shall be calculated using the following formula:

$$Cfpa = (Ctem) \times \frac{(I - Bc)}{100}$$

Where:

Cfpa = fuel price adjustment paid to Contractor or Owner, in dollars

Ctem = total estimated monthly fuel consumption

I = progress payment month fuel price index (for the month that the work was completed in)

Bc = fuel price index in the month that the Contract was advertised for tender

- b) The progress payment month fuel index shall be published the first Friday of every month in the Owner's Contract Bulletin.
- c) The total monthly fuel consumption shall be calculated by multiplying the consumption rates in Table 8.02.04.02-1 by the work accomplished in the current month for each applicable item and totalling the volume in litres.
- d) Only tender item quantities or work done at the tender item price shall be included in the calculation.

.07 Payment Certificate Documentation

- a) When (I-Bc) (progress payment month fuel price index - advertising month fuel price index) is positive, the Contractor shall receive a payment.
- b) When (I-Bc) (progress payment month fuel price index - advertising month fuel price index) is negative the Owner shall receive a credit.
- c) The Contractor shall show the fuel price adjustment as a line item on each progress payment certificate and the final payment certificate. The item shall be called fuel price adjustment.

.08 Fuel Price Adjustment Flow Through

- a) The Contractor agrees to adjust the payment to each trucker hired directly by the Contractor for execution of part of the Work according to the following formula:

$$Tfpa = (Tmpp) \times \frac{(I - Bt)}{Bt} \times 0.17$$

Where:

Tfpa = fuel price adjustment paid to trucker, in dollars

Tmpp = monthly payment to trucker, in dollars

Bt = fuel price index in the month that the Contract with the trucker was entered into either verbally or in writing

I = progress payment month fuel price index (for the month that the work was completed in)

The fuel price adjustment paid to each trucker (Tfpa) shall be calculated for each calendar month and may be positive or negative.

- b) The Contractor agrees to adjust the payment to each Subcontractor according to the following formula:

$$Sfpa = (Smpp) \times \frac{(I - Bs)}{Bs} \times \frac{Fn}{100}$$

Where:

Sfpa = fuel price adjustment paid to the Subcontractor, in dollars

Smpp = monthly progress payment to the Subcontractor, in dollars

Bs = fuel price index in the month that the Contract with the Subcontractor was entered into either verbally or in writing

I = progress payment month fuel price index (for the month that the work was completed in)

Fn = fuel consumption factor as negotiated between the Contractor and the Subcontractor as a percentage of the value of the subcontract

- c) The Contractor shall report the negotiated fuel consumption factor (Fn) on MTO form PH-CC-744, Fuel Consumption Listing Subcontractor, listing all subcontracts, and the corresponding negotiated fuel consumption factor. The form shall be updated monthly or as changes and additions arise.
- d) The Contractor also agrees that each subcontract shall contain a requirement that the Subcontractor shall make a fuel price adjustment to each trucker hired directly by the Subcontractor for execution of part of the work according to the same formula and conditions used by the Contractor to make fuel price adjustments to truckers, and provide such confirmation on MTO form PH-CC-745, Fuel Consumption Tracking Subcontractor, for each trucker.

**GC 8.02.04.03 Certification of Subcontract Completion**

- .01 Before the Work has reached the stage of substantial performance; the Contractor may notify the Contract Administrator, in writing that a subcontract is completed satisfactorily and ask that the Contract Administrator certify the completion of the subcontract.
- .02 The Contract Administrator shall determine if the subcontract has been satisfactorily completed with all required inspections and testing required for the subcontract work and, if the Contract Administrator so determines, shall certify completion using MTO form PH-CC-797, Certificate of Completion of Subcontract.
- .03 Within 7 Days of the date the subcontract is certified complete, the Contract Administrator shall give a copy of the certificate to the Contractor and to the Subcontractor concerned.

**GC 8.02.04.04 Subcontract Statutory Holdback Release Certificate and Payment**

- .01 At the time of issuance of the Certificate of Completion of Subcontract, the Contract Administrator shall:
  - a) Prepare a subcontract completion payment certificate showing:
    - i. The final prices for items;
    - ii. The amount of holdback monies;
    - iii. The amount due the Contractor.
  - b) Provide to the Contractor, the subcontract completion payment certificate within 10 Days of the date the subcontract was certified complete, for the Contractor to sign and return within 5 further Days. The Contract Administrator shall release to the Subcontractor through the Contractor the 10% holdback retained by the Owner in respect of the work covered by the said subcontract after being certified completed and providing that all lien claims that may be claimed against the holdback for the subcontract work have been expired or been satisfied or discharged, or otherwise provided for according to the *Construction Act*, and providing that the Contractor has furnished to the Contract Administrator a statutory declaration in a form supplied by the Owner that the said Subcontractor has discharged all liabilities incurred by the Subcontractor in carrying out the said subcontract.
- .02 The Contractor shall make payment of the said subcontract to the Subcontractor concerned pursuant to the *Construction Act*.
- .03 Release of holdback monies by the Owner in respect of a subcontract according to the foregoing shall not relieve the Contractor or its Surety of any of their responsibilities.
- .04 Payment for subcontracts certified complete pursuant to the Contract and the *Construction Act*, including the payment of the statutory holdback, shall be made no later than 120 Days of the date on which the Work was certified complete, when all the liens have been satisfied according to Section 25 of the *Construction Act*.



**GC 8.02.04.05****Certificate of Substantial Performance**

- .01 Application for substantial performance by the Contractor shall be submitted in the form of a letter, accompanied with:
  - a) An application for payment at substantial performance in a form satisfactory to the Contract Administrator for all work to date, the amount of the 10% holdback, and the amount due.
  - b) A release, on MTO 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.
  - c) A statutory declaration, on MTO form PH-CC-817, Application for Substantial Performance/Contract Completion, that all liabilities incurred by the Contractor and the Subcontractors in carrying out the Contract have been discharged except for the statutory holdbacks properly retained.
  - d) A satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board.
- .02 Upon written application by the Contractor for substantial performance, the Contract Administrator shall conduct an inspection of the Work to determine if the Work is substantially performed and the date for substantial performance. The Contractor's application shall detail non-conformances, defects to be rectified, and Work yet to be completed. After inspection, the Contract Administrator shall provide a list of deficiencies and Work yet to be completed in addition to the Contractor's list. The Contractor's list of non-conformances, defects, and Work yet to be completed together with the Contract Administrator's list of same shall be combined and referred to as Finishing Work. All deficiencies and Work to be completed from the Finishing Work Deficiency List shall be completed prior to Contract Completion. Any additional defects and deficiencies for Work previously accepted as substantially performed shall be completed within 60 Days of Contract Completion, unless prevented by winter weather conditions; in such case, the defects and deficiencies shall be corrected by June 15<sup>th</sup> of the following year. Defects and deficiencies on Work completed after substantial performance shall be completed prior to Contract Completion.
- .03 Upon verifying that the Contract has been substantially performed, the Contract Administrator shall issue a Certificate of Substantial Performance and shall set out in the Certificate of Substantial Performance the date on which the Contract was substantially performed and within 7 Days after the signing the said certificate the Contract Administrator shall provide a copy to the Contractor.
- .04 Upon receipt of a copy of the Certificate of Substantial Performance, the Contractor shall arrange to have the certificate published in a construction trade newspaper and the Contractor shall provide to the Contract Administrator proof that the certificate was published. Where the Contractor fails to publish a Certificate of Substantial Performance within 7 Days of receiving the certificate, the Owner shall publish the certificate in the *Daily Commercial News* and charge the Contractor \$1,000 for the costs of advertising and administration. Subject to the *Construction Act*, the 60-Day lien period shall start on the date the Certificate of Substantial Performance is published.
- .05 Except as otherwise provided for in Section 31 of the *Construction Act*, the 60-Day lien period prior to the payment of statutory holdback shall commence from the date of publication of the Certificate of Substantial Performance as provided for in paragraph .04 of clause GC 8.02.04.05, Certificate of Substantial Performance.

**GC 8.02.04.06****Substantial Performance Payment and Statutory Holdback Release Payment**

- .01 Upon receipt of the application for payment at substantial performance, the Contract Administrator shall check the application and advise the Contractor of any discrepancies. Any of these discrepancies that are unresolved prior to the expiry of the lien period shall be treated as set-offs.
- .02 Subject to any outstanding liens and permissible set-offs, the Owner shall issue payment, including the release of the Basic Holdback on the Work completed, within 28 Days, where all the liens have expired or been satisfied, discharged or otherwise provided for pursuant to the *Construction Act*.

- .03 In addition to any permissible set-offs, Holdback for Finishing Work shall be retained at the rate of 10%, on all Work performed after the date of the Certificate of Substantial Performance.
- .04 If the Contract provides for a completion schedule that is longer than 1 year, Total Bid Price is greater than \$10,000,000 and there are no outstanding liens, the Contractor may request payment of the retained Basic Holdback on an annual basis. When a request is received, the Owner shall issue payment to reduce the holdback on work done from 10% to 2½%, plus the amount of the Owner's set-offs, provided that the Contract had not been substantially performed and the estimated value of the work performed is greater than 60% of the original tender value for a Contract having an expected duration of two construction seasons or less, or 40% for a Contract having an expected duration of more than two construction seasons.
- .05 The holdback may not be released to the Contractor within the timeline according to clause GC 8.02.04.06, Substantial Performance Payment and Statutory Holdback Release Payment, when Form 6 of Ontario Regulation 303/18 of the *Construction Act* is provided to the Contractor to indicate notice of non-payment of holdback and published by the Owner in the *Daily Commercial News* as provided in Section 27.1 of the *Construction Act*. The Contract Administrator shall notify the Contractor, in writing, of its publication no later than 3 Days after the publication of the notice of non-payment.
- .06 Within 3 Days after receiving Form 6 of Ontario Regulation 303/18 of the *Construction Act* from the Contract Administrator, the Contractor shall notify the affected Subcontractor(s) providing a copy of the notice.
- .07 Payments for Work certified as substantially performed, including release of holdback, shall be made no later than 135 Days of the date of publication of substantial performance. The Owner shall release the holdback at the end of the 60-Day lien period providing all liens are expired or been satisfied, discharged or otherwise provided according to the *Construction Act*. This payment shall be made within 28 Days of the expiry of the 60-Day lien period and subject to Subsection 26.1 of the *Construction Act*.

#### **GC 8.02.04.07 Certificate of Contract Completion**

- .01 Application for Contract Completion may be requested by the Contractor once all services and Material required by the Contract have been supplied, exclusive of any warranties, and shall be submitted in the form of a letter, accompanied with:
  - a) An application for payment at Contract Completion in a form satisfactory to the Contract Administrator for all work to date, the amount of the 10% holdback, and the amount due the Contractor.
  - b) A release, on the MTO 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).
  - c) A statutory declaration, on MTO form PH-CC-817, Application for Substantial Performance/Contract Completion, by the Contractor to the Contract Administrator that all liabilities incurred by the Contractor and Subcontractors in carrying out the Contract have been discharged, except for the statutory holdbacks properly retained.
  - d) A satisfactory Certificate of Clearance from the Workplace Safety and Insurance Board.
- .02 Upon confirming the Contract is complete, the Owner shall issue a Certificate of Contract Completion on the MTO form PH-CC-890, Certificate of Contract Completion, and shall set out in the form the date on which the Contract was completed (date of Contract Completion) and within 7 Days after the signing the said certificate, the Owner shall provide a copy to the Contractor. A Certificate of Substantial Performance shall also be provided, if not previously requested by the Contractor.

- .03 If the Contractor has not applied for or received a Certificate of Substantial Performance, upon receipt of a copy of the Certificate of Contract Completion and the Certificate of Substantial Performance, the Contractor shall arrange to have the Certificate of Substantial Performance published in a construction trade newspaper and the Contractor shall provide to the Contract Administrator proof that the certificate was published. When the Contractor fails to publish a Certificate of Substantial Performance within 7 Days of receiving the certificate, the Owner shall publish the certificate in the *Daily Commercial News* and charge the Contractor \$1,000 for the costs of advertising and administration. Subject to the *Construction Act*, the 60-Day lien period shall start on the date the certificate is published.
- .04 The Certificate of Contract Completion may be issued although not all required Contractor submissions have been provided. The Contractor shall provide all outstanding submissions (e.g., test results, Record Drawings, and manuals) within 20 Business Days of the date of Certificate of Contract Completion. It is anticipated the Owner shall incur damages after such time should the submissions not be received within the above time. The parties agree that liquidated damages of \$400 per Day shall be charged to the Contractor for each Day after 20 Business Days of the date of Certificate of Contract Completion until all submissions have been received.
- .05 Upon receipt of the application for payment at Contract Completion, the Contract Administrator shall check the application and advise the Contractor of any discrepancies. Any of these discrepancies that are unresolved prior to the expiry of the 60-Day lien period shall be treated as a set-off.
- .06 Subject to any outstanding liens and permissible set-offs, the Owner shall issue payment, including the release of any Holdback for Finishing Work on the Work completed, within 28 Days, where all the liens have expired or been satisfied, discharged or otherwise provided for pursuant to the *Construction Act*.

**GC 8.02.04.08 Interest**

- .01 Interest due the Contractor is based on simple interest and is calculated using the applicable Rates of Interest.

**GC 8.02.04.09 Interest for Late Payment**

- .01 When the Contractor has complied with the requirements of the Contract and when payment by the Owner to the Contractor for Work performed, monies to be paid upon the determination resulting from an Adjudication, or for release of the statutory holdback is delayed by the Owner, then the Contractor shall be entitled to interest upon the late payment for Work performed or for the release of the statutory holdback at the Rate of Interest.

**GC 8.02.04.10 Interest for Compensation Requests and Claims**

- .01 Where a Compensation Request and any subsequent Claims are submitted according to the time limits and/or procedure according to subsections GC 3.14, Compensation Request, and GC 3.15, Dispute Resolution, the Owner shall pay the Contractor the Rate of Interest on the amount of the agreed upon price for the Work or on the amount of the settled Claim. The Rate of Interest shall commence from a date 28 Days following the established Cut-off Date which immediately follows the completion of the Work to which the negotiation applies

**GC 8.02.04.11 Owner's Set-Off**

- .01 Subject to Section 26 and Subsection 27.1 of the *Construction Act* and pursuant to Section 12 of the *Construction Act*, the Owner shall retain from monies owing to the Contractor under the Contract an amount sufficient to cover all debts, claims, or damages related to the Contract, any outstanding or disputed liabilities the cost to remedy deficiencies, the reduction in value of substandard portions of the Work, claims for damages by third-parties that have not been determined in writing by the Contractor's insurer, undetermined claims by the Owner according to paragraph .01, a), and paragraph .02, a), of clause GC 8.01.02, Variations in Tender Quantities, and any assessment due the Workplace Safety and Insurance Board.
- .02 Under these circumstances the Owner shall give the Contractor notice.

#### GC 8.02.04.12

#### Contract Completion, Statutory Holdback Release and Final Payment

- .01 The Owner shall release the statutory holdback so as to discharge all claims in respect of the statutory holdback where all liens that may be claimed against the Holdback for Finishing Work have expired or been satisfied, discharged or otherwise provided according to the *Construction Act*.
- .02 Final payment including payment of statutory holdback shall be made no later than 120 Days from the date of Contract Completion upon the expiry of all liens or upon the liens being satisfied, discharged or otherwise provided for pursuant to the *Construction Act*.

#### GC 8.03

#### Payment on a Time and Material Basis

##### GC 8.03.01

##### Definitions

For the purpose of subsection GC 8.03, Payment on a Time and Material Basis, the following definitions apply:

**Actual Payroll Burden** means the payments in respect of the following list of items. No other items shall be permitted in the calculation of the Contractor's Actual Payroll Burden.

- a) **Vacation** means the Contractor's paid time off for vacation earned in each year calculated at salary cost, including overtime, according to the Contractor's policy.
- b) **Sick Leave** means the Contractor's paid time off due to sickness, accident, or injury or specific personal and family issues such as bereavement leave, jury duty, and similar leaves. Such paid time off is according to Contractor's policy and calculated at salary cost.
- c) **Statutory Holidays** means the Contractor's paid time off according to Ontario law and established custom.
- d) **Training** means the Contractor's paid time for employees to maintain and increase their level of skills pertaining to their position.
- e) **Employment Insurance** means the Contractor's portion of employment insurance premiums incurred according to the Employment Standards Act.
- f) **Group Life Insurance** means the premium paid by the Contractor to employee group life and short and long term disability insurance plans.
- g) **Employer Health Tax** means the premium incurred by the Contractor for the year according to the Employer Health Tax Act of Ontario.
- h) **Group Medical Plan** means the premium paid by the Contractor for group health insurance plans providing coverage of health care costs not covered by the basic government health plan.
- i) **Workplace Safety and Insurance Board** means the WSIB premium incurred by the Contractor for the year according to Workplace Safety and Insurance Act.
- j) **Contractor Pension Plan** means the Contractor's pension plan cost, including the cost of funding the pension benefits earned by employees and cost of services of third-parties incurred for the pension plan.
- k) **Canada Pension Plan** means the Contractor's portion of Canada pension plan contribution incurred according to the Canada Pension Plan Act or its equivalent for non-residents.
- l) **Union Contributions** means the premium paid by the Contractor to a union according to active collective agreements. Items such as Industry Funds paid to a Trustee and Legal Benefits identified in such agreements are to be included under this item.

**Cost of Labour** means the amount of wages, salary, travel expenses, travel time, room and board, and Actual Payroll Burden paid or incurred directly by the Contractor to or in respect of labour and supervision actively and necessarily engaged on the Work on a Time and Material Basis based on the recorded time and hourly rates of pay for such labour and supervision but shall not include any payment or costs incurred for general supervision, administration, or management time spent on the entire Work or on any wages, salary, or Actual Payroll Burden for which the Contractor is compensated by any payment made by the Owner for Equipment.

Travel expenses, travel time, and room and board shall be justified by the Contractor and, if requested, the Contractor shall supply the Owner with proof of the expenditure. Reasonable costs for room and board shall only be paid if the Work on a Time and Material Basis extends the time that the Contractor's labour is on-site or if the Contractor hires labour that is not normal to the Contract and room and board is charged.

**Cost of Material** means the cost of Material purchased or supplied from stock and valued at current market prices for the purpose of carrying out Work on a Time and Material Basis by the Contractor or by others when such arrangements have been made by the Contractor for completing the Work on a Time and Material Basis, as shown by itemized invoices.

**Mark-Up** means the amount of administrative overhead and project overhead costs incurred by the Contractor and an amount for profit. Administrative overheads and project overheads include but are not limited to the following:

Advertising, amortization, association and convention fees, audit and accounting fees, bad debt, bank charges and interest, building repairs - head office, capital tax, computer costs, donations, freight and express, insurance - liability and property, interest on long term debt, licences and permits - non Equipment related, management bonuses, management fees subcontracts, management salaries, municipal taxes, office and land - rent or lease, performance, labour and Material bonds, pit rehabilitation - commercial, plans, postage, printing and stationary, promotions, radio, Hand Tools or equipment that are tools of the trade, clothing allowance, sundry, supplies - operation, Utilities: telephone, heat, light, and water, and vehicles repairs - light trucks and autos.

**Operated Rented Equipment** means Rented Equipment rented or leased for which an operator is provided by the supplier of the Equipment and for which the rent or lease includes the cost of the operator.

**Rented Equipment** means Equipment that is rented or leased from an individual, firm, or corporation that is not a related entity or associated corporation with common ownership to the Contractor as defined by the *Income Tax Act*, [R.S.C., 1985, c. 1 (5th Supp.)], and is accepted by the Contract Administrator.

**Standby Time** means any period of time that is not considered Working Time and that together with the Working Time does not exceed 10 hours in any one Working Day and during which time a unit of Equipment cannot practically be used on other Work and remains on the site in order to continue with its assigned task and during which time the unit is in fully operable condition.

**The 127 Rate** means the rate for a unit of equipment as listed in OPSS 127, Schedule of Rental Rates for Construction Equipment, Including Model and Specification Reference, which is current at the time the Work is carried out or, for Equipment that is not so listed, the rate that has been calculated by the Owner, using the same principles as used in determining The 127 Rates.

**Work on a Time and Material Basis** means Changes in the Work and Additional Work approved by the Contract Administrator for payment on a Time and Material basis. The Work on a Time and Material Basis shall be subject to all the terms, conditions, Standards, and provisions of the Contract.

**Working Time** means each period of time during which a unit of Equipment of necessity and is actively engaged on a specific operation and the first 2 hours of each immediately following period, during which the unit is not so engaged but during which the operation is otherwise proceeding and during which time the unit cannot practically be transferred to other Work and remains on the site in order to continue with its assigned tasks and during which time the unit is in a fully operable condition.

#### **GC 8.03.02 Daily Work Records**

.01 Daily Work Records reporting the labour and Equipment employed and the Material used shall be prepared by the Contractor's representative. The Daily Work Records shall be signed each Day by both the Contractor's representative and the Contract Administrator. The Contract Administrator will note disagreements on the Daily Work Record prior to signing and return a copy to the contractor. These records shall be used for the basis of payment.

- .02 Daily Work Records shall report the labour and Equipment employed, both working time and downtime, and the Material used on MTO form PH-CC-754, Daily Work Record. Daily Work Records shall include a brief description of the work being carried out and location of such work.
- .03 For each Day that a Daily Work Record is required under these provisions, the Contractor shall deliver daily to the Contract Administrator's representative at the working area a Contractor signed copy of the Daily Work Record.
- .04 The Contractor's failure to keep or deliver Daily Work Records or to keep complete Daily Work Records may limit the Contractor's ability to recover its costs.

**GC 8.03.03 Payment for Work**

- .01 Payment as herein provided shall be full compensation for all labour, Equipment, and Material to do the Work on a Time and Material Basis, except where there is agreement to the contrary prior to the commencement of the Work on a Time and Material Basis.
- .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.

**GC 8.03.04 Payment for Labour**

- .01 The Owner shall pay the Contractor for labour used on each Time and Material basis at 100% of the Cost of Labour. Payroll Burden shall not be applied to room and board and or travel expenses when calculating the Cost of Labour.
- .02 Payments in respect of Payroll Burden shall be made at the following rates:
  - a) Union workers - 40% of the wages and salary portion of the Cost of Labour.
  - b) Non-union workers - 30% of the wages and salary portion of the Cost of Labour.
  - c) Alternatively, the Contractor's external auditor shall complete, sign, and submit a copy of the Contractor's Actual Payroll Burden. The following shall apply when this option is used:
    - i. Actual Payroll Burden shall be calculated using MTO form PH-CC-819, Actual Payroll Burden, and only those items stated under clause GC 8.03.01, Definitions, shall be included.
    - ii. MTO form PH-CC-819, Actual Payroll Burden, shall be completed by the Contractor's external auditor and filed with the Contract Management Office, St Catharines.
    - iii. The Actual Payroll Burden shall be filed annually and shall be applied from April 1 of each year to March 31 of the following year. The Actual Payroll Burden can be adjusted once annually upon submission of a revised MTO form PH-CC-819, Actual Payroll Burden, completed by the Contractor's external auditor.
    - iv. The Owner shall apply union workers or non-union workers Payroll Burden whichever is applicable, to Contractors failing to provide an annual update by April 1 of the current year. Once MTO form PH-CC-819, Actual Payroll Burden, is received, the Owner shall apply the new rate from the date of receipt of an acceptable Actual Payroll Burden to March 31 of the following year.
    - v. The Contractor's Actual Payroll Burden rate shall apply universally to all labour areas across the province.
  - d) At the Owner's discretion, a review of the Actual Payroll Burden may be conducted, in which case, the Actual Payroll Burden so determined at the time of the review shall be applied to all Work on a Time and Material Basis affected. Upon request, the Contractor shall make available all records in support of the Actual Payroll Burden calculation submitted.

**GC 8.03.05 Payment for Material**

- .01 The Owner shall pay the Contractor for Material at 100% of the cost of the Material.

**GC 8.03.06 Payment for Equipment**

**GC 8.03.06.01 Working Time**

- .01 The Owner shall pay the Contractor for the Working Time of all Equipment other than Rented Equipment and Operated Rented Equipment used on the Work on a Time and Material Basis at The 127 Rate.
- .02 The Owner shall pay the Contractor for the Working Time of Rented Equipment used on the Work on a Time and Material Basis at 110% of the Rented Equipment invoice price. The Contractor shall obtain approval from the Contract Administrator prior to the use of the Rented Equipment, if 110% of the invoice price is greater than The 127 Rate.
- .03 The Owner shall pay the Contractor for the Working Time of Operated Rented Equipment used on the Work on a Time and Material Basis at 110% of the Operated Rented Equipment invoice price. The Contractor shall obtain approval from the Contract Administrator prior to the use of the Operated Rented Equipment, if 110% of the invoice price is greater than The 127 Rate.
- .04 When Equipment is transported solely for the purpose of the Work on a Time and Material Basis to or from the Working Area on a Time and Material basis, payment shall be made by the Owner only in respect of the transporting units. When Equipment is moved under its own power it shall be deemed to be Working. The method of moving Equipment and the rates shall be subject to the approval of the Contract Administrator.

**GC 8.03.06.02 Standby Time**

- .01 The Owner shall pay the Contractor for Standby Time of all Equipment other than Rented Equipment and Operated Rented Equipment at 50% of The 127 Rate.
- .02 The Owner shall pay for Rented Equipment and Operated Rented Equipment at 100% of the invoice price where it is necessary to retain Equipment in the Working Area for extended periods agreed to by the Contract Administrator.

**GC 8.03.06.03 Payment for Work by Subcontractors**

- .01 Where the Contractor arranges for Work on a Time and Material Basis, or a part of it, to be performed by Subcontractors on a Time and Material basis and has received approval prior to the commencement of the Work according to the requirements of subsection GC 3.09, Subcontracting by the Contractor, the Owner shall pay the cost of Work on a Time and Material Basis by the Subcontractor calculated as if the Contractor had done the work on a Time and Material basis.

**GC 8.03.06.04 Mark-Up on Work on a Time and Material Basis**

- .01 Payment for Mark-Up on Work on a Time and Material Basis shall be made at the following rates:
  - a) Contractor Mark-Up  
15% applied to the total payment for labour, Rented Equipment, Operated Rented Equipment, and Material when the Work on a Time and Material Basis was completed by the Contractor.
  - b) Subcontractor Mark-Up  
15% applied to the total payment for labour, Rented Equipment, Operated Rented Equipment, and Material when the Work on a Time and Material Basis was completed by the Subcontractor.
  - c) Contractor Mark-Up on Subcontractors Work on a Time and Material Basis:  
10% mark-up allowed on Subcontractor's total labour, Equipment, and Material after Subcontractor Mark-Up is applied. If Work on a Time and Material Basis is assigned or sublet to a related entity or associated corporation with common ownership to the Contractor as defined by the *Income Tax Act* [R.S.C., 1985, c. 1 (5th Supp.)], then the Contractor Mark-Up is not permitted. The application of associated rules under the *Income Tax Act* [R.S.C., 1985, c. 1 (5th Supp.)] is extended to include partnerships.

**GC 8.03.06.05                      Submission of Invoices**

- .01 At the start of the Work on a Time and Material Basis, the Contractor shall provide the applicable labour and Equipment rates not already submitted to the Contract Administrator during the course of the Work. The Contractor shall provide documented proof of labour and Equipment rates when requested by the Contract Administrator.
- .02 A separate MTO form PH-CC-796, Time and Material Summary for Payment, shall be completed for Contractor and Subcontractor Work on a Time and Material Basis. Each completed form shall include the Change Order number and covering dates of the Work on a Time and Material Basis and shall itemize separately payment for labour, payment for Materials, and payment for Equipment. Invoices for Materials, Rented Equipment, and other charges incurred by the Contractor on the Work on a Time and Material Basis shall be included with each summary.
- .03 Each month the Contract Administrator shall include with the monthly progress payment certificate, the costs of the Work on a Time and Material Basis incurred during the preceding month all according to the Contract administrative procedures and the Contractor's invoice of the Work on a Time and Material Basis.
- .04 The final MTO form PH-CC-796, Time and Material Summary for Payment, shall be submitted by the Contractor within 60 Days after the completion of the Work on a Time and Material Basis.

**GC 8.04                                      Release from Warranty**

- .01 At the expiry of the last warranty period and after correction of all deficiencies, the Owner shall issue to the Contractor the MTO form PH-CC-895, Release from Warranty Certificate.

**GC 8.05                                      Records**

- .01 The Contractor shall maintain and keep accurate Records relating to the Work, Changes in the Work, and Claims arising there from in sufficient detail to support the total cost of the Work, Changes in the Work, and Claims. The Contractor shall preserve all such original Records until 12 months after the Release from Warranty Certificate is issued or until all claims have been settled, whichever is longer. The Contractor shall require that Subcontractors preserve all original Records pertaining to the Work, Changes in the Work, and Claims arising there from for a similar period of time.
- .02 If, in the opinion of the Contract Administrator, Daily Work Records are required, the Contractor shall complete such Daily Work Records for the Work or such specific part of the Work requested.

**GC 8.06                                      Taxes and Duties**

- .01 Where a change in Canadian Federal or Provincial taxes occurs after the date of tender closing for this Contract, and this change could not have been anticipated at the time of bidding, the Owner shall increase or decrease Contract payments to account for the exact amount of tax change involved.
- .02 Claims for compensation for additional tax cost shall be submitted by the Contractor to the Contract Administrator on MTO form, PH-CC-725, Tax Change Statement. Such claims for additional tax costs shall be submitted not later than 30 Days after the date of completion of the Work.
- .03 Where the Contractor benefits from a change in Canadian Federal or Provincial taxes, the Contractor shall submit a statement of such benefits to the Contract Administrator on MTO form, PH-CC-725, Tax Change Statement. This statement shall be submitted not later than 30 Days after the date of completion of the Work.
- .04 The Contract Administrator reserves the right to make deductions from regular progress payments to compensate for the estimated benefit from decreased tax costs. Such deductions shall be set-off from Contract payments pending receipt of the statement itemizing the benefits that have resulted from a decrease in tax costs at which time the final payment adjustment shall be determined.



.05 The Contractor shall add the HST to all invoices and Proper Invoices

**GC 8.07 Liquidated Damages**

.01 When liquidated damages are specified in the Contract and the Contractor fails to complete the Work according to the Contract, the Contractor shall pay such amounts as are specified in the Contract Documents.

## GC TABLES - List of Tables

**TABLE 7.02-1  
Layout Intervals and Measurement Accuracy for Construction Survey - Layout**

Activity	Interval	Measurement Accuracy
Layout: - Rock - Earth (With the exception of plus sections, layout is normally at the same interval as the cross-sections/grade calculations. This may be varied when extreme changes in horizontal and vertical alignment are encountered.)	10 m 25 m	-
Maximum for setting structure footing grades	10 m	-
Set structure grades	-	1 mm
Adjustment to slope stake distances to allow for grubbing losses	-	300 mm
Set grades for earth grading	-	10 mm
Set grades for granular	-	5 mm
Layout stake offset for curb and gutter (2 m but may be varied to suit conditions.)	-	-
Stake layout for curb and gutter (May be necessary to reduce for very sharp curves.)	10 m	-
Set curb and gutter grades	-	1 mm
Staking maximum for layout of a radius, intersections	3 m	-
Layout stake (2 m offset) for concrete pavement	-	-
Set concrete pavement grades	-	1 mm

**TABLE 7.02-2  
Layout Intervals and Measurement Accuracy for Construction Survey - Cross-Sections**

Activity	Interval	Measurement Accuracy
Backsight and foresight readings	-	1 mm
Maximum allowable error between adjacent Benchmarks	-	5 mm
Intermediate road readings: - earth cut - rock cut; rock cut with overburden - muskeg excavation; borrow pits - fills with stripping, sub-excavation, or ditching - transition from cut to fill; fills; earth or rock fills	25 m 10 m 25 m 25 m 25 m	10 mm
Maximum transverse interval for cross-section elevations: - earth - rock - borrow	25 10 25	-
Measure offset distances	-	100 mm

**TABLE 8.02.04.02-1  
Fuel Consumption Rates**

	<b>Item Description</b>	<b>Notes</b>	<b>Diesel Fuel Consumption Rates</b>
1	Clearing including Close Cut Clearing		237 l/ha
2	Grubbing		163 l/ha
3	Earth Excavation and Earth Borrow	1	1.7 l/m <sup>3</sup>
4	Rock Excavation	2	0.6 l/m <sup>3</sup>
5	Rock Embankment		1.6 l/m <sup>3</sup>
6	Rock Face		1.2 l/m <sup>2</sup>
7	Select Subgrade Material (SSM)		1.0 l/t
8	Granular A, B, O, and RSS Backfill	9	1.9 l/t
9	All Asphalt Pavement, except Superpave FC2 Pavement	10	11.5 l/t
10	Superpave FC2 Pavement	10	14.3 l/t
11	Concrete Pavement		4.9 l/m <sup>2</sup>
12	Structural Concrete	3	5.5 l/m <sup>3</sup>
13	Tall Wall, any non-precast barrier wall, including asymmetric		3.2 l/m
14	Milling by m <sup>2</sup> Items	4	0.4 l/m <sup>2</sup>
15	Milling by tonne Items	5	3.0 l/t
16	Pulverize		0.2 l/m <sup>2</sup>
17	Cold In Place Recycling		0.4 l/m <sup>2</sup>
18	Concrete Removal, all complete structural concrete	6	1.0 l/m <sup>3</sup>
19	Concrete Removal, concrete base and pavements		0.9 l/m <sup>2</sup>
20	Asphalt Removal	7	0.4 l/m <sup>2</sup>
21	Piling & Caissons		5.0 l/m
22	Sewers & Drainage	8	8.0 l/m
23	Rock Supply		1.4 l/m <sup>3</sup>

Notes:

1. Also includes the tender item Earth Excavation for Structures when the quantity is greater than 100 m<sup>3</sup>.
2. If the Contract has a Rock Excavation item but not the Rock Embankment item, the diesel fuel consumption rate for Rock Excavation shall be 2.2 l/m<sup>3</sup>.
3. Structural concrete is normally a lump sum item that has no quantity listed in the Contract Documents. The Contract Administrator shall calculate the quantity for this item or get concrete ticket summary sheets for this item. This item does not include deck joint assemblies or modifications, concrete patches, or precast units. Includes the following items:
  - concrete in deck
  - concrete in substructure
  - concrete in culverts
  - high performance concrete in deck
  - concrete in footing, structure
  - concrete in substructure and retaining wall
  - high performance concrete in sub structures
  - concrete in structure
  - concrete in approach slab
  - high performance concrete in barrier walls
  - concrete in parapet walls
4. Includes the following items:
  - removal of asphalt pavement from concrete surfaces
  - removal of asphalt pavement, partial depth
  - removal of asphalt pavement from concrete surfaces on structures
  - reclaim asphalt pavement, full depth
  - remove asphalt pavement and salvage; full depth
  - reclaim asphalt pavement, full depth over concrete
5. Includes the following items:
  - reclaim asphalt pavement, partial depth
  - remove asphalt pavement and salvage, partial depth
6. Includes the following items:
  - removal of bridge structures
  - concrete removal, full depth
  - concrete removal, complete deck
7. Includes the following items:
  - removal of asphalt pavement
8. Sewers and drainage is to be applied to sewers that are 300 mm in diameter or larger. Subdrains do not receive compensation. Catchbasins with a single stub outlet receive no compensation nor do flexible pipe culverts.
9. 60% of the Diesel Fuel Consumption Rate shall apply to the production and stockpiling of Granular A, B, O, and RSS Backfill. 40% of the Diesel Fuel Consumption Rate shall apply to Granular A, B, O, and RSS Backfill supplied from existing stockpiles that are the property of the Owner.
10. When measurement for payment of asphalt is by square metre, for the purpose of fuel price index payment adjustment calculation, square metre asphalt quantities shall be converted to tonnage ( $T_{mix}$ ) using the following formula, rounded to one decimal according to LS-100:  
$$T_{mix} = [BRD_s \times (TD/1000) \times A_{mix}]$$

Where:

  - $BRD_s = 2.50 \text{ t/m}^3$
  - $TD = \text{average asphalt thickness from core measurements, mm}$
  - $A_{mix} = \text{quantity of asphalt placed, m}^2$