

# **General Conditions** ***(Services)***

**ND PAPER INC.**  
**Biron / Rumford**

**GENERAL CONDITIONS**  
**Table of Contents**

**GENERAL**

1. DEFINITIONS .....	1
2. INTERPRETATION OF CONTRACT .....	3
3. TIME.....	3
4. NOTICES .....	4
5. OWNER'S REPRESENTATIVE .....	4
6. THE CONTRACTOR .....	5

**PROGRESS OF THE WORK**

7. CONTRACTOR'S LABOUR FORCE .....	5
8. SITE OCCUPATION .....	6
9. MATERIALS .....	6
10. SUBSTITUTES.....	7
11. OFFLOADING AND STORAGE.....	7
12. RECEIVING AND RESPONSIBILITY .....	7
13. INSPECTION OF THE WORK.....	8
14. UNSATISFACTORY WORK .....	8
15. WORK CHANGES .....	9
16. WORK PROGRESS.....	9
17. DELAYS .....	10
18. SITE CONDITIONS.....	11
19. USE OF WORK.....	12
20. WARRANTIES AND GUARANTEES.....	12

**SAFETY AND ENVIRONMENT**

21. CLEAN SITE .....	13
22. PROTECTION OF PERSONS AND SAFETY STANDARDS .....	14
23. PROTECTION OF WORK AND PROPERTY .....	15
24. USE OF SITE .....	16
25. PROTECTION OF ENVIRONMENT .....	17

**REMEMDIES**

26. OWNER'S RIGHT TO DO WORK .....	18
27. SUSPENSION.....	18
28. OWNER'S RIGHT TO TERMINATE CONTRACT .....	19
29. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT.....	19
30. OWNER'S RIGHT TO CANCEL CONTRACT .....	19

**DISPUTE RESOLUTION**

31. DISPUTE RESOLUTION .....	20
32. CONTRACT ADJUSTMENTS.....	21

**TERMS OF PAYMENT**

33. GENERAL .....	22
34. INVOICING INSTRUCTIONS AND INVOICING .....	22
35. WORK CHANGE INVOICING .....	23
36. PAYMENT .....	23
37. COST PLUS WORK.....	23
38. LIENS AND CLAIMS.....	24
39. PAYMENT BY CONTRACTOR.....	25

**MISCELLANEOUS**

40. TAXES AND DUTIES.....	26
41. OWNER'S INSURANCE .....	26
42. CONTRACTOR'S INSURANCE .....	26
43. MAINTENANCE OF RECORDS .....	28
44. LAWS AND PERMITS.....	28
45. CONFIDENTIALITY .....	29

46.	PATENTS, TRADEMARKS AND COPYRIGHT .....	29
47.	IMPORTATION OF WORK .....	29
48.	SUBCONTRACTS.....	30
49.	OTHER CONTRACTORS .....	30
50.	ASSIGNMENT.....	30
51.	AMENDMENT TO CONTRACT .....	31
52.	WAIVER .....	31
53.	GENERAL INDEMNITY .....	31

**APPENDICES**

Appendix A - Address for Invoices .....	◆
Appendix B - Cost Plus Labour Charge-Out Rates.....	◆
Appendix C - Confidentiality Provisions.....	◆
Appendix D - Unit Prices.....	◆

1. **DEFINITIONS**

1.1. **Definitions** – Unless the context indicates otherwise, in the Contract:

“**Change**” means a change in the Work contemplated by GC 15.1;

“**Contractor’s Equipment**” means all equipment and materials supplied by the Contractor to perform the Work but does not include any equipment or materials to be incorporated into the Work;

“**Consultant**” means the engineering firm retained by the Owner as set forth in the Contract Agreement;

“**Consultant’s Representative**” means the person so designated in the Contract Agreement unless otherwise changed by written notice to the Contractor;

“**Contract**” means the entire undertaking between the Parties to perform their respective duties, responsibilities and obligations as described and set forth in the Contract Documents in respect of the Work, including any modifications made to such Contract in accordance with the terms of GC 51.

“**Contract Adjustment**” means a fair and reasonable adjustment of

(a) the Contract Price, or

(b) the completion date for all the Work as specified in the Contract, taking into account the provisions of the Contract and all of the circumstances surrounding the matter in question as provided in GC 32;

“**Contract Agreement**” means the contract form included in the Contract Documents;

“**Contract Documents**” mean the documents referred to in the Contract Agreement which documents are incorporated into and form part of the Contract;

“**Contract Price**” means the total price payable by the Owner to the Contractor specified in the Contract for performing the Work in accordance with the Contract;

“**Contractor**” means the Contractor or Vendor identified in the Contract;

“**Contractor’s Representative**” means the person appointed by the Contractor under GC 6.3;

“**Cost Plus Work**” means Work for which a method of payment has been established on an actual labour and materials cost basis;

“**Day**” means calendar day;

“**Equipment**” means all equipment, materials, components and parts supplied by the Contractor to be incorporated into the Work;

“**Labour Disruption**” includes strikes, picketing, lockouts, exercise of Non-Affiliation Rights, slowdown or cessation of Work or refusal to handle any Materials, equipment or product, or any other actions, similar in nature or intent which results from or arises, directly or indirectly, from, or affects only the Work, the Project or the Site, or which is local to the organization of the Owner, the Contractor, any Subcontractor or supplier;

“**Materials**” mean all parts, furnishings, materials, supplies and equipment of any kind supplied by the Owner or the Contractor to be incorporated into the Work;

“**Owner**” means the Owner identified in the Contract;

“**Owner’s Representative**” means the person appointed by the Owner under GC 5.1;

“**Parties**” means the Owner and the Contractor each of whom is a party to the Contract Agreement;

“**Project**” means the total services contemplated by the Owner of which the Work may be a whole or a part;

“**Site**” means the location specified in the Contract where the Work is to be performed;

“**Subcontract**” means a contract entered into between the Contractor and a Subcontractor;

“**Subcontractor**” means any person, firm or corporation that performs or furnishes any part of the Work as a subcontractor or supplier to the Contractor;

“**Work**” includes all labour, Materials, Contractor’s Equipment and Equipment and all matters and things required to be done or provided by the Contractor under the Contract, including a Work Change, and shall be interpreted to mean all or any part of the Work, as the context requires;

“**Work Change**” means

- (a) a deletion from the Work, or
- (b) an addition to or modification, supplement, amendment or revision of the Work which is consistent with and not outside the general scope of the Contract, in either case, authorized by a Work Order;

“**Work Order**” means a written authorization issued by the Owner’s Representative that directs the Contractor to perform a Work Change or confirms an earlier direction to perform a Work Change, and sets out particulars of the Work Change including the method of valuation of the affected Work for purposes of a Contract Adjustment.

- 1.2. **Grammatical Forms** – Unless the context indicates otherwise, where a word or expression is defined in the Contract, other parts of speech or grammatical forms of the same word or expression have corresponding meanings.
- 1.3. **Included Meanings** – In the Contract,
  - (a) words in the singular include the plural and words in the plural include the singular,
  - (b) words in the masculine gender include the feminine and words in the feminine gender include the masculine, and
  - (c) words in the neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter.
  - (d) words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in the accepted manner in which type are so used; and
  - (e) wherever in the Contract Documents, the words “as shown”, “as indicated”, “as detailed”, or words of similar import are used, they shall refer to the Contract Documents unless otherwise expressly stated.
- 1.4. **Headings** – The headings used in any of the Contract Documents are inserted for convenience of reference only and shall not be used to interpret the Contract.
- 1.5. **Currency** – Unless the context indicates otherwise, in the Contract, all monetary amounts shall be interpreted as amounts in the lawful currency of the United States of America.

## 2. INTERPRETATION OF CONTRACT

- 2.1. **Intent** – The intent of the Contract Documents is to describe the Work to be performed by the Contractor and the respective rights and obligations of the Parties.
- 2.2. **Omission from Contract Documents** – Omission from the Contract Documents of any detail of Work which is necessary to perform the intent of the Contract Documents, or which is customarily performed, shall not relieve the Contractor from performing such omitted Work and it shall be performed as if fully and correctly described in the Contract Documents in a competent and workmanlike manner with materials and workmanship of the best quality and shall finish the Work complete in every detail. Such Work shall not be deemed a Work Change.
- 2.3. **Document Precedence** – In the event of any ambiguity or inconsistency between the Contract Documents, the Contract Documents shall be interpreted and applied in the following order of precedence:
- (a) the Contract Agreement;
  - (b) the Description of Work;
  - (c) the Special Conditions;
  - (d) the General Conditions;
  - (e) the Appendices to the General Conditions;
- 2.4. **Clarification** – If the Contractor becomes aware of any ambiguity or inconsistency between the Contract Documents or believes there is an error in the Contract Documents, the Contractor shall refer the matter immediately to the Owner's Representative for a written direction before proceeding with the affected Work and shall perform the Work in accordance with that direction.
- 2.5. **Failure to Clarify** – If
- (a) a matter which the Contractor knew, or ought reasonably to have known,
    - (i) gave rise to an ambiguity or inconsistency between the Contract Documents, or
    - (ii) was unclear, and
  - (b) the Contractor failed to refer the matter to the Owner's Representative immediately for a decision under GC 2.4,
- the Contractor shall be responsible for the results of failing to interpret or apply the Contract Documents correctly.
- 2.6. **Severance** – If any one or more of the provisions of the Contract are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of the Contract will be unimpaired and will remain in full force and effect, and the invalid, illegal or unenforceable provision will be replaced by a valid, legal and enforceable provision that comes closest to the intent of the parties underlying the invalid, illegal or unenforceable provision.

## 3. TIME

- 3.1. **Essential** – Each party shall do all things reasonably necessary to perform its obligations under the Contract in a diligent, prompt and timely manner.
- 3.2. **Mitigation** – Notwithstanding the right of any party to request a Contract Adjustment of the completion date, both parties shall make every effort to mitigate or overcome any delay of the Work caused by the circumstances giving rise to the right. Notwithstanding the foregoing, the Contractor shall not work overtime without the Owner's prior authorization.
- 3.3. **Holidays** – Where the time for giving a notice or making an application or request falls or expires on Saturday, Sunday or a statutory holiday in the State in which the Work is being performed, the time for taking the action is extended to the next available Day.
- 3.4. **Calculation** – In the calculation of time, the first Day shall not be counted.

#### 4. NOTICES

- 4.1. **To Contractor** – A written notice to the Contractor shall be given by
- (a) delivering it personally to the Contractor or the Contractor's Representative, or
  - (b) addressing it to the attention of the Contractor's Representative and delivering it, or sending it by courier or electronic mail ("email") to the Contractor's principal place of business, to his office at or near the Site or to the address he supplied to the Owner under the Contract Agreement.
- 4.2. **To the Owner** – A written notice to the Owner shall be given by
- (a) delivering it personally to the Owner's Representative, and
  - (b) addressing it to the attention of the Owner's Representative and delivering it, or sending it by courier or email to the address the Owner supplied to the Contractor under the Contract Agreement,
- If a notice is to be given to the Consultant, notice shall be given to the Consultant by:
- (c) delivering it personally to the Consultant's Representative; or
  - (d) addressing it to the attention of the Consultant's Representative and delivering it, or sending it by courier or email to the address of the Consultant supplied to the Contractor under the Contract Agreement.
- 4.3. **Expeditious Method** – In any particular circumstances, a party shall use the most expeditious method specified in GC 4.1 and GC 4.2 of giving the written notice.
- 4.4. **Deemed Receipt** – A written notice delivered by hand, courier or email shall be deemed to have been received
- (a) if delivered by hand or courier, on the next Day after delivery, and;
  - (b) in the case of delivery by email on the next Day after delivery provided that an electronic confirmation of delivery has been obtained by the sender.

#### 5. OWNER'S REPRESENTATIVE

- 5.1. **Designation** – As soon as practicable after award of the Contract and from time to time as may be necessary, the Owner shall
- (a) designate a Representative who
    - (i) has the full authority to act on behalf of and bind the Owner unless the Contractor is expressly advised otherwise, and
    - (ii) may be an independent engineer or consultant,
  - (b) advise the Contractor in writing of the Representative's name, delivery address, email address and telephone number(s), and
  - (c) advise the Contractor in writing of the name of the Consultant and Consultant's Representative, if any, who is acting on behalf of the Owner in respect of the Project, and who has authority to act on behalf of the Owner but not to bind the Owner and who is in addition to the Owner's Representative.
- 5.2. **Delegation** – Unless the Contractor is expressly advised otherwise by the Owner, the Owner's Representative may, by providing written notice to the Contractor, delegate any or all of his authority to any other person.
- 5.3. **Questions** – Unless the context indicates otherwise, the Owner's Representative shall decide all questions which arise respecting the interpretation of the Contract or the performance of the Work.
- 5.4. **Binding Decisions** – Unless disputed pursuant to GC 31, every direction, order, decision or determination by the Owner's Representative under the Contract is final and binding. Nothing in this clause shall limit or abrogate the parties' rights pursuant to GC 31 and GC 32.

## 6. THE CONTRACTOR

- 6.1. **Independent Contractor** – The Contractor shall be deemed for all purposes and in all respects to be an independent contractor.
- 6.2. **Control** – Except as otherwise specifically provided in the Contract, the Contractor shall have complete control of his organization and shall supervise, direct and exercise direction of the Work done by his labour force using his best skills and attention.
- 6.3. **Representative** – Unless otherwise provided, as soon as practicable after award of the Contract and from time to time as necessary, the Contractor shall
- (a) designate a Representative who
    - (i) is acceptable to the Owner, and
    - (ii) has been given authority, acceptable to the Owner, to act on behalf of the Contractor, and
  - (b) advise the Owner, in writing, of the Representative's address, telephone numbers, and email addresses, and the extent of the Representative's authority.
- 6.4. **Representative at Site** – The Contractor shall ensure that his Representative is available at the Site when the Work is being performed.

## 7. CONTRACTOR'S LABOUR FORCE

- 7.1. **Competence** – The Contractor shall employ competent and skilled workers in the trades, professions and/or services which the Work demands.
- 7.2. **Employee Misbehaviour** – The Contractor shall maintain good order and discipline among its employees and those of its Subcontractor engaged in the Work and the Contractor shall immediately remove any employee from the Work at the Site:
- (a) who is incompetent, disorderly or intemperate,
  - (b) who violates the Owner's safety rules, or
  - (c) who utilizes or interferes with the Owner's facilities at the Site in an unauthorized manner,
- and all such employees shall no longer be allowed admission to the Site.
- 7.3. **Failure to Remove** – The Contractor shall be responsible for the consequences arising from the activities of any employee whose behaviour is a ground for removal under GC 7.2.
- 7.4. **Site Work Practices** – The Site is an open Site not exclusively union or non-union. Labour peace shall be maintained at the Site. The Contractor shall take all possible steps to ensure that the performance of the Work is not affected by any Labour Disruption.
- 7.5. **Meeting** – Before commencing the Work, the Contractor shall, as applicable, meet with the labour representatives of all the trades, professions and/or services who may have jurisdiction to perform the Work in order to resolve any jurisdictional issues among them.
- 7.6. **Consultation** – During the course of the Work the Contractor shall
- (a) advise the Owner's Representative of all possible labour disputes which may interfere with the progress of the Work or the operation of the Owner's facilities, and
  - (b) take all necessary steps to ensure, as far as possible, that the performance of the Work shall not be affected.
- 7.7. **Access Rules** – The Contractor shall ensure that all persons performing any of the Work
- (a) shall enter and leave the Site through the entrance provided,
  - (b) shall comply with any check in-and-out system provided by the Owner,
  - (c) are restricted to that part of the Site where the Work is to be performed; and
  - (d) honour any Legal Picket Lines.



- 7.8. **No Labour Disruption** – The Contractor confirms that no agreement with his employees or labour representatives representing his employees or between his Subcontractors, suppliers, sub-subcontractors and their employees or labour union representing those employees, will affect the Contractor's performance under the Contract, any other projects at the Site or the Owner's operations or give rise to any Labour Disruption.
- 7.9. **Subcontractors** – No work shall be undertaken by any Subcontractor unless the Owner has first approved in writing the use of that Subcontractor.

## 8. **SITE OCCUPATION**

- 8.1. **Timely Occupation** – The Owner shall give the Contractor occupation of all or parts of the Site
- (a) on the dates or within the periods specified under the Contract, or
  - (b) where dates or periods have not been specified, on a timely basis.
- 8.2. **No Exclusive Occupation** – The Contractor shall not have the exclusive right to occupy the Site at any time.
- 8.3. **Cooperation** – The Contractor shall cooperate with other contractors and the Owner's employees in carrying out their duties.
- 8.4. **Operating Mill** – Where the Site includes an operating mill, the Contractor shall to the best of his abilities:
- (a) ensure that neither his employees nor the Subcontractors interfere with the operations of that mill unless it is required by the Work shown in the Contract Documents,
  - (b) give the Owner's Representative advance notice of the time when performance of the Work is expected to interfere with that mill; and
  - (c) work with other contractors and, if applicable, the Consultant to minimize where possible interruptions and delays.

## 9. **MATERIALS**

- 9.1. **Quality** – The Contractor shall ensure that all Materials he supplies
- (a) are in accordance with the Contract, and
  - (b) unless otherwise specified, are new.
- 9.2. **Review** – On request of the Owner's Representative, the Contractor shall
- (a) state the source of any Materials he proposes to use in the Work, and
  - (b) supply to the Owner's Representative, for his review, manufacturers' information, documents and specifications for and testing results and samples of the Materials.
- 9.3. **Use of Reviewed Materials** – Where the Owner's Representative has reviewed certain testing results and samples of or manufacturers' information, documents and specifications for Materials, the Contractor shall not perform the Work using Materials which are different from the samples, testing results, information, documents or specifications reviewed, but the Contractor may make a resubmission under GC 9.2(b) to the Owner's Representative for additional review.
- 9.4. **Supplier's Instructions** – Except as otherwise specifically provided, the Contractor shall install, use and maintain all Materials in accordance with the supplier's instructions.
- 9.5. **Asbestos** - No asbestos containing material may be supplied or used by the Contractor. For greater certainty, even if the Work is intended to replace, in whole or in part, any existing asbestos-containing material (including, without limitation, gaskets, insulation, brake linings, wall panels, or packing) non-asbestos containing material must be used by the Contractor. If it is not technically feasible to use non-asbestos containing material, or the relevant product is not available in a non-asbestos containing form, then the Contractor will notify the Owner's Representative and will provide all relevant information and

documentation regarding the proposed asbestos-containing material. In any event, no asbestos-containing material may be brought onto the Owner's site without the prior written permission of the Owner's Representative.

- 9.6. **Responsibilities** – The Contractor shall not be relieved of any of his responsibilities under the Contract whether or not the Owner's Representative has made a request or conducted a review under GC 9.2(b) or GC 9.3.

## 10. **SUBSTITUTES**

- 10.1. **Substitute** – The Contractor shall not substitute any Materials, processes or method specified in the Contract unless the Owner's Representative has given prior approval of the substitute in writing under GC 10.2.
- 10.2. **Approval** – The Contractor may apply in writing to the Owner's Representative for written approval of a substitute and shall, in his application, satisfy the Owner's Representative that the proposed substitute shall
- (a) perform adequately the duties imposed by the general design,
  - (b) be equal or superior to the Materials, process or method specified, and
  - (c) be suited to the same use and capable of performing the same function as that specified for the Materials, process or method in the Contract.
- 10.3. **Responsibilities** – The Contractor shall not be relieved of any of his responsibilities under the Contract to ensure the quality and performance of the substitute used even if the Owner's Representative has approved it under GC 10.2.

## 11. **OFFLOADING AND STORAGE**

- 11.1. **Owner's Obligations** – Unless otherwise specifically provided, the Owner shall offload, handle and store in storage facilities paid by the Owner all Materials supplied by the Owner before the Contractor is scheduled to be on the Site. Where such materials are stored by the Owner off-site, the Contractor shall bear the expense and be responsible for moving the Materials from the storage facility to the Site.
- 11.2. **Contractor's Obligation** – The Contractor shall offload, handle and store in storage facilities on the Site all Materials supplied by the Owner after the Contractor is scheduled to be on the Site.
- 11.3. **On-Site Handling** – The Contractor shall handle and transport on the Site all Materials supplied by the Owner when the Contractor withdraws them from the storage facilities on the Site.
- 11.4. **Contractor's Materials** – The Contractor shall deliver, offload, handle and store all Materials he supplied in his storage facilities on the Site.
- 11.5. **Appropriate Facilities** – Except as otherwise specifically provided, the Contractor shall
- (a) provide storage which the Owner's Representative considers to be suitable and appropriate to protect and maintain all the Materials supplied by the Owner and the Contractor in areas on the Site designated by the Owner's Representative, and
  - (b) protect and maintain the Materials during storage.
- 11.6. **Costs** – Where the Contractor fails to comply with any obligation in GC 11, the Contractor shall pay all costs incurred by the Owner as a result of the Contractor's failure.

## 12. **RECEIVING AND RESPONSIBILITY**

- 12.1. **Inspection and Inventory** – The Contractor shall
- (a) inspect and inventory all Materials supplied by the Owner as soon as the Contractor
    - (i) unloads them under GC 11.2, or

- (ii) withdraws them from the storage facilities under GC 11.3, whichever is applicable, and
- (b) immediately give a written report of any evidence of loss, damage, defects or deficiencies in the Materials to the Owner's Representative.

12.2. **Receipt of Materials** – Unless the Contractor makes a report under GC 12.1(b), he shall be conclusively deemed to have received the Materials referred to in GC 12.1 into his care, custody and control without any loss, damage, defects or deficiencies, excluding any latent or hidden defects or deficiencies which could not, in the opinion of the Owner's Representative, have been discovered at the time the Contractor was required to make his inspection.

12.3. **Liability** – From the time the Contractor receives into his care, custody or control the Materials supplied by the Owner under GC 11.2 or GC 11.3 until the Work is completed, the Contractor shall be liable for, and shall indemnify the Owner in respect of, all loss and damage to the Materials and, where applicable, for all costs of replacing or repairing those Materials.

### 13. **INSPECTION OF THE WORK**

13.1. **Access for Inspection** – The Owner's Representative may inspect or test the Work at any time and shall have access

- (a) at all times to the Work at the Site, and
- (b) following reasonable written notice, to the Work at the premises of the Contractor and at any other place where the Work is being fabricated or manufactured.

13.2. **Facilities** – Unless expressly provided otherwise, the Contractor shall provide all necessary facilities and labour for access to and testing and inspection of the Work.

13.3. **Notice of Inspection** – If the Contract, the Owner's Representative, the law or a public authority requires the Work to be inspected, tested or approved, the Contractor shall give the Owner's Representative

- (a) and any relevant authority reasonable written notice of the Work's readiness for any particular inspection, testing or approval, and
- (b) sufficient advance written notice of the time and place of any scheduled tests to enable the Owner's Representative to attend the tests if he so chooses.

13.4. **Work Covered Up** – If the Contractor has covered up the Work without having given a notice required under GC 13.3 or having been given permission to do so by the Owner's Representative, the Contractor shall

- (a) immediately uncover or expose it for inspection at the request of the Owner's Representative, and
- (b) bear the cost of exposing the Work, of the inspection of the Work and of any necessary restoration as a result of it.

13.5. **Testing** – If the Contractor is required to test the Work in the Contract, he shall

- (a) test it as and when required, and
- (b) submit test certificates to the Owner's Representative containing all the information he requires.

13.6. **Responsibilities** – The Contractor shall not be relieved of any of his responsibilities under the Contract whether or not the Owner's Representative has inspected or tested the Work.

### 14. **UNSATISFACTORY WORK**

14.1. **Remove and Replace** – On receiving written notice from the Owner's Representative, the Contractor shall, within the time required,

- (a) remove and replace or modify all Work which the Owner's Representative considers not to be in accordance with the Contract in order to make it in accordance with the Contract, and

- (b) restore the Work, and the work of others, which is disturbed or damaged by the removal and replacement or modification of the unsatisfactory Work.
  - 14.2. **Responsibility** – The Contractor shall be responsible for all risks associated with
    - (a) the removal, including disposal and storage, of the unsatisfactory Work, and
    - (b) replacement or modification of the unsatisfactory Work,whether performed by himself or by the Owner under GC 14.3, so long as where performed by the Owner the performance has been in accordance with accepted industry practice.
  - 14.3. **Owner’s Right** – If the Contractor does not remove and replace or modify any unsatisfactory Work within the time required, the Owner may carry out any of the activities referred to in GC 14.1, and, in that event, the Contractor shall be responsible for all costs incurred by the Owner to carry out those activities.
15. **WORK CHANGES**
- 15.1. **Work Change** – The Owner may make changes by altering, adding to, or deducting from the Work (referred to as a “change”) without invalidating the Contract.
  - 15.2. **Prohibition** – No change shall be made to the Work unless in pursuance of a Work Order or other written order from the Owner’s Representative and no claim for a change to the completion date or a change to the Contract Price shall be considered or allowed unless so ordered.
  - 15.3. **Adjustment** – The amount to be added to or deducted from the Contract Price for any change ordered by the Owner shall be determined by the Owner, in one or more of the following ways:
    - (a) by lump sum;
    - (b) by actual labour and material costs, as calculated in the manner set forth in GC 37;
    - (c) by Unit Prices, as defined in the Contract Documents.
  - 15.4. **Record** – The Contractor shall maintain a separate record of all Materials, labour and Contractor’s Equipment used for each Work Change under GC 15.3(b).
  - 15.5. **Authorization** – On receiving an order as above, the Contractor shall proceed with the Work. Payments on account of a Work Change shall be made in the same manner and shall be subject to the same holdbacks as stated in this Contract.
  - 15.6. **Adjustment Request** – If a Contract Adjustment was not settled between the parties when a Work Change was required under GC 15.1, either party may request a Contract Adjustment under GC 32 within 14 Days after the Contractor received the direction to perform the Work Change.
16. **WORK PROGRESS**
- 16.1. **Expedited Work** – If
    - (a) the Contractor fails to complete the Work by the completion date in the Contract, or
    - (b) the Owner’s Representative is of the opinion that the Work will not be completed by the completion date in the Contract,the Owner’s Representative may direct the Contractor to take any necessary steps to expedite the Work to ensure its completion within the required times.
  - 16.2. **Early Completion** – The Owner’s Representative may, by written notice, require the Contractor to perform part of the Work before any of the dates specified or to complete all of the Work before the completion date in the Contract and the Contract Price shall be adjusted accordingly.

- 16.3. **Delayed Completion** – The Owner’s Representative may, by written notice, require the Contractor to slow down or delay the performance of the Work by delaying the completion date in the Contract and the Contract price shall be adjusted accordingly.
- 16.4. **Emergency Order** – If  
(a) the manner in which the Work is being performed, or  
(b) an emergency,  
affects or threatens to affect the safety of lives, the Work or any property, the Owner’s Representative may stop the Work or require the Contractor to take any steps the Owner’s Representative considers necessary to relieve the circumstances, and the Owner’s Representative shall, as soon as practicable, confirm the directions in writing.
- 16.5. **Contract Adjustment** – Where the Owner’s Representative gives a written notice  
(a) under GC 16.2 or GC 16.4, the Contractor,  
(b) under GC 16.3, either party,  
may request a Contract Adjustment under GC 32 within 14 Days after the Contractor was given the notice.
- 16.6. **Contractor’s Responsibility** – Nothing in GC 16.4 shall be construed to limit in any way the responsibilities of the Contractor for the safety and protection of persons and property under the Contract and the Contractor shall take any necessary steps to relieve any emergency circumstances in the absence of any directions from the Owner’s Representative.

## 17. DELAYS

- 17.1. **Notice** – If either party is aware of an event or any circumstances which are delaying or are expected to delay the performance of the Work, that party’s Representative shall give the other Representative a written notice of  
(a) the particulars of the cause of any expected delay,  
(b) the expected length of the delay, and  
(c) steps that the party intends to take to mitigate or overcome the delay.
- 17.2. **Timing of Notice** – The notice under GC 17.1 shall be given as soon as possible and in any event not later than seven (7) Days after the party becomes aware or ought reasonably to have become aware of the commencement of the event or circumstances causing or expected to cause the delay.
- 17.3. **Late Completion** – If the Contractor has failed to complete the Work on time, the Owner may request a Contract Adjustment under GC 32 within seven (7) Days of the specified date.
- 17.4. **Excusable Delay** – If the Work is delayed beyond the completion date of the Work as a result of a force majeure event or circumstances affecting the operations of the Contractor, the Contractor may request a Contract Adjustment of the completion date for the Work under GC 32 within seven (7) Days of giving the notice under GC 17.1.
- 17.5. **Owner Delay** – If the delay referred to in GC 17.4 is a direct result of an act or the failure to act of the Owner or the Owner’s Representative, save and except any act or omission as a result of a force majeure event or circumstances, the Contractor may also request a Contract Adjustment of the Contract Price under GC 32.
- 17.6. **Time Warning** – If the Owner has failed to provide the Contractor with any documents, Materials or written instructions as required under the Contract, the Contractor is entitled to make a request for a Contract Adjustment under GC 17.4 or GC 17.5 unless the Contractor failed to request the required documents, Materials or written instructions within the times, if any, specified in the Contract.

- 17.7. **Failure to Give Notice** – If the Contractor fails to give the notice as required in GC 17.1 and GC 17.2 in a particular matter, he is not entitled to make a request for any Contract Adjustment in respect of that matter.
- 17.8. **No Default** – If either party is delayed in performing its obligations under the Contract as a result of a force majeure event or circumstances, that party shall be deemed not to be in default of its obligations under the Contract.
- A force majeure event or circumstance is one which is due to or results from extraordinary weather conditions; fire; shipwreck; riot; war declared or undeclared; enemy action; floods; laws, regulations, ruling or acts of any governmental body or agency which frustrate the Contract; strikes, cessation or slowdown or stoppage of labour or labour disturbances of general industry application, it being understood and agreed that a Labour Disruption as defined in GC 1 is not an event of force majeure; and any other cause, whether similar to the foregoing or not, beyond the control of the party affected by such cause.
- 17.9. **Mitigation** – The party claiming the benefit of GC 17.8 shall take all reasonable efforts to mitigate or overcome any negative effects of the force majeure event or circumstances and shall bear the burden of proving that performance of an obligation was delayed by the event or circumstances.
- 17.10. **Labour Disruption** – The Contractor acknowledges and agrees that the Owner is not responsible to the Contractor for any delays, obstructions or impediments to access or performance of the Work, costs, damages or expenses caused by any Labour Disruption occurring between the Owner and its employees or any trade union. No Labour Disruption between the Owner and its employees or any trade union which obstructs or delays the completion of the Work is considered an act or neglect of the Owner.

## 18. **SITE CONDITIONS**

- 18.1. **Site Examination** – The Contractor shall be deemed to have conducted an examination of the Site and to have fully informed himself about any risks, contingencies, matters and things respecting the Site and any other aspects of the Work necessary to satisfactorily perform the Contract in all respects.
- 18.2. **Performance** – The Contractor's failure  
(a) to examine the Site, or  
(b) to properly interpret the conditions at or respecting the Site or any information respecting the Site or any other aspects of the Work,  
shall not relieve him of the responsibility of satisfactorily performing the Work under the Contract.
- 18.3. **Notice** – If, during performance of the Work, the Owner's Representative or the Contractor claims that the actual Site conditions are materially and substantially different from the Site conditions which could have been reasonably anticipated based upon  
(a) the knowledge of the Site conditions which the Contractor is required to obtain or is deemed to obtain under the Contract, and  
(b) any information in the Contract Documents, with respect to any Site conditions not ascertainable from that knowledge,  
he shall promptly notify the other party in writing to give him a reasonable opportunity to examine the Site conditions before any substantial evidence of the alleged material and substantial difference is destroyed, removed or obscured.
- 18.4. **Contract Adjustment** – If the actual Site conditions are materially and substantially different from the Site conditions referred to in GC 18.3, either party may request a Contract Adjustment under GC 32 within 14 Days of giving or receiving the notice under GC 18.3, whichever is applicable.
- 18.5. **Responsibility** – If the actual Site conditions are materially and substantially different from the Site conditions referred to in GC 18.3, the Contractor shall not, subject to the doctrine

of frustration, be relieved of the responsibility of satisfactorily performing the Work under the Contract.

## 19. USE OF WORK

- 19.1. **Early Use by Owner** – Notwithstanding that the time for completing the Work may not have expired, the Owner may take possession of and use any completed or partially completed parts of the Work. In the event the Owner takes possession of and uses any completed or partially completed parts of the Work, as provided herein and subject to the provisions of GC 19.2, risk of loss shall thereupon transfer to the Owner and the warranty shall thereupon commence.
- 19.2. **No Acceptance** – The Owner's actions under GC 19.1 shall not be deemed to be an acceptance of any Work which has not been carried out in accordance with the Contract.

## 20. WARRANTIES AND GUARANTEES

- 20.1. **Skill and Expertise** – The Contractor warrants and guarantees that he has the skill and expertise to carry out the Work and that the Work shall be performed in a competent and workmanlike manner and in accordance with generally accepted standards and practices of the pulp and paper industry.
- 20.2. **Defects** – The Contractor warrants and guarantees that the Work shall be free from defects arising from
- (a) faulty design in any part of the Work which has been designed by him or on his behalf, and
  - (b) faulty application, manufacture, installation, Materials or workmanship in any part of the Work,
- which appear within one (1) year from the date the Owner accepts the Work or 24 months from delivery of Equipment to the Site whichever occurs first.
- 20.3. **Latent Defect** – The Contractor warrants and guarantees that the Work shall be free from latent or hidden defects in design, workmanship or Materials, which could not have been ascertained by a reasonable inspection of the Work and, if the Owner does not give notice to the Contractor of such claims within 1 year of the date on which such claims are discovered by the Owner such claims shall be deemed waived by the Owner.
- 20.4. **Liens and Charges** – The Contractor warrants and guarantees that the Work shall be free from all third-party liens, encumbrances and other charges and that the Owner shall enjoy quiet possession of the Work.
- 20.5. **Notice** – On receiving written notice from the Owner or the Owner's Representative, the Contractor shall remedy immediately, and to the satisfaction of the Owner's Representative,
- (a) any defect referred to in GC 20.2 and any damage to the Work and any other work arising from that defect, and
  - (b) any breach of any warranty or guarantee given under GC 20.
- 20.6. **Remedial Work** – The Contractor warrants and guarantees that all remedial Work he performs under GC 20.5 shall be free from all defects to the same extent provided in GC 20.2 except that the warranty period commences on the date the Owner's Representative gives written acceptance of the remedial Work performed by the Contractor.
- 20.7. **Owner's Option** – At the Owner's option or where any defect is not remedied by the Contractor within a reasonable time, the Owner may remedy any defect referred to in GC 20 and any damage to the Work and any other work arising from that defect at the Contractor's cost.

- 20.8. **Manufacturer's Warranties and Guarantees** – The Contractor shall ensure that any manufacturer's warranties or guarantees on Materials or Equipment that he supplies under the Contract
- (a) are made for the benefit of and in the name of the Owner, and
  - (b) commence from the date that the Materials or Equipment are placed in full operation,
- but nothing in this clause shall relieve the Contractor of any other obligations he has under GC 20.
- 20.9. **Obligations** – The obligations of the Contractor under GC 20 shall not be affected by any completion or termination of the Contract or suspension or withdrawal of the Work or rejection of the Work under the Contract in respect of those portions of the Work undertaken by the Contractor and completed.
- 20.10. **Limitation of Warranties** – The foregoing warranties and representations are limited to the warranty period defined in GC 20.2 or GC 20.3, as the case may be. If the Owner does not give notice to the Contractor of such claims within the time prescribed after the commencement of the warranty period, then such claims, whether advanced in law or under the Contract, shall be deemed waived by the Owner.
- 20.11. **Exclusion From Warranties** – Warranties under GC 20 do not cover the effects of normal wear on or abuse of the Work; abrasion, erosion or corrosion; consequential or additional damage suffered by or caused to a component of the Work where the Owner chooses to continue operation of the component subsequent to the existence of a defect becoming apparent; and, failure to operate or maintain the Equipment in accordance with usual operating parameters of acceptable industry practices. The provisions of GC 20.11 shall be construed in the context of the stated purpose of the Equipment and its usual operating environment as set out in the Contract.
- 20.12. **Familiarity With Laws** – The Contractor represents and warrants that it, its employees and Subcontractors are familiar with all laws applicable to the performance of the Work, including all environmental regulations and requirements.
- 20.13. **Exclusive Warranties** – The express warranties set forth in these General Conditions and any express warranties set forth elsewhere in the Contract Documents are exclusive and no other warranties of any kind, whether statutory, oral, written, express, or implied, including any implied warranty of merchantability or fitness for purpose, shall apply.

## SAFETY AND ENVIRONMENT

### 21. CLEAN SITE

- 21.1. **Maintaining Site Cleanliness** – At all times during the performance of the Work the Contractor shall keep the Site neat, clean, sanitary and free from accumulation of waste materials and rubbish.
- 21.2. **Disposal** – The Contractor shall remove all waste materials and rubbish to areas designated by the Owner's Representative and shall dispose of them as required by law or as the Owner's Representative directs.
- 21.3. **Removal on Completion** – On completion of the Work the Contractor shall
- (a) remove from and around the Site all waste materials and rubbish, temporary buildings and facilities, tools, Contractor's Equipment and surplus Materials and supplies resulting from or used for the Work,
  - (b) deliver all surplus Materials to a location specified by the Owner's Representative, and
  - (c) leave the Site in a clean and safe condition.



21.4. **Default** – If the Contractor fails to comply with GC 21.1 to GC 21.3, the Owner's Representative may carry out any of the Contractor's obligations including, but not limited to, removing and storing the Contractor's Materials, tools and Contractor's Equipment at suitable locations at the Contractor's cost and risk.

## 22. PROTECTION OF PERSONS AND SAFETY STANDARDS

22.1. **Responsibility** – The Contractor shall be responsible for the safety of all persons engaged in the Work.

22.2. **Safety Precautions** – The Contractor shall take all necessary precautions to prevent risk of injury or loss of life to all employees of the Contractor of every Subcontractor, of the Owner or the Consultant or any other persons about the Work at the Site during the performance of the Work including, but not limited to, guarding and lighting the Work and designating a person at the Site to be responsible for accident prevention and safety indoctrination. Without limiting the generality of the foregoing, the Contractor will ensure compliance at all times with the Owner's safety manual and other provisions communicated to the Contractor by the Owner or the Owner's Representative from time to time.

22.3. **Notice** – As soon as possible, the Contractor shall notify the Owner's Representative in writing about any injuries or loss of life described in GC 22.1 and GC 22.2 occurring during the performance of the Work and any claims made in respect of them, and on settling any claim, the Contractor shall obtain a release jointly in the names of the Contractor and the Owner.

22.4. **Safety Standards** – The Contractor shall comply with

- (a) all applicable legislation relating to health and safety, and all safety rules and regulations of all governmental authorities;
- (b) the safety standards practiced in the industry for the type of Work to be performed; and
- (c) the safety rules and regulations issued by the Owner's Representative from time to time for the Site and governing the conduct or welfare of persons on the Site.

22.5. **Notice under Act** – The Contractor shall provide the Owner's Representative with a copy of any notice respecting the Project which he gives to or receives from the applicable workers' compensation authority.

22.6. **Failure to Pay Assessment** – Contractor shall indemnify and hold Owner and its directors and officers harmless from and against all losses, liabilities, costs, charges, claims, damages, expenses, penalties or liens which may arise as a consequence of or in connection with any failure by Contractor or any Subcontractor to pay any assessment or compensation owing in respect of workers' compensation coverage.

22.7. **Hazardous Materials** – The Contractor shall not bring hazardous materials onto the Site unless they are kept in safety containers and stored in and dispensed from a storage area designated by the Owner's Representative in accordance with all applicable legislation relating to hazardous materials.

22.8. **Duty to Warn** – If the Contractor becomes aware of

- (a) the discharge of hazardous materials on the Site, or
- (b) hazardous materials which were not anticipated to be on the Site,

he shall notify the Owner's Representative as soon as possible and shall comply with the rules and regulations issued by the Owner's Representative for these circumstances.

22.9. **Explosive Materials** – The Contractor shall not bring explosive materials onto the Site without the prior written permission of the Owner's Representative, and the Contractor shall comply with the rules and regulations issued by the Owner's Representative and all applicable legislation relating to those materials.

## 23. PROTECTION OF WORK AND PROPERTY

- 23.1. **Responsibility** – The Contractor shall
- (a) be responsible for the safe performance of the Work and the security of the Site, and
  - (b) comply with the safety rules and regulations issued by the Owner's Representative for the Site.
- 23.2. **Precautions Taken** – The Contractor shall take all necessary precautions against, and be responsible for the loss, theft or damage of, his equipment, materials and property on the Site, and the Contractor shall ensure that:
- (a) the Work, anything adjacent to the Work, and any other property is not damaged or lost,
  - (b) no legal rights are infringed, due to the performance of the Work,
  - (c) all cutting, digging or other operations which he is required to perform shall not endanger existing structures, equipment and facilities; and
  - (d) all shoring, Contractor's Equipment, Materials or any of his operations or forces of nature which apply loads to any part of the Work shall not damage the Work or anything adjoining the Work, or any person on the Site.
- 23.3. **Lock-Up/Marking of Tools** - The Contractor shall provide suitable lock-up facilities on the Site for his tools and Contractor's Equipment and those of his employees. All tools and Contractor's Equipment shall be marked for identification when taken off the Site. No tools, Contractor's Equipment, Material or other articles may be removed from the Site unless the person removing such article can clearly identify each article and establish his ownership and his right to remove it from the Site. The Contractor is responsible for the security of his own tools, material and Contractor's Equipment.
- 23.4. **Fire Precautions** – Except as otherwise specifically provided, the Contractor shall
- (a) take all necessary precautions to protect the Work from fire,
  - (b) appoint a person at the Site to be responsible for providing and maintaining fire protection equipment at the Site and designating and training the Contractor's employees in firefighting, and
  - (c) comply with any fire safety rules and regulations issued by the Owner's Representative for the Site.
- 23.5. **Contractor Responsible** – The Contractor shall be responsible for all loss, theft or damage to the property of the Owner including the property of the Owner in the care, custody or control of the Contractor or used or occupied by him that is caused by or arises directly or indirectly out of
- (a) the negligent acts or omissions of the Contractor, his agents, Subcontractors or employees while performing the Work or acting in the course of their employment, or
  - (b) the Contractor's failure to comply with the Contract.
- 23.6. **Notice** – As soon as possible, the Contractor shall notify the Owner's Representative in writing about any loss or damage described in GC 23.2 and GC 23.5 occurring during performance of the Work and any claims made in respect of them, and on settling any claim, the Contractor shall obtain a release jointly in the names of the Contractor and the Owner.
- 23.7. **Contractor to Reimburse** – On the written request of the Owner's Representative, the Contractor shall promptly
- (a) repair or replace the Work or the property of the Owner that is lost or damaged in any way due to performance of the Work or the Contractor's failure to comply with the Contract, or
  - (b) reimburse the Owner for that loss or damage.

23.8. **Owner Not Responsible** – The Owner shall not be responsible for any loss or damage to the property of the Contractor, his agents, Subcontractors or employees unless caused by the negligent or deliberate act or omission of the Owner, its agents or employees.

## 24. USE OF SITE

24.1. **Confinement, Storage and Operation** – The Contractor shall confine his operations, Contractor's Equipment and storage of Materials to areas designated by the Owner's Representative, and shall not unreasonably obstruct the Site with Materials or Contractor's Equipment.

24.2. **Access to Facilities** – Unless otherwise specifically provided, the Contractor shall

- (a) not have access to any of the Owner's premises, facilities, stores or equipment on the Site or elsewhere,
- (b) provide and maintain temporary washroom facilities on the Site for the use of all persons engaged in the Work, and
- (c) supply all first-aid personnel, facilities and supplies required by law and any additional facilities which the Owner's Representative considers necessary for the welfare of all persons employed by the Contractor on the Work.

24.3. **Vehicle Access** – The Contractor shall not bring, or allow any person engaged in the Work to bring, any vehicle on the Site without the Owner's Representative's prior permission, but provided each person so doing ensures that at all times a valid parking permit is displayed in each such vehicle at all times while such vehicle is parked on Site. The Contractor shall comply with each Site's Contractor vehicle policy, including but not limited to the following:

- (a) the Contractor acknowledges and understands that bringing a Contractor motor vehicle onto the Site is solely at their own risk and, notwithstanding any other provision of these General Conditions or the Contract, discharges the Owner, its servants and agents, from all liability for any and all loss or damage to any motor vehicle owned, or driven by the Contractor or the contents thereof which shall occur upon the Contractor's property,
- (b) all Contractor vehicles, packages or containers are subject to search or inspection,
- (c) obey all posted vehicle speed signs on the Site;
- (d) alcoholic beverages are not allowed on the Site,
- (e) parking must be in designated areas only, clear of sidewalks, railroads, hydrants and emergency access routes,
- (f) improperly parked vehicles will be removed from the Site at Contractor's expense,
- (g) vehicles must have headlights on at all times while on the Site,
- (h) Contractor vehicles must have company name/logo displayed on vehicle,
- (i) Contractor vehicle entry privileges may be revoked for reasons of safety, security, traffic control or non-compliance with Site rules,
- (j) parking on Site is at Contractor's own risk.

24.4. **Designated Access** – The Contractor shall access the Site by those gates designated by the Owner's Representative.

24.5. **Designated Parking** – The Owner's Representative shall designate areas outside the Site where vehicles not permitted on the Site may be parked.

24.6. **Prohibition** – The Contractor shall not place or permit to be placed any signs or posters in or about the Site without the written consent of the Owner's Representative.

24.7. **Enforcement** – The Contractor shall take all reasonable efforts to ensure that his agents, Subcontractors and employees comply with the rules and regulations of the Owner's Representative respecting use of the Site.

## 25. PROTECTION OF ENVIRONMENT

- 25.1. **Minimize Disturbance** – The Contractor shall take all reasonable and necessary measures to ensure that any activities undertaken in the performance of the Work are conducted in such a way as to minimize any disturbance or damage to the environment.
- 25.2. **Trees and Water** – The Contractor shall not destroy, remove or clear trees, timber or shrubs or disturb watercourses to any extent greater than is necessary for the performance of the Work.
- 25.3. **Notice** – If the Work  
(a) performed by the Contractor, as required under the Contract, has caused, or  
(b) to be performed by the Contractor, as required under the Contract, is likely to cause,  
damage to the environment, the Contractor shall notify the Owner's Representative as soon as possible.
- 25.4. **Compliance** – The Contractor shall comply with any directions given by the Owner's Representative to protect and preserve the environment and if the directions are given orally, the Owner's Representative shall confirm them in writing as soon as possible.
- 25.5. **No Discharge** – The Contractor is prohibited from discharging hazardous substances to the Owner's treatment system without the written authorization of the Owner's Representative.
- 25.6. **Owner's Policies** – In addition to complying with all applicable environmental laws, the Contractor shall comply with all of the Owner's standards, policies and manuals for the handling, clean-up and storage of hazardous substances or other environmental matters at the Site.
- 25.7. **Waste Collection Site** – The Contractor shall ensure that its waste collection site is secured against dumping or discharge of unauthorized or inappropriate material.
- 25.8. **Inappropriate Disposal** – If, in the opinion of the Owner's Representative, waste materials which have been removed from the Site have not been processed in a reasonable or timely manner, the Owner may, after giving the Contractor two (2) Days' written notice, arrange for the materials to be removed to an alternative site for disposal. All costs, including administrative costs, incurred by the Owner in disposing of the materials at the alternative site, shall be for the account of the Contractor and may be deducted by the Owner from any money otherwise due to the Contractor.
- 25.9. **Permits and Approvals** – The Contractor shall comply strictly with all terms and conditions of any permits, orders, approvals and licenses of all government authorities. In no circumstances shall the Contractor discharge any substance used in the performance of the Work, or provided by the Contractor, into the environment (excluding only normal combustion exhaust emissions from Contractor's Equipment which are within legally allowable levels).
- 25.10. **Stop Work Order** – Notwithstanding any term of the Contract to the contrary, the Owner or Owner's Representative shall have authority to order the Contractor to immediately cease any or all activities which, in their opinion, may cause damage, risk, disturbance or impairment to or of the environment in breach of any applicable permit, law or regulation. The Contractor, at its sole expense, shall immediately comply with such direction and shall not recommence such activity until after the Contractor has demonstrated to the satisfaction of the Owner's Representative that the activity can be commenced and successfully completed without disturbance, damage or impairment to the environment. Without limiting the Owner's other remedies, the Owner may require the Contractor to remove any personnel or Subcontractors that violate the Contractor's obligation to protect the environment hereunder.

- 25.11. **Contractor's Responsibility** – The Contractor shall be solely responsible for and accept all risk of disturbance, damage or impairment of the environment caused by the performance of the Work which is in excess of that permitted by the provisions of the Contract, any applicable law or any permit or order of a governmental authority.

## REMEDIES

### 26. **OWNER'S RIGHT TO DO WORK**

- 26.1. **Withdrawal of Work** – Without prejudice to any rights that the Owner may have under the Contract, if the Contractor fails to comply with
- (a) any provision of the Contract, including performing the Work on time, or
  - (b) a direction, order or requirement of the Owner's Representative under the Contract,
- the Owner may withdraw any part of the Work from the Contractor after giving one (1) Day written notice to the Contractor.
- 26.2. **Vacate** – On receiving a notice under GC 26.1, the Contractor shall
- (a) promptly vacate those parts of the Site in which he is no longer required to perform the Work, and
  - (b) co-ordinate performance of any part of the Work for which he remains responsible and cooperate fully with the Owner's own forces or any other contractors coming to the Site to perform the withdrawn Work.
- 26.3. **Contract Adjustment** – Either party may, within seven (7) Days, request a Contract Adjustment under GC 32 with respect to the Work withdrawn under GC 26.1.
- 26.4. **Responsibility** – The Contractor shall be responsible for and shall pay the Owner, on demand, all costs the Owner incurs to complete the Work withdrawn from the Contractor under GC 26.1 that exceed the value of the Contract adjustment made pursuant to GC 26.3.

### 27. **SUSPENSION**

- 27.1. **Suspension** – The Owner's Representative may suspend the progress of the Work at any time by giving written notice, which shall include the reason for the suspension, to the Contractor.
- 27.2. **Preservation of Work** – During the period of suspension, the Contractor shall protect, preserve and maintain the Work in a manner satisfactory to the Owner's Representative and shall not remove any part of the Work or the Contractor's Equipment and Materials from the Site without the prior written permission of the Owner's Representative.
- 27.3. **Notices** – During the period of suspension, the Owner's Representative shall notify the Contractor in writing from time to time of the expected length of the suspension under GC 27.1.
- 27.4. **Resumption of Work** – The Owner's Representative may require the Contractor to resume the Work after giving the Contractor a written notice specifying a date for resumption of the Work which is reasonable in the particular circumstances.
- 27.5. **Request** – If the progress of the Work is suspended under GC 27.1, the Contractor may request a Contract Adjustment under GC 32 within seven (7) Days of receipt of the notice under GC 27.1 unless the suspension was necessary by reason of a default by the Contractor under the Contract or a force majeure event.

## 28. OWNER'S RIGHT TO TERMINATE CONTRACT

- 28.1. **Right to Terminate** – The Owner may terminate the Contract by notice in writing to the Contractor in the following circumstances:
- (a) with three (3) Days' written notice to the Contractor to comply with a provision of the Contract, if the Contractor fails to comply with the provision;
  - (b) without any prior notice, if
    - (i) the Contractor becomes insolvent,
    - (ii) a petition in bankruptcy is filed by or against the Contractor,
    - (iii) the Contractor makes a general assignment for the benefit of creditors, or
    - (iv) a receiver is appointed for all or any part of the Contractor's property;
  - (c) without any prior notice, if, under an order made by any court or governmental authority, the Work or a project of which the Work is a part has been lawfully stopped resulting directly or indirectly, from the Contractor's conduct;
  - (d) without any prior notice, if, because of a Labour Disruption, the Owner concludes that the Contract should be terminated and the Contractor should leave the Site.
- 28.2. **Take Possession** – If the Owner terminates the Contract under GC 28, the Owner may complete the Work by whatever method the Owner considers expedient.
- 28.3. **Completion Costs** – The Contractor shall be responsible for all reasonable costs incurred by the Owner to complete the Work under GC 28.2.
- 28.4. **Payment on Completion** – On termination of the Contract under GC 28.1, the Owner shall not be obliged to pay the Contractor any amounts due under the Contract until all the Work is completed or the Work is permanently abandoned.
- 28.5. **Balance Payable** – After the Work is completed under GC 28.2, the Owner shall pay the Contractor any balance of the Contract Price after deducting
- (a) the total of all previous payments made to the Contractor under the Contract,
  - (b) any amounts which the Owner is entitled to retain or deduct under GC 38 or GC 39, and
  - (c) any amounts owed by the Contractor to the Owner under the Contract, including the costs referred to in GC 28.3.
- 28.6. **Contractor to Pay** – If there is an insufficient amount available under GC 28.5 to satisfy the amounts owed to the Owner under the Contract, the Owner may
- (a) by written demand, require the Contractor to pay the excess amount required, and
  - (b) recover the amount by any remedies permitted by law.

## 29. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

- 29.1. **Right to Stop or Terminate** – The Contractor may stop the Work or terminate the Contract by notice in writing to the Owner in the following circumstances:
- (a) without any prior notice, if, under an order made by any court or governmental authority, the Work or the project of which the Work is a part has been lawfully and permanently stopped provided such stoppage does not result directly or indirectly from the Contractor's conduct;
  - (b) with 30 Days' written notice to the Owner to pay the Contractor a sum required to be paid under the Contract, if the Owner fails to pay without lawful excuse.

## 30. OWNER'S RIGHT TO CANCEL CONTRACT

- 30.1. **Right to Cancel** – The Owner may cancel the Contract at any time by giving the Contractor three (3) Days' written notice.
- 30.2. **Final Settlement** – Within 15 Days after the effective date of cancellation, the Contractor and the Owner's Representative shall meet to negotiate a sum, as complete and final settlement, of the amount that the Owner is obliged to pay the Contractor under the Contract as a result of the Owner exercising his right to cancel under GC 30.1.

- 30.3. **Sum Determination** – The sum to be negotiated under GC 30.2 shall be the total of the following amounts only:
- (a) the Contractor's total costs as defined under the Contract incurred to the effective date of cancellation, less all sums previously paid on account;
  - (b) the Contractor's estimated profits for the Work to be performed under this Contract to the effective date of cancellation; and
  - (c) the Contractor's total costs incurred or to be incurred in demobilizing his Materials, Contractor's Equipment, tools and labour from the Site.
- 30.4. **Payment** – The Owner shall pay the Contractor the settlement sum referred to under GC 30.2 after deducting any amounts
- (a) which the Owner is entitled to retain or deduct under the Contract, or
  - (b) owed by the Contractor to the Owner under the Contract.
- 30.5. **Ownership** – If the Owner
- (a) pays the amount calculated under GC 30.4 to the Contractor, and
  - (b) assumes all obligations that the Contractor undertook or incurred in connection with the Work,
- the Owner shall be conclusively deemed to be the owner of all the Work and Materials.
- 30.6. **Obligation** – Before the Owner is required to pay the Contractor the amount calculated under GC 30.5(a), the Contractor shall execute and deliver all the documents and take all the steps that the Owner requires to fully vest in itself the rights and benefits of the Contractor under any obligation referred to under GC 30.5(b).

<b>DISPUTE RESOLUTION</b>
---------------------------

31. **DISPUTE RESOLUTION**

- 31.1. **Amicable Negotiations** – The parties agree that, both during and after the performance of the Work under the Contract, each of them shall
- (a) make bona fide efforts to resolve any disputes arising between them by amicable negotiations, and
  - (b) provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.
- 31.2. **Decisions of Owner's Representative** – All decisions, determinations, certifications and approvals to be made under this Contract by the Owner's Representative as to the interpretation, application or administration of this Contract or any failure to agree where agreement between the Owner and the Contractor is called for which are not made or resolved to the satisfaction of both the Owner and the Contractor in the first instance by the decision of the Owner's Representative pursuant to the provisions hereof, shall be settled in accordance with the requirements of this GC 31.
- 31.3. **Settlement between Representatives** – Either the Contractor or the Owner shall, within seven (7) Days of receipt of an interpretation, determination or decision of the Owner's Representative, notify the Owner's Representative in writing, with a copy to the other party, should the Contractor or the Owner disagree with the interpretation, determination or decision of the Owner's Representative. Immediately following such notification, the Owner's Representative and the Contractor's Representative shall make reasonable good faith efforts in the circumstances to settle the matter between themselves, such agreement to be binding upon the Owner and the Contractor respectively.
- 31.4. **Continuance of the Work** – Notwithstanding any provision in this GC 31 the parties agree:
- (a) that the progress of the Work not, under any circumstances, be delayed, suspended or interrupted by any disputes between the parties or by procedures to settle such disputes;
  - (b) that disputes be settled expeditiously;

(c) that the settlement procedures be economical.

It is agreed that no action by either party shall be construed as a renunciation or a waiver of any of its rights or recourses, provided it has given the notices in accordance with GC 31.3 and each has carried out its obligations, as applicable, as provided in this GC 31.4.

- 31.5. **Mediation** – In the event the Contractor’s Representative and the Owner’s Representative cannot resolve the dispute within 14 Days immediately following the delivery of the notice referred to in GC 31.3, then the parties shall immediately refer the matter to a senior representative of such party who shall attempt to resolve the dispute. If such officers cannot resolve the dispute then the party in dispute will give written notice of such dispute to the other party, setting forth the particulars of the dispute, the probable extent and value of the amount claimed and the relevant provisions of the Contract Documents relating to such dispute. The time requirement for notification provided for in GC 31.3 shall not be considered to have been modified by this GC 31.5. The other party shall reply to such notice, no later than 14 Days after it receives or is considered to have received it, setting out in such reply its answer referred to the provisions of the Contract Documents which he relies upon in support. The parties shall then refer such dispute to non-binding mediation before a single Mediator and in accordance with the AAA Commercial Mediation Rules. The dispute as defined in the notice and reply, if any, shall be referred to the Mediator no later than 15 Days after the claimant receives or is considered to have received the reply or the time for giving such reply expires. These time limits shall be strictly observed. The time may be abridged or extended at any time by agreement of the parties. If either party is not satisfied with the Mediator’s recommendation, then such party shall be entitled to refer the matter to a court of competent jurisdiction.
- 31.6. **Early Commencement** – In recognition of the obligation by the Contractor, to perform the disputed Work during the course of any dispute resolution procedures required by this GC 31, it is agreed that dispute resolution proceedings will be commenced as soon as practicable following notice of the dispute and during the continuance of the Work in accordance with the foregoing dispute resolution procedures.

## 32. **CONTRACT ADJUSTMENTS**

- 32.1. **Application and Time Limit** – A party may request a Contract Adjustment only in those circumstances specifically authorized under the Contract, and such request must be made within seven (7) Days of the Party becoming aware of the circumstances giving rise to such request.
- 32.2. **Waiver** – If a party does not request a Contract Adjustment within the time specified in a particular provision of the Contract, the party shall be deemed to have waived any right to request a Contract Adjustment in those circumstances.
- 32.3. **Reasonableness** – Where a party requests a Contract Adjustment in accordance with the provisions of the Contract, the other party to the Contract shall not unreasonably refuse the request.
- 32.4. **Procedure** – If either party requests a Contract Adjustment, the following procedure shall be used:
- (a) the applicant shall make the request in writing and shall give it to the other party within the time specified in the relevant provision in the Contract;
  - (b) the applicant shall give a written summary of the relevant facts supporting the request and all documentation necessary to verify those facts to the other party within the time referred to in GC 32.4(a) or a further period agreed to by the parties;
  - (c) the responding party shall give the applicant his written response and any documentation on which he intends to rely within seven (7) Days after receipt of the summary and documents under GC 32.4(b) or a further period agreed to by the parties;
  - (d) on request, each party shall permit a representative of the other party to inspect any documents of the other party relating to the request;



- (e) the parties shall make every effort to reach agreement on any Contract Adjustment to be made;
  - (f) if agreement cannot be reached within 21 Days of the responding party's receipt of the summary and documents under GC 32.4(b) or a further period agreed to by the parties, the Owner shall make a decision in writing, with reasons, within 14 Days and shall immediately deliver the decision to the Contractor;
  - (g) if the Contractor does not give written notice of his rejection of the decision made by the owner within 14 Days of receipt of the Owner's decision, he shall be deemed to have accepted the decision of the Owner.
- 32.5. **Adjustment of Contract Price** – Any Contract Adjustment of the Contract Price under GC 32 shall be based upon the valuation of the affected Work by one or more of the methods set out in GC 15.3 and confirmed by the issuance of a Work Order.
- 32.6. **Obligation to Mitigate** – Notwithstanding any right to request a Contract Adjustment, both parties shall make every reasonable effort to mitigate or overcome any negative effects of the circumstances giving rise to the right.
- 32.7. **Efforts to Mitigate** – In considering a request for a Contract Adjustment, any efforts taken, or not taken, by the applicant to mitigate or overcome the effects of the circumstances giving rise to the right may be taken into account to the extent appropriate in all the circumstances.
- 32.8. **Inadequate Tender** – Failure of the Contractor to adequately cover his costs in his tendered prices shall not be grounds for, or considered in, a Contract Adjustment.

<b>TERMS OF PAYMENT</b>
-------------------------

33. **GENERAL**

- 33.1. **Payment** – For the performance of the Work in accordance with the Contract, the Owner agrees to pay the Contractor
- (a) any amounts approved by the Owner's Representative calculated in accordance with actual measured quantities of Work performed, and
  - (b) any other amounts required to be paid under the Contract, including any amounts required to be paid by the Owner to the Contractor under any Contract Adjustments.
- 33.2. **Set-off** – The obligation of the Owner to pay the Contractor compensation is subject to any rights that the Owner may have under the Contract to
- (a) request Contract Adjustments,
  - (b) set off any amounts owed by the Contractor, or
  - (c) retain any payments or recover any amounts from the Contractor.
- 33.3. **Entire Cost** – Unless otherwise specified in the Contract, any unit prices and any other amounts specified in the Contract shall be deemed to include the entire cost of doing everything necessary to complete all Work required under the Contract, including the provision of any services or performing any obligation required under the Contract.
- 33.4. **Entire Consideration** – The compensation payable to the Contractor under GC 33 to GC 37 constitutes the entire consideration payable by the Owner to the Contractor for the performance of the Work except as otherwise provided for in the Contract.

34. **INVOICING INSTRUCTIONS AND INVOICING**

- 34.1. **Address for Invoices** - The Contractor shall send all invoices issued pursuant to the Contract to the Owner with the information required, and to the address noted on, Appendix A – Address for Invoices, to these General Conditions.

- 34.2. **Invoice** – The Contractor shall submit a progress invoice for the Work completed. The amount shall be calculated by
- (a) applying the completed Work,
  - (b) deducting all amounts previously invoiced, and
  - (c) unless otherwise specified in the Contract, all invoices shall include the following information:
    - (i) total on-site straight time man hours for services;
    - (ii) total on-site overtime man hours for services (at straight time)
    - (iii) total on-site straight time man hours for maintenance and repair;
    - (iv) total on-site overtime man hours for maintenance and repair (at straight time);
    - (v) wages paid for the total of man hours in GC 34.2(c)(i) through GC 34.2(c)(iv) above.

35. **WORK CHANGE INVOICING**

- 35.1. **Separate Invoice** – The Contractor shall submit a separate invoice for each Work Change ordered under GC 15.
- 35.2. **Cost Plus Basis** – Where a Work Change is to be paid for on a cost-plus basis,
- (a) the Work Change shall be valued as specified in GC 37, and
  - (b) the invoice shall be supported by copies of suppliers' and subcontractors' invoices, if applicable.
- 35.3. **Unit Price Basis** – Where a Work Change is to be paid for on a unit price basis, the Work Change shall be valued by applying the unit prices specified in Appendix D - Unit Prices to the completed units of Work.

36. **PAYMENT**

- 36.1. **Payment** – Within a reasonable period of time following the receipt of the Contractor's correctly prepared invoice, the Owner shall pay the Contractor the amount due after deducting any amount estimated by the Owner's Representative to be sufficient to remedy any defects or deficiencies in the Work.

37. **COST PLUS WORK**

- 37.1. **Total Amount** – The total amount to be paid for Cost Plus Work shall be based on the actual cost to the Contractor for Materials, labour and Equipment used directly in performing the Work, as determined in accordance with GC 37.2 to GC 37.5, or such other amount as may be agreed to in writing between the Owner and the Contractor, and no other amounts shall be paid.
- 37.2. **Labour Amount** – The amount permitted for labour under GC 37.1 shall be the total of
- (a) the approved labour hours worked priced at the applicable and appropriate trade charge-out rate which rate shall be determined by adding the following amounts:
    - (i) the base wage rate;
    - (ii) the cost of benefits which form part of the worker's terms of employment as defined by the applicable collective agreement or by law; and
  - (b) the amount resulting from the application of the allowances specified in Appendix B - Cost Plus Labour Charge Out Rates, as follows
    - (i) the small tools and consumables allowance percentage to the base wage rate; and
    - (ii) the general overhead and profit allowance percentage to the base wage rate, and
    - (iii) in the case of overtime, the field overhead allowance percentage to the base wage premium.
- 37.3. **Materials Amount** – The amount permitted for Materials under GC 37.1 shall be the total of

- (a) the actual costs, including transportation, of all Materials provided by the Contractor and actually used in the performance of the Work, and
  - (b) the amount resulting from the application of the general overhead and profit allowance percentage specified in Appendix B to the actual costs.
- 37.4. **Equipment Amount** – The amount permitted for Equipment under GC 37.1 shall be
- (a) the total of
    - (i) the actual rental costs of Equipment rented from third parties, and
    - (ii) the amount resulting from the application of the field overhead allowance percentage specified in Appendix B to the actual rental costs, and
  - (b) the total of the rental costs of Equipment owned by the Contractor calculated in accordance with the schedule of rental rates approved by the Owner.
- 37.5. **Subcontracting Fee** – If the Owner’s Representative has given the Contractor approval to retain a Subcontractor to perform all or part of the Cost-Plus Work, the Contractor shall be paid the amount resulting from the application of the field overhead allowance percentage specified in Appendix B – Cost-Plus Labour Charge Out Rates to the actual cost of the Work performed.
- 37.6. **Discounts** – If the Contract is based in whole or in part on Cost-Plus Work, the Contractor shall avail itself of all discounts, refunds or rebates to which it is entitled in the purchasing of any Materials, supplies, tools, services, equipment and/or any other requirement of the Work the Contractor shall credit the Owner’s account with the amount of any such discount, refund or rebate. If the Contractor fails to obtain any such discount, refund or rebate for any reason, or fails to so credit the Owner, the Contractor shall reimburse the Owner with the discount, or the Owner may deduct it from any payment due the Contractor.
- 37.7. **Competitive Price Enquiries** – The Owner may provide to the Contractor, a list of preferred suppliers and the Contractor shall contact such suppliers for pricing enquiries prior to purchasing materials. For greater certainty, the Contractor will purchase materials which represent the “best value” and not necessarily the lowest price.

38. **LIENS AND CLAIMS**

- 38.1. **Payment** – The Contractor shall pay promptly, and shall ensure that his Subcontractors pay promptly, for all materials, labour and services arising out of or relating to the Work or performance of the Contract and all taxes, duties, assessments and costs in respect of the materials, labour and services so used.
- 38.2. **Failure by Subcontractor** – In the event that the Subcontractor does not make any payments referred to in GC 38.1 promptly, the Contractor shall make them on his behalf.
- 38.3. **Evidence of Payment** – At any time the Owner’s Representative may
- (a) require the Contractor to produce evidence satisfactory to the Owner’s Representative that
    - (i) the Work, the Site and other property of the Owner are free and clear of all liens and claims for wages, services, Workers’ Compensation assessments, materials or otherwise arising out of or relating to the Work or the performance of the Contract, and
    - (ii) no claims exist in respect of which any such lien or claim could attach upon the Work, the Site and other property of the Owner, and
  - (b) withhold payment of any amount due or accruing due to the Contractor under the Contract until the Owner’s Representative has received the required evidence.
- 38.4. **Owner Payment** – The Owner may pay and discharge, whether by way of payment into court or otherwise, any liens or claims for which the Owner may become liable or which may attach to the Owner’s property at any time arising out of or relating to the Work or performance of the Contract, whether or not the liens or claims are valid.

- 38.5. **Debt from Contractor** – If the Owner pays or discharges a lien or claim under GC 38.4, the amount of the lien or claim and the costs, including legal costs, of discharging it
- (a) shall immediately become due from the Contractor to the Owner,
  - (b) may be deducted from any payment due from the Owner to the Contractor under the Contract, and
  - (c) if final payment has already been paid under the Contract, shall be reimbursed immediately by the Contractor on written demand by the Owner.
- 38.6. **Releases** – Before the Owner is required to make the final payment or any part of it under the Contract, the Contractor shall, on request of the Owner's Representative, deliver to the Owner
- (a) total releases of all liens relating to or arising out of the Work or performance of the Contract, and
  - (b) evidence that all those liens are cancelled and discharged from the records of the appropriate Land Title Office.
- 38.7. **Withholding Payment** – Notwithstanding any other provision of the Contract, there is no money due to the Contractor and the Owner may withhold payment to the Contractor without payment of interest, if:
- (a) the Owner has reason to believe that the Contractor or any Subcontractor has not made payment to any persons for work done, labour or Materials supplied up to the date of the preceding progress estimate; or
  - (b) the Owner has reason to believe that the Contractor is insolvent; or
  - (c) the Owner has been served with any demand for payment, garnishing order or claim in relation to the Work or the Contractor; or
  - (d) the Owner has reason to believe that the Contractor or any Subcontractor has not complied with the Workers' Compensation and Employment Insurance legislation relating to deductions and assessments; or
  - (e) the Owner has reason to believe that the Contractor has not disposed of any Hazardous Waste associated with the Work in an appropriate and legal manner; or
  - (f) the Owner has reason to believe that the Contractor cannot complete the Work for the unpaid balance of the Contract Price;
- and the Owner may use the whole or any part of the amount that would otherwise have been due, to respond to demands for payment, garnishing orders or claims relating to the Work, or to complete the Work, including correcting defects.

### 39. **PAYMENT BY CONTRACTOR**

- 39.1. **Demand to Pay** – The Contractor shall pay to the Owner, immediately on written demand, any amount due to the Owner for any reason under the Contract and the Owner shall provide the Contractor with the particulars of any such demand.
- 39.2. **Remedies** – If the Contractor fails to make the payment required under GC 39.1, the Owner may take either or both of the following actions:
- (a) retain, out of any amounts due to the Contractor under the Contract, an amount no greater than the amount demanded;
  - (b) recover the amount by any other remedies permitted by law.
- 39.3. **Claims** – If, in the opinion of the Owner's Representative, there are claims or potential claims of any kind relating to or arising out of the Work the Contractor is required to perform for which the Owner may be held wholly or partially liable, the Owner's Representative shall notify the Contractor in writing of those claims and the Owner may retain all or part of any payment due to the Contractor under the Contract to a limit of the amount of those claims.
- 39.4. **Owner's Option** – If the Contractor fails to remedy or rectify any matter referred to in GC 39.3 to the satisfaction of the Owner's Representative within seven (7) Days of receiving the notice, the Owner may, on behalf of the Contractor, remedy or rectify the cause for withholding the payment and deduct the cost of so doing from the amount of the retained payment.

## MISCELLANEOUS

### 40. TAXES AND DUTIES

- 40.1. **Contractor Pays** – Except as otherwise specifically provided, the Contractor shall pay all federal, state and local taxes and duties of any kind payable in respect of the Work.

### 41. OWNER'S INSURANCE

- 41.1. **All Risks Property Coverage** – The Owner shall, at its expense, provide and maintain during the term of the Contract, coverage under an "All Risks Property" policy on all property and Materials at the Site which will be incorporated into the Work with the exception of Contractor's Equipment, tools or apparatus including vessels and temporary buildings leased or owned by, or in the care, custody or control of, the Contractor, the Subcontractors or other contractors and shall, subject to its terms, protect the Contractor, the Subcontractors or other contractors on the Site against all risks of direct physical loss or damage including the perils of earthquake and flood in respect of all property to be incorporated into the Work, or in any way connected with or to be used in the completed Work while it is at the Site during storage, erection, installation, testing and while in transit to the Site including land and inland marine transit, and until handed over and finally accepted by the Owner.
- 41.2. **Exclusions** – The Insurance referred to in GC 41.1 shall be subject to the policy's customary exclusions.
- 41.3. **Coverage Requirements** – The insurance policies provided by the Owner under GC 41 shall:
- (a) be written for limits of coverage not less than the estimated completed value of the Work including the value of Owner supplied materials; and
  - (b) shall be subject to a deductible determined by the Owner in its absolute discretion, which amount shall be, unless specified in writing prior to or concurrently with the execution of the Contract by the Contractor, the amount of \$2,000,000, which deductible shall be for the account of the party responsible for the loss.
- 41.4. **Liabilities** – The provision of insurance by the Owner under GC 41 shall not relieve the Contractor from any of its obligations under the Contract.
- 41.5. **Loss** – In the event of a loss the Owner will adjust that loss with insurers.

### 42. CONTRACTOR'S INSURANCE

- 42.1. **Commercial General Liability Insurance** – The Contractor shall provide commercial general liability insurance including, but not limited to the following risks:
- (a) premises and operations liability;
  - (b) owners' and contractors' protective liability;
  - (c) products and completed operation liability;
  - (d) contractual liability;
  - (e) cross liability clause or severability of interests clause;
  - (f) employer's liability;
  - (g) personal and advertising injury liability;
  - (h) "occurrence" basis coverage for bodily injury and property damage;
  - (i) "broad form" property damage coverage, including "broad form" completed operation coverage;
  - (j) loss of use of property coverage;
  - (k) coverage for shoring, blasting, excavating, underpinning, demolition, pile driving, caisson work, grading, tunneling and all work below ground surface; and
  - (l) non-owned automobile liability insurance (SPF#6);

and the Contractor shall maintain such insurance with minimum limits of liability in an amount to be agreed between the Owner and Contractor but which amount shall not be less than \$5 million inclusive per occurrence of bodily injuries and property damage including loss of use thereof.

- 42.2. **Additional Insured** – The policy referred to in GC 42.1 shall include the Owner as additional insured with respect to the operations of the Contractor or its Subcontractors.
- 42.3. **Primary Insurance** – The policy referred to in GC 42.1 shall state that the Contractor's policy will be considered as primary insurance for all insureds thereunder.
- 42.4. **Term** – The insurance referred to in GC 42.1 shall be maintained continuously from commencement of the Work until all services, installation and testing has been completed and the project has been finally accepted by the Owner. The products and completed operations coverage shall be maintained for a period of 12 months after acceptance of the Work by the Owner.
- 42.5. **Motor Vehicle Liability Insurance** – The Contractor shall provide and maintain during the term of the Contract, coverage for statutory motor vehicle liability insurance covering all the Contractor's owned or leased vehicles with minimum limits of liability of \$5 million inclusive per occurrence of bodily injuries and property damage.
- 42.6. **Insurance on Contractor's Equipment** – the Contractor shall provide and maintain during the term of the Contract coverage under a Property Policy for replacement value covering all Contractor's Equipment, tools and apparatus, including vessels and temporary buildings, owned or leased by the Contractor or in the care custody or control of the Contractor against all risks of direct physical loss or damage including the perils of earthquake and flood.
- 42.7. **Waiver** – The Contractor shall arrange that all policies of insurance provided by the Contractor under GC 42.1 and 42.6 contain a waiver of subrogation clause whereby the insurer waives its rights of subrogation against the Owner and other contractors and Subcontractors on the Site.
- 42.8. **Approval by Owner** – All policies of insurance provided by the Contractor under GC 42 shall:
  - (a) have coverage and be in the amounts approved by the Owner;
  - (b) be issued by an insurer licensed to carry on business in the State in which the Work is being performed which insurer is satisfactory to the Owner; and
  - (c) be issued by an insurer with an AM Best's rating at all times of not less than A- VII, unless otherwise approved in writing by the Owner.
- 42.9. **Professional Liability Insurance** – the Owner reserves the right to require the Contractor to carry a Professional Liability insurance policy with the limit of liability amount to be agreed upon between the Owner and Contractor. The costs for this policy will be the sole responsibility of the Contractor.
- 42.10. **Aircraft and Watercraft Liability Insurance** – Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, including use of additional premises, shall be subject to limits of not less than \$5 million inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$5 million for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Owner.
- 42.11. **Notice of Cancellation** – The Contractor's policies described in GC 42 shall be endorsed to require that the insurer provide the Owner with not less than 30 Days' written notice in advance of any cancellation. In the absence of such endorsement, it shall be the Contractor's responsibility to provide such notice. Failure to do so shall constitute a breach of this Contract Agreement.

- 42.12. **Verification of Coverage** – The Contractor shall promptly provide the Owner with certificates of insurance evidencing the required coverage prior to the commencement of Work or operations at or on Owner's project or Site including adding Owner as a certificate holder, an additional insured and permitting waivers of subrogation. Renewal certificates are to be provided to the Owner within 15 Days of the renewal of the required insurance policies. Owner has no duty to confirm the existence of such insurance or to monitor such certificates. It is the Contractor's responsibility to ensure its compliance with all of the insurance coverage requirements set out in the Contract, and any proof or confirmation of compliance requested by Owner or by a third party on behalf of Owner, in whole or in part, shall be supplemental to and shall not supersede the terms and conditions set out in the Contract.
- 42.13. **Failure to Insure** – If the Contractor fails to obtain and maintain insurance as required in GC 42, the Owner may do anything necessary to effect and maintain such insurance at the cost of the Contractor.
- 42.14. **Insurance Refusal** – The failure or refusal of any insurance company carrying insurance on behalf of the Contractor or a Subcontractor to pay losses shall not be held to waive or relieve the Contractor from its obligations under the Contract Agreement.
- 42.15. **Hook & Hoist Liability Insurance** - If the Work includes lifting, lowering or moving of property of the Owner, the Contractor shall provide and maintain during the term of the Contract insurance covering such property for accidental loss or damage, including loss of use of property, while the property is being lifted, lowered or moved by the Contractor by the use of cranes or other lifting devices, which insurance shall be subject to limits of not less than the value of the property to a maximum of \$5,000,000.
- 42.16. **Workers' Compensation Insurance** - Workers' compensation insurance or the like as required by the laws of the jurisdiction where the Work will be performed.

#### 43. **MAINTENANCE OF RECORDS**

- 43.1. **Record Keeping** – For a period of three (3) years, or such longer period required by law, after the Work is completed, the Contractor shall keep a separate set of records, accounts, statements and other documents arising out of or relating to the performance of the Work and shall permit representatives of the Owner to inspect, audit and make extracts or photocopies of them at all reasonable times.

#### 44. **LAWS AND PERMITS**

- 44.1. **Compliance** – The Contractor shall comply with, and give all notices required by, all laws applicable to the Work or performance of the Contract.
- 44.2. **Evidence of Compliance** – At any time on the Owner's Representative's request, the Contractor shall provide the Owner's Representative with satisfactory evidence that the Contractor has no outstanding assessments, taxes or payments due under any applicable laws.
- 44.3. **Permits, Licenses** – Unless otherwise specifically provided, the Contractor shall obtain at its expense all necessary permits, licenses and certificates of inspection required for the performance of the Work and shall deliver promptly copies of them to the Owner's Representative and shall pay all fees required to be paid and shall give all notices to be given in connection with the Work under any permit, license or certificate. If the Contractor has to pay additional fees for permits and licenses because of Changes in the Work, the Owner will reimburse the Contractor for the costs of such additional fees, subject to the Contractor, providing to the Owner with satisfactory evidence of and receipted invoices for such additional fees.

45. **CONFIDENTIALITY**

- 45.1. **Disclosure** – The Owner and the Contractor shall keep confidential all matters respecting technical, financial, commercial and legal issues relating to or arising out of the Work or the performance of the Contract and shall not, without the prior written consent of the other party, disclose any such matters, except in strict confidence, to its professional advisors.
- 45.2. **Confidentiality Provisions**- The confidentiality provisions attached as Appendix C - Confidentiality Provisions to these General Conditions is incorporated into this Contract and is deemed to have been entered into by the Contractor upon execution by the Contractor of the Contract.

46. **PATENTS, TRADEMARKS AND COPYRIGHT**

- 46.1. **Royalties** – The Contractor shall pay all royalties and license fees for use of any materials or processes in the performance of the Work.
- 46.2. **Indemnification** – The Contractor shall indemnify the Owner from all claims, loss and damages and all costs including legal fees and disbursements and all consequential damages, loss of profits and business losses, arising out of those claims, loss and damages, resulting from any alleged or actual infringement of any patent, copyright, trademark or industrial design arising out of or relating to performance of the Work or Contract.
- 46.3. **Defence** – If the Owner promptly notifies the Contractor of any claim of infringement and provides to the Contractor, at his request, all reasonable assistance and information available to the Owner relevant to that claim, the Contractor shall assume the defence of the Owner concerning that claim.
- 46.4. **Counsel** – Notwithstanding the obligation of the Contractor to assume the defence of any claims under GC 46.3, the Owner may retain its own counsel to represent it, and if the Owner has consulted with the Contractor prior to selecting its own counsel, the Contractor shall pay the cost of that counsel.
- 46.5. **Infringement** – Not later than 60 Days after it is finally adjudicated that an infringement exists or upon the Contractor recognizing that an infringement exists, the Contractor shall, at his cost and expense,
- (a) alter the Work to make it non-infringing, provided that such altered non-infringing Work shall fulfill substantially the same function as it fulfilled prior to such alteration,
  - (b) replace the infringing Work with non-infringing Work which shall fulfill substantially the same function as the infringing Work, or
  - (c) obtain a settlement or license permitting the Owner's use of any infringing Work.
- 46.6. **Exclusion** – If the Owner has specified in writing that a particular process or materials supplied by a particular manufacturer are to be used in the Work, GC 46 does not apply to that process or those materials.
- 46.7. **Contract Obligations Continue** – No claim or allegation of patent, trademark or copyright infringement shall relieve the Contractor of its obligations under the Contract or gives the Contractor a right to Contract Adjustment to the Contract Price or completion date for the Work.

47. **IMPORTATION OF WORK**

- 47.1. **Contractor to Import** – The Contractor shall import into the United States all non-American equipment or materials to be supplied by the Contractor and used in performing the Work, and shall pay all customs duties, fees, taxes, licenses and permits arising from importation.



48. **SUBCONTRACTS**

- 48.1. **Prohibition** – The Contractor shall not subcontract all or any part of the Work without the prior written permission of the Owner's Representative.
- 48.2. **Required Information** – Before giving permission under GC 48.1, the Owner may require the Contractor to supply written information about
- (a) the proposed Subcontractor, including qualifications and audited financial statements,
  - (b) the part of the Work to be subcontracted, and
  - (c) the terms of the subcontract, excluding prices.
- 48.3. **Same Terms** – If the Owner's Representative gives permission under GC 48.1, the Contractor shall ensure that the Subcontract imposes on the Subcontractor all the same terms as this Contract insofar as they are relevant to the part of the Work performed by the Subcontractor.
- 48.4. **Responsibility** – If the Work is subcontracted, the Contractor shall remain responsible to the Owner for performance of the Work and for the acts, omissions or defaults of the Subcontractor, its agents and employees as if they were the acts, omissions or defaults of the Contractor.
- 48.5. **No Contractual Relationship** – Nothing contained in the Contract shall be construed as creating any contractual relationship whatsoever between any Subcontractor and the Owner.
- 48.6. **Termination** – If any event occurs or circumstance arises with respect to any Subcontractor that would, if it had occurred or arisen with respect to the Contractor, entitle the Owner, upon notice or otherwise, to terminate the rights of the Contractor under GC 28, the Contractor shall do either or both of the following:
- (a) give written notice to the Subcontractor specifying the event or circumstance which must be rectified within a specified period of time;
  - (b) terminate the Subcontract which the Subcontractor has with the Contractor with respect to the Work.
- 48.7. **Interpretation** – Nothing in GC 48.6 shall be interpreted as permitting the Contractor to complete the Work beyond the time required under the Contract.

49. **OTHER CONTRACTORS**

- 49.1. **Coordination With** – The Owner may let other contracts for work at the Site and, in that event, the Contractor shall
- (a) coordinate his Work with the work of, and cooperate with, other contractors, and
  - (b) comply with any directions given by the Owner's Representative.
- 49.2. **Report of Defects** – If the Work depends upon the work of other contractors for its proper performance, the Contractor shall report promptly in writing to the Owner's Representative any defects or deficiencies in the work of, or equipment or materials supplied by, the other contractors that interfere with or hinder the proper performance of the Work.
- 49.3. **Failure** – If the Contractor fails to report promptly any defects or deficiencies referred to in GC 49.2, he may not make a request under GC 32 in respect of those defects unless the claims are for latent or hidden defects or deficiencies which could not have been ascertained by a reasonable inspection at the time of commencement of the relevant part of the Work.

50. **ASSIGNMENT**

- 50.1. **Permission Required** – The Contractor shall not assign all or any part of the Contract, or any benefit or monies accruing from it, without the prior written consent of the Owner, and

any assignment without such consent shall be conclusively deemed to be void and unenforceable.

50.2. **Contract Not Asset** – The Contract is not and shall not be deemed to be an asset in the event that the Contractor becomes bankrupt.

## 51. **AMENDMENT TO CONTRACT**

51.1. **Requirement** – Subject to the provisions of the Contract, any amendment or variation of the Contract Documents shall be binding on the Owner and the Contractor only if made in writing and signed by the authorized representatives of both parties.

## 52. **WAIVER**

52.1. **No Waiver** – Any failure of the Owner or the Owner's Representative to enforce or to require the strict performance of any of the provisions of the Contract shall not, in any way,  
(a) constitute a waiver of those provisions, and  
(b) affect or impair those provisions or any right the Owner has at any time to avail itself of any remedies it may have  
(i) for any breach of these provisions, or  
(ii) to require Work to be performed in accordance with the Contract.

52.2. **Written Only** – Neither party is bound by a waiver of any provision of the Contract unless the waiver is clearly expressed in writing and signed by the party's representative.

## 53. **GENERAL INDEMNITY**

53.1. **Obligation of Contractor** – In addition to the obligations of the Contractor under the Contract, under GC 20, GC 46, or any Schedule or Appendix to the Contract Agreement or these General Conditions, the Contractor shall indemnify and defend the Owner, its agents and employees from all claims or damages brought against the Owner, its agents and employees and caused directly by or arising out of or relating to the performance of or failure to perform the Work or the Contract by the Contractor, its agents, employees, and Subcontractors and resulting in bodily injury including death or property damage.

53.2. **Counsel** – Notwithstanding the obligation of the Contractor to assume the defence of any claims under GC 53, the Owner may retain its own counsel to represent it, and if the Owner has consulted with the Contractor prior to selecting its own counsel, the Contractor shall pay the reasonable cost of that counsel.

53.3. **Obligations** – The obligations of the Contractor under GC 53 shall not be affected by completion or termination of the Contract or suspension or withdrawal of the Work or rejection of the Work under the Contract.

53.4. **Limitation of Liability** – Except in connection with a Party's indemnification obligations under the Contract and a Party's breach of GC 50, (i) in no event shall either Party, its affiliates, or their respective directors, officers, agents or employees, be liable to the other Party for any reason, whether in contract or in tort, for any direct damages arising out of or based upon the Contract exceeding in aggregate the greater of the Contract Price paid and due to be paid by Owner to Contractor hereunder or the insurance coverage required to be carried by the Contractor under the Contract, regardless of the form in which any legal or equitable action may be brought, and (ii) in no event shall either Party, its affiliates, or their respective directors, officers, agents or employees, be liable to the other Party under any theory of tort, contract, strict liability or other legal or equitable theory for exemplary, punitive, indirect, special, lost profits, consequential or similar damages, each of which is hereby excluded by agreement of the Parties regardless of whether or not such Party has been advised of the possibility of such damages.

**APPENDIX A**  
**ADDRESS FOR INVOICES**

All invoices delivered by the Contractor to the Owner under this Contract shall include the project number issued by the Owner to the Contractor in respect of the Work and shall be addressed to:

If to the Owner, to the relevant mill: **[select appropriate mill if only one]**

ND Paper Inc.  
Biron Division  
621 North Biron Drive  
Wisconsin Rapids, WI 54494  
Attention: Accounts Payable  
E-mail: [biron.accountspayable@us.ndpaper.com](mailto:biron.accountspayable@us.ndpaper.com)

ND Paper Inc.  
Rumford Division  
35 Hartford Street  
Rumford, ME 04276  
Attention: Accounts Payable  
E-mail: [rumford.accountspayable@us.ndpaper.com](mailto:rumford.accountspayable@us.ndpaper.com)

<b>APPENDIX B</b> <b>COST PLUS LABOUR CHARGE-OUT</b> <b>RATES</b>
---

1. Labour Amount – The amount permitted for labour under GC37.2 shall be the total of items 1.1 – 1.4 below:

1.1 Labour Charge Out Rates shall be provided by the Contractor, which shall include straight time, time and a half, and double time labour charge out rates of each trade classification performing the Work.

<b>Rates</b>	<b>Straight Time</b>	<b>Time and a half</b>	<b>Double Time</b>
Base Rate			
Holiday Pay			
Vacation & Holiday Pay			
<b>Wage Sub-total</b>			
Pension			
Union Funds (benefits)			
Health & Welfare			
EI Premiums			
Canada Pension			
WCB			
Company Insurance			
<b>Sub-total</b>			
Small Tools / Consumables			
General Overhead / Profit			
<b>Labour Charge Out Rate</b>			

**Applicable definition of time and a half and double time hours shall be provided by the Contractor.**

1.2 The per diem rate for living out allowance per day is \$

1.3 Travel time will be paid for in accordance with the terms of the tradesmen employment agreement.

1.4 The cost of travel expenses, in transporting the employees referred to above to or from the Site, will be paid for in accordance with the terms of the applicable tradesmen employment agreement.

2. Materials Amount – The general overhead and profit allowance percentage to be applied to the amount permitted for Materials under GC 37.3 shall be  %

**Prior to the commencement of Work, Contractor shall provide a complete detailed materials list of any and all items that may appear on an invoice related to the Work under this Agreement. Any additional items used in relation to the Work but not referenced in such list shall be at the cost and expense of the Contractor unless Owner provides its advance written consent.**

3. Equipment Amount – The amount permitted for Equipment under GC 37.4 shall be calculated as set forth below.

- Rental rates are all found (excluding operator);

3.1 The total of

(a) the actual rental cost of Equipment rented from third parties as listed below or enclosed:

Item	Description	Hourly \$	Daily \$	Weekly \$	Monthly \$

(b) and the field overhead allowance percentage to be applied to the amount permitted for Equipment rented from third parties shall be  %

3.2 The total of the rental costs of Equipment owned by the Contractor calculated in accordance with the table of rental rates listed below or enclosed:

Item	Description	Hourly \$	Daily \$	Weekly \$	Monthly \$

4 Subcontractors – The subcontracting fee as per GC 37.5 shall be  %

**To be submitted for each trade, profession or services provided on Site.**

**APPENDIX C**  
**CONFIDENTIALITY PROVISIONS**

1. Confidential Information means all information, whether written, oral, graphic or magnetically or electronically recorded or in any other form, disclosed by or on behalf of the Owner relating to the Project or to the Owner's business, operations, finances, processes, formulae, technology, specifications, know-how, trade secrets, practices, plans, forecasts, names of and information relating to customers and suppliers, pricing, marketing plans and all other information that the Owner may designate, or that ought reasonably to be considered, as Confidential Information and includes all evaluations, reports or other materials prepared by the Contractor which incorporates any Confidential Information.
2. The Contractor acknowledges that the Confidential Information is confidential and proprietary to the Owner and will remain the property of the Owner. The Contractor hereby agrees:
  - (a) to use the Confidential Information only for the purpose of carrying out its obligations under the Contract (the "Purpose");
  - (b) not to disclose, or permit to be disclosed, any Confidential Information to any person, firm or entity except to those of its directors, officers, employees, Subcontractors and professional advisors who have a bona fide need to know such Confidential Information for the Purpose and who are bound by confidentiality obligations no less stringent than those set out in this Appendix ("Permitted Representatives"). The Contractor shall be liable for any breaches of this Appendix by any of its Permitted Representatives;
  - (c) to maintain the confidential nature of the Confidential Information by protecting the Confidential Information from inadvertent or unauthorized disclosure, access or use through all reasonable necessary actions while at all times using the same degree of care which it uses with respect to its own information of like nature which, in any case, will not be less than a reasonable standard of care; and
  - (d) not to record, make notes of, copy or reproduce Confidential Information except as is necessary for the Purpose.
3. The Contractor will not be liable for disclosure of Confidential Information which is required to be disclosed by operation of law or the requirement of a governmental authority, provided that the Contractor:
  - (a) promptly notifies the Owner in writing prior to such disclosure and the Owner shall have been given the reasonable opportunity to contest such disclosure;
  - (b) discloses only that portion of the Confidential Information legally required to be disclosed; and
  - (c) takes reasonable steps in any such disclosure to have the court or governmental authority protect the confidentiality of all Confidential Information disclosed.
4. Upon completion of the Purpose or at such earlier time as requested by the Owner, the Contractor will immediately return to the Owner or destroy, at the Owner's option, all written copies, extracts, other reproductions and other physical embodiments (including computer files) of any Confidential Information. Upon request by the Owner, the Contractor will provide the Owner with a written certification by a responsible officer of the Contractor that the Contractor has complied with its obligations under this paragraph 4. Notwithstanding the return or destruction of Confidential Information pursuant to this paragraph 4, the Contractor will continue to be bound by its obligations of confidentiality under this Appendix.

5. The obligations of confidentiality, non-disclosure and non-use in this Appendix shall not apply to Confidential Information which:
  - (a) is or was already lawfully in the possession of the Contractor at the time of disclosure and which was not already held in confidence due to either disclosure under this, or previous written or verbal agreement of the parties or without any other obligations of confidentiality, PROVIDED THAT all information disclosed to the Contractor by the Owner in respect of prior projects undertaken by the Contractor for the Owner shall be considered to be Confidential Information;
  - (b) is or becomes generally available to the public through no act or omission by the Contractor or its Permitted Representatives; or
  - (c) becomes available to the Contractor on a non-confidential basis from a source other than the Owner, provided that such source is not known or reasonably believed by the Contractor to be subject to an obligation of confidentiality.
6. The Contractor acknowledges that any breach by the Contractor of this Appendix would cause the Owner irreparable harm for which the Owner could not adequately be compensated by an award of damages. Accordingly, if there is any breach or threatened breach of any terms of this Appendix, the Owner has the right to seek equitable relief by way of injunction to restrain any such breach and to specifically enforce the terms of this Appendix, in addition to any other remedies that the Owner may have at law or in equity.
7. The Contractor acknowledges that neither the Owner nor any of its representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information or other information disclosed by the Owner pursuant to this Appendix, and that only those particular representations and warranties made in any formal documentation entered into between the parties shall have any legal effect.
8. No patent or other proprietary rights of any kind regarding, or which is contemplated by or included within, any Confidential Information are licensed to the Contractor or otherwise granted to the Contractor by the Contract or pursuant to the terms of the Project or the Work. The obligations of confidentiality, non-disclosure and non-use of the Contractor as contained herein, shall survive termination of the Contract or any other agreement between the parties with respect of the Project or the Work for a period of three years following the termination thereof.
9. In addition to any other rights that the Owner may have arising of any breach of this Appendix, the Contractor shall:
  - (a) be liable to the Owner for any and all losses, costs, damages and reasonable expenses whatsoever which the Owner may suffer, sustain, pay or incur including without limitation all legal fees; and
  - (b) indemnify and hold the Owner and its respective directors, officers, employees, representatives and agents harmless against all actions, proceedings, claims, demands, losses, costs, damages and reasonable expenses whatsoever which may be brought against or suffered by it or which it may sustain, pay or incur.

**APPENDIX D**  
**UNIT PRICES [if applicable]**