



February 1, 2008

## CCDC 2 – 2008 Stipulated Price Contract

CCDC has just released the new version of CCDC 2 to replace the version which has been in widespread use since 1994.

Attached is a chart we have prepared to highlight changes of note between the 1994 and 2008 versions. The chart is arranged in the same order as the Articles and General Conditions of the CCDC 2 – 2008 document. In many respects, the 2008 version is simply a re-working of the format of the contract to make it clearer and easier to read. However, there are a number of substantive changes, some of which are more important than others. Some of the more important changes are:

1. **Indemnification and Waiver of Claims** – GC 12 has been extensively re-drafted. The obligation to indemnify is now mutual and, with respect to claims by third parties for bodily injury or property damage, unlimited in amount.
2. **Claims for a Change in Contract Price** – GC 6.6 is an entirely new section which outlines the procedures for making claims for either an increase or decrease in the contract price, including notice provisions.
3. **Delays Due to Weather** – GC 6.5.3 now provides that delays due to abnormal weather conditions will result in an extension of the contract time. However, there is no corresponding entitlement to payment for costs associated with such delays.
4. **Insurance** – GC 11.1 has been extensively reworked, with different limits and insurance conditions.
5. **Utility Location** – GC 9.1.2 now requires the Contractor to determine the location of all underground utilities and structures before commencing any work, subject to certain limitations set out in the GC.
6. **Toxic and Hazardous Substances / Mould** - GC 9 sets out protocols for dealing with these substances.

If you have any questions on the new contract, or the impact it may have on your particular operation, please give any of the lawyers listed below a call. We will be pleased to discuss these with you.

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## Highlights of the New Standard Construction Document CCDC 2 – 2008

**IMPORTANT:** The purpose of this summary is to draw attention to some of the more important changes in the new CCDC 2 - 2008, and give a general idea of what those changes are. It is not a complete list of the changes. As well, the changes have been described in simplified form in many cases in an attempt to keep the document to a reasonable length. This document is not intended to be used for the purpose of interpreting the new CCDC 2 or as a substitute for a careful review of the new CCDC 2 itself.

If you have any questions on this summary or the CCDC 2 - 2008 contract itself, feel free contact us.

Note: Italicized terms in this summary are defined terms in the applicable version of the CCDC 2

No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
<b>Articles and Definitions</b>			
1.	Interest Rate if Either Party Fails to Make Payments as They Become Due Under the <i>Contract</i> or in an Award by Arbitration or Court	Interest was calculated at a percent per annum agreed to by the parties above the Bank of Canada prime rate on unpaid amounts.	Interest will be calculated on unpaid amounts at (a) 2% per annum above the “prime rate” for the first 60 days and (b) 4% per annum above the “prime rate” after the first 60 days. [Article 5.3.1]  The “prime rate” is the rate of interest quoted by a chartered lending institution, agreed to between the parties, for prime business loans as it may change from time to time. [Article 5.3.1]  Interest at the rate described above applies to the amount agreed to be owing, or the amount found to be owing, regardless of the method of dispute resolution. [Article 5.3.2]
2.	<i>Notice in Writing</i>	Delivery of a notice in writing could be by hand, regular mail or registered post, with deemed dates of receipt. [Article 6.1]  No similar provision.	Delivery of a <i>Notice in Writing</i> can now be by hand, courier, prepaid first class mail, fax or other electronic communication [e.g. <u>E-mail</u> ]. Again, deemed dates of receipt are provided. [Article 6.1]  If it is intended that the notice be received by a specific



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
			<p>individual, that individual's name must be inserted. [Article 6.1]</p> <p>Article 6 formalizes the process for giving written notice under the <i>Contract</i> (see, for example, GC5.1; GC6.4; GC6.5; GC6.6; GC7.1; GC7.2; GC8.2; GC8.3; GC12.1; 12.2).</p>
3.	Definition of <i>Change Directive</i>	See definition 18.	Clarified by now requiring the <i>Contractor</i> to proceed with a change in the <i>Work</i> prior to the <i>Owner</i> and the <i>Contractor</i> agreeing upon an adjustment in <i>Contract Price</i> and <i>Contract Time</i> . [definition 1]
4.	Definition of <i>Subcontractor</i>	See definition 5.	Restricts the definition to those entities which perform <i>Work</i> by removing reference to the supply of <i>Products</i> . [definition 19]
5.	Definition of <i>Notice in Writing</i>	No similar provision.	A <i>Notice in Writing</i> is a written communication between the parties or between them and the <i>Consultant</i> that is transmitted in accordance with the provisions of Article A-6. [definition 11]
6.	New Defined Terms	Various items were referred to throughout the Contract without being formal, defined terms.	<i>Construction Equipment, Drawings, Shop Drawings, Specifications</i> and <i>Temporary Work</i> are all now defined terms in the <i>Contract</i> .
<b>Part 2 – Administration of the Contract</b>			
7.	Role of the <i>Consultant</i>	The <i>Consultant</i> provided administration of the <i>Contract</i> as described in the <i>Contract Documents</i> during construction until the issuance of the final certificate of payment and, with the <i>Owner's</i> concurrence, from time to time until the correction of defects. [GC 2.2.1]	The <i>Consultant</i> now provides administration of the <i>Contract</i> as described in the <i>Contract Documents</i> with no temporal or other restrictions on the provision of its services. [GC 2.2.1]



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		No similar provision.	The <i>Consultant</i> now must promptly inform the <i>Owner</i> of the date of receipt of the <i>Contractor's</i> applications for payment. [GC 2.2.4]
8.	Cost of Review and Inspection of the Work	No similar provisions.	The <i>Contractor</i> must now pay the cost of: <ul style="list-style-type: none"> <li>▪ making any test or inspection, if designated in the <i>Contract Documents</i> to be performed by the <i>Contractor</i> or by the laws or ordinances applicable to the <i>Place of the Work</i>;</li> <li>▪ samples required for any test or inspection to be performed by the <i>Consultant</i> or the <i>Owner</i>, if designated in the <i>Contract Documents</i>. [GC 2.3.6 and 2.3.7]</li> </ul>
9.	Defective Work	The <i>Contractor</i> had to promptly remove from the <i>Place of the Work</i> and replace or re-execute defective work that was rejected by the <i>Consultant</i> as failing to conform to the <i>Contract Documents</i> . [GC 2.4.1]	The requirement to remove defective work has been deleted. The <i>Contractor</i> now must promptly correct defective work that has been rejected by the <i>Consultant</i> as failing to conform to the <i>Contract Documents</i> . [GC 2.4.1]
<b>Part 3 – Execution of the Work</b>			
10.	Construction by the <i>Owner</i> or Other Contractors	When separate contracts were awarded for other parts of the <i>Project</i> , or when work was performed by the <i>Owner's</i> own forces and where part of the <i>Work</i> was affected by or depended upon for its proper execution the work of other contractors or <i>Owner's</i> own forces, the <i>Contractor</i> had to promptly report to the <i>Consultant</i> in writing, and prior to proceeding with that part of the <i>Work</i> , any apparent deficiencies in such work. Failure by the <i>Contractor</i> to report such deficiencies invalidated any claims against the <i>Owner</i> by	The <i>Contractor</i> still must promptly report to the <i>Consultant</i> in writing any apparent deficiencies in the work of other contractors or of the <i>Owner's</i> own forces, where such work affects the proper execution of any portion of the <i>Work</i> , prior to proceeding with that portion of the <i>Work</i> . However, the failure to report such deficiencies no longer expressly invalidates claims against the <i>Owner</i> by reason of the deficiencies. [GC 3.2.3]



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		reason of the deficiencies, except those deficiencies not then reasonably discoverable. [GC 3.2.3]	
11.	<i>Shop Drawings</i>	<p>The <i>Contractor</i> was required to provide shop drawings as described in the <i>Contract Documents</i> or as the <i>Consultant</i> may have reasonably requested. [GC 3.11.2]</p> <p>At the time of providing shop drawings the <i>Contractor</i> had to notify the <i>Consultant</i> in writing of any deviations in the shop drawings from the requirements of the <i>Contract Documents</i>. [GC 3.11.3]</p> <p>The <i>Consultant's</i> review of the shop drawings did not relieve the <i>Contractor</i> of responsibility for errors or omissions in the shop drawings or for meeting all requirements of the <i>Contract Documents</i> <u>unless</u> the <i>Consultant</i> expressly noted the acceptance of a deviation on the shop drawings. [GC 3.11.5]</p>	<p>The <i>Contractor</i> must now only provide shop drawings as described in the <i>Contract Documents</i>. There is no longer a requirement that shop drawings “reasonably requested” by the <i>Consultant</i> be provided. [GC 3.10.1]</p> <p>At the time of providing <i>Shop Drawings</i>, the <i>Contractor</i> must still advise the <i>Consultant</i> in writing of any deviations in the <i>Shop Drawings</i> from the requirements of the <i>Contract Documents</i>. However, the <i>Consultant</i> is now obligated to indicate, in writing, the acceptance or rejection of such deviations. [GC 3.10.9]</p> <p>The <i>Consultant's</i> review of the <i>Shop Drawings</i> still does not relieve the <i>Contractor</i> of responsibility for errors or omissions, but now the <i>Contractor</i> is responsible for such errors and omissions even where the <i>Consultant</i> has accepted a deviation in the <i>Shop Drawings</i>. [GC 3.10.10]</p>
12.	Use of <i>Work</i>	The <i>Contractor</i> had to confine construction machinery and equipment, storage of <i>Products</i> , and operations of employees to limits indicated by laws, ordinances, permits or the <i>Contract Documents</i> and could not unreasonably encumber the <i>Work</i> with <i>Products</i> . [GC 3.12.1]	The <i>Contractor's</i> responsibilities are expanded and it now must confine the operations of its <i>Subcontractors</i> , in addition to its employees, at the <i>Place of the Work</i> . [GC 3.11.1]
13.	Cleanup	The <i>Contractor</i> had to leave the <i>Work</i> clean before it would be given <i>Substantial</i>	Now, the <i>Contractor</i> has to have the <i>Work</i> clean before applying for <i>Substantial Performance of the Work</i> . [GC



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		<i>Performance of the Work.</i> [GC 3.14.2]	3.14.2]
<b>Part 4 - Allowances</b>			
14.	Cash Allowances	<p>What a cash allowance covered was expressly set out. [GC 4.1.2]</p> <p>Where costs under a cash allowance exceeded the amount of the allowance, the <i>Contractor</i> had to be compensated for any excess incurred and substantiated plus an amount for overhead and profit as set out in the <i>Contract Documents</i>. Nothing provided for where cash allowance was less than that expressed amount. [GC 4.1.4]</p>	<p>What cash allowances cover is no longer specifically defined, but rather it has to be set out in the <i>Contract Documents</i>.</p> <p>The <i>Contractor</i> receives the same compensation as referred to in the previous version. However, now where the actual cost of the <i>Work</i> under any cash allowance is less than the amount of the allowance, the <i>Owner</i> is to be credited for the unexpended portion of the cash allowance, but not for the <i>Contractor's</i> overhead and profit on such amount. Also, multiple cash allowances are not to be combined for the purpose of calculating the amount of credit to either the <i>Owner</i> or <i>Contractor</i>. [GC 4.1.4]</p>
15.	Mark-up on Contingency Allowance	No similar provision.	The contingency allowance now expressly includes the <i>Contractor's</i> overhead and profit in connection with that allowance. [GC 4.2.2]
<b>Part 5 – Payment</b>			
16.	Financing Information Required of the Owner	The <i>Owner</i> had to notify the <i>Contractor</i> in writing of any material change in the <i>Owner's</i> financial arrangements during the performance of the <i>Contract</i> . [GC 5.1.2]	The <i>Owner's</i> disclosure obligation is now limited to any material change in its financial arrangements respecting the fulfillment of its obligations under the <i>Contract</i> during the performance of the <i>Contract</i> . [GC 5.1.2]
17.	Progress Payment	After the receipt of an application for payment from the <i>Contractor</i> :	<p>Now, after receipt by the <i>Consultant</i> of an application for payment submitted by the <i>Contractor</i>:</p> <ul style="list-style-type: none"> <li>▪ The <i>Consultant</i> must promptly inform the <i>Owner</i> of the date of receipt of the <i>Contractor's</i> application for payment [not previously required].</li> </ul>



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		<ul style="list-style-type: none"> <li>▪ The <i>Consultant</i> had to issue to the <i>Owner</i>, no later than 10 days, a certificate for payment in the amount applied for or in such other amount as the <i>Consultant</i> determined to be properly due. If the <i>Consultant</i> amended the application, the <i>Consultant</i> had to promptly notify the <i>Contractor</i> in writing giving reasons for the amendment. [GC 5.3.1]</li> <li>▪ The <i>Owner</i> had to make payment to the <i>Contractor</i> no later than 5 days after the date of a certificate for payment issued by the <i>Consultant</i>. [GC 5.3.2]</li> </ul>	<ul style="list-style-type: none"> <li>▪ The <i>Consultant</i> must issue to the <i>Owner</i> and copy to the <i>Contractor</i>, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the <i>Consultant</i> determines to be properly due. If the <i>Consultant</i> amends the application, the <i>Consultant</i> must promptly advise the <i>Contractor</i> in writing giving reasons for the amendment.</li> <li>▪ The <i>Owner</i> must now make payment to the <i>Contractor</i> on or before <u>the later of</u> 20 calendar days after receipt by the <i>Consultant</i> of the application for payment, or the last day of the monthly payment period for which the application for payment is made. [GC 5.3.1]</li> </ul>
18.	<i>Substantial Performance of the Work</i>	<p>When the <i>Contractor</i> considered that the <i>Work</i> was substantially performed, the <i>Contractor</i> prepared and submitted to the <i>Consultant</i> a comprehensive list of items to be completed or corrected and applied for a review by the <i>Consultant</i> to establish <i>Substantial Performance of the Work</i>. [GC 5.4.1]</p> <p>No later than 10 days after the receipt of the <i>Contractor's</i> list and application the <i>Consultant</i> had to:</p> <ul style="list-style-type: none"> <li>▪ review the <i>Work</i> to verify the validity of the application; and</li> <li>▪ no later than 7 days after completing the review, notify the <i>Contractor</i> whether the <i>Work</i> was substantially</li> </ul>	<p>Now, when the <i>Contractor</i> considers that the <i>Work</i> is substantially performed, the <i>Contractor</i> must, <u>within one Working Day</u>, deliver to the <i>Consultant</i> and to the <i>Owner</i> a comprehensive list of items to be completed or corrected, together with a written application for a review by the <i>Consultant</i> to establish <i>Substantial Performance of the Work</i>. [GC 5.4.1]</p> <p>No later than 20 calendar days after receipt of the <i>Contractor's</i> list and application the <i>Consultant</i> must:</p> <ul style="list-style-type: none"> <li>▪ review the <i>Work</i> to verify the validity of the application; and</li> <li>▪ advise the <i>Contractor</i> in writing that the <i>Work</i> is not substantially performed and give reasons why, or</li> <li>▪ state the date of <i>Substantial Performance of the Work</i> in a certificate and issue a copy of that certificate to</li> </ul>



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		performed. [GC 5.4.2]	each of the <i>Owner</i> and the <i>Contractor</i> . [GC 5.4.2]
19.	Progressive Release of the Holdback	Where the <i>Consultant</i> had certified that the work of a <i>Subcontractor</i> or <i>Supplier</i> as performed prior to <i>Substantial Performance of the Work</i> , the <i>Owner</i> had to pay the <i>Contractor</i> the holdback amount retained for such subcontract work, or the <i>Products</i> supplied by such <i>Supplier</i> , on the day following the expiration of the holdback period for such work set out in the Builders Lien Act. [GC 5.6.1]	The same requirement respecting the payment out of the holdback still applies. However, now the <i>Owner</i> may retain out of the holdback amount any sums required by law to satisfy any liens against the <i>Work</i> or, if permitted by the lien legislation applicable to the <i>Place of the Work</i> , other third party monetary claims against the <i>Contractor</i> which are enforceable against the <i>Owner</i> . [GC 5.6.1]  Although not yet considered by a court, this new provision may cover <i>Shimco</i> liens advanced against the holdback.
20.	Final Payment	The <i>Consultant</i> had to, upon receipt of an application from the <i>Contractor</i> for final payment: <ul style="list-style-type: none"> <li>▪ no later than 10 days after the receipt review the <i>Work</i> to verify the validity of the application; and</li> <li>▪ no later than 7 days after reviewing the <i>Work</i>, notify the <i>Contractor</i> that the application is valid or give reasons why it is not valid. [GC 5.7.2]</li> </ul>	The <i>Consultant</i> now must, no later than 10 calendar days after the receipt of an application from the <i>Contractor</i> for final payment, both: <ul style="list-style-type: none"> <li>▪ review the <i>Work</i> to verify the validity of the application; and</li> <li>▪ advise the <i>Contractor</i> in writing that the application is valid or give reasons why it is not valid. [GC 5.7.2]</li> </ul>
<b>Part 6 – Changes In the Work</b>			
21.	Using <i>Change Orders</i> to Make Schedule Changes	No similar provision.	The <i>Owner</i> may change the <i>Contract Time</i> for the <i>Work</i> (or any part of it) without any change in the <i>Work</i> itself, by means of a <i>Change Order</i> [GC 6.1.1], although not by a <i>Change Directive</i> . [GC 6.3.3]
22.	Scope of <i>Change Directives</i>	No similar provision.	<i>Change Directive</i> can only be used to direct a change that is within the general scope of the <i>Contract Documents</i> . [GC 6.3.2]



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23.	Markup on <i>Change Directives</i> Which Increase the Cost of the <i>Work</i> .	“An allowance for overhead and profit” [GC 6.3.6]	“The <i>Contractor's</i> percentage fee” as set out in the <i>Contract Documents</i> or as may be agreed between the parties. [GC 6.3.6]
24.	What Changes can be Grouped Together in a <i>Change Directive</i> .	No similar provision.	Only changes which are substitutions or otherwise related to each other. [GC 6.3.5] (This prevents an <i>Owner</i> from avoiding markup on extra work by combining it with an unrelated deletion in order to achieve a net reduction in cost for the <i>Change Directive</i> .)
25.	Costs to be Included When Valuing <i>Change Directives</i>	Listed in GC 6.3.4	Expanded and clarified list in GC 6.3.7
26.	Increased Costs of <i>Change Directive</i> Work Resulting from <i>Contractor</i> negligence	No similar provision.	The <i>Contractor</i> bears any increased cost due to the <i>Contractor's</i> failure to exercise reasonable care and diligence. [GC 6.3.8]
27.	<i>Owner's</i> Right of Access to <i>Contractor's</i> Documents Related to the Cost of <i>Change Directive</i> Work.	No similar provision.	Reasonable access to all pertinent documents. [GC 6.3.10]
28.	Physical Conditions Expressly Excluded from GC 6.4 "Concealed or Unknown Conditions"	No similar provision.	Conditions due to weather [GC 6.4.1.2], toxic and hazardous substances and materials, artifacts, fossils and mould. [GC 6.4.4]. Note that these are all dealt with elsewhere in the <i>Contract</i> .



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29.	Schedule Extensions due to Weather	No similar provision.	The <i>Contractor</i> is entitled to an extension of the <i>Contract Time</i> (but no additional payment) for delay due to “abnormally adverse weather conditions”. [GC 6.5.3]
30.	Schedule Extension due to Cause Beyond <i>Contractor’s</i> Control	<i>Contract Time</i> extended if the <i>Contractor</i> was delayed by any cause beyond its control. [GC 6.5.3]	This extension has been revised to make clear that it does not apply to a cause which resulted from a default or breach of the <i>Contract</i> by the <i>Contractor</i> .
31.	Payment of Costs Resulting From <i>Contract Time</i> Extension	The <i>Contractor</i> was not entitled to payment for costs incurred by delays resulting in extension of <i>Contract Time</i> unless such delays resulted from action by the <i>Owner</i> . [GC 6.5.3]	The <i>Contractor’s</i> right to recover costs has been expanded so that it is now entitled to its costs if the delay resulted from the actions of not just the <i>Owner</i> but also the <i>Consultant</i> or anyone employed by either of them. [GC 6.5.3]
32.	Claims for a Change in <i>Contract Price</i>	No similar provision.	Requires any party intending to make a claim for an increase in or credit against the <i>Contract Price</i> to give timely notice to the <i>Consultant</i> , take all reasonable measures to mitigate loss or expense, keep all necessary records, and submit a claim to the <i>Consultant</i> within a reasonable time (with updates if necessary), with the <i>Consultant</i> to deliver its findings in writing within 30 days from receipt of the claim unless the parties agree otherwise. [GC 6.6]
<b>Part 7 – Default Notice</b>			
33.	<i>Owner’s</i> Right to Perform the <i>Work</i> , Terminate the <i>Contractor’s</i> Right to Continue with the <i>Work</i> or Terminate the <i>Contract</i>	<p>If a default could not be corrected in the 5 <i>Working Days</i> notice period, the <i>Contractor</i> was deemed to be in compliance with the <i>Owner’s</i> instructions if the <i>Contractor</i> commenced the correction of the default within the specified time, provided the <i>Owner</i> with an acceptable schedule for correction and corrected the default in accordance with the schedule. [GC 7.1.3]</p> <p>If the <i>Owner</i> terminated the <i>Contract</i> due to a <i>Contractor’s</i> default, the <i>Owner</i> was entitled to</p>	<p>The <i>Contractor</i> and the <i>Owner</i> may now agree in writing to a time period other than 5 <i>Working Days</i> to correct the default. As well, added to the criteria for determining whether the <i>Contractor</i> is deemed to be in compliance with the <i>Owner’s</i> instructions is that the default be corrected in accordance with the <i>Contract</i> terms. [GC 7.1.3]</p> <p>It is now clarified that the <i>Owner’s</i> right to utilize the <i>Construction Equipment</i> under this section is subject to the</p>



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		take possession of <i>Work</i> and <i>Products</i> and utilize the construction machinery and equipment. [GC 7.1.5]	rights of third parties. [GC 7.1.5]
34.	<i>Contractor's</i> Right to Suspend the <i>Work</i> or Terminate the <i>Contract</i>	If <i>Work</i> was stopped or otherwise delayed for a period of at least 30 days by an order of a Court or other public authority, the <i>Contractor</i> was entitled to give the <i>Owner</i> notice of termination in writing. [GC 7.2.2]	<i>Work</i> need only be suspended or delayed for a period of at least 20 <i>Working Days</i> under an order of a Court or other public authority before the <i>Contractor</i> is entitled to give notice of termination. [GC 7.2.2]
<b>Part 8 – Dispute Resolution</b>			
35.	Negotiation, Mediation and Arbitration	<p>The applicable rules governing mediations and arbitrations were the latest edition of the Rules for Mediation / Rules for Arbitration of CCDC2 Construction Disputes. [GC 8.2.1]</p> <p>The parties were required to appoint a Project Mediator either within 30 days of the <i>Contract</i> being awarded or within 15 days after either party requested in writing that a Project Mediator be appointed. [GC 8.2.1]</p>	<p>The applicable rules are now the Rules for Mediation / Rules for Arbitration of Construction Disputes as provided for in CCDC 40 in effect at the time of bid closing. [GC 8.2.1]</p> <p>The parties are now required to appoint a Project Mediator within either 20 <i>Working Days</i> of the <i>Contract</i> being awarded or within 10 <i>Working Days</i> after either party request in writing that a Project Mediator be appointed. [GC 8.2.1]</p>
<b>Part 9 – Protection of Persons and Property</b>			
36.	Protection of <i>Work</i> and Property	No similar provision.	Before commencing any work, the <i>Contractor</i> must determine the location of all underground utilities and structures indicated in the <i>Contract Documents</i> or that are <u>reasonably apparent</u> in an inspection of the <i>Place of the Work</i> . [GC 9.1.2]
37.	Damages and Mutual Responsibility	The parties agreed that should one suffer damage as a result of the other's wrongful act or neglect, it would be reimbursed by the other party. [GC 9.2]	The provisions respecting damages and mutual responsibility have been removed, and replaced with the mutual indemnity obligations in GC 12.



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
38.	Toxic and Hazardous Substances	<p>The <i>Owner</i> was deemed to have control of the <i>Place of the Work</i> for purposes of applicable “environmental” legislation. [GC 9.3.1]</p> <p>The <i>Owner</i> had to take reasonable steps to ensure no person suffered injury, sickness or death as a result of exposure to, or presence of, toxic or hazardous substances or materials which were at the <i>Place of the Work</i> prior to the <i>Contractor</i> commencing the <i>Work</i>. [GC 9.3.3]</p> <p>If the <i>Contractor</i> encountered a toxic or hazardous substance, or had reasonable grounds to believe that same was present, not disclosed by <i>Owner</i> or was disclosed but not dealt with pursuant to the GC 9.3.4, the <i>Contractor</i> had to take all reasonable steps to ensure no person suffered injury, illness or death and no property was destroyed. [GC 9.3.5]</p> <p>The <i>Consultant</i> was responsible for determining any disputes pertaining to delays, additional costs and extension of <i>Contract Time</i> as a result of the <i>Contractor</i> taking additional steps to deal with toxic or hazardous material and substances. The <i>Consultant</i> could select and rely on an expert, deemed to have been jointly retained by the <i>Owner</i> and the <i>Contractor</i> and jointly paid by them, to make such a determination. [GC 9.3.6 and GC 9.3.7]</p> <p>The <i>Owner</i> was required to indemnify and hold</p>	<p>The <i>Owner</i> is now deemed to have control of the <i>Place of the Work</i> for purposes of applicable “legislation related to toxic and hazardous substances”. [GC 9.2.1]</p> <p>The <i>Owner</i> must now take reasonable steps to ensure no person’s exposure to toxic or hazardous substances exceeds the time weighted levels prescribed by the applicable legislation, which were at the <i>Place of the Work</i> prior to the <i>Contractor</i> commencing the <i>Work</i>. [GC 9.2.3]</p> <p>Now if the <i>Contractor</i> encounters such conditions, it must take all reasonable steps to ensure no person’s exposure to the substance exceeds any applicable time weighted levels prescribed by the applicable legislation. [GC 9.2.5]</p> <p>The <i>Consultant</i> is no longer involved in the dispute resolution process respecting toxic and hazardous substances. If the <i>Owner</i> and <i>Contractor</i> do not agree on the existence, significance of, or whether the toxic or hazardous substance was brought onto the <i>Place of the Work</i> by the <i>Contractor</i> or anyone for whom the <i>Contractor</i> is responsible, the <i>Owner</i> shall retain and pay for an independent qualified expert to investigate and determine such matters. [GC 9.2.6]</p> <p>If it is agreed or the expert determines that the toxic or</p>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
		harmless the <i>Contractor</i> , the Consultant, their agents and employees, with respect to proceedings arising out of or resulting from the presence of or exposure to toxic or hazardous substances or materials. [GC 9.3.8]	hazardous substances were: <ul style="list-style-type: none"> <li>▪ not brought onto the <i>Place of the Work</i> by the <i>Contractor</i> or someone for whom the <i>Contractor</i> is responsible, the <i>Owner</i> must take all necessary steps to deal with the toxic or hazardous substances; reimburse the <i>Contractor</i> for costs of steps taken as a result of the toxic or hazardous substances; extend the <i>Contract Time</i>; and indemnify the <i>Contractor</i> as required by GC 12.1;</li> <li>▪ brought onto the <i>Place of the Work</i> by the <i>Contractor</i> or someone for whom the <i>Contractor</i> is responsible, the <i>Contractor</i> must take all necessary steps to deal with the toxic or hazardous substances; make good any damage to the <i>Work</i> or property adjacent to the <i>Place of the Work</i>, reimburse the <i>Owner</i> for costs of steps taken as a result of the toxic or hazardous substances; and indemnify the <i>Owner</i> as required by GC 12.1. [GC 9.2.7 and 9.2.8]</li> </ul>
39.	Artifacts and Fossils	No similar provisions.	Fossils, coins, articles of value or antiquity, structures and other remains discovered at the <i>Place of the Work</i> are deemed to be property of the <i>Owner</i> . The <i>Contractor</i> must take all reasonable precautions to prevent removal of such items and must advise the <i>Consultant</i> upon discovery of same. The <i>Consultant</i> will investigate the impact of such discoveries and if such discovery will have an effect on the <i>Contractor's</i> time and/or costs to perform the <i>Work</i> , the <i>Consultant</i> , with the <i>Owner's</i> approval, must issue instructions for a change in the <i>Work</i> . [GC 9.3]
40.	Mould	No similar provisions.	There is no obligation on the <i>Owner</i> to identify mould prior to the commencement of the <i>Work</i> . Rather, if the <i>Contractor</i> or <i>Owner</i> observes or reasonably suspects the presence of mould, the remediation of which is not expressly part of the <i>Work</i> :



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
			<ul style="list-style-type: none"> <li>▪ the identifying party must immediately report the observation;</li> <li>▪ the <i>Contractor</i> must promptly take all reasonable steps to ensure no persons suffers sickness or death and that no property is damaged due to exposure; and</li> <li>▪ the <i>Owner</i> must retain and pay for an independent qualified expert if the <i>Owner</i> and <i>Contractor</i> do not agree on the existence, significance or cause of the mould. [GC 9.5.1]</li> </ul> <p>If the <i>Owner</i> and <i>Contractor</i> agree or if the expert determines that the presence of mould was:</p> <ul style="list-style-type: none"> <li>▪ caused by the <i>Contractor's</i> operations under the <i>Contract</i>, the <i>Contractor</i> must promptly and at its own expense take all reasonable steps to safely remediate and dispose of the mould; make good any damages to the <i>Work</i> or the <i>Owner's</i> property; reimburse the <i>Owner</i> for reasonable costs incurred; and indemnify the <i>Owner</i> as required by GC 12.1 [GC 9.5.2];</li> <li>▪ not caused by the <i>Contractor's</i> operations under the <i>Contract</i>, the <i>Owner</i> must promptly and at its own expense take all reasonable steps to safely remediate and dispose of the mould; make good any damages to the <i>Work</i>; reimburse the <i>Contractor</i> for reasonable costs incurred; extend the <i>Contract Time</i> for such time as the <i>Consultant</i> recommends; and indemnify the <i>Owner</i> as required by GC 12.1 [GC 9.5.3]</li> </ul>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
<b>Part 10 – Governing Regulations</b>			
41.	<i>Contractor’s Responsibility for Permits.</i>	The Contractor was responsible for permits (other than building permits), licenses, and certificates necessary for the performance of the <i>Work</i> which were in force at the date of bid closing. [GC 10.2.2]	<p>The Contractor is now responsible for permits (other than building permits), licenses, inspections, and certificates which are necessary for the performance of the <i>Work</i> and customarily obtained by contractors in the jurisdiction of the <i>Place of the Work</i> after the issuance of the building permit. [GC 10.2.3]</p> <p>Either party may make a claim for a change in the <i>Contract Price</i> if applicable laws, ordinances, rules, regulations or codes change after bid closing. [GC 10.2.7]</p>
<b>Part 11 – Insurance and Contract Security</b>			
42.	Insurance		The new version contains only basic insurance requirements leaving specifics to be captured, by reference, in CCDC 41 – Insurance Requirements. CCDC 41 is intended to act as a “live document” which can more readily facilitate changes as they occur in the insurance industry having regard to policy limits, deductibles, and emerging exclusions.
43.	Insurance: Limits	<p>Coverage limits were as follows:</p> <ul style="list-style-type: none"> <li>▪ general liability insurance – not less than \$2M per occurrence;</li> <li>▪ automobile liability insurance – not less than \$2M per occurrence;</li> <li>▪ aircraft and watercraft liability insurance – not less than \$2M per occurrence;</li> <li>▪ “all risks” property insurance – not less than the sum of the <i>Contract Price</i> and the full value of <i>Products</i> that were specified by the <i>Owner</i> for</li> </ul>	<p>Coverage limits are now:</p> <ul style="list-style-type: none"> <li>▪ general liability insurance – not less than \$5M per occurrence;</li> <li>▪ automobile liability insurance – not less than \$5M per occurrence;</li> <li>▪ aircraft and watercraft liability insurance – not less than \$5M per occurrence;</li> <li>▪ “broad form” property insurance – not less than 1.1 times the <i>Contract Price</i> and the full value of <i>Products</i> that are specified by the <i>Owner</i> for incorporation into the <i>Work</i>;</li> <li>▪ boiler and machinery insurance – not less than the</li> </ul>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
		incorporation into the <i>Work</i> ; <ul style="list-style-type: none"> <li>▪ boiler and machinery insurance – not less than the replacement value of the insurable objects forming part of the <i>Work</i>;</li> <li>▪ <i>Contractors’</i> equipment insurance – no ascribed limit. [GC 11.1.1]</li> </ul>	replacement value of the insurable objects forming part of the <i>Work</i> ; <ul style="list-style-type: none"> <li>▪ <i>Contractors’</i> equipment insurance – no prescribed limit. [GC 11.1.1 and CCDC 41]</li> </ul>
44.	Insurance: Duration	<p>General liability, automobile liability, and <i>Contractor’s</i> equipment insurance policies were to be maintained from the date of commencement of the <i>Work</i> until the date of the final certificate for payment. [GC 11.1.1]</p> <p>“All risks” property insurance was to be maintained continuously from commencement of use or operation of the property insured and until 10 days after the date of the final certificate for payment. [GC 11.1.1]</p> <p>Boiler and machinery insurance was to be maintained continuously from the commencement of use or operation of the property insured until 10 days after the date of the final certificate of payment. [GC 11.1.1]</p>	<p>The duration of coverage has been modified or extended:</p> <ul style="list-style-type: none"> <li>▪ general liability insurance – to be maintained from the date of commencement of the <i>Work</i> until one year from the date of <i>Substantial Performance of the Work</i>;</li> <li>▪ automobile liability insurance – to be maintained from the date of commencement of the <i>Work</i> until one year after the date of <i>Substantial Performance of the Work</i>;</li> <li>▪ boiler and machinery insurance – to be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of <i>Substantial Performance of the Work</i>;</li> <li>▪ <i>Contractors’</i> equipment insurance – to be maintained from the date of commencement of the <i>Work</i> until one year after the date of <i>Substantial Performance of the Work</i>;</li> <li>▪ “Broad form” property insurance – to be maintained from the date of commencement of the <i>Work</i> until the earliest of 10 calendar days after the date of <i>Substantial Performance of the Work</i>; the commencement of use or occupancy (other than for construction purposes), or when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 20 consecutive calendar days. [GC 11.1.1]</li> </ul>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
45.	Insurance: Scope of Coverage	<p>Where the <i>Contractor</i> maintains a single, blanket policy, the addition of the <i>Owner</i> and the <i>Consultant</i> was limited to liability arising out of the <i>Project</i> and all operations necessary or incidental thereto. [GC 11.1.1]</p> <p>General liability, “all risks” property and boiler and machinery insurance had to be in the joint names of the <i>Contractor</i>, the <i>Owner</i> and the <i>Consultant</i>. [GC 11.1.1]</p>	<p>Where the <i>Contractor</i> maintains a single, blanket policy, coverage is now limited to liability, other than legal liability arising out of the <i>Owner’s</i> or <i>Consultant’s</i> sole negligence, arising out of the operations of the <i>Contractor</i> with regard to the <i>Work</i>. [GC 11.1.1]</p> <p>General liability, “broad form property” and boiler and machinery insurance must be in the joint names of the <i>Contractor</i>, the <i>Owner</i> and the <i>Consultant</i>. “Broad form property” and boiler and machinery insurance must now cover <i>Subcontractors</i> as well. [GC 11.1.1]</p>
46.	Insurance: Payment of the Deductible	<p>The <i>Contractor</i> was responsible for deductible amounts under the policies except where such amounts were excluded from the <i>Contractor’s</i> responsibility by the terms of GC 9.1. [GC 11.1.2]</p>	<p>The parties must now pay their share of the deductible amounts in direct proportion to their responsibility for any loss for which the policies are required to pay, except where such amounts are excluded by the terms of the <i>Contract</i>. [GC 11.1.3]</p> <p>In general, the deductible amount has been raised from \$2,500 to \$5,000. [GC 11.1.1 and CCDC 41]</p>
47.	Insurance: Insurable Value	<p>Where the full insurable value of the <i>Work</i> is substantially less than the <i>Contract Price</i>, the <i>Owner</i> may reduce the amount of insurance required or waive the course of construction insurance requirement. [GC 11.1.3]</p>	<p>The discretion in the <i>Owner</i> to reduce the amount of insurance required or waive the course of construction insurance requirement where the full insurable value of the <i>Work</i> is substantially less than the <i>Contract Price</i> has been deleted.</p>
48.	Insurance: Standard Exclusions	<p>No similar provision.</p>	<p>The <i>Contractor</i> is not required to provide insurance coverage for asbestos, cyber risk, mould and terrorism. [CCDC 41]</p>
49.	<i>Contract</i> Security	<p>The <i>Contractor</i> had to, prior to commencement of the <i>Work</i> or within the specified time, provide to the <i>Owner</i> any surety bonds required by the <i>Contract</i>. [11.2.1]</p>	<p>The requirement for the <i>Contractor</i> to provide surety bonds has been replaced with the provision of “any <i>Contract</i> security specified in the <i>Contract Documents</i>”. Thus, no longer restricted to simply bonds. [11.2.1]</p>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
<b>Part 12 – Indemnification, Waiver of Claims and Warranty</b>			
50.	Indemnification: Scope	<p>The <i>Contractor</i> agreed to indemnify the <i>Owner</i> and <i>Consultant</i>, but not <i>vice versa</i>. [GC 12.1.1]</p> <p>Negligence, but not breach of the <i>Contract</i>, triggered indemnity obligation. [GC 12.1.1]</p> <p>Indemnity was in respect of claims by third parties only. [GC 12.1.1]</p> <p>Only related to third party claims for either bodily injury or property damage. [GC 12.1.1]</p> <p>The <i>Owner</i> was not required to waive claims arising out of the <i>Contractor</i> bringing hazardous substances onto the site.</p>	<p>The agreement to indemnify is now mutual, with the <i>Contractor</i> and <i>Owner</i> both agreeing to indemnify the other. The <i>Consultant</i> is no longer an indemnified party. [GC 12.1.1]</p> <p>Indemnity obligation now triggered by both negligence and breach of the <i>Contract</i> itself. [GC 12.1.1]</p> <p>Indemnity now available for direct claims of the <i>Owner</i> and <i>Contractor</i> against the other, as well as for third party claims against the party seeking indemnity. [GC 12.1.1]</p> <p>No longer any restriction on the type of claim that can be the subject of indemnification, so it can be something other than for bodily injury or property damage. For example, indemnification can now be sought for liquidated damages or consequential damages. [GC 12.1.1]</p> <p>There is now an express mutual indemnity for claims arising out of GC 9.2. [GC 12.1.4]</p>
51.	Indemnification: Monetary Limits	<p>The “cap” was \$2M per occurrence from the commencement of the <i>Work</i> until <i>Substantial Performance</i> of the <i>Work</i> and thereafter to an aggregate limit of \$2M. [GC 12.1.2]</p>	<p>Different “cap” levels now exist, depending on the type of claim for which indemnification is being sought:</p> <p>(a) <i>Owner</i> or <i>Contractor</i> seeking indemnity for their own claims in relation to a matter for which insurance was to be provided under the <i>Contract</i> – the cap on indemnity is the general liability insurance limit for one occurrence. [GC 12.1.2.1]</p> <p>(b) <i>Owner</i> or <i>Contractor</i> seeking indemnity for their own claims in relation to a matter for which insurance was <u>not</u></p>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
		<p>No mention of whether the monetary cap amounts include interest or legal costs.</p>	<p><u>required</u> to be provided under the Contract – the cap on indemnity is the <u>greater</u> of the <i>Contract Price</i> or \$2M, but never to exceed \$20M [GC 12.1.2.2]</p> <p>(c) Claims by third parties for bodily injury or property damage – UNLIMITED! There is no cap on the amount of indemnity for which a party is entitled in this scenario, even if the third party claim exceeds the <i>Contract Price</i> or the previously mentioned \$20M figure. If it is a claim by a third party for other than bodily injury/property damage, then the caps provided in the earlier sections apply. [GC 12.1.2.3]</p> <p>The monetary limits are inclusive of both interest and legal costs.</p>
52.	Indemnification: Notice of Claim	<p>No particular form of notice of claim for indemnity required, other than having to be in writing.</p> <p>No time limit for the giving of a written notice was set out.</p>	<p>There is nothing in GC 12.1.6 which specifies a particular form of notice. However, there are express requirements set out in GC 12.2.6 in relation to notices of claims. Those requirements must be complied with to avoid a waiver of the claim, so the claim for indemnity should comply with those notice requirements, discussed below.</p> <p>Notice must be given within a reasonable time after the facts upon which such claim is based become known. [12.1.1.1] What is “reasonable” will depend on the circumstances surrounding the claim and guidance will have to be provided by the Courts as claims are brought forward in litigation.</p>
53.	Waiver of Claims	<p>The <i>Owner</i> and <i>Contractor</i> both agreed to waive all claims they had against each other, whether based in negligence or breach of contract, as of the date of the date of the final certificate for payment, with the exception of the following claims: [GC 12.2.1 and 12.2.2]</p>	<p>The waiver of claims provisions have been extensively re-worked and there is now a much more detailed (and complicated) system which determines which claims are waived by which party, and when. Particular attention must be paid to these sections [GC 12.2.1-12.2.5] to avoid unintentionally waiving a claim one might otherwise be</p>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
		<ul style="list-style-type: none"> <li>▪ those made in writing prior to the date of the final certificate for payment (date of application in the case of the <i>Contractor</i>'s claims) and still unsettled;</li> <li>▪ those relating to GC 9.3 Hazardous Substances;</li> <li>▪ claims by the <i>Owner</i> arising out of the <i>Contractor</i>'s obligation to indemnify or the Warranty provisions;</li> <li>▪ claims by the <i>Owner</i>, made within 6 years of <i>Substantial Performance</i>, relating to “substantial defects or deficiencies” for which the <i>Contractor</i> was proven responsible.</li> </ul>	<p>entitled to pursue.</p> <p>First, there is a general waiver by both the <i>Owner</i> and the <i>Contractor</i> for all claims against the other in relation to the <i>Work</i>. The scope is not just claims they know about, but also claims that they “reasonably ought to have knowledge of ...”. The <i>Contract</i> then sets out a list of exceptions which keep certain claims alive. These include, for both the <i>Owner</i> and the <i>Contractor</i>:</p> <ul style="list-style-type: none"> <li>▪ claims which arose before or on the date of <i>Substantial Performance of the Work</i>, <u>provided that Notice in Writing</u> of such claim has been given no later than the 6<sup>th</sup> calendar day before the expiry of the lien period;</li> <li>▪ claims for indemnity in relation to claims by third parties;</li> <li>▪ claims in relation to toxic or hazardous substances under GC 9.2; and</li> <li>▪ claims which arose from acts or omissions occurring after the date of <i>Substantial Performance of the Work</i> [the “Post-Substantial Performance Claims”];</li> </ul> <p>In addition, there are two further exemptions in relation to claims an <i>Owner</i> may have against a <i>Contractor</i>:</p> <ul style="list-style-type: none"> <li>▪ damages arising in relation to “substantial defects or deficiencies in the <i>Work</i>”, and</li> <li>▪ warranty claims under GC 12.3.</li> </ul> <p>The waiver is effective as of the 5<sup>th</sup> calendar day before the expiry of the lien period unless one of the exceptions is operative. This is why the <i>Notice in Wiring</i> of claim must be given no later than one day before this date as noted above. This could have serious repercussions for a <i>Contractor</i> or <i>Owner</i> who fails to pay attention to this new provision.</p>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
		<p>Notice in writing was required prior to the date of the final certificate for payment being issued for certain of the claims.</p>	<p>The Post-Substantial Performance Claims are automatically waived by both the <i>Contractor</i> and the <i>Owner</i> unless either:</p> <p>(a) they are third party claims for which indemnity is sought or hazardous materials claims; <u>or</u></p> <p>(b) claims for which <i>Notice in Writing</i> has been received within 395 calendar days following the date of <i>Substantial Performance of the Work</i>.</p> <p>In relation to the <i>Owner</i>'s claim relating to “substantial defects or deficiencies in the <i>Work</i>,” such claim is waived unless <i>Notice in Writing</i> is received by the <i>Contractor</i> 6 years from the date of <i>Substantial Performance of the Work</i>, unless a shorter period of time is prescribed in the provincial Limitation Act.</p> <p>There is no express waiver in relation to warranty claims.</p> <p>There is now an express requirement that the notice be a <i>Notice in Writing</i> and that it must contain: [GC 12.2.6]</p> <ul style="list-style-type: none"> <li>▪ a clear and unequivocal statement of the intention to claim;</li> <li>▪ a statement of the nature of the claim;</li> <li>▪ the grounds upon which the claim is based; and</li> <li>▪ an estimated quantum of the claim.</li> </ul> <p>This <i>Notice in Writing</i> must then be followed by a detailed account of the amount claimed “within a reasonable time”. This account will be considered an interim account if the event(s) giving rise to the claim have a continuing effect. [GC 12.2.7 and 12.2.8]</p> <p>The <i>Notice in Writing</i> must be given within a “reasonable time” after the facts upon which it is based become known.</p>



No.	Topic	CCDC 2 – 1994	CCDC 2 – 2008
			<p>[GC 12.1.6.1]</p> <p>The <i>Contract</i> now provides an extension of time provision. If a <i>Notice in Writing</i> is received on the 6<sup>th</sup> or 7<sup>th</sup> day before the lien period expires, and if it relates to a claim arising on or before <i>Substantial Performance of the Work</i>, then the time for the other party to give its own <i>Notice in Writing</i> is extended to 2 calendar days before the expiry of the lien period. This is intended to catch the scenario of one of the parties “lying in the weeds” and issuing its <i>Notice in Writing</i> at the last possible moment to prevent the other party from fully considering whether to bring its own claims forward or simply waive them. [GC 12.2.9 and 12.2.10]</p>
54.	Warranty	<p>Length of Warranty Period – default of 1 year, but modified where Contract Documents specified something different for certain portion of <i>Work</i> or Products.</p> <p style="text-align: center;">No similar provision.</p>	<p>Length is 1 year from <i>Substantial Performance of the Work</i> for everything, except extended warranties. [GC 12.3.1]</p> <p>Extended Warranties – language makes clear that the <i>Contractor’s</i> only obligation with respect to these is to obtain them. The <i>Contractor</i> is not liable as the warrantor itself. [GC 12.3.6]</p>