



## CCDC 17 - 2010 Stipulated Price Contract Between Owner and Trade Contractor for Construction Management Projects

In November 2010, the Canadian Construction Documents Committee will replace the old CCA 17 – 1996 with a new CCDC 17 – 2010. There are a number of differences between the CCA 17 – 1996 and the CCDC 17 – 2010 which impact the duties, rights and obligations of *Owners* and *Trade Contractors*. Many of the changes made are designed to make the CCDC 17 – 2010 consistent with the CCA 1 – 2008 and the CCDC 2 – 2008. Below is a list of some of the significant changes.

### 1. Administration of the Contract

In the CCA 17 – 1996, the *Construction Manager* provided general administration of the *Contract*; however, the *Consultant* had administrative responsibilities as well. Under the CCDC 17 – 2010 (GC 2.2), the *Construction Manager* has taken over many of the administrative duties previously performed by the *Consultant* including making the first determination of the requirements of the *Contract Documents* (except for matters relating to the architectural and engineering aspects of the *Work*), making findings relating to the performance under the *Trade Contract* (except for matters relating to the architectural and engineering aspects of the *Work*) and issuing *Supplemental Instructions*.

Consistent with this approach is that the *Construction Manager* can now take on the responsibility of payment certification, which was previously performed by the *Consultant*. The role of *Payment Certifier* has been created and is identified in Article 1.1 as a role of either the *Construction Manager* or the *Consultant*.

### 2. Safety

Under the CCDC 17 – 2010 (GC 9.4), the *Owner* is now expressly made responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation.

### 3. Insurance

The insurance requirements for both the *Trade Contractor* and the *Owner* have changed under the CCDC 17 – 2010 (GC 11.1). The *Owner* must now obtain, maintain and pay for ‘wrap up’ general liability insurance with a limit of not less than \$10,000,000 per occurrence and a deductible of not more than \$10,000. The *Owner* must also maintain and pay for ‘broad form’ property insurance with a limit of not less than 1.1 times the *Contract Price* and the full value of products and design services provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000.

The *Trade Contractor* must maintain and pay for the same types of insurance coverage as specified under the CCA 17 – 1996, namely automobile liability, aircraft and watercraft liability insurance and contractors’ equipment insurance. However, the insurance coverages provided by the *Trade Contractor* must now meet the minimum requirements specified in CCDC 41 – Insurance Requirements in effect at the time of bid closing. In addition, automobile liability and contractors’ equipment insurance coverage must be maintained from the date of commencement of the *Work* until

one year after *Substantial Performance of the Work*, as opposed to until the date of the final certificate of payment which was standard under the CCA 17 – 1996.

#### 4. **Warranty**

Under the CCDC 17 – 2010 (GC 12.3), the warranty period under the *Contract* is one year from the *Project In-Use Date*, except for extended warranties specified in the *Contract Documents*. In the CCA 17 – 1996, the warranty period with regard to the *Contract* was one year from the date of *Substantial Performance of the Project* or those periods specified in the *Contract Documents* for certain portions of the *Work* or *Products*. *Project In-Use Date* is a new term but similar in concept to *Substantial Performance of the Project* in the CCA 17 – 1996 and refers to the date when the *Project* is ready for use or is being used for the purpose intended and is confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

#### 5. **Parallels Between the CCDC 17 – 2010 / CCA 1 – 2008 / CCDC 2 – 2008**

As set-out above, many of the General Conditions in the CCDC 17 – 2010 parallel the CCA 1 – 2008 and CCDC 2 – 2008, including:

Indemnification and Waiver of Claims – GC 12.1 and GC 12.2 have 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.

Claims for 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.

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 of costs associated with such delays.

Utility Location – GC 9.1.2 now requires the *Trade Contractor*, before commencing any work, to determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Project*.

Toxic and Hazardous Substances & Mould – GC 9.2 and GC 9.5 set out the specific procedures and protocols to follow for dealing with these substances and compensation with respect to same.

There is no substitute for reading the actual contract and being familiar with its terms. 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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