

GENERAL CONDITIONS

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GENERAL CONDITIONS

GC1 INTERPRETATION

- 1.1 In the contract
- 1.1.1 where reference is made to a part of the contract by means of numbers preceded by letters, the reference shall be construed to be a reference to the particular part of the contract that is identified by that combination of letters and numbers and to any other part of the contract referred to therein.
 - 1.1.2 "contract" means the contract documents referred to in the Articles of Agreement.
 - 1.1.3 "contract security" means any security given by the Contractor to the Owner in accordance with the contract.
 - 1.1.4 "Engineer" means the officer or employee of the Owner who is designated pursuant to the Articles of Agreement and includes a person specially authorized by him to perform, on his behalf, any of his functions under the contract.
 - 1.1.5 "material" includes all commodities, articles and things required to be furnished by or for the Contractor under the contract for incorporation into the work.
 - 1.1.6 "person" includes, unless the context otherwise requires, a partnership, proprietorship, firm, joint venture, consortium and a corporation.
 - 1.1.7 "plant" includes all animals, tools, implements, machinery, vehicles, buildings, structures, equipment and commodities, articles and things other than material, that are necessary for the due performance of the contract.
 - 1.1.8 "subcontractor" means a person to whom the Contractor has, subject to GC4, subcontracted the whole or any part of the work.
 - 1.1.9 "substantial performance" as defined in the lien legislation applicable to the Place of Work. If such legislation is not in force, is not applicable or does not contain such definition, substantial performance shall have been reached when Work is ready for use or is being used for the purpose intended and is so certified by the Engineer.
 - 1.1.10 "superintendent" means the employee of the Contractor who is designated by the Contractor to act pursuant to GC18.
 - 1.1.11 "work" includes, subject only to any express stipulation in the contract to the contrary, everything that is necessary to be done, furnished or delivered by the Contractor to perform the contract.
- 1.2 The division into sections, the table of contents, and the headings in the contract documents, other than in the Plans and Specifications, form no part of the contract but are inserted for convenience of reference only
- 1.3 In interpreting the contract, in the event of discrepancies or conflicts between anything in the Plans and Specifications and the General Conditions, the General Conditions govern.
- 1.4 In interpreting the Plans and Specifications, in the event of discrepancies or conflicts between
- 1.4.1 the Plans and Specifications, the Specifications govern;
 - 1.4.2 the Plans, the Plans drawn with the largest scale govern, and
 - 1.4.3 figured dimensions and scaled dimensions, the figured dimensions govern.

- 1.5 Any reference to a statutory provision shall include any subordinate legislation made and from time-to-time amended, extended or re-enacted.
- 1.6 This Agreement shall be governed by and construed in accordance with the laws of Nunavut and the laws of Canada as applicable therein.
- 1.7 Unless otherwise indicated, all dollar amounts referred to in the Agreement are in lawful money of Canada.
- 1.8 In any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect. In the event any provision of this Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain in full force and effect.
- 1.9 Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 1.10 The Contractor shall be required to comply, and shall require its subcontractors to comply, with all applicable laws, orders, rules and regulations; and, without limiting the generality of the foregoing, the Contractor shall at its sole expense comply with all unemployment insurance, Worker's Compensation, income tax, payroll tax, Canada Pension Plan, occupational health and safety and environmental protection legislation.

GC2 SUCCESSORS AND ASSIGNS

- 2.1 The contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

GC3 ASSIGNMENT OF CONTRACT

- 3.1 The contract may not be assigned by the Contractor, either in whole or in part without the written consent of the Owner.

GC4 SUBCONTRACTING BY CONTRACTOR

- 4.1 Subject to this General Condition, the Contractor may subcontract any part of the work so long as such subcontracting is consistent with the information provided on Appendix B-1 and B-2 of the Tender.
- 4.2 The Contractor shall notify the Engineer of his intention to subcontract.
- 4.3 A notification referred to in GC4.2 shall identify the part of the work, and the subcontractor with whom it is intended to subcontract.
- 4.4 The Engineer may, within six days of receipt by him of a notification referred to in GC4.2, object to the intended subcontracting.
- 4.5 If the Engineer objects to a subcontracting pursuant to GC4.4, the Contractor shall not enter into the intended subcontract.
- 4.6 The Contractor shall not, without the written consent of the Owner change a subcontractor who has been engaged by him in accordance with this General Condition and the tender form, and if any

changes are made without consent, the contract may be terminated at the option of the Owner.

4.7 Every subcontract entered into by the Contractor shall adopt all of the terms and conditions of this contract that are of general application.

4.8 Neither a subcontracting nor the Engineer's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the contract or to impose any liability upon the Owner.

GC5 AMENDMENTS

5.1 No amendment or change in any of the provisions of the contract shall have any force or effect until it is reduced to writing.

GC6 NO IMPLIED OBLIGATIONS

6.1 No implied terms or obligations of any kind by or on behalf of the Owner shall arise from anything in the contract and the express covenants and agreements therein contained and made by the Owner are the only covenants and agreements upon which any rights against the Owner are to be founded.

6.2 The contract supersedes all communications, negotiations and agreements, either written or oral, relating to the work that was made prior to the date of the contract.

GC7 TIME OF ESSENCE

7.1 Time is of the essence of the contract.

GC8 INDEMNIFICATION BY CONTRACTOR

8.1 The Contractor shall indemnify and save the Owner harmless from and against all claims, demands, losses, damages, actions, suits or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor, his servants, agents, and subcontractors in performing the work including an infringement or an alleged infringement of patent of invention or any kind of intellectual property.

8.2 For the purposes of GC8.1, "activities" includes but is not limited to any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GC9 INDEMNIFICATION BY THE OWNER

9.1 The Owner shall, subject to any law that affects the Owner's rights, powers, privileges or obligations, indemnify and save the Contractor harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of his activities under the contract that are directly attributable to

9.1.1 lack of or a defect in the Owner's title to the work site whether real or alleged; or

9.1.2 an infringement or an alleged infringement by the Contractor of any patent of invention or any other kind of intellectual property occurring while the Contractor was performing any act for the purposes of the contract employing a model, plan or design or any other thing related to the work that was supplied by the Owner to the Contractor.

GC10 NOTICES TO CONTRACTOR

10.1 Notices for the purposes of GC37.1.1, GC39 and GC40 shall be in writing and shall be given

10.1.1 by delivering the notice to the Contractor in person or, if the Contractor is a partnership, firm, joint venture consortium or corporation, to a senior administrative or executive officer thereof, or

- 10.1.2 by mailing the notice to the Contractor at his address set out in the Articles of Agreement.
- 10.2 A notice referred to in GC10.1 shall be deemed to have been received by the Contractor
- 10.2.1 if it was delivered pursuant to GC10.1.1, on the day that it was delivered, and
- 10.2.2 if it was sent by mail pursuant to GC10.1.2, on the earlier of the day it was received by the Contractor and the sixth day after it was mailed.
- 10.3 Any notice, consent, order, direction, decision, or other communication, other than a notice referred to in GC10.1, that may be given to the Contractor pursuant to the contract may be given in any manner, but it shall be deemed to have been received by the contractor, if it is in writing.
- 10.3.1 on the day that it was delivered to the superintendent, or
- 10.3.2 on the sixth day after it was mailed to the Contractor at his address set out in the Articles of Agreement.
- 10.4 Where the postal service is disrupted by a strike, a notice, consent, order, direction, decision or other communication may be given to the Contractor by facsimile and shall be deemed to have been received by the Contractor twenty-four hours after it was transmitted.
- GC11 MATERIAL, PLANT AND REAL PROPERTY SUPPLIED BY THE OWNER**
- 11.1 Subject to GC11.2, the Contractor is liable to the Owner for any loss or damage to material, plant or real property that is supplied or placed in the care, custody and control of the contractor by the Owner for use in connection with the contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control.
- 11.2 The Contractor is not liable to the Owner for any loss or damage to material, plant or real property referred to in GC11.1 if that loss or damage results from and is directly attributable to reasonable wear and tear.
- 11.3 The Contractor shall not use any material, plant or real property referred to in GC11.1 except for the purpose of performing this contract.
- 11.4 When the Contractor fails to make good any loss or damage for which he is liable under GC11.1 within a reasonable time after being required to so by the Engineer, the Engineer may cause the loss or damage to be made good at the Contractor's expense, and the Contractor shall thereupon be liable to the Owner for the cost thereof and shall, on demand, pay to the Owner an amount equal to that cost.
- 11.5 The Contractor shall keep such records of all material, plant and real property referred to in GC11.1 as the Engineer from time to time requires and shall satisfy the Engineer, when requested, that such material, plant and real property are at the place and in the condition in which they ought to be.
- GC12 MATERIAL, PLANT AND REAL PROPERTY BECOME THE PROPERTY OF THE OWNER**
- 12.1 All material and plant and the interest of the Contractor in all real property, licenses, powers and privileges acquired, used or provided by him for the contract shall, from the time of their acquisition, use or provision, be the property of the Owner for the purposes of the work and they shall continue to be the property of the Owner
- 12.1.1 in the case of material, until the Engineer indicates that he is satisfied that it will not be required for the work; and

- 12.1.2 in the case of plant, real property, licenses, powers and privileges, until the Engineer indicates that he is satisfied that the interest vested in the Owner therein is no longer required for the purposes of the work.
- 12.2 Material or plant that is the property of the Owner by virtue of GC12.1 shall not be taken away from the work site or used or disposed of except for the purposes of the work without the written consent of the Engineer.
- 12.3 The Owner is not liable for loss of or damage from any cause to the material or plant referred to in GC12.1 and the Contractor is liable for such loss or damage notwithstanding that the material or plant is the property of the Owner
- GC13 MUNICIPAL PERMITS**
- 13.1 The Contractor shall, within 30 days after the date of the contract, tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the work were being performed for a person other than the Owner
- 13.2 Within 10 days of making a tender pursuant to GC13.1, the Contractor shall notify the Engineer of his action and of the amount tendered and whether or not the municipal authority has accepted that amount.
- 13.3 If the municipal authority does not accept the amount tendered pursuant to GC13.1, the Contractor shall pay that amount to the Owner within 6 days after the time stipulated in GC13.2.
- 13.4 For the purposes of GC13.1, to GC13.3, "municipal authority" means any authority that would have jurisdiction respecting permission to perform the work if the owner were not the Owner.
- GC14 PERFORMANCE OF WORK UNDER DIRECTION OF ENGINEER**
- 14.1 The Contractor shall
- 14.1.1 permit the Engineer to have access to the work and its site at all times during the performance of the contract;
- 14.1.2 furnish the Engineer with such information respecting the performance of the contract as he may require; and
- 14.1.3 give the Engineer every possible assistance to enable the Engineer to carry out his duty to see that the work is performed in accordance with the contract and to carry out any other duties and exercise any powers specially imposed or conferred on the Engineer under the contract.
- GC15 COOPERATION WITH OTHER CONTRACTORS**
- 15.1 Where, in the opinion of the Engineer, it is necessary that other contractors or workers with or without plant and material, be sent onto the work or its site, the Contractor shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligations.
- 15.2 The Owner shall pay the Contractor the cost calculated in accordance with GC46 to GC49, of the extra labour, plant and material that was necessarily incurred if:
- 15.2.1.1.1 the sending onto the work or its site of other contractors or workers pursuant to GC15.1 could not have been reasonably foreseen or anticipated by the Contractor when entering into the contract.
- and
- 15.2.2 the Contractor incurs, in the opinion of the Engineer, extra expense in

- and complying with GC15.1;
- 15.2.3 the Contractor has given the Engineer written notice of his claim for the extra expense referred to in GC15.2.2 within 10 days of the date that the other contractors or workers were sent onto the work or its site.

GC16 EXAMINATION OF WORK

- 16.1 If, at any time after the commencement of the work but prior to the expiry of the warranty period, the Engineer has reason to believe that the work or any part thereof has not been performed in accordance with the contract, the Engineer may have that work examined by an expert of his choice.
- 16.2 If, as a result of an examination of the work referred to in GC16.1, it is established that the work was not performed in accordance with the contract, then, in addition to and without limiting or otherwise affecting any of the Owner's rights and remedies under the contract either at law or in equity, the Contractor shall pay the Owner, on demand, all reasonable costs and expenses that were incurred by the Owner in having that examination performed.

GC17 CLEARING OF SITE

- 17.1 The Contractor shall maintain the work and its site in a tidy condition and free from the accumulation of waste material and debris, in accordance with any directions of the Engineer.
- 17.2 Before the issue of a Certificate of Substantial Completion referred to in GC43.2, the Contractor shall remove all the plant and material not required for the performance of the remaining work, and all waste material and other debris, and shall cause the work and its site to be clean and suitable for occupancy or use by the Owner's servants, unless otherwise stipulated in the contract. The Contractor shall, as directed by the owner, take down all signs erected during construction.
- 17.3 Before the issue of a final certificate referred to in GC43.1, the Contractor shall remove from the work and its site all of the surplus plant and material and any waste material and other debris.
- 17.4 The Contractor's obligations described in GC17.1 to GC17.3 do not extend to waste material and other debris caused by the Owner's servants or contractors and workers referred to in GC15.1.

GC18 CONTRACTOR'S SUPERINTENDENT

- 18.1 The Contractor shall, forthwith upon the award of the contract, designate a Superintendent.
- 18.2 The Contractor shall forthwith notify the Engineer of the name, address and telephone number of a superintendent designated pursuant to GC18.1.
- 18.3 A superintendent designated pursuant to GC18.1 shall be in full charge of the site of the work and the operations of the Contractor, his servants, agents, and subcontractors in the performance of the work and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the Contractor that may be given to the superintendent under the contract.
- 18.4 The Contractor shall, until the work has been completed, keep a competent superintendent at the work site during working hours.
- 18.5 The Contractor shall, upon the request of the Engineer, remove any superintendent who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and shall forthwith designate another superintendent who is acceptable to the Engineer.
- 18.6 Subject to GC18.5, the Contractor shall not substitute a superintendent without the written consent of the Engineer.

- 18.7 A breach by the Contractor of GC18.6 entitles the Engineer to refuse to issue any certificate referred to in GC43 until the superintendent has returned to the work site or another superintendent who is acceptable to the Engineer has been substituted.

GC19 NATIONAL SECURITY

- 19.1 If the Owner is of the opinion that the work is of a class or kind that involves the national security, he may order the Contractor
- 19.1.1 to provide him with any information concerning persons employed or to be employed by him for purposes of the contract; and
 - 19.1.2 to remove any person from the work and its site if, in the opinion of the Owner, that person may be a risk to the national security.
- 19.2 The Contractor shall, in all contracts with persons who are to be employed in the performance of the contract, make provision for his performance of any obligation that may be imposed upon him under GC18 to GC20.
- 19.3 The Contractor shall comply with an order of the Owner under GC19.1.

GC20 UNSUITABLE WORKERS

- 20.1 The Contractor shall, upon the request of the Engineer, remove any person employed by him for purposes of the contract who, in the opinion of the Engineer, is incompetent or has conducted himself improperly, and the Contractor shall not permit a person who has been removed to return to the work site.

GC21 INCREASED OR DECREASED COSTS

- 21.1 The amount set out in the Articles of Agreement shall not be increased or decreased by reason of any increase or decrease in the cost of the work that is brought about by an increase or decrease in the cost of labour, plant or material or the wage rates set out in or prescribed pursuant to the Labour Conditions.
- 21.2 Notwithstanding GC21.1, and GC34, an amount set out in the Articles of Agreement shall be adjusted in the manner provided in GC21.3, if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act or the Customs Tariff
- 21.2.1 occurs after the date of the submission by the Contractor of his tender for the contract.
 - 21.2.2 applies to material, and
 - 21.2.3 affects the cost to the Contractor of that material.
- 21.3 If a change referred to in GC21.2 occurs, the appropriate amount set out in the Articles of Agreement shall be increased or decreased by an amount equal to the amount that is established by an examination of the relevant records of the Contractor referred to in GC50 to be the increase or decrease in the cost incurred that is directly attributable to that change.
- 21.4 For the purpose of GC21.2, where a tax is changed after the date of submission of the tender but public notice of the change has been given by the Owner of Finance before that date, the change shall be deemed to have occurred before the date of submission of the tender.

GC22 LABOUR AND MATERIAL

- 22.1 The Contractor shall use Canadian labour and material in the performance of the work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the work.

GC23 PROTECTION OF WORK AND DOCUMENTS

- 23.1 The Contractor shall guard or otherwise protect the work and its site, and protect the contract, specifications, plans, information, material, plant and real property, whether or not they are supplied by the Owner to the Contractor, against loss or damage from any cause, and he shall not use, issue, disclose or dispose of them without the written consent of the Owner, except as may be essential for the performance of the work.
- 23.2 If any document or information given or disclosed to the Contractor is assigned a security rating by the person who gave or disclosed it, the Contractor shall take all measures directed by the Engineer to be taken to ensure the maintenance of the degree of security that is ascribed to that rating.
- 23.3 The Contractor shall provide all facilities necessary for the purpose of maintaining security, and shall assist any person authorized by the Owner to inspect or to take security measures in respect of the work and its site.
- 23.4 The Engineer may direct the Contractor to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC23.1 to GC23.3.

GC24 PUBLIC CEREMONIES AND SIGNS

- 24.1 The Contractor shall not permit any public ceremony in connection with the work without the prior consent of the Owner.
- 24.2 The Contractor shall not erect or permit the erection of any sign or advertising on the work or its site without the prior consent of the Engineer.

GC25 PRECAUTIONS AGAINST DAMAGE, INFRINGEMENT OF RIGHTS, FIRE AND OTHER HAZARDS

- 25.1 The Contractor shall, at his own expense, do whatever is necessary to ensure that:
- 25.1.1 no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the contract.
 - 25.1.2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the work or plant;
 - 25.1.3 fire hazards in or about the work or its site are eliminated and, subject to any direction that may be given by the Engineer, any fire is promptly extinguished.
 - 25.1.4 the health and safety of all persons employed in the performance of the work is not endangered by the method or means of its performance;
 - 25.1.5 adequate medical services are available to all persons employed on the work or its site at all times during the performance of the work;
 - 25.1.6 adequate sanitation measures are taken in respect of the work and its site; and
 - 25.1.7 all stakes, buoys and marks placed on the work or its site by or under the authority of the Engineer are protected and are not removed, defaced, altered or destroyed.

Without limiting any of the foregoing, the Contractor shall take all actions required or necessary to ensure compliance by all persons employed in the performance of the work or at the site of the work, including the employees of the Contractor and sub-contractors and their employees, with the

Consolidation of Safety Act, R.S.N.W.T. 1988, c.S-1 and any regulations thereunder.

25.2 The Engineer may direct the Contractor to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC25.1.

25.3 The Contractor shall, at his own expense, comply with a direction of the Engineer made under GC25.2.

GC26 INSURANCE

26.1 The Contractor shall, at his own expense, maintain insurance contracts in respect of the work

26.1.1 with insurance companies approved by the Owner, companies must comply with the Insurance Act for Nunavut, and

26.1.2 that are in a form, of the nature, in the amounts, for the periods and containing the terms and conditions, if any, specified in GC58, GC59, GC60, GC61 and GC62.

GC27 INSURANCE PROCEEDS

27.1 If the work or any part thereof is lost, damaged or destroyed and monies are paid to the Owner in respect of that loss, damage or destruction under an insurance contract maintained by the Contractor pursuant to GC26, the monies shall be held by the Owner for the purposes of the contract.

27.2 The Owner may elect to retain the monies referred to in GC27.1 and in that event the monies belong to the Owner absolutely.

27.3 If an election is made pursuant to GC27.2, the Owner may cause an audit to be made of the accounts of the Contractor and of the Owner in respect of the part of the work that was lost, damaged or destroyed for the purpose of establishing the difference, if any, between

27.3.1 the aggregate of the amount of the loss or damage suffered or sustained by the Owner, including any costs incurred in respect of the clearing and cleaning of the work and its site and any other amount that is payable by the Contractor to the Owner under the contract, minus any monies retained pursuant to GC27.2 and

27.3.2 the aggregate of the amounts payable by the Owner to the Contractor pursuant to the contract up to the date of the loss or damage.

27.4 A difference that is established pursuant to GC27.3 shall be paid forthwith by the party who is determined by the audit to be the debtor to the party who is determined by the audit to be the creditor.

27.5 When payment of a deficiency has been made pursuant to GC27.4, all rights and obligations of the Owner and the Contractor under the contract shall, with respect only to the part of the work that was the subject of the audit referred to in GC27.3, be deemed to have been expended and discharged.

27.6 If an election is not made pursuant to GC27.2, the Contractor shall, subject to GC27.7, clear and clean the work and its site and restore and replace the part of the work that was lost, damaged or destroyed at his own expense as if that part of the work had not yet been performed.

27.7 When the Contractor clears and cleans the work and its site and restores and replaces the work referred to in GC27.6, the Owner shall pay him out of the monies referred to in GC27.1 so far as they will thereunto extend.

27.8 Subject to GC27.7, payment to the Owner pursuant to GC27.7 shall be made in accordance with the contract but the amount of each payment shall be 100% of the amount claimed notwithstanding

TP4.4.1 and TP4.4.2.

GC28 CONTRACT SECURITY

- 28.1 The Contractor shall obtain and deliver contract security to the Engineer in accordance with the provisions of GC56 and GC57.
- 28.2 If the whole or a part of the contract security referred to in GC28.1 is in the form of a security deposit, it shall be held and disposed of in accordance with GC42 and GC44.
- 28.3 If a part of the contract security referred to in GC28.1 is in the form of a labour and material payment bond, the Contractor shall post a copy of that bond on the work site.

GC29 CHANGES IN THE WORK

- 29.1 Subject to GC5, the Engineer may, at any time before he issues his Final Certificate of Completion:
- 29.1.1 order work or material in addition to that provided for in the Plans and Specifications; and
- 29.1.2 dispense with or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in the Plans and Specifications or in any order made pursuant to GC29.1.1, if that additional work or material dispensation, or change is, in his opinion, consistent with the general intent of the original contract.
- 29.2 The Contractor shall perform the work in accordance with such order, dispensations and changes that are made by the Engineer pursuant to GC29.1 from time to time as if they had appeared in and been part of the Plans and Specifications.
- 29.3 The Engineer shall determine whether or not anything done or omitted by the Contractor pursuant to an order, dispensation or change referred to in GC29.1 increased or decreased the cost of the work to the Contractor.
- 29.4 If the Engineer determines pursuant to GC29.3 that the cost of the work to the Contractor has been increased, the Owner shall pay the Contractor the increased cost of the labour, plant and material that he necessarily incurred calculated in accordance with GC46 to GC49.
- 29.5 If the Engineer determines pursuant to GC29.3 that the cost of the work to the Contractor has been decreased, the Owner may reduce the amount payable to the Contractor under the contract by an amount equal to the decrease in the cost of the labour, plant and material that was incurred calculated in accordance with GC46 to GC49.
- 29.6 An order, dispensation or change referred to in GC29.1 shall be in writing, signed by the Engineer and given to the Contractor in accordance with GC10.

GC30 INTERPRETATION OF CONTRACT BY ENGINEER

- 30.1 If, at any time before the Engineer has issued a Final Certificate of Completion referred to in GC43.1, any question arises between the parties about whether anything has been done as required by the contract or about what the Contractor is required by the contract to do, and, in particular but without limiting the generality of the foregoing, about
- 30.1.1 the meaning of anything in the Plans and Specifications.
- 30.1.2 the meaning to be given to the Plans and Specifications in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention.
- 30.1.3 whether or not the quality or quantity of any material or workmanship supplied or

proposed to be supplied by the Contractor meets the requirements of the contract,

30.1.4 whether or not the labour, plant or material provided by the Contractor for performing the work and carrying out the contract are adequate to ensure that the work will be performed in accordance with the contract and that the contract will be carried out in accordance with its terms,

30.1.5 what quantity of any kind of work has been completed by the Contractor, or

30.1.6 the timing and scheduling of the various phases of the performance of the work,

the question shall be decided by the Engineer whose decision shall be final and conclusive in respect of the work.

30.2 The Contractor shall perform the work in accordance with any decisions of the Engineer that are made under GC30.1 and in accordance with any consequential directions given by the Engineer.

GC31 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK

31.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the contract documents, the Contractor shall, at his own expense, rectify and make good any defect or fault that appears in the work or comes to the attention of the Owner within 12 months from the date of the Substantial Completion referred to in GC43.2.

31.2 The Engineer may direct the Contractor to rectify and make good any defect or fault referred to in GC31.1 or covered by any other expressed or implied warranty or guarantee.

31.3 A direction referred to in GC31.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the Contractor, and shall be given to the Contractor in accordance with GC10.3.

31.4 The Contractor shall rectify and make good any defect or fault described in a direction given pursuant to GC31.2 within the time stipulated therein.

GC32 NON-COMPLIANCE BY CONTRACTOR

32.1 If the Contractor fails to comply with any decision or direction given by the Engineer pursuant to GC17, GC23, GC25, GC30 or GC31, the Engineer may employ such methods as he deems advisable to do that which the Contractor failed to do.

32.2 The Contractor shall, on demand, pay the Owner an amount that is equal to the aggregate of all costs, expenses and damage incurred or sustained by the Owner by reason of the Contractor's failure to comply with any decision or direction referred to in GC32.1, including the cost of any methods employed by the Engineer pursuant to GC32.1.

GC33 PROTESTING ENGINEER'S DECISIONS

33.1 The Contractor may, within ten (10) days after the communication to him of any decision or direction referred to in GC32.1, protest that decision or direction.

33.2 A protest referred to in GC33.1 shall be in writing, contain full reasons for the protest, be signed by the Contractor and be given to the Owner by delivery to the Engineer.

33.3 If the Contractor gives a protest pursuant to GC33.2, any compliance by the Contractor with the decision or direction that was protested shall not be construed as an admission by the Contractor of the correctness of that decision or direction or prevent the Contractor from taking whatever lawful action he considers appropriate in the circumstances.

33.4 The giving of a protest by the Contractor pursuant to GC33.2 shall not relieve him from complying

with the decision or direction that is the subject of the protest.

- 33.5 Subject to GC33.6, the Contractor shall take any action referred to in GC33.3 within three months after the date that a Final Certificate of Completion is issued under GC43.1 and not afterwards.
- 33.6 The Contractor shall take any action referred to in GC33.3, resulting from a direction under GC31 within three months after the expiry of a warranty or guarantee period and not afterwards.
- 33.7 Subject to GC33.8, if the Owner determines that the Contractor's protest is justified, the Owner shall pay the Contractor the cost of the additional labour, plant and material necessarily incurred by the Contractor in carrying out the protested decision or direction.
- 33.8 Costs referred to in GC33.7 shall be calculated in accordance with GC47 to GC49.

GC34 CHANGES IN SOIL CONDITIONS AND NEGLECT OR DELAY BY THE OWNER

- 34.1 Subject to GC34.2 no payment, other than a payment that is expressly stipulated in the contract, shall be made by the Owner to the Contractor for any extra expense or any loss or damage incurred or sustained by the Contractor.

- 34.2 If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to

34.2.1 a substantial difference between the information relating to soil conditions at the work site that is contained in the Plans and Specifications or other documents supplied to the Contractor for his use in preparing his tender or a reasonable assumption of fact based thereon made by the Contractor, and the actual soil conditions encountered by the Contractor at the work site during the performance of the contract, or

34.2.2 any neglect or delay that occurs after the date of the contract on the part of the Owner in providing any information or in doing any act that the contract either expressly requires the Owner to do or that would ordinarily be done by an owner in accordance with the usage of the trade.

He shall, within ten days of the date that an event described in GC34.2.1 or GC34.2.2 occurred, give the Engineer written notice of the event and of his intention to claim for that extra expense or that loss or damage.

- 34.3 When the Contractor has given a notice referred to in GC34.2, he shall give the Engineer a written claim for extra expense or loss or damage within 30 days of the date that a Final Certificate of Completion referred to in GC43.1 is issued and not afterwards.
- 34.4 A written claim referred to in GC34.3 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable the Engineer to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as the Engineer requires from time to time.
- 34.5 If the Engineer determines that a claim referred to in GC34.3 is justified, the Owner may make an extra payment to the Contractor in an amount that is calculated in accordance with GC46 to GC49.
- 34.6 If, in the opinion of the Engineer, an occurrence described in GC34.2.1 results in a saving of expenditure by the Contractor in performing the contract, the amount set out in the Articles of Agreement shall, subject to the GC34.7, be reduced by an amount that is equal to the saving.
- 34.7 The amount of the saving referred to GC34.6 shall be determined in accordance with GC46 to GC49.
- 34.8 If the Contractor fails to give a notice referred to in GC34.2 and a claim referred to in GC34.3 within the times stipulated, an extra payment should not be made to him in respect of the

occurrence.

GC35 EXTENSION OF TIME

- 35.1 Subject to GC35.2, the Engineer may, on the application of the Contractor made before the day fixed by the Articles of Agreement for completion of the work or before any other date previously fixed under this General Condition, extend the time for its completion by fixing a new date, if in his opinion, causes beyond the control of the Contractor have delayed its completion.
- 35.2 An application referred to in GC35.1 shall be accompanied by the written consent of the bonding company whose bond forms part of the contract security.

GC36 ASSESSMENTS AND DAMAGES FOR LATE COMPLETION

- 36.1 For the purposes of this General Condition
- 36.1.1 the work shall be deemed to be completed on the date that a Substantial Certificate of Completion referred to in GC43.2 is issued, and
- 36.1.2 "period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the work and ending on the day immediately preceding the day on which the work is completed but does not include any day within a period of extension granted pursuant to GC35.1, and any other day on which, in the opinion of the Engineer, completion of the work was delayed for reasons beyond the control of the Contractor.
- 36.2 If the Contractor does not complete the work by the day fixed for its completion by the Articles of Agreement but completes it thereafter, the Contractor shall pay the Owner an amount equal to the aggregate of
- 36.2.1 all salaries, wages, and travelling expenses incurred by the Owner in respect of persons overseeing the performance of the work during the period of delay,
- 36.2.2 the cost incurred by the Owner as a result of the liability to use the completed work for the period of delay; and
- 36.2.3 all other expenses and damages incurred or sustained by the Owner during the period of delay as a result of the work not being completed by the day fixed for its completion.
- 36.3 The Owner may waive its right to the whole or any part of the amount payable by the Contractor pursuant to GC36.2 if, in the opinion of the Owner, it is in the public interest to do so.

GC37 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

- 37.1 The Owner may, at its sole discretion, take all or any part of the work out of the Contractor's hands, and may employ such means as he sees fit to have the work completed if the Contractor
- 37.1.1 has not, within six days after receiving notice given by the Owner or the Engineer in accordance with GC10.1, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;
- 37.1.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the contract;
- 37.1.3 has become insolvent;
- 37.1.4 has committed an act of bankruptcy;
- 37.1.5 has abandoned the work;

- 37.1.6 has made an assignment of the contract without the consent required by GC3.1; or
- 37.1.7 has otherwise failed to observe or perform any of the provisions of the contract.
- 37.2 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC37.1:
 - 37.2.1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC37.4, extinguished, and
 - 37.2.2 the Contractor is liable to pay the Owner, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Owner in respect of the Contractor's failure to complete the work.
- 37.3 If the whole or any part of the work that is taken out of the Contractor's hands pursuant to GC37.1 is completed by the Owner, the Engineer shall determine the amount, if any, of a holdback or a progress claim that had accrued and was due prior to the date on which the work was taken out of the Contractor's hands and that is not required for the purposes of having the work performed or of compensating the Owner for any other loss or damage incurred or sustained by reason of the Contractor's default.
- 37.4 The Owner may pay the Contractor the amount determined not to be required pursuant to GC37.3.

GC38 EFFECT OF TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

- 38.1 The taking of the work or any part thereof out of the Contractor's hands pursuant to GC37 does not operate so as to relieve or discharge him from any obligation under the contract or imposed upon him by law except the obligation to complete the performance of that part of the work that was taken out of his hands.
- 38.2 If the work or any part thereof is taken out of the Contractor's hands pursuant to GC37, all plant and material and the interest of the Contractor in all real property, licenses, powers and privileges acquired, used or provided by the Contractor under the contract shall continue to be the property of the Owner without compensation.
- 38.3 When the Engineer certifies that any plant, material, or any interest of the Contractor referred to in GC38.2 is no longer required for the purposes of the work, or that it is not in the interests of the Owner to retain that plant, material, or interest, it shall revert to the Contractor.

GC39 SUSPENSION OF WORK

- 39.1 The Owner may, when in his opinion it is in the public interest to do so, require the Contractor to suspend performance of the work either for a specified or an unspecified period by giving a notice of suspension to the Contractor in accordance with GC10.
- 39.2 When a notice referred to in GC39.1 is received by the Contractor in accordance with GC10 he shall suspend all operations in respect of the work except those that, in the opinion of the Engineer, are necessary for the care and preservation of the work, plant and material.
- 39.3 The Contractor shall not, during a period of suspension, remove any part of the work, plant or material from its site without the consent of the Engineer.
- 39.4 If a period of suspension is 30 days or less, the Contractor shall, upon the expiration of that period resume the performance of the work and he is entitled to be paid the extra cost, calculated in accordance with GC47 to GC49, of any labour, plant and material necessarily incurred by him as a result of the suspension.
- 39.5 If, upon the expiration of a period of suspension of more than 30 days, the Owner and the Contractor agree that the performance of the work will be continued by the Contractor, the

Contractor shall resume performance of the work subject to any terms and conditions agreed upon by the Owner and the Contractor.

- 39.6 If, upon the expiration of a period of suspension of more than 30 days, the Owner and the Contractor do not agree that performance of the work will be continued by the Contractor or upon the terms and conditions under which the Contractor will continue the work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC40.

GC40 TERMINATION OF CONTRACT

- 40.1 The Owner may terminate the contract at any time by giving a notice of termination to the Contractor in accordance with GC10.1.

- 40.2 When a notice referred to in GC40.1 is received by the Contractor in accordance with GC10, he shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the contract.

- 40.3 If the contract is terminated pursuant to GC40.1, the Owner shall pay the Contractor, subject to GC40.4, an amount equal to

40.3.1 the cost to the Contractor of all labour, plant and material supplied by him under the contract up to the date of termination in respect of a contract or part thereof for which a Unit Price Arrangement is stipulated, in the contract, or

40.3.2 the lesser of

40.3.2.1 an amount, calculated in accordance with the Terms of Payment, that would have been payable to the Contractor had he completed the work, and

40.3.2.2 an amount that is determined to be due to the Contractor pursuant to GC48 in respect of a contract or part thereof for which a Fixed Price Arrangement is stipulated in the contract.

less the aggregate of all amounts that were paid to the Contractor by the Owner and all amounts that are due to the Owner from the Contractor pursuant to the contract.

- 40.4 If the Owner and the Contractor are unable to agree about an amount referred to in GC40.3 that amount shall be determined by the method referred to in GC49.

GC41 CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR

- 41.1 The Owner may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the performance of the contract, pay any amount that is due and payable to the Contractor pursuant to the contract directly to the obligees of and the claimants against the Contractor or subcontractor.

- 41.2 A payment made pursuant to GC41.1, is to the extent of the payment, a discharge of the Owner's liability to the Contractor under the contract and may be deducted from an amount payable to the Contractor under the contract.

- 41.3 To the extent that the circumstances of the work being performed for the Owner permit, the Contractor shall comply with all laws in force in Nunavut relating to payment periods, mandatory holdbacks, and creation and enforcement of mechanics' liens.

- 41.4 The Contractor shall discharge all his lawful obligations and shall satisfy all lawful claims against him arising out of the performance of the work at least as often as the contract requires the Owner to pay the Contractor.

- 41.5 The Contractor shall, whenever requested to do so by the Engineer, make a statutory declaration

deposing to the existence and condition of any obligations and claims referred to in GC41.4.

41.6 GC41.1 shall only apply to claims and obligations that have been received by the Engineer in writing before payment to the Contractor pursuant to TP4.8 and within 120 days after a claimant

41.6.1 should have been paid in full under his contract with the Contractor or subcontractor where the claim is for money that was lawfully required to be held back from the claimant: or

41.6.2 performed the last of the service, work or labour, or furnished the last of the material pursuant to his contract with the Contractor or subcontractor, where the claim is not for money referred to in GC41.6.1.

41.7 No interest will be paid to the Contractor on any monies withheld pursuant to GC41 due to a Contractor or subcontractor's claim for non-payment.

GC42 SECURITY DEPOSIT - FORFEITURE OR RETURN

42.1 The Owner may convert the security deposit, if any, to its own use, if

42.1.1 the work is taken out of the Contractor's hands pursuant to GC37;

42.1.2 the contract is terminated pursuant to GC40: or

42.1.3 the Contractor is in breach of or in default under the contract.

42.2 If the Owner converts the contract security pursuant to GC42.1, the amount realized shall be deemed to be an amount due from the Owner to the Contractor under the contract.

42.3 Any balance of an amount referred to in GC42.2 that remains after payment of all losses, damage and claims of the Owner and other shall be paid by the Owner to the Contractor, if in the opinion of the Engineer, it is not required for the purposes of the contract.

GC43 ENGINEER'S CERTIFICATES

43.1 On the date that

43.1.1 the work has been completed, and

43.1.2 the Contractor has complied with the contract and all orders and directions made pursuant thereto,

both to the satisfaction of the Engineer, he shall issue a Certificate of Final Completion to the Contractor.

43.2 If the Engineer is satisfied that the work is sufficiently complete to be acceptable for use by the Owner, he may, at any time before he issues a certificate referred to in GC43.1, issue a Certificate of Substantial Completion to the Contractor.

43.3 A Certificate of Substantial Completion referred to in GC43.2 shall describe the parts of the work not completed to the satisfaction of the Engineer and all things that must be done by the Contractor before a certificate referred to in GC43.1 will be issued.

43.4 The Engineer may, in addition to the parts of the work described in a Certificate of Substantial Completion referred to in GC43.2, require the Contractor to rectify any other parts of the work not completed to his satisfaction and to do any other things that are necessary for the completion of the work.

43.5 If the contract or a part thereof is subject to a Unit Price Arrangement, the Engineer shall measure

and record the quantities of labour, plant and material, performed, used and supplied by the Contractor in performing the work and shall, at the request of the Contractor, inform him of those measurements.

43.6 The Contractor shall assist and co-operate with the Engineer in the performance of his duties referred to in GC43.5 and shall be entitled to inspect any record made by the Engineer pursuant to GC43.5.

43.7 After the Engineer has issued a Certificate of Final Completion referred to in GC43.1, he shall, if GC43.5 applies, issue a Certificate of Final Measurement.

43.8 A Certificate of Final Measurement referred to in GC43.7 shall

43.8.1 contain the aggregate of all measurements of quantities referred to in GC43.5, and

43.8.2 be binding upon and conclusive between the Owner and the Contractor as to the quantities referred to therein.

GC44 RETURN OF SECURITY DEPOSIT

44.1 After a Certificate of Substantial Completion referred to in GC43.2 has been issued, the Owner shall, if the Contractor is not in breach of or in default under the contract, return to the Contractor all or any part of the security deposit that, in the opinion of the Engineer, is not required for the purposes of the contract.

44.2 After a Certificate of Final Completion referred to in GC43.1 has been issued, the Owner shall return to the Contractor the remainder of any security deposit unless the contract stipulates otherwise.

44.3 Interest shall not be paid on security deposits.

GC45 CLARIFICATION OF TERMS IN GC46 TO GC49

45.1 For the purposes of GC46 to GC49,

45.1.1 "Unit Price Table" means the table set out in the Tender, and

45.1.2 "plant" does not include tools customarily provided by a tradesman in practising his trade.

GC46 ADDITIONS OR AMENDMENTS TO UNIT PRICE TABLE

46.1 Where a Unit Price Arrangement applies to the contract or a part thereof the Engineer and the Contractor may, by an agreement in writing

46.1.1 add classes of labour, plant or material, and units of measurement, prices per unit and estimated quantities to the Unit Price Table if any labour, plant or material that is to be included in a Final Certificate of Measurement referred to in GC43.7 is not included in any class of labour, plant or material set out in the Unit Price Table; or

46.1.2 subject to GC46.2, amend a price per unit set out in the Unit Price Table for any class of labour, plant or material included therein if an estimated quantity is set out therein for that class of labour, plant or material and a Final Certificate of Measurement referred to in GC43.7 shows or is expected to show that the total quantity of that class of labour, plant or material actually performed, used or supplied by the Contractor in performing the work is

46.1.2.1 less than 85% of that estimated quantity; or

46.1.2.2 in excess of 115% of that estimated quantity.

46.2 An amendment that is made necessary by GC46.1.2.2 shall apply only to the quantities that are in excess of 115%.

46.3 If the Engineer and the Contractor do not agree as contemplated in GC46.1, the Engineer shall determine the class and the unit of measurement of the labour, plant or material and the price per unit therefore shall be determined in accordance with GC49.

GC47 DETERMINATION OF COST - UNIT PRICE TABLE

47.1 Whenever, for the purposes of the contract it is necessary to determine the cost of labour, plant or material, it shall be determined by multiplying the quantity of that labour, plant or material expressed in the unit set out in the Unit Price Table by the price of that unit set out in the Unit Price Table.

GC48 DETERMINATION OF COST - NEGOTIATION

48.1 If the method described in GC47 cannot be used because the labour, plant or material is of a kind or class that is not set out in the Unit Price Table, the cost of the labour, plant or material for the purposes of the contract shall be the amount agreed upon from time to time by the Contractor and the Engineer.

48.2 For the purpose of GC48.1, the Contractor, when requested by the Engineer, shall submit a detailed statement of the cost to him of the labour, plant and material referred to in GC48.1 to the Engineer.

GC49 DETERMINATION OF COST - FAILING NEGOTIATION

49.1 If the parties or the methods described in GC46, GC47 or GC48 fail for any reason to achieve a determination of the cost of labour, plant and material for the purposes referred to therein, that cost shall be equal to the aggregate of

49.1.1 all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, plant or material that falls within one of the classes of expenditure described in GC49.2 that are directly attributable to the performance of the contract, and

49.1.2 an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, and every other cost, charge and expense but not including those referred to in GC49.1.1 or of a class referred to in GC49.2, in an amount that is equal to:

(a) 10% of the sum of the expenses referred to in GC49.2.1;

(b) 20% of the sum of the expenses referred to in GC49.2.2 through GC49.2.8

49.2 For purposes of GC49.1.1 the classes of expenditure that may be taken into account in determining the cost of labour, plant and material are:

49.2.1 payments to subcontractors:

49.2.2 wages, salaries and travelling expenses of employees of the Contractor while they are actually and properly engaged on the work, other than wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor unless they are engaged at the work site with the approval of the Engineer;