



The St. Lawrence
Seaway Management
Corporation

Corporation de Gestion
de la Voie Maritime
du Saint-Laurent

GENERAL CONDITIONS Procurement Contract

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GC1 Interpretation

- 1.1 Unless the context otherwise requires,
- 1.1.1 «the agreement» means the particular agreement or contract of which in each specific case, these General Conditions are made a part;
 - 1.1.2 «the Contract» includes the agreement, these General Conditions and any Supplementary Conditions, Specifications, schedules and any other documents referred to in the agreement as constituting the contract;
 - 1.1.3 «Supplementary Conditions» means any other General conditions forming part of the contract;
 - 1.1.4 «herein», «hereby», «hereof», «hereunder» and similar expressions, when used in any article, shall be understood to relate to the Contract as a whole and not merely to the article in which they appear;
 - 1.1.5 «work», means the whole of the work, materials, matters and things required to be done, furnished and performed in order to carry out the contract;
 - 1.1.6 «finished work» means the supplies, projects or other work completed in accordance with the provisions of the contract;
 - 1.1.7 «equipment» includes machinery, apparatus and equipment of all kinds;
 - 1.1.8 «specifications» means the specifications, drawings, designs and models, if any, furnished to the Contractor by the Owner for the carrying out of the contract;
 - 1.1.9 «Owner Issue» means all materials, machinery, tools, or equipment (if any) which may be supplied by or on behalf of

the Owner to the Contractor for the purpose of the work and includes also any specifications supplied to the Contractor for the said purposes, provided however, that the Contractor shall not be entitled to be supplied with any Owner issue except as and to extent (if any) specifically provided in the contract;
 - 1.1.10 «contract price» means the amount expressed in the agreement to be payable to the Contractor for the finished work;
 - 1.1.11 «Engineer» means the person designated as such by the Owner and any person acting on behalf of the Owner as the Engineer under the contract;

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1.1.12 «review by the Engineer» means that the Engineer reviews documents, procedures or requests submitted and grants permission to proceed with the work according to the documents or procedures submitted, or accepts the request submitted. Permission to proceed is granted when the Engineer indicates that no corrections are noted. Permission to proceed may also be granted conditionally to the implementation of corrections which the Engineer has indicated on the documents. The Contractor may not proceed if the document is rejected or the review stamp requires a revised document to be resubmitted.

Review by the Engineer does not, in any way, relieve the Contractor from full responsibility for the correctness of submitted documents, procedures and of the Contractor's work and their conformity with the Contract documents and the field conditions.

1.1.13 «allied firm» means any firm, company or corporation which directly or indirectly controls or is controlled by or is affiliated with the Contractor and includes any individual or individuals directly or indirectly controlling the Contractor or any such firm, company or corporation as aforesaid;

1.1.14 «invention» means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter;

1.1.15 the singular number includes the plural and vice versa.

1.2 In the event of any inconsistencies, the provisions of the specifications shall prevail over the provisions of the agreement and these General Conditions and the provisions of the agreement and Supplementary Conditions shall prevail.

GC2 Assignment and Sub-letting

2.1 The Contractor shall not assign the contract or sub-let any of the work without the prior written consent of the Owner and any assignment or sub-letting made without such consent shall be of no effect; provided that, unless the contract or the Owner directs otherwise, the Contractor may sub-let such portions of the work as is customary in the carrying out of similar contracts. No assignments or sub-letting shall relieve the Contractor from any of its obligations under the contract or impose any liability upon the Owner to an assignee or sub-contractor.

2.2 Unless otherwise agreed to by the Owner in any assignment or sub-letting, the Contractor agrees to bind each assignee or sub-contractor by the terms of the General Conditions, the Supplementary Conditions, if any, the drawings and specifications as far as applicable to the work.

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- 2.3 No act or omission of the Contractor, whether before or after the entry into the contract, shall have the effect of rendering any monies payable by the Owner under the contract payable to any person, firm or corporation other than the Contractor unless the Owner consents thereto.
- 2.4 Subject to the preceding provisions of this Article, the contract shall endure to the benefit of and shall be binding upon the successors and assigns of the Owner and of the Contractor, respectively.

GC3 Conduct of the Work

- 3.1 The Contractor agrees to carry out the work diligently and to provide efficient supervision and inspection thereof and warrants, without restricting the generality of the foregoing, that the work is of proper quality, material and workmanship and in full conformity with the specifications, drawings, models or samples, if any, and is fit for the purpose intended.
- 3.2 No materials or parts shall be used or processed and no finished work shall be submitted for acceptance or shall be delivered unless or until approved by the Contractor's inspection staff and wherever practicable, marked with an approval stamp satisfactory to the Engineer. The Contractor shall keep proper and adequate inspection records which shall at all times be open to examination by the Engineer who may make copies thereof and take extracts therefrom.
- 3.3 The Owner and the Engineer shall have access to the work at all times and to the plant and premises where any part of the work is being carried on, and may make such inspections and tests of the work and of parts, materials and work in process as the Owner or the Engineer may think fit. The Contractor shall provide at his own expense all assistance and facilities, test pieces and samples which the Owner or the Engineer may reasonably require for the carrying out of any such inspections and any such tests as aforesaid, and shall forward at his own expense such test pieces and samples to such person or location as the Owner or the Engineer may direct. The Contractor shall, at his own expense, provide the Owner and the Engineer with such facilities as they may require for the purpose of such inspections and any such tests and for the exercise of any other powers conferred upon them hereunder.
- 3.4 The Contractor shall not stop or suspend work pending the settlement or determination of any differences arising under the contract.

GC4 Personal Information and Privacy

- 4.1 With respect to Personal Information, the Contractor shall comply with the ***Personal Information Protection and Electronic Documents Act, 2001*** (PIPEDA) and any other applicable laws or regulations concerning the protection of privacy. The Owner will handle any Personal Information provided by the Contractor in the course of providing services to the Owner in accordance with the Owner's Privacy Policy and the PIPEDA.

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GC5 Specifications, Drawings, etc.

- 5.1 All specifications, drawings, patterns, samples and other information furnished the Contractor in connection with the contract shall be used by the Contractor solely for the purpose of carrying out the work and for no other purpose except with the consent in writing of the Owner and shall remain the property of the Owner and be returned to the Owner upon demand.
- 5.2 Any minor part or parts not shown in the specifications, drawings, patterns or samples, but which are necessary for the due completion of the work shall be deemed to be included in the contract price and no addition to the contract prices will be allowed by reason of such omission, unless otherwise agreed to by the Owner.

GC6 Engineer Final Judge of Work

- 6.1 The Engineer shall be the final judge of the work and of its quality and workmanship. The Engineer shall have full power to reject or refuse any finished work or parts or materials or work-in-process which he considers are not in accordance with the requirements of the contract. The Engineer shall also be the sole judge as to the meaning or intention of the specifications.

GC7 Acceptance and Delivery

- 7.1 Acceptance by the Engineer of the work or part thereof shall be deemed to be acceptance by the Owner of the work or part thereof, but delivery thereof shall be deemed not to have been made until after acceptance by the Engineer. If the agreement requires delivery at a particular place or in a particular manner, such delivery shall be made in accordance therewith and not otherwise. Unless the agreement otherwise provides, title to the work or any part thereof so delivered shall vest in the Owner at time of delivery. Notwithstanding the foregoing, the Owner shall, after delivery, have the right to reject the work or any part thereof if the same does not comply with the agreement and this right shall survive any prior inspection, acceptance or test of parts, materials, work-in-process or finished work.

GC8 Warranty

- 8.1 Without restricting any other term of the contract or any conditions, warranty, or provision implied or imposed by law, the Contractor shall, if requested by the Owner to do so at any time within twelve months from date of delivery as specified in the agreement, replace, at its own expense, any work and each article or part and any material included in the work (but excluding Owner issue) which becomes defective or fails to conform to contract requirements as a result of faulty or inefficient manufacture, material or workmanship, such replacement to be made (unless otherwise agreed to by the Owner) by delivering the replaced work or material to the delivery point set out in the contract.

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GC9 Performance Bond

- 9.1 The Contractor shall, at his own expense, furnish a guarantee bond suitable to the Owner, covering the satisfactory operation of mechanical and electrical parts for a period of one year after the commencement of regular operation of the equipment, but to terminate not later than 2 years after the date of the final acceptance of the procured goods. The bond shall be in an amount of 10 per cent of the total contract price for the mechanical and electrical parts, and shall insure the cost of expeditiously correcting any defect in workmanship or material which may occur or be found to exist.

GC10 Owner Issue

- 10.1 All items comprised in any Owner issue shall be used by the Contractor solely for the purposes of the contract and shall be and remain the property of the Owner and wherever feasible, the Contractor shall maintain complete accounting records of all Owner issue and shall mark the same as being the Owner's property.
- 10.2 All Owner issue (except as are installed or incorporated in the work) shall be returned to the Owner upon demand, in the same condition as when supplied to the Contractor; provided that the Contractor shall not be responsible for any loss or damage resulting from ordinary wear and tear or from causes beyond the Contractor's control.
- 10.3 All scrap and waste materials derived from any Owner issue or from any other materials, articles or things which are the property of the Owner, shall, unless otherwise specifically provided herein, remain the property of the Owner and shall be disposed of only as prescribed by the Owner.

GC11 Conditions Precedent to Payment

- 11.1 No payment shall be made to the Contractor unless or until,
- 11.1.1 invoices, inspection notes and all other documents prescribed from time to time by the Owner or Engineer are submitted in accordance with the terms of the contract or instructions of the Owner; and
- 11.1.2 the Contractor, if required to do so, establishes to the satisfaction of the Owner that all materials, parts, work-in- process or finished work in respect of which payment is being made are free from all claims, liens, attachments, charges or encumbrances.

GC12 Indemnification and Patent Claim

- 12.1 The contractor shall defend, indemnify and save harmless the Owner, its representatives and Her Majesty in Right of Canada harmless from and against all claims, demands, losses, costs of any nature including judicial and extra-judicial costs arising from any legal action, damages, actions, suits, or proceedings and by whomever made, brought or prosecuted and in any manner based upon, occasioned by or attributable to any injury to or death

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of a person or damage to or loss of property resulting from any imprudence or lack of skill or any wilful or negligent act, omission or delay on the part of the contractor, his representatives, employees, servants, agents, suppliers, Subcontractors and their subcontractors, or any other person under his jurisdiction in performing the work or as a result of the work.

12.2 The Contractor shall also defend, indemnify and save harmless the Owner, its representatives and Her Majesty in Right of Canada from and against all costs, charges and expenses whatsoever that the Owner sustains or incurs in or about all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement or any patent or any registered industrial design or any copyright or any other kind of intellectual property resulting from the performance of the Contractor's obligations under the contract, and in respect of the use of or disposal by the Owner of anything furnished pursuant to the contract.

12.3 The Contractor's liability to indemnify or reimburse the Owner under the contract shall not affect or prejudice the Owner from exercising any other rights under law.

GC13 Title on Progress Payments

13.1 Upon any payment being made to the Contractor for or on account of materials, parts, work-in-process, or finished work, either by way of progress payments or accountable advances or otherwise, title in and to such materials, parts, work-in-process and finished work shall vest and remain in the Owner unless already so vested under any provision of the contract but the Contractor shall be responsible therefore in accordance with the provision of Article 15 hereof.

GC14 Further Assurances

14.1 Wherever it is herein provided that title to any parts, materials, work-in-process or finished work becomes vested in the Owner, the Contractor shall execute such conveyances thereof and other instruments as the Owner may request.

GC15 Care of Owner Property

15.1 The Contractor shall take reasonable and proper care of all property, title to which is vested in the Owner, while the same is in, on or about the plant and premises of the Contractor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

GC16 Time of Essence

16.1 Time shall be deemed to be of the essence of the contract, provided that the time for completing any of the work which has been or is likely to be delayed by reason of force majeure or other cause beyond the reasonable control of the Contractor shall be extended by a period equal to the length of the delay

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so caused, provided that prompt notice in writing of the occurrence causing or likely to cause such delay is given to the Owner.

GC17 Waiver of Liens for Work in Progress

17.1 In consideration of obtaining the contract, the Contractor renounces and waives any right he may have to any lien for work done or to be done, services rendered or to be rendered, or materials and equipment furnished or to be furnished, for or in connection with the buildings, material, equipment and property related to the said contract.

GC18 Patent Licenses and Use of Technical Information

18.1 The Contractor shall promptly report and fully disclose to the Owner any and all inventions, methods or processes, whether patented or unpatented, conceived or first actually used or reduced to practice in the course of carrying out the work; and the Contractor agrees to and does hereby grant unto the Owner a non-exclusive irrevocable, royalty-free license to make, have made and use for the purposes of the Owner, and to sell or otherwise dispose of any article or thing embodying or using any and all such inventions, methods or processes, and a similar license to practice or cause to be practised any such methods or processes.

18.2 The Contractor shall grant to the Owner the right to reproduce, use and disclose for the purposes of the Owner, all or any part of the reports, drawings, blueprints, data and technical information specified to be delivered under the contract.

GC19 Suspension of Work and Change in Specifications

19.1 The Owner may at any time and from time to time order a suspension of the work, in whole or in part, and make modifications, of changes in or additions to the specifications, time of delivery. All directions given by the Owner with respect to the foregoing shall be complied with by the Contractor.

19.2 If any such suspension, modification, change or addition results in an increase or decrease in the cost of the work, the contract price shall be adjusted accordingly provided that the Contractor shall in no event be entitled to compensation for any loss of anticipated profits (except that in the event of any change which results in a substantial part of the work theretofore performed by the Contractor shall be entitled to payment of an amount representing a fair and reasonable profit in respect of such discarded work) and provided further that minor increases or decreases in cost shall be disregarded.

GC20 Canadian Labour and Materials

20.1 To the full extent to which the same are procurable, consistent with proper economy and the expeditious carrying out of the contract, Canadian labour, parts and materials shall be used in the work. In the execution of the work, the Contractor shall employ reasonable proportions of workers who have served on active service with the armed forces of Canada and have been honourably

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discharged therefrom, where such workers are available and competent.

GC21 Default by Contractor

- 21.1 If the Contractor is in default in carrying out any of the terms, conditions, covenants or obligations of the contract, or if the Contractor becomes bankrupt or insolvent, or has a receiving order made against it, or makes an assignment for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, the Owner may, upon giving notice in writing to the Contractor, terminate the whole or any part of the contract.
- 21.2 Upon the giving of such notice, the Contractor shall have no claim for any further payment save as hereinafter in this Article 21 provided, but shall remain liable to the Owner for all loss and damage which may be suffered by the Owner by reason of the default or occurrence upon which such notice was based.
- 21.3 Notwithstanding the provision of Article 21.2, the Contractor shall not be liable for any loss or damage if the failure to perform the contract on which the notice of termination is based arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include but are not restricted to strikes, floods, fires, epidemics, Acts of God or of the Queen's enemies.
- 21.4 Upon termination of the contract under this Article, the Owner may require the Contractor to deliver to the Owner in the manner and to the extent directed by the Owner, any finished work which has not been delivered and accepted prior to such termination and any materials, parts, work-in-process, or tools which the Contractor has specifically acquired or produced for the fulfillment of the contract. Subject to the deduction of any claim which the Owner may have against the Contractor arising under the contract or out of the termination, the Owner shall pay or credit to the Contractor the value of all such finished work delivered pursuant to such direction and accepted by the Owner determined in accordance with the contract price and shall pay or reimburse the Contractor the reasonable and proper cost to the Contractor for all materials, parts, or work-in-process delivered to the Owner pursuant to such direction.
- 21.5 If after notice of termination of the contract, under the provision of Article 21.1, it is determined by the Owner that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to Article 26 *Termination* of these General Conditions and the rights and obligations of the parties hereto shall be governed by that Article.

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GC22 No Bribe, Etc.

- 22.1 The Contractor warrants,
- 22.1.1 that no bribe, gift or other inducement has been paid, given, promised or offered to any official or employee of the Owner for, or with a view to, the obtaining of the contract by the Contractor, and
- 22.1.2 that it has not employed any person to solicit or secure the contract upon any agreement for a commission, percentage, brokerage or contingent fee.

GC23 Labour and Health Conditions

- 23.1 The Contractor shall comply with all applicable labour laws, and with all health conditions and requirements, from time to time applicable to the work.

GC24 Members of the House of Commons and Senate Not To Benefit

- 24.1 As required by Law no Senator or member of the House of Commons shall be admitted to any share or part of the contract or to any benefit to arise therefrom.

GC25 Notice

- 25.1 Any notice to the Contractor hereunder shall be effectively given if sent by letter or by facsimile, postage prepaid or with charges prepaid as the case may be, addressed to the Contractor at his address as given in the agreement or, if no address is so given, at his address as shown by the records of the Owner. Any notice so given shall be deemed to have been received by the Contractor at the time when in the ordinary course such letter or facsimile should have reached its destination.

GC26 Termination

- 26.1 Notwithstanding anything in the contract contained the Owner may, by giving notice to the Contractor (hereinafter sometimes referred to as a «Termination Notice») terminate the contract as regards all or any part or parts of the work not theretofore completed. Upon a termination notice being given, the Contractor shall cease work (including the manufacturing and procuring of materials for the fulfillment of the contract) in accordance with and to the extent specified in such notice. The Owner may, at any time or from time to time, give one or more additional termination notices, with respect to any or all parts of the work not terminated by any previous termination notice.
- 26.2 In the event of a termination notice being given under the provisions of this Article, and subject as hereinafter provided:
- 26.2.1 all finished work, whether completed before the giving of such notice or completed thereafter pursuant to such notice shall be paid for (subject to acceptance in accordance with the provisions of the

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contract) on the basis of the contract price;

- 26.2.2 in respect of work not completed before the giving of such notice, and not completed thereafter pursuant to such notice the Contractor shall be entitled to be reimbursed the actual cost to the Contractor of such uncompleted work, and to receive in addition an amount representing a fair and reasonable profit in respect of work done thereon. Cost shall be determined in accordance with provisions which the Owner may consider to be appropriate in the circumstances.
- 26.3 No reimbursement shall be made in respect of work which has been or may be rejected after inspection as not complying with the requirements of the contract.
- 26.4 The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or due or becoming due to the Contractor under the contract, shall exceed the contract price applicable to the work or the particular part thereof.
- 26.5 In case of disagreement as to the amount which the Contractor is entitled to be reimbursed, the matter shall be referred to the Federal Court.
- 26.6 As far as practicable, the Contractor shall place purchase orders and sub-contracts on terms that will enable the Contractor to terminate the same upon conditions and terms similar in effect to these provided in this Article, and generally the Contractor shall co-operate with the Owner and do everything reasonably within his power at all times to minimise and reduce the amount of the Owner's obligations in the event of termination hereunder.
- 26.7 Title to all materials, parts, plant, equipment and work-in-process in respect of which reimbursement is made to the Contractor as herein provided shall, upon such reimbursement being made, pass to and vest in the Owner unless already so vested under any other provision of the contract and such materials, parts, plant, equipment and work- in-process shall be delivered to the order of the Owner, but the materials thus taken over will in no case be in excess of what would have been required in performing the contract in full if no termination notice had been given.
- 26.8 If the Owner is satisfied that by reason of any action taken under the provisions of this Article exceptional hardships have resulted to the Contractor, then the Owner may, in its absolute discretion, grant such allowance (not to include in any case, however, any allowance or compensation for loss of profit) to the Contractor as, in the opinion of the Owner, is warranted by the circumstances.
- 26.9 The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Owner under or pursuant to the provisions of this Article except to the extent in this Article expressly provided.

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GC27 Accounts

- 27.1 The Contractor shall keep proper accounts and records of the cost to the Contractor of the work and of all expenditures or commitments made by the Contractor in connection therewith and the invoices, receipts and vouchers relating thereto.
- 27.2 Such accounts, records, invoices, receipts and vouchers shall at all times be open to audit and inspection by the authorised representatives of the Owner (who may make copies thereof and take extracts therefrom) and the Contractor shall afford all facilities for such audits and inspections and shall furnish the Owner and its authorised representatives with all such information as it or they may from time to time require with reference to such accounts, records, invoices, receipts and vouchers.
- 27.3 If any part of the work is performed by an allied firm, the Contractor shall also cause such allied firm to keep similar accounts, records, invoices, receipts and vouchers, with respect to the cost of the work performed by such allied firm and, to permit the same to be inspected and audited by the authorised representatives of the Owner.
- 27.4 The Contractor shall, unless otherwise agreed to by the Owner, cause all such accounts, records, invoices, receipts, and vouchers as aforesaid to be preserved and kept available for audit and inspection at any time until the expiration of five (5) years from the date of the acceptance of the work.

GC28 Foreign Exchange

- 28.1 Unless otherwise provided in the contract or agreed to by the Owner, the Contractor shall not be entitled to any increase in the contract price by reason of foreign exchange fluctuations.