

TENDER DOCUMENTS

SECTION 7 TERMS OF PAYMENT

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SECTION 7 TERMS OF PAYMENT

TP1 AMOUNT PAYABLE - GENERAL

- TP1.1 Subject to any other provisions of the Contract, the **Owner** shall pay the **Contractor**, at the times and in the manner hereinafter set out, the amount by which
- TP1.1.1 the aggregate of the amounts described in TP2 *Amounts Payable to the Contractor* exceeds
- TP1.1.2 the aggregate of the amounts described in TP3 *Amounts Payable to the Owner*, and the **Contractor** shall accept that amount as payment in full satisfaction for everything furnished and done by it in respect of the work to which the payment relates.

TP2 AMOUNTS PAYABLE TO THE CONTRACTOR

- TP2.1 The amounts referred to in TP 1.1.1 are the aggregate of
- TP2.1.1 the amounts referred to in the Price Table, and
- TP2.1.2 the amounts, if any, that are payable to the **Contractor** pursuant to the *Contract documents*.

TP3 AMOUNTS PAYABLE TO THE OWNER

- TP3.1 The amounts referred to in TP 1.1.2 are the aggregate of the amounts, if any, that the **Contractor** is liable to pay the **Owner** pursuant to the Contract.
- TP3.2 When making any payment to the **Contractor**, the failure of the **Owner** to deduct an amount referred to in TP3.1 from an amount referred to in TP2 *Amounts Payable to the Contractor* shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the **Contractor**.

TP4 TIME OF PAYMENT

- TP4.1 For the purposes of this Term of Payment, "payment period" means a period of thirty (30) consecutive days or such other interval as is agreed between the **Contractor** and the Engineer.
- TP4.2 The **Contractor** shall, on the expiration of a payment period, deliver to the Engineer in respect of that payment period a written progress claim that fully describes any part of the work that has been completed, and any material that was delivered to the work site but not incorporated into the work, during that payment period.
- TP4.3 The Engineer shall, not later than ten days after receipt by the Engineer of a progress claim referred to in TP4.2
- TP4.3.1 Inspect the part of the work and the material described in the progress claim; and

- TP4.3.2 issue a progress report, a copy of which the Engineer will give to the **Contractor**, that indicates the value of the part of the work and the material described in the progress claim that, in the opinion of the Engineer,
- MP4.3.2.1 is in accordance with the Contract, and
- MP4.3.2.2 was not included in any other prior progress report relating to the Contract.
- TP4.4 Subject to TP1 *Amount Payable - General* and TP4.5, the **Owner** shall, not later than 30 days after the issue of a progress report referred to in TP4.3, pay the **Contractor**
- TP4.4.1 an amount that is equal to 95% of the value that is indicated in that progress report if a labour and material payment bond has been furnished by the **Contractor**, or
- TP4.4.2 an amount that is equal to 90% of the value that is indicated in that progress report if a labour and material payment bond has not been furnished by the **Contractor**.
- TP4.5 It is a condition precedent to the **Owner's** obligation under TP4.4 that the **Contractor** has made and delivered to the Engineer a statutory declaration described in TP4.6 in respect of a progress claim referred to in TP4.2.
- TP4.6 A statutory declaration referred to in TP4.5 shall contain a deposition by the **Contractor** that
- TP4.6.1 up to the date of the **Contractor's** progress claim, it has complied with all its lawful obligations with respect to the Labour Conditions; and
- TP4.6.2 up to the date of the **Contractor's** immediately preceding progress claim,
- MP4.6.2.1 it has paid its suppliers in full for all materials, and
- MP4.6.2.2 it has discharged all its lawful obligations to its subcontractors.
- TP4.7 Subject to TP1 *Amount Payable - General* and TP4.8, the **Owner** shall, not later than sixty (60) days after the date of issue of an Interim Certificate of Completion referred to in GC44.2, pay the **Contractor** the amount referred to in TP1 *Amount Payable - General* less the aggregate of
- TP4.7.1 the sum of all payments that were made pursuant to TP4.4;
- TP4.7.2 an amount that is equal to the Engineer's estimate of the cost to the **Owner** of rectifying defects described in the interim Certificate of Completion; and
- TP4.7.3 an amount that is equal to the Engineer's estimate of the cost to the **Owner** of completing the parts of the work described in the Interim Certificate of Completion other than the defects referred to in TP4.7.2.
- TP4.8 It is a condition precedent to the **Owner's** obligation under TP4.7 that the **Contractor** has made and delivered to the Engineer a sworn statutory declaration described in TP4.9 in respect of the Interim Certificate of Completion referred to in GC44.2.

- TP4.9 A statutory declaration referred to in TP4.8 shall contain a deposition by the **Contractor** that up to the date of the Interim Certificate of Completion,
- TP4.9.1 the **Contractor** has complied with all of the **Contractor's** lawful obligations with respect to the Labour Conditions; and
- TP4.9.2 the **Contractor** has discharged all of the **Contractor's** lawful obligations to the subcontractors and suppliers of material in respect of the work under the Contract.
- TP4.10 Subject to TP1 *Amount Payable - General* and TP4.11, the **Owner** shall, not later than 60 days after the date of issue of a Final Certificate of Completion referred to in GC44.1, pay the **Contractor** the amount referred to in TP1 *Amount Payable - General* less the aggregate of
- TP4.10.1 the sum of all payments that were made pursuant to TP4.4; and
- TP4.10.2 the sum of all payments that were made pursuant to TP4.7.
- TP4.11 It is a condition precedent to the **Owner's** obligation under TP4.10 that the **Contractor** has made and delivered a sworn statutory declaration described in TP4.12 to the Engineer.
- TP4.12 A statutory declaration referred to in TP4.11 shall, in addition to the depositions described in TP4.9, contain a deposition by the **Contractor** that it has discharged and satisfied all its lawful obligations and any lawful claims against it that arose out of its performance of the Contract.

TP5 PROGRESS REPORT AND PAYMENT THEREUNDER NOT BINDING ON THE OWNER

- TP5.1 Neither a progress report referred to in TP4.3 nor any payment made by the **Owner** pursuant to these *Terms of Payment* shall be construed as an admission by the **Owner** that the work, material or any part thereof is complete, is satisfactory or is in accordance with the Contract.

TP6 DELAY IN MAKING PAYMENT

- TP6.1 Notwithstanding GC7 *Time of the Essence* any delay by the **Owner** in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of the Contract by the **Owner**.
- TP6.2 When the **Owner** delays in making a payment that is due pursuant to TP4.4 and TP4.7, the **Contractor** shall be entitled to receive simple interest on the amount that is overdue from and including the day that it became overdue up to and including the date that the payment was made, at the annual rate of interest described in TP6.3.
- TP6.3 The rate of interest referred to in TP6.2 shall be the average accepted tender rate that was current for Government of Canada three-month Treasury bills immediately preceding the day that a payment referred to in TP6.2 became overdue.

TP6.4 The **Contractor** shall not be entitled to receive interest on any other amount that is unpaid including, without limitation, an amount that is calculated in accordance with GC50 *Determination of Cost - Failing Negotiation*.

TP7 RIGHT OF SET-OFF

TP7.1 Without limiting any right of set-off or deduction given or implied by law or elsewhere in the Contract, the **Owner** may set off any amount payable to the **Owner** by the **Contractor** under this Contract or under any Current Contract against any amount payable to the **Contractor** under this Contract.

TP7.2 For the purposes of TP7.1, "Current Contract" means a contract between the **Owner** and the **Contractor**.

TP7.2.1 under which the **Contractor** is legally obligated to perform or supply work, labour or material; or

TP7.2.2 in respect of which the **Owner** has, since the date of Notice of Contract Award, exercised its right to take the work that is the subject of the Contract out of the **Contractor's** hands.

TP8 PAYMENT IN EVENT OF TERMINATION

TP8.1 If the Contract is terminated pursuant to GC41 *Termination of Contract*, the **Owner** shall pay the **Contractor** any amount that is lawfully due and payable to the **Contractor** as soon as is practicable under the circumstances calculated according to said GC41.

END OF SECTION