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## GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

### GC 1.00 - DEFINITIONS

- 1.01 Where used in these General Conditions and in the other documents forming part of the Contract:
- (a) **“Bid”** means the offer contained in the Tender Submission;
  - (b) **“Bidder”** means any person submitting a Bid for the Work;
  - (c) **“Business Day”** means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
  - (d) **“Change in Work”** means an addition, deletion or modification to the Work as described in the Contract at the time that the Contract is awarded and includes modifications in quantity or nature of Plant, Material or labour, methods, location or work schedule;
  - (e) **“Change Order”** means an approval of a Change in Work, issued by the Contract Administrator in accordance with GC7.00.
  - (f) **“Contract”** means the combined documents consisting of the agreement or purchase order forwarded to the Contractor pursuant to GC:4.00 and all schedules thereto (consisting of the Tender Documents and any documents and Drawings referred to and incorporated therein) together with any submissions required to be made by the Contractor after award, and all amendments to the foregoing;
  - (g) **“Contract Administrator”** means the person designated by Manitoba Housing to administer the Contract.
  - (h) **“Contract Price”** means the price agreed upon for the Work and any adjustments thereto which may be required or agreed to pursuant to the Contract;
  - (i) **“Contractor”** means the person undertaking the performance of the Work under the terms of the Contract;
  - (j) **“Drawings”** means drawings which show the nature and scope of the Work to be performed and which have been prepared or approved by the Project Manager and are referred to in the Contract;
  - (k) **“Manitoba”** means the Government of Manitoba;
  - (l) **“Material”** means any things, including goods, parts and equipment, which are to form part of the permanent Work;
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- (m) **“Person”** means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (n) **“Plant”** means any things brought to or constructed upon the Site by the Contractor for the performance of the Work, including goods, tools, equipment, consumable supplies, fuel, power and utility connections therefor, but does not include Material;
- (o) **“Prime Contractor”** has the same meaning, duties and responsibilities as set out in *The Workplace Safety and Health Act* (Manitoba);
- (p) **“Project Manager”** means the person designated by Manitoba Housing to manage the Project on its behalf;
- (q) **“Shop Drawings”** means all drawings, diagrams and illustrations prepared by the Contractor, Subcontractor, manufacturer, supplier or distributor and that illustrate some portion of the Work;
- (r) **“Site”** means the spatially and temporally distinct lands, buildings and other structures or locations, whether indoor or outdoor, on, under, in or through which the Work described in the Contract is to be carried out, including the point of delivery of Plant and Materials to be used in the Work;
- (s) **“Subcontractor”** means a person contracting with the Contractor for the performance of a part or parts of the Work or for the furnishing of Plant or Material and includes a Subcontractor’s subcontractor;
- (t) **“Submittals”** means all Shop Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are submitted by or are required to be submitted by the Contractor in accordance with the requirements of the Tender Documents or Contract;
- (u) **“Substantial Performance”** shall have the meaning attributed to it in *The Builders’ Liens Act* (Manitoba), or any successor legislation thereto;
- (v) **“Tender Documents”** means the Tender Submission, the Bidding Instructions, these General Conditions, the Supplemental Conditions, the Specifications, the Drawings and all addenda;
- (w) **“Tender Submission”** means that portion of the Tender Documents that must be completed or provided and submitted by the Submission Deadline, or submitted after the Submission Deadline if permitted in the Bidding Instructions or Supplemental Conditions, in order to constitute a responsive Bid;
- (x) **“Total Performance”** means that the entire Work, except those items arising from the provisions of GC:14.00, have been performed in accordance with the Contract;
- (y) **“Work”** means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant

to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfillment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided;

- (z) **“Working Day”** means any calendar day, other than a Sunday or a statutory or civic holiday, on which the Project Manager determines atmospheric and Site conditions are such that the Contractor is able to work at least seven (7) hours during the period between 7:00 a.m. Winnipeg time or the time the Contractor's operations normally commence, whichever is the earlier, and 7:00 p.m. Winnipeg time.

## **GC 2.00 - INTERPRETATION**

- 2.01 Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.
- 2.02 Wherever the singular or masculine is used, it shall be construed to mean the plural or the feminine or the neuter as the context may reasonably require.
- 2.03 Headings, titles and margin notes in the Contract are inserted for convenience only and shall not be considered in any construction or interpretation of the Contract.
- 2.04 In the event of conflicts between portions of the Contract, the following shall apply:
- (a) the executed agreement or Purchase Order between Manitoba Housing and Contractor shall govern over all schedules or other documents forming part of the Contract;
  - (b) the Supplemental Conditions shall govern over the General Conditions;
  - (c) the General Conditions shall govern over Specifications;
  - (d) Specifications of a later date shall govern over Specifications of an earlier date;
  - (e) Specifications shall govern over Drawings;
  - (f) Drawings of a later date shall govern over Drawings of an earlier date;
  - (g) Drawings of larger scale shall govern over those of smaller scale;
  - (h) figured dimensions shown on a Drawing shall govern over scaled or implied dimensions on the same Drawing; and
  - (i) Drawings shall govern over the Tender Submission.
- 2.05 The various portions of the Contract are intended to be read together and complement each other, and what is called for by any one shall be deemed to be called for by all.

- 2.06 Manitoba Housing and the Contractor acknowledge and agree that the Contractor is an independent contractor and neither the Contractor, nor any officer, employee, servant or agent of the Contractor shall be deemed to be an employee, agent, representative or servant of Manitoba Housing.
- 2.07 The Contract shall constitute the entire agreement between Manitoba Housing and the Contractor. There are no representations, warranties, covenants or agreements other than those contained in the Contract.

### **GC 3.00 - DECLARATIONS**

#### **Site Investigation**

- 3.01 The Contractor declares that, in bidding for the Work and in entering into the Contract, he:
- (a) has investigated the Site, the nature of the Work to be done and all local conditions that might affect his Bid or his performance of the Work; or
  - (b) has not investigated the Site, the nature of the Work to be done or local conditions;

and, in either event, assumes all risk for conditions now existing or arising in the course of the Work which have been or could have been determined through such investigation, and that he did not and does not rely upon information furnished by Manitoba Housing or of its servants or agents other than information furnished in writing for or in connection with the Bid or the Contract by the Project Manager.

### **GC 4.00 - EXECUTION OF CONTRACT**

- 4.01 The Contractor shall execute the Contract or Purchase Order in the manner stipulated by Manitoba Housing and return the Contract within seven (7) calendar days of receipt of the Contract, to the Manitoba Housing Contract Administrator.
- 4.02 If the Contractor does not execute and return the Contract or Purchase Order as set out in GC:4.01, the Contractor may be deemed by Manitoba Housing to have abandoned the Contract, whereupon the acceptance of the Bid by Manitoba Housing shall be null and void, and Manitoba Housing shall be entitled to retain the bid security accompanying the Bid as liquidated damages.
- 4.03 No payments will be made by Manitoba Housing to the Contractor until the Contractor has executed and returned the Contract or Purchase Order as set out in GC:4.01.

### **GC 5.00 - AUTHORITY OF PROJECT MANAGER**

#### **General**

- 5.01 The Project Manager shall be Manitoba Housing's representative throughout the duration of the Contract and shall have authority to act on behalf of Manitoba Housing to the extent expressly provided for in the Contract.

### **Approval and Inspection**

- 5.02 All Plant to be used for the Work shall be subject to approval by the Project Manager and shall be maintained in satisfactory working condition for the duration of the Contract.
- 5.03 The Project Manager may examine or inspect the Work or any part thereof and determine whether the Work meets the requirements of the Contract. The Project Manager may reject the Work or any part thereof which does not meet the requirements of the Contract.

### **Control**

- 5.04 The Project Manager may give instructions or orders to the Contractor to the extent necessary to ensure that the Work is performed in an orderly manner and meets the requirements of the Contract.
- 5.05 The Project Manager may give instructions or orders to the Contractor's supervisor on the Site and such instructions or orders shall be deemed to have been given to the Contractor.
- 5.06 The Project Manager may order the Contractor to remove from the Work any person employed or retained by the Contractor or by any Subcontractor in the performance of the Work who the Project Manager determines is incompetent, negligent or guilty of misconduct.
- 5.07 The Project Manager may order the Contractor to alter or improve his methods, including those of a Subcontractor, to increase or improve his Plant, to furnish additional or more suitable Material, or to employ additional or more qualified labour if, at any time, the Project Manager determines that:
- (a) the Work is not being, or will likely not be, constructed satisfactorily; or
  - (b) progress is not being, or will likely not be, maintained in accordance with the work schedule.
- 5.08 The Project Manager may order the Contractor to stop work in whole or in part or to order his Subcontractor to stop work in whole or in part, or to take such remedial measures as the Project Manager considers necessary, if, at any time, the Project Manager determines that:
- (a) a danger to life or to property exists;
  - (b) the Contractor has failed to carry out any orders given by the Project Manager in accordance with these GCs; or

- (c) such stoppage or remedial measures may be necessary to ensure the performance of the Work in accordance with the requirements of the Contract.
- 5.09 Without limiting the generality of the foregoing provisions, none of the Project Manager's actions or responsibilities shall be interpreted as taking away from the Contractor's role and responsibilities as Prime Contractor, as more specifically set out in GC: 7.25.
- 5.10 Neither the giving of any orders by the Project Manager pursuant to these provisions nor the carrying out of such orders by the Contractor shall entitle the Contractor to any extra payment, nor relieve the Contractor of his responsibilities under GC:7.00.
- 5.11 In accordance with the Supplemental Conditions, the Project Manager shall determine if and when Substantial Performance and Total Performance are achieved and shall certify the dates thereof.
- 5.12 If the Contractor disputes a determination or order of the Project Manager on any of the foregoing matters, the Contractor shall act in accordance with the Project Manager's determination or order. The Contractor may concurrently appeal the determination or order of the Project Manager to the General Manager as provided for in GC:22.00.

#### **GC 6.00 - AUTHORITY OF THE CONTRACT ADMINISTRATOR**

- 6.01 The Contract Administrator shall interpret or clarify the Contract or any part thereof which appears indefinite, not clear or contradictory to the Contractor.
- 6.02 The Contract Administrator may at any time correct errors or omissions in the Contract or issue additional Drawings or Specifications further detailing, explaining or modifying the Work. Such Drawings or Specifications shall either supplement or supersede those forming part of the Contract at the time the Contract was executed.

#### **GC 7.00 - RESPONSIBILITIES OF CONTRACTOR**

##### **General**

- 7.01 Except as otherwise provided in the Contract, the Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, and for coordinating the various parts of the Work so as to ensure its proper progress and completion in a sound and workmanlike manner, in all respects in strict conformity with the Contract and in accordance with the approved work schedule.
- 7.02 The Contractor shall have complete control over the methods of performing the Work and shall direct and supervise the Work so as to ensure conformance with the Contract.
- 7.03 The Contractor shall provide all Plant, Material, labour, services and incidentals necessary for the performance of the Work.

- 7.04 The Contractor shall be responsible for any Work not explicitly set out in the Contract but which may be reasonably implied for the proper completion of the Work.
- 7.05 Unless otherwise specified in the Specifications, all Material shall be new, fit for the purpose intended and shall meet or exceed the kind, quality and quantity of same specified in the Contract. If required, the Contractor shall provide evidence satisfactory to the Project Manager that the foregoing requirements have been met.

### **Contract**

- 7.06 The Contractor shall perform, complete and maintain the Work in strict accordance with the Contract.
- 7.07 If the Contract or any part thereof appears indefinite, not clear or contradictory, the Contractor shall refer such feature or features to the Contract Administrator for interpretation or clarification.
- 7.08 The Contractor shall be responsible for conveying the interpretation or clarification of the Contract, as given by the Contract Administrator, to Subcontractors.
- 7.09 The Contractor shall prepare and submit all Submittals required by the Contract along with such other drawings, schedules, documents or information as may reasonably be required by the Contract Administrator.
- 7.10 The Contractor shall keep one copy of the Contract and any other reviewed Submittals or other information at the Site, and shall make them available at all reasonable times for the inspection and use of the Project Manager.

### **Laws and Regulations**

- 7.11 The Contractor shall comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction which are or come into force during the performance of the Work and which relate to the Work. Where there are two or more laws, by-laws, ordinances, regulations or codes applicable to the Work, the most restrictive shall apply.
- 7.12 The Contractor shall procure approvals, clearances, permits, licences and certificates required by law or by any by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction for the performance of the Work, but this shall not include the obtaining of permanent easements or rights of servitude.
- 7.13 The Contractor shall give any notices required by law or by by-laws, ordinances, regulations, codes or orders of the authorities having jurisdiction and which relate to the Work.
- 7.14 The Contractor shall not be responsible for verifying that the Contract complies with the applicable laws, by-laws, ordinances, regulations, codes and orders relating to the Work.

### **Patents and Royalties**

- 7.15 If the Contract requires or the Contractor desires the use of any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the owner or licensee.
- 7.16 Upon request of the Contract Administrator, the Contractor shall provide Manitoba Housing with a copy of the said agreement.
- 7.17 If Manitoba Housing or the Contractor is served with a claim or notice of an infringement or alleged infringement of any patent, copyright, trademark or trade name, the party so served shall immediately give notice thereof to the other party.
- 7.18 If Manitoba Housing or the Contractor is prevented by injunction from using any design, device, material or process covered by letters patent, copyright, trademark or trade name, the Contractor shall, at his own cost, substitute an equally suitable design, device, material or process, all subject to the prior approval of the Project Manager.

### **Workplace Safety and Health**

- 7.19 The Contractor is the Prime Contractor for the Works at the Site and, notwithstanding any of the actions of the Project Manager in accordance with these GCs or the Contract, shall have all of the duties and responsibilities of a Prime Contractor.
- 7.20 For the purposes of clause 7(2)(a) of *The Workplace Safety and Health Act*, the Contract entered into between the Contractor and MANITOBA HOUSING, which incorporates these GCs, is a contract to serve as a prime contractor.
- 7.21 In addition to his role as Prime Contractor, the Contractor may also be an “employer” and “contractor”, as those roles are set out in *The Workplace Safety and Health Act*, and shall have all of the duties and responsibilities of an employer and contractor.
- 7.22 The Contractor shall be solely responsible for workplace safety at the Site and at any other locations where the Contractor’s employees or subcontractors may be undertaking the Work and for compliance with all laws, rules, regulations and practices required by the applicable construction and workplace safety legislation.

### **Supervision**

- 7.23 The Contractor shall provide competent, suitably qualified personnel to perform the Work. He shall at all times maintain good discipline and order at the Site.
- 7.24 The Contractor shall obey, perform and comply with the Project Manager's orders, instructions, rules and procedures with respect to the Work or concerning the conduct thereof promptly, efficiently and to the satisfaction of the Project Manager and he will assist other contractors, their employees, subcontractors and agents to do the same.
- 7.25 The Contractor shall employ and keep on the Work and at the Site at all times during the performance of the Work, a competent supervisor, and assistants if necessary. The supervisor shall represent the Contractor on the Site and shall be responsible for

accepting or acting on any instructions from the Project Manager in the place of the Contractor.

- 7.26 If the Project Manager orders a person to be removed from the Work in accordance with GC:5.08, the Contractor shall comply forthwith. Any person so removed shall not be re-employed on the Work by the Contractor or by a Subcontractor.

### **Coordination and Control**

- 7.27 The Contractor must arrange and carry on his Work so as not to conflict with the Work being carried on or to be carried on for or at the request of Manitoba Housing by other contractors or by Manitoba Housing's employees. If the Contractor finds it difficult to work in harmony with such parties, he shall notify the Project Manager promptly.

- 7.28 The Contractor shall be solely responsible for securing the Site, and any existing facility thereon, and for the proper care and protection of the Work already performed.

- 7.29 The Contractor shall do whatever is necessary to ensure that:

- (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work;
- (b) 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;
- (c) fire hazards in or about the Work or its Site are eliminated;
- (d) the health and safety of all persons employed or engaged in the performance of the Work or otherwise is not endangered by the method or means of its performance;
- (e) medical services are available to all persons employed or engaged on the Work or its Site at all times during the performance of the Work;
- (f) sanitation measures are taken and facilities provided with respect to the Work and its Site;
- (g) all survey posts or control monuments are protected and are not removed, defaced, altered or destroyed; and
- (h) all stakes and marks placed on the Work or its Site by or under the authority of the Project Manager are protected and are not removed, defaced, altered or destroyed.

- 7.30 The Contractor shall maintain the Site and the Work in a tidy condition and free from the accumulation of waste and debris, other than that caused by Manitoba Housing or by other contractors. Waste and debris shall be promptly disposed of in a manner that will not contaminate or mar the surrounding area.

- 7.31 Upon attaining Substantial Performance, the Contractor shall remove any Plant and Material not required for the performance of the remaining Work. He shall also remove waste and debris other than that caused by Manitoba Housing or other contractors and shall leave the Site and the Work clean and suitable for occupancy by Manitoba Housing unless otherwise specified.
- 7.32 Total Performance shall not be considered to have been achieved until the Contractor has cleaned up the Site and has removed all Plant, surplus Material, waste and debris, other than that left by Manitoba Housing or other contractors.

### **Subcontractors**

- 7.33 The Contractor agrees that the list of names of Subcontractors included in his Tender Submission is the list of Subcontractors proposed to be used to carry out those parts of the Work noted thereon, and he shall not employ any to whom the Project Manager may reasonably object. The Contractor shall not make any change to the list of Subcontractors without prior notification to the Project Manager.
- 7.34 The Contractor, with respect to Work to be performed under subcontract, shall:
- (a) enter into contracts or written agreements with his Subcontractors that incorporate the terms and conditions of the Contract and that require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract; and
  - (b) be as fully responsible to Manitoba Housing for acts and omissions of his Subcontractors and of persons directly or indirectly employed or engaged by them as for acts and omissions of persons directly employed or engaged by him.
- 7.35 The Contractor shall make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material.
- 7.36 The Contractor shall promptly secure a discharge of a lien or trust claim served upon Manitoba Housing pursuant to *The Builders' Liens Act* (Manitoba).

## **GC 8.00 - CHANGES IN WORK**

### **General**

- 8.01 Manitoba Housing shall have the right to order a Change in Work at any time after award of the Contract.
- 8.02 If, at any time after award of the Contract, the Contractor is of the opinion that a Change in Work is necessary to accomplish the result intended by the Contract or if the Contractor considers it desirable that a Change in Work be approved, he shall promptly provide notice thereof to the Project Manager, including:
- (a) the reason for the proposed Change in Work;

- (b) a detailed description of the proposed Change in Work;
- (c) the Contractor's proposed method(s) to determine the adjustment, if any, in Contract Price pursuant to GC:8.09.

8.03 Without limiting the generality of GC:8.02, if the Contractor observes:

- (a) any substantial difference in the nature of the surface or subsurface conditions at the Site, or the location, nature, quality or quantity of the materials to be removed, from those set out in the Contract; or
- (b) that the Contract is at variance with any laws, ordinances, rules, regulations or codes of authorities having jurisdiction, or if changes are made to any laws, ordinances, rules, regulations and codes subsequent to the Submission Deadline which require modifications to the Contract;

the Contractor shall immediately notify the Project Manager.

8.04 The Project Manager shall make an assessment as to whether a proposed Change in Work is necessary or desirable and whether a corresponding adjustment to the Contract Price is required, and will provide the Contract Administrator with his recommendation. The Contract Administrator shall determine whether the proposed Change in Work is approved or not, including any corresponding adjustment to the Contract Price.

8.05 If the Contract Administrator determines that no Change in Work is necessary or desirable, he will issue a notice stating his determination.

8.06 If the Contract Administrator determines that a Change in Work is necessary or desirable but no corresponding adjustment to the Contract Price is required, he will issue a Change Order to the Contractor approving the Change in Work and stating his determination.

8.07 If the Contract Administrator determines that a Change in Work is necessary or desirable and that requires a corresponding adjustment to the Contract Price, and he is able to determine such adjustment based on the available information, he shall issue a Change Order to the Contractor approving the Change in Work and stating his determination regarding the method(s) to be used to determine the adjustment in Contract Price pursuant to GC:8.09.

8.08 If the Contract Administrator determines that a Change in Work is necessary or desirable and that requires a corresponding adjustment to the Contract Price, and he requires further information to determine such adjustment, he shall issue a notice to the Contractor, stating his determination and requiring the Contractor to submit the Contractor's proposed method(s) to determine the adjustment in Contract Price pursuant to GC:8.09 and upon receipt and evaluation of such information, he shall issue a Change Order in accordance with GC:8.07.

### **Valuation of a Change in Work**

- 8.09 The adjustment in Contract Price resulting from a Change in Work shall be determined by one or more of the following methods:
- (a) by estimate in a lump sum;
  - (b) by the unit prices and methods of measurement set out in the Contract or subsequently agreed upon;
  - (c) by the actual cost of the Change in Work to the Contractor plus a fixed fee;
  - (d) by the actual cost of the Change in Work to the Contractor plus fifteen percent (15%) on any portion of the Change in Work undertaken by the Contractor's own forces, or by the actual cost of the Change in Work plus ten percent (10%) on any portion of the Change in Work undertaken by a Subcontractor.
- 8.10 For the purposes of GC:8.09 (c) or (d), "actual cost" on any portion of the Change in Work undertaken by the Contractor's own forces shall mean the direct cost of labour plus an allowance for direct supervision and payroll burden (including Employment Insurance, Canada Pension, Payroll Tax, Workers Compensation assessments and vacation pay), purchase or rental of Plant and Material and any other payments made by the Contractor with the prior approval of the Project Manager that are necessary for the performance of the Change in Work.
- 8.11 For the purposes of GC:8.09 (d), "actual cost" on any portion of the Change in Work undertaken by a Subcontractor shall mean the amount invoiced by the Subcontractor and paid by the Contractor, net of any discounts and excluding any late payment interest or penalties. Only one mark up of ten percent (10%) shall be permitted on a Change of Work, even if the Change of Work is undertaken by a Subcontractor's subcontractor.
- 8.12 If a Change in Work results in a reduction in the Contract Price, no claim may be made for damages on the ground of loss of anticipated profit on Work so diminished or on any other ground provided that the aggregate reduction in the Contract Price does not exceed twenty percent (20%) of the price agreed upon for the Work as of the date of the award of the Contract.
- 8.13 Reductions in the Contract Price as a result of:
- (a) Changes in Work requested by the Contractor;
  - (b) a deduction, pursuant to GC:12.07 (d), for defective or deficient Work;
  - (c) a decrease, pursuant to GC:13.07, due to a change in tax laws or applicability; or
  - (d) Manitoba Housing's application of a remedy for an event of default;
- shall not be considered in calculating the aggregate reduction in the Contract Price for the purposes of GC:8.12.
- 8.14 If a Change in Work diminishes the Work or any part thereof, resulting in:

- (a) extra cost to the Contractor directly attributable to the diminution for which he would not be entitled to payment on a unit price basis (e.g.: loss of volume discounts); or
- (b) loss to the Contractor in respect of Material required by Manitoba Housing to be purchased by him for the Work but not used thereon as a direct result of the diminution (e.g.: restocking charges);

the Contractor shall be compensated therefor by Manitoba Housing in the sum or sums determined by the Project Manager.

- 8.15 If the method of valuation or measurement of the adjustment to the Contract Price cannot be promptly agreed upon and the Project Manager requires the Change in Work to proceed, then the Contract Administrator will determine the method of valuation and measurement and the adjustment to the Contract Price. The Contract Administrator shall issue a Change Order to the Contractor approving the Change in Work and setting out the method of valuation, measurement, and any approved adjustments to the Contract Price.
- 8.16 If the Contractor disputes a determination made by the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's determination. The Contractor may concurrently appeal the determination of the Contract Administrator to the General Manager as provided for in GC:22.00.

### **Cost Records**

- 8.17 If a valuation is required pursuant to GC:8.09 or GC:8.14, the Contractor shall provide the Contract Administrator with:
- (a) detailed and accurate statements showing:
    - (i) description, cost (including expenses for operation and maintenance) and time for Plant used by the Contractor;
    - (ii) description, cost and quantity for Material used by the Contractor;
    - (iii) name, rate of pay and hours of work for each of the persons employed by the Contractor; and
  - (b) access to any cost records (including payroll records, time books and invoices) or other data necessary to verify the accuracy of such statements.

### **GC 9.00 - RIGHT OF ENTRY**

- 9.01 The Contractor shall not be entitled to exclusive possession of the Site.
- 9.02 Manitoba Housing shall have the right, for itself, its agents, representatives or other persons, to enter, occupy or use any portion of the Site or the Work, at any time and for so long a time as the Project Manager may require.

- 9.03 If Manitoba Housing does enter, occupy or use the Site pursuant to GC:9.02, it shall, or it shall cause its agents, representatives or other persons to notify the Contractor prior to entry, occupation or use. Manitoba Housing, its agents, representatives or other persons entering, occupying or using the Site will comply with any instructions given by the Contractor in his role as Prime Contractor.
- 9.04 Such entry, occupation or use shall not constitute acceptance of the Work by Manitoba Housing nor shall it relieve the Contractor of responsibility to complete the Work.

#### **GC 10.00 -CONTROL OF PLANT AND MATERIAL**

- 10.01 The Contractor shall not remove any Plant or Material that he has brought to the Site and which is required to complete the Work without the prior consent of the Project Manager until the date of Total Performance.
- 10.02 Plant or Material that is the property of Manitoba Housing shall not be removed from the Site, disposed of or used except for the purposes of the Work without the prior consent of the Project Manager.
- 10.03 The Contractor shall keep such records of all Plant and Material supplied or placed in the care, custody and control of the Contractor by Manitoba Housing as the Project Manager may from time to time require and shall satisfy the Project Manager, when requested, that such Plant and Material are at the place and in the condition required by Manitoba Housing.

#### **GC 11.00 -RISK AND RESPONSIBILITY**

- 11.01 Plant or Material brought to the Site or the Work by the Contractor shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until:
- (a) Material is incorporated into the Work; or
  - (b) Plant or Material is removed from the Site or the Work by the Contractor.
- 11.02 The Contractor shall be liable to Manitoba Housing for any loss of or damage to Plant or Material that is supplied to or placed in the care, custody and control of the Contractor by Manitoba Housing in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control, from the commencement of the Work until:
- (a) Material is incorporated into the Work; or
  - (b) Plant or Material is returned, in its original condition, to Manitoba Housing.
- 11.03 The Work shall remain at the risk and the responsibility of the Contractor from the commencement of the Work until the date of Substantial Performance.

- 11.04 That portion of the Work not completed as of the date of Substantial Performance shall remain at the risk and responsibility of the Contractor until the date of Total Performance.
- 11.05 The Contractor shall, at his own cost, be required to maintain the Work, make good all damage thereto and imperfections therein and to deliver the completed Work to Manitoba Housing in accordance with the provisions of the Contract.

## **GC 12.00 -INSPECTION**

### **General**

- 12.01 The Contractor shall provide the Project Manager access, whether at the Site or at the premises of the Contractor or any Subcontractor, to observe and inspect the Work and its progress.
- 12.02 The Contractor shall provide the Project Manager any samples required to inspect the Work.
- 12.03 The Contractor shall provide the Project Manager any and all assistance which he may require to observe and inspect the Work.
- 12.04 Before beginning or resuming operations upon any portion of the Work, the Contractor shall notify the Project Manager so as to enable him to arrange for inspection. If the Contractor fails to notify the Project Manager, the Contractor shall, if and when required by the Project Manager, forthwith take down or expose and rebuild that portion of the Work required to facilitate inspection. The cost of such taking down or exposure and rebuilding, if any, shall be borne by the Contractor.
- 12.05 If and when required by the Project Manager, the Contractor shall take down or expose forthwith any portion of the Work where the Project Manager determines that the Work is not in accordance with the Contract. The cost of such taking down or exposure and rebuilding, if any, shall fall upon Manitoba Housing if the taking down or exposure indicates that the portion exposed is properly constructed and of satisfactory Material, but if otherwise the cost shall be borne by the Contractor.
- 12.06 The inspection herein provided for shall in no way relieve the Contractor of full responsibility for the quality, proper operation and performance of the Work.

### **Defective Work**

- 12.07 If the Project Manager determines that the Work, or any part thereof is defective or deficient, Manitoba Housing shall have the right to do any one or more of the following in addition to anything permitted elsewhere in the Contract or by law:
- (a) if the Project Manager determines that any Plant is defective, deficient or otherwise unfit for the purpose intended, the Project Manager may direct the

Contractor to remove such Plant from the Site and promptly replace it with Plant which meets the requirements of the Contract and is fit for the purpose intended;

- (b) if the Project Manager determines that any Material which is not yet incorporated into the Work is defective, deficient or otherwise unfit for the purpose intended, the Project Manager may direct the Contractor to remove such Material from the Site and promptly replace it with Material which meets the requirements of the Contract and is fit for the purpose intended;
- (c) if the Project Manager determines that the Work or any portion thereof, including any Material which is incorporated therein, is defective, deficient or otherwise unfit for the purpose intended, the Project Manager may direct the Contractor to repair, reconstruct, replace or otherwise remedy the defect or deficiency;
- (d) if the Project Manager determines that it is not expedient to correct defective or deficient Work, Manitoba Housing may deduct from the Contract Price the difference between the value of the Work as done and that called for by the Contract, the amount of which shall be determined by the Project Manager.

12.08 The Contractor shall, without delay, carry out the directives of the Project Manager pursuant to GC:12.07. In addition, the Contractor shall be responsible for the cost of any additional inspections necessitated thereby.

12.09 Manitoba Housing shall be entitled, in its sole discretion, to use the Work or any portion thereof notwithstanding that it may be defective or deficient, and such use shall not constitute acceptance of any defects or deficiencies nor shall it relieve the Contractor of responsibility to complete the Work.

## **GC 13.00 -MEASUREMENT AND PAYMENT**

### **General**

13.01 Unless otherwise specified in the Specifications or Supplemental Conditions, Manitoba Housing shall only be required to pay the Contractor for Material required for the Work upon the installation and total incorporation of same permanently in the Work.

13.02 The amounts to be paid by Manitoba Housing to the Contractor shall be the sums certified by the Project Manager in the interim and final progress estimates. All percentage of work completions must be shown in whole percentage amounts (no partial or negative percentages).

13.03 For unit price Contracts, such sums shall be determined by the Project Manager upon the basis of the unit prices for the various classes of the Work stated on **Form B: Prices**. The total amount to be paid to the Contractor for the Work will be the amount arrived at by measuring the amount of each bid item listed on **Form B: Prices** and performed in accordance with the Contract, and pricing the same, in accordance with the unit prices stated thereon.

13.04 For lump sum Contracts, such sums shall be determined by the Project Manager upon the basis of the lump sum price stated on **Form B: Prices**. Where, in the opinion of the Project Manager, lump sum prices are unbalanced, the payments for the applicable lump sum item may be made on a pro-rata basis over the life of the Contract.

13.05 Prices stated on Form B: Prices shall be deemed to include:

- (a) duty;
- (b) freight and cartage;
- (c) Provincial and Federal taxes and all charges governmental or otherwise paid;
- (d) profit and all compensation which shall be due to the Contractor for the Work and all details necessarily connected with the completion of the Work and all risks and contingencies connected therewith.

#### **Increased or Decreased Costs**

13.06 The Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of the Work to the Contractor except as provided for herein.

13.07 The Contract Price shall be adjusted if any change in a tax imposed under the *Excise Act (Canada)* the *Excise Tax Act (Canada)*, the *Customs Act (Canada)*, the Customs Tariff, *The Mining Tax Act (Manitoba)*, or *The Retail Sales Tax Act (Manitoba)*:

- (a) occurs after the Submission Deadline;
- (b) applies to Material; and
- (c) affects the cost of that Material to the Contractor.

13.08 If a change referred to in GC:13.07 occurs, the Contract Price 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, to be the increase or decrease in the cost incurred that is directly attributable to that change.

13.09 For the purpose of GC:13.07, where a tax is changed after the Submission Deadline but public notice of the change has been given by either the Federal or Provincial Minister of Finance before that date, the change shall be deemed to have occurred before the Submission Deadline and the Contractor shall not be entitled to an increase in the Contract Price.

#### **Measurement and Payment**

13.10 By the fourteenth (14) Calendar Day after the end of each month, or as soon thereafter as possible, the Project Manager shall, subject to having received all necessary information from the Contractor by the seventh (7) Calendar Day after the end of that month, prepare a progress estimate setting out the quantity and value of the Work performed during the preceding month.

- 13.11 The Contractor shall sign each progress estimate signifying that he agrees with the Project Manager's estimate of the quantity and value of the Work completed.
- 13.12 Approval by Manitoba Housing of payment on account of a progress estimate will make the amount of the progress estimate valid for payment. Manitoba Housing will use its best efforts to issue payment to the Contractor within thirty (30) days of receipt of a signed progress estimate pursuant to GC:13:11.
- 13.13 Any payment made by Manitoba Housing to the Contractor on account of a progress estimate shall be less any holdback required to be made by *The Builders' Liens Act*, and any such holdbacks or other amounts which Manitoba Housing is entitled to withhold pursuant to the Contract.

### **Final Payment**

- 13.14 Approval by Manitoba Housing of payment on account of the final progress estimate shall be subject to the following conditions:
- (a) issuance by the Contact Administrator of a certificate of Total Performance;
  - (b) receipt by Manitoba Housing of a certificate from the Workers Compensation Board stating that full payment has been made to the Board with respect to all assessments owing.
- 13.15 Payment on account of the final progress estimate, including the holdback made by Manitoba Housing in compliance with *The Builders' Liens Act*, shall be paid to the Contractor when the time for filing liens or trust claims has elapsed, unless Manitoba Housing is in receipt of a lien or trust claim.
- 13.16 Neither the issuance of a certificate of Total Performance nor the payment of the final progress estimate shall relieve the Contractor from his responsibilities either under GC:14.00 or as a result of any breach of the Contract by the Contractor including, but not limited to, defective or deficient Work appearing after Total Performance, nor shall it conclude or prejudice any of the powers of the Project Manager or the General Manager hereunder.
- 13.17 Subject to GC:13.18, acceptance by the Contractor of payment on account of the final progress estimate shall constitute a waiver and release by him of all claims against Manitoba Housing whether for payment for Work done, damages or otherwise arising out of the Contract.
- 13.18 If the Contractor disputes a determination made by the Project Manager with respect to an interim or final progress estimate, the Contractor shall be paid in accordance with the Project Manager's determination. The Contractor may concurrently appeal the determination of the Project Manager to the General Manager as provided for in GC:22.00.

### **GC 14.00 -WARRANTY**

## **General**

- 14.01 The Contractor warrants that the Work will be free of any and all defects or deficiencies during the warranty period.

## **Warranty Period**

- 14.02 Unless specifically stated otherwise in the Specifications or Supplemental Conditions, the warranty period shall begin on the date of Total Performance and shall expire one (1) year thereafter unless extended pursuant to GC:14.03 or GC:14.04, in which case it shall expire when provided for under these sections.
- 14.03 If a defect or deficiency prevents the full and normal use or operation of the Work or any portion thereof, then for purposes of calculating the warranty period time shall be deemed to cease to elapse for the defective or deficient portion, and for any portion of the Work whose use or operation is prevented by such defect or deficiency, as of the date on which the defect or deficiency is observed or the use or operation is prevented and shall begin to run again when the defect or deficiency has been corrected or the Work may be used or operated to the satisfaction of the Project Manager.
- 14.04 If all outstanding defects or deficiencies have not been corrected to the satisfaction of the Project Manager by at least two (2) weeks prior to the date on which the warranty would expire except for this GC:14.04, then the Project Manager may require the Contractor to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Work identified by the Project Manager as still outstanding and uncorrected or for any portion of the Work whose use or operation is prevented by such defects or deficiencies.
- 14.05 Notwithstanding GC:14.01, if any law of Manitoba or of the jurisdiction in which the Work was manufactured requires, or if the manufacturer provides, a longer warranty period or a warranty which is more extensive in its nature, then the provisions of such law or manufacturer's warranty shall apply.

## **Warranty Inspection**

- 14.06 Within a reasonable time before the warranty expires, the Project Manager shall request that the Contractor arrange, attend at and assist the Project Manager in carrying out an inspection of the Work. If the request for inspection is made prior to the expiration of the warranty period, but the inspection does not take place until after the expiration of the warranty period, then the warranty period shall be deemed to be extended until such time after the inspection of the Work takes place.
- 14.07 If the Project Manager has not requested an inspection at least two weeks prior to the expiry of the warranty period, then the Contractor shall advise the Project Manager of the approaching expiry date and shall arrange for an inspection in accordance with GC:14.06.

14.08 Where the warranty period has been extended pursuant to GC:14.04, a second inspection shall be carried out in accordance with GC:13.06 before the warranty period, as extended, expires.

### **Warranty Work**

14.09 The Project Manager shall notify the Contractor of observed defects or deficiencies and damage, if any, arising or resulting from such defects or deficiencies, within the warranty period.

14.10 The Contractor shall correct, to the satisfaction of the Project Manager, all defects, deficiencies and damage identified by the Project Manager in the manner and within the time period(s) specified in the notice.

14.11 If the Contractor disagrees with the Project Manager's determination under GC:14.09, he shall nonetheless comply with GC:14.10. The Contractor may concurrently appeal the determination of the Project Manager as provided for in GC:22.00.

### **Acceptance of the Work**

14.12 The Project Manager shall certify acceptance of the Work upon:

- (a) the satisfactory performance of the Work during the warranty period;
- (b) the Contractor having fully complied with GC:14.10; and
- (c) the successful conclusion of any tests required under the Contract.

14.13 Only certification of acceptance of the Work shall constitute:

- (a) acceptance of the Work; or
- (b) acceptance that the Work or any part thereof has been duly performed; or
- (c) acceptance of the accuracy of any claim of the Contractor.

14.14 Certification of acceptance of the Work shall not, however, relieve the Contractor from his responsibilities for any breach of the Contract including, but not limited to, defective or deficient Work appearing after the date of such certification.

### **GC 15.00 -GOVERNING LAW**

15.01 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein.

### **GC 16.00 -ASSIGNMENT**

16.01 The Contractor shall not assign the Contract or any payments thereunder without the prior written consent of Manitoba Housing.

16.02 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, successors and assigns of Manitoba Housing and the Contractor.

#### **GC 17.00 -FORCE MAJEURE**

17.01 If the Contractor is delayed in the performance of the Work by reason of strikes or lock-outs, an act of God, or any other cause which the Contractor satisfies the Project Manager to be totally beyond his control, the work schedule shall be adjusted by a period of time equal to the time lost due to such delays.

17.02 No extension for delay shall be approved unless a notice of the claim is received by the Project Manager from the Contractor within seven (7) calendar days of the date on which the cause of delay arose.

17.03 Any notice or claim for extension must state the cause of delay and the length of extension requested.

17.04 In the case of a continuing cause of delay, only one claim for an extension shall be necessary.

#### **GC 18.00 -INDEMNITY**

18.01 The Contractor shall save harmless and indemnify Manitoba Housing against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, his Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any property owned in whole or in part by Manitoba Housing, or which Manitoba Housing by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than Manitoba Housing;
- (d) failure to pay and obtain a discharge of a notice of claim for lien served upon Manitoba Housing in accordance with the requirements of *The Builders' Liens Act*;
- (e) failure to pay a workers compensation assessment, or federal or provincial taxes;

- (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
  - (g) inaccuracies in any information provided to Manitoba Housing by the Contractor.
- 18.02 Manitoba Housing has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.
- 18.03 The Contractor shall pay to Manitoba Housing the value of all legal fees and disbursements required to settle any such claim or to defend Manitoba Housing against any such claim, action, proceeding, claim or demand notwithstanding that the settlement or defense of the said action, proceeding, claim or demand was undertaken on behalf of Manitoba Housing by a salaried employee of Manitoba Housing or of the Government of Manitoba.
- 18.04 If the Contractor fails to make any payment required to be made to Manitoba Housing pursuant to GC:18.02 and GC:18.03, Manitoba Housing shall be entitled to deduct the amount of such payment from any payment required to be made by Manitoba Housing to the Contractor under the Contract or take whatever other remedies against the Contractor that Manitoba Housing may have at law.

#### **GC 19.00 -EVENTS OF DEFAULT**

- 19.01 An event of default will be deemed to have occurred if the Contractor:
- (a) abandons the Work; or
  - (b) is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of his creditors, or has a receiver or liquidator appointed in respect of his assets; or
  - (c) is not performing or has not been performing the Work, or any part thereof, in a sound and workmanlike manner and in all respects in strict conformity with the Contract; or
  - (d) is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the completion of the Work or any part thereof, in accordance with the work schedule; or
  - (e) fails to take down, rebuild, repair, alter or amend any defective or deficient Work, or to remove any defective or deficient Material; or
  - (f) fails to remedy defects or deficiencies during the warranty period in the manner and within the time periods specified by the Project Manager; or
  - (g) fails to make prompt payment to his Subcontractors, his employees or on account of the purchase or rental of Plant or Material; or

- (h) fails to promptly secure a discharge of a lien or trust claim served upon Manitoba Housing pursuant to *The Builders' Liens Act*; or
- (i) fails to comply with any laws, by-laws or statutory regulations; or
- (j) refuses or neglects to comply with an order given by the Project Manager; or
- (k) commits any other breach of the Contract.

19.02 Any provision of the Contract may be waived only by express waiver in writing by the Project Manager. No express waiver of any provision shall imply the waiver of any other provision.

## **GC 20.00 -MANITOBA HOUSING'S RIGHTS AND REMEDIES**

### **General**

20.01 If an event of default has occurred, Manitoba Housing may do any one or more of the following:

- (a) withhold or retain the whole or part of any payment;
- (b) take the whole of the Work, or any part or parts thereof out of the hands of the Contractor;
- (c) demand payment for any amount owed to MANITOBA HOUSING;

all as more particularly set forth in GC:20.03 to GC:20.16 below.

20.02 The duties and obligations imposed upon the Contractor by the Contract and the rights and remedies available to Manitoba Housing hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to Manitoba Housing at law.

### **Withholding of Payment**

20.03 If an event of default has occurred, Manitoba Housing may withhold or retain the whole or part of any payment to the Contractor.

20.04 Manitoba Housing may apply the amount withheld or retained to:

- (a) pay any person to whom the Contractor is indebted in respect of Material, labour or services furnished for the Work;
- (b) secure the discharge of a lien or trust claim served upon Manitoba Housing pursuant to *The Builders' Liens Act*;
- (c) indemnify, compensate or reimburse Manitoba Housing for amounts paid or costs incurred by Manitoba Housing in connection with the event of default.

- 20.05 Payment of such amounts shall discharge Manitoba Housing's liability to the Contractor to the same extent as payment directly to him.
- 20.06 Upon remedy of the event of default, any amount remaining from the amount withheld will be released to the Contractor.

### **Taking the Work out of the Contractor's Control**

- 20.07 If an event of default has occurred, Manitoba Housing may, without process or action at law, upon giving the Contractor notice, take the whole of the Work, or any part or parts thereof out of the hands of the Contractor.
- 20.08 Upon such notice being given to the Contractor, he shall immediately discontinue the Work or any part or parts thereof specified in the said notice.
- 20.09 The taking of the Work or any part thereof out of the Contractor's control pursuant to GC:20.07 shall not relieve or discharge the Contractor 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 the Contractor's control.
- 20.10 If the Work or any part thereof is taken out of the Contractor's control pursuant to GC:20.07, all Plant and Material, and the interest of the Contractor in all licenses, powers and privileges acquired, used or provided by the Contractor under the Contract shall be assigned by the Contractor to Manitoba Housing without compensation to the Contractor.
- 20.11 Manitoba Housing shall have the right, subject to GC: 21.00, to complete, by contract or with its own forces, the Work taken out of the Contractor's control, and the Contractor agrees that Manitoba Housing shall have the right to take possession of and use any of the Contractor's Material and property of every kind provided by the Contractor for the purpose of the Work, and to procure other Plant or Material for the completion thereof. Manitoba Housing shall not be required to obtain the lowest price to complete the Work taken out of the Contractor's control.
- 20.12 When the Project Manager certifies that any Plant, Material or any interest of the Contractor referred to in GC:20.10 is no longer required for the purposes of the Work, or that it is not in the best interest of Manitoba Housing to retain that Plant, Material or interest, it shall revert to the Contractor.
- 20.13 If the cost to Manitoba Housing of completing the Work or portion thereof as aforesaid is less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against Manitoba Housing. If the cost of the Work performed by Manitoba Housing is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, Manitoba Housing shall have a claim against the Contractor for such excess costs.
- 20.14 When any portion of the Work is being carried on by Manitoba Housing, by contract or otherwise, the Contractor shall continue to perform the remainder of the Work in

accordance with the Contract, and in such manner as in no way to hinder or interfere with the persons performing the portion of the Work being carried on by Manitoba Housing.

### **Demand for Payment**

- 20.15 If an event of default has occurred, Manitoba Housing may demand payment from the Contractor for amounts paid or costs incurred by Manitoba Housing in connection with the event of default.
- 20.16 The Contractor shall, within seven (7) calendar days of receipt of a notice from Manitoba Housing, pay Manitoba Housing the amount set out in the notice.

### **GC 21.00 -SURETY'S OPTION TO ASSUME THE CONTRACT**

- 21.01 Where Manitoba Housing has given notice to the Contractor that the Work or part thereof has been taken out of the Contractor's control, Manitoba Housing shall promptly provide the Surety with a copy of such notice.
- 21.02 The Surety may, at its option, assume the Contract in respect of the Work specified in the notice and proceed to perform same.
- 21.03 Within fourteen (14) calendar days after the date on which the Surety is provided with a copy of the notice given to the Contractor, the Surety shall advise Manitoba Housing whether it intends to exercise such option. The said option shall expire if the Surety fails to so advise Manitoba Housing within the time specified.
- 21.04 If the Surety has exercised its option in accordance with the foregoing, it shall take the Contractor's place in all respects. The Surety shall be bound by all terms and conditions of the Contract and shall be paid in accordance with the terms of the Contract for all Work performed by it.
- 21.05 The Surety may, with the consent of the General Manager, subcontract the Work so taken over or any portion thereof.

### **GC 22.00 -CONTRACTOR'S RIGHT TO APPEAL**

- 22.01 If the Contractor disagrees with a determination or order of the Project Manager or Contract Administrator he may, within seven (7) calendar days after receiving notice of the Project Manager or Contract Administrator's determination or order, notify the General Manager of the Manitoba Housing of his contention with respect thereto and request a determination thereon from the General Manager.
- 22.02 If the Contractor disagrees with the General Manager's determination he may request that the dispute be referred to arbitration in accordance with GC:23.00, by providing notice to the General Manager within seven (7) calendar days after receiving notice of the General Manager's determination.

22.03 If the Contractor neglects or fails to observe fully and faithfully the above conditions, he shall be deemed to have accepted the Project Manager or Contract Administrator's determination and to have waived any said claim, at law or otherwise.

## **GC 23.00 -ARBITRATION**

### **Requests for Arbitration**

23.01 If, at any time before the termination of the warranty period, any dispute, difference or question shall arise between Manitoba Housing and the Contractor regarding the Work, then every such dispute, difference or question may, with the consent of both Manitoba Housing and the Contractor, be referred to arbitration. Notwithstanding that the parties may have consented to arbitration, no arbitration shall proceed before the date of Substantial Performance.

23.02 The party desiring arbitration (the "Requesting Party") shall request the consent of the other party (the "Other Party") to refer a particular dispute, difference or question to arbitration.

23.03 The Other Party shall reply to the request within seven (7) calendar days of receiving same.

### **Referral to a Single Arbitrator**

23.04 If the Other Party has consented to arbitration, the Requesting Party shall nominate an arbitrator (the "Requesting Party's Nominee") within seven (7) calendar days of receiving the reply. The Other Party shall have seven (7) calendar days after receiving notice of the nomination to accept or reject the Requesting Party's Nominee.

23.05 If the Other Party accepts the Requesting Party's Nominee, the dispute, difference or question shall be promptly referred to him or her.

### **Referral to a Panel of Arbitrators**

23.06 If the Other Party rejects the Requesting Party's Nominee, it shall, within seven (7) calendar days of rejection, appoint its own arbitrator.

23.07 The Requesting Party shall, within seven (7) calendar days of receiving the Other Party's rejection, appoint its own arbitrator.

23.08 The arbitrators appointed under GC:23.06 and GC:23.07 shall, within seven (7) calendar days of the date on which the last of them was appointed, appoint a third arbitrator (the "Panel Chair") who will act as chair of the arbitration panel.

### **General**

- 23.09 *The Arbitration Act* (Manitoba) or any successor legislation thereto shall apply to the arbitration in all respects except as expressly otherwise provided in these General Conditions.
- 23.10 The single arbitrator or the Panel Chair, as the case may be, shall determine the procedure to be followed in the arbitration, which shall be consistent with *The Arbitration Act* (Manitoba) or any successor legislation thereto.
- 23.11 Where the matter proceeds with a single arbitrator, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, and for an equal share of the fees and expenses of the single arbitrator and of any other expenses related to the arbitration.
- 23.12 Where the matter proceeds with an arbitration panel, each party shall be responsible for its own legal expenses, expenses to produce expert evidence or other expenses voluntarily incurred, for the fees and expenses of the arbitrator appointed by it, and for an equal share of the fees and expenses of the Panel Chair and of any other expenses related to the arbitration.

#### **GC 24.00 -NOTICES**

- 24.01 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under the Contract shall be in writing and shall be delivered by hand, by facsimile transmission (fax) or by mail.
- 24.02 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications shall be delivered to the applicable addresses set out in the Bidding Instructions.
- 24.03 Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications.
- 24.04 Delivery to the Contractor's designated supervisor at the Site shall constitute delivery to the Contractor.
- 24.05 Any notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall:
- (a) if delivered by hand, be deemed to have been received on the day of receipt;
  - (b) if delivered by facsimile transmission, be deemed to have been received on the day of transmission, if a Business Day, or if not a Business Day, on the Business Day next following the day of transmission; and
  - (c) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing.

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