

# TERMS & CONDITIONS FOR SURVEYORS & CONSULTANTS

## 1. Definitions

"Surveyor"/"Consultant" is the Surveyor/Consultant trading under these conditions.

"Client" is the party at whose request or on whose behalf the Surveyor/Consultant undertakes surveying services. "Report" means any report or statement supplied by the Surveyor/Consultant in connection with instructions received from the Client.

"Disbursements" means the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, subsistence and hotel accommodation where an overnight stay is necessary. "Fees" means the fees charged by the Surveyor/Consultant to the Client and including any value added tax where applicable and any Disbursements.

## 2. Scope

The Surveyor/Consultant shall provide its services solely in accordance with these terms and conditions.

## 3. Work

The Client will set out in writing the services which it requires the Surveyor/Consultant to provide. The Surveyor/Consultant will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions.

Once the Surveyor/Consultant and the Client have agreed what services are to be performed (the Services) any subsequent changes or additions must be agreed by both parties in writing.

## 4. Payment

The Client shall pay the Surveyor/Consultant's Fees punctually in accordance with these Conditions and in any event not later than 15 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the parties. Any delay in payment shall entitle the Surveyor/Consultant to interest at 20% above the Base Lending Rate of the Bank of Canada prevailing at the time of default.

## **5. Obligations and Responsibilities**

(a) Client: The Client undertakes to ensure that full instructions are given to the Surveyor/Consultant and are provided in sufficient time to enable the required Services to be performed effectively and efficiently and to procure all necessary access for the Surveyor/Consultant to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions. The Surveyor/Consultant shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions.

(b) Surveyor: The Surveyor/Consultant shall use reasonable care and skill in the performance of the services in accordance with sound marine surveying/consulting practice.

(c) Reporting: The Surveyor/Consultant shall submit a final written Report to the Client following completion of the agreed Services describing the Surveyor's/Consultant's findings and the condition and/or quality of the object and/or purpose of the assignment, unless otherwise expressly instructed by the Client not to do so.

(d) Confidentiality: The Surveyor/Consultant undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law.

(e) Property: The right of ownership in respect of all original work created by the Surveyor/Consultant remains the property of the Surveyor/Consultant.

(f) Conflict of Interest/Qualification: The Surveyor/Consultant shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Surveyor/Consultant to continue its involvement with the appointment. The Client shall be responsible for payment of the Surveyor/Consultant's Fees up to the date of notification.

## **6. Liability**

(a) Without prejudice to Clause 7, the Surveyor/Consultant shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect and howsoever arising UNLESS same is proved to have

resulted solely from the negligence, gross negligence or willful default of the Surveyor/Consultant or any of its employees or agents or subcontractors.

(b) In the event that the Client proves that the loss, damage, delay or expense suffered was caused by the negligence, gross negligence or willful default of the Surveyor/Consultant aforesaid, then, save where loss, damage, delay or expense has resulted from the Surveyor's/Consultant's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Surveyor's/Consultant's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a sum calculated on the basis of three times the Surveyor's/Consultant's charges or \$10,000.00 whichever is the greater.

(c) Without prejudice to (a) and (b) above, the Surveyor/Consultant shall not be liable for loss of or damage to physical equipment and property placed at its disposal by, or on behalf, of the Client however such loss or damage occurs, unless such loss or damage was caused by act or omission committed with intent to cause some or recklessly with knowledge that such loss or damage would probably result.

## **7. Indemnity**

Except to the extent and solely for the amount therein set out that the Surveyor/Consultant would be liable under Clause 6, the Client hereby undertakes to keep the Surveyor/Consultant and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including, but not limited to, legal costs and expenses on a full indemnity basis) which the Surveyor/Consultant may suffer or incur (either directly or indirectly) in the course of the Services under these Conditions.

## **8. Force Majeure**

The Surveyor/Consultant and/or the Client shall not, except as otherwise provided in these Conditions, be responsible or have any liability for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God (including, but not limited to earthquake, flood, tsunami, volcano, hurricane, tropical storm, cyclone, blizzard or other similar event), act of war, terrorist attack, nuclear contamination, seizure under legal process, epidemic quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people.

Following a force majeure event either party may serve notice on the other to terminate the agreement.

## **9. Insurance**

The Surveyor/Consultant shall effect and maintain, at no cost to the Client, Professional Liability Insurance for such loss and damage for which the Surveyor/Consultant may be held liable to the Client under these terms and conditions.

## **10. Surveyor's/ Consultant's Right to Sub-contract**

The Surveyor/Consultant shall have the right to sub-contract any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds. In the event of such a subcontract the Surveyor/Consultant shall remain fully liable for the due performance of its obligations under these Conditions.

## **11. Time Bar**

Any claims against the Surveyor/Consultant by the Client shall be deemed to be waived and absolutely time barred upon the expiry of one year from the submission date of the Report to the Client.

## **12. Jurisdiction and Law**

These Conditions shall be governed by and construed in accordance with the laws of Canada and Ontario, any dispute shall be subject to the exclusive jurisdiction of the Ontario Courts.