

TENDER DOCUMENTS

SECTION 11 INSURANCE CONDITIONS

TABLE OF CONTENTS

	PAGE
GENERAL INSURANCE CONDITIONS (GIC).....	1
GIC1 INDEMNIFICATION.....	1
GIC2 OBLIGATIONS OF THE CONTRACTOR	1
GIC3 INSURANCE PROCEEDS	2
GIC4 NAMED INSURED / ADDITIONAL INSURED	3
GIC5 CONTRACTOR’S RESPONSIBILITY FOR SUBCONTRACTORS, THEIR SUBSUBCONTRACTORS AND SUPPLIERS	3
GIC6 PERIOD OF INSURANCE	3
GIC7 PROOF OF INSURANCE	3
GIC8 NOTIFICATION.....	3
GIC9 PAYMENT OF DEDUCTIBLE	3
GIC10 OTHER INSURANCE	4
GIC11 AGENCY/TRUSTEE CLAUSE.....	4
GIC12 DEFINITIONS.....	4
COMPREHENSIVE GENERAL LIABILITY (CGL).....	5
CGL1 SCOPE OF POLICY.....	5
CGL2 COVERAGE / PROVISIONS	5
CGL3 ADDITIONAL EXPOSURES.....	6
BUILDERS' RISK (BR).....	6
BR1 SCOPE OF POLICY.....	6
BR2 PROPERTY INSURED	7
BR3 INSURANCE PROCEEDS	7
BR4 AMOUNT OF INSURANCE.....	7
BR5 SUBROGATION.....	7
BR6 THE FOLLOWING ADDITIONAL CLAUSES SHALL BE INCLUDED IN THE POLICY	7
AUTOMOBILE LIABILITY (AL)	9
AL1 SCOPE OF POLICY.....	9
AL2 COVERAGE / PROVISIONS.....	9
MARINE PROTECTION & INDEMNITY (P&I).....	10
P&I1 SCOPE OF POLICY.....	10
P&I2 COVERAGE.....	10
PROFESSIONAL LIABILITY (PL)	10
PL1 SCOPE OF POLICY.....	10
PL2 COVERAGE.....	11
PL3 PERIOD OF INSURANCE	11
WORKER’S COMPENSATION (WC)	11

SECTION 11 INSURANCE CONDITIONS

The **Contractor** shall at its own expense provide and maintain insurance as provided hereunder with companies subject to approval by the **Owner**.

PART I

GENERAL INSURANCE CONDITIONS (GIC)

GIC1 INDEMNIFICATION

GIC1.1 The **Contractor** shall indemnify and save the **Owner** and Her Majesty in Right of Canada harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the **Contractor**, its servants, agents, Subcontractors and Sub-subcontractors in performing the work under the Contract, including an infringement or an alleged infringement of a patent of invention or any other kind of intellectual property.

GIC1.2 For the purposes of GIC1.1, "activities" includes any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GIC2 OBLIGATIONS OF THE CONTRACTOR

GIC2.1 The **Contractor** shall, at its own expense, obtain and maintain insurance contracts according to the form, the nature, in the amounts, for the periods and containing the terms and conditions specified in the *Insurance Conditions*.

GIC2.2 Prior to entering the property of the **Owner**, the **Contractor** shall provide the Engineer with the "Notice of Compliance with Insurance Conditions" form. This form, which shall be signed by the insurance broker and by the **Contractor**, shall be considered sufficient proof that the **Contractor's** insurance policies meet or will meet the requirements specified in the *Insurance Conditions* and that they will be in force throughout the term of the Contract.

GIC2.3 The **Contractor** shall provide the Engineer with insurance certificates within seven (7) days of the date of Notice of Contract award in accordance with the requirements of the *Insurance Conditions*.

GIC2.4 The subscription by the **Contractor** to the insurance Contracts coverage required by the provisions of these Insurance Conditions shall in no way limit the **Contractor's** obligations under the Contract. Any additional coverage the **Contractor** may deem necessary to fulfil the obligations under the Contract shall be at the **Contractor's** own discretion and expense.

GIC3 INSURANCE PROCEEDS

- GIC3.1 In the case of a claim payable under a Comprehensive General Liability insurance contract maintained by the **Contractor** pursuant to Part II, the proceeds of the claim shall be paid by the insurer directly to the claimant.
- GIC3.2 In the case of a claim payable under a Builders' Risk / Installation Floater (All Risk) insurance contract maintained by the **Contractor** pursuant to Part III, the proceeds of the claim shall be paid directly to the **Owner**, and
- GIC3.2.1 the monies so paid shall be held by the **Owner** for the purposes of the Contract, or
- GIC3.2.2 if the **Owner** elects that it shall retain the monies, in which event they vest in the **Owner** absolutely.
- GIC3.3 If an election is made pursuant to GIC3.2, the **Owner** may cause an audit to be made of its accounts of those of the **Contractor** in respect of the part of the work that was lost, damaged or destroyed for the purpose of establishing the difference, if any, between:
- GIC3.3.1 the aggregate of the amount of the loss or damage suffered or sustained by the **Owner**, including any costs incurred in respect of the clearing and cleaning of the work and its site and any other amount that is payable by the **Contractor** to the **Owner** under the Contract, less any monies retained pursuant to GIC3.2.2, and
- GIC3.3.2 the aggregate of the amounts payable by the **Owner** to the **Contractor** pursuant to the Contract up to the date of the loss or damage.
- GIC3.4 A difference that is established pursuant to GIC3.3, shall be paid forthwith by the party who is determined by the audit to be the debtor to the party who is determined by the audit to be the creditor.
- GIC3.5 Once payment of a deficiency has been made pursuant to GIC3.4, all rights and obligations of the **Owner** and the **Contractor** under the Contract shall, with respect only to the part of the work that was the subject of the audit referred to in GIC3.3, be deemed to have been expended and discharged.
- GIC3.6 If an election is not made pursuant to GIC3.2.2 the **Contractor** shall, subject to GIC3.7, clean and clear the work and its site and restore and replace the part of the work that was lost, damaged or destroyed at its own expense as if that part of the work had not yet been performed.
- GIC3.7 Once the **Contractor** has cleared and cleaned the work and its site and restored and replaced the work referred to in GIC3.6, the **Owner** shall pay it out of the monies referred to in GIC3.2 so far as they will hereunto extend.

GIC3.8 Subject to GIC3.7, payment by the **Owner** pursuant to GIC3.7 shall be made in accordance with the Contract, but the amount of each payment shall be 100% of the amount claimed.

GIC4 NAMED INSURED / ADDITIONAL INSURED

GIC4.1 Each insurance policy shall insure the **Contractor** as "Named Insured" and the **Owner**, The St-Lawrence Seaway Management Corporation and Her Majesty in Right of Canada are to be named as "Additional Insured"

GIC5 CONTRACTOR'S RESPONSIBILITY FOR SUBCONTRACTORS, THEIR SUBSUBCONTRACTORS AND SUPPLIERS

GIC5.1 It is the **Contractor's** responsibility to ensure that their subcontractors, the sub-subcontractors and suppliers insure their exposures and maintain insurance contracts in order to support the **Contractors** insurance requirements according to the terms and conditions specified in the *Insurance Conditions*. Failure to do so does not relieve the **Contractor** of its legal responsibilities under the Contract.

GIC6 PERIOD OF INSURANCE

GIC6.1 The insurance policies required hereunder shall attach from the date of the commencement of the Contract and shall be maintained until the day of issue of the Final Certificate of Completion.

GIC7 PROOF OF INSURANCE

GIC7.1 Immediately following notification of Contract award and preceding the start of any on-site work, the **Contractor** shall provide the Engineer with proof in writing from the insurer(s) that all insurance required hereunder is in force for the commencement of work.

GIC8 NOTIFICATION

GIC8.1 Each insurance policy shall contain a provision that thirty (30) days prior written notice shall be given by the Insurer to the **Owner** in the event of any material change in or cancellation of coverage. Any such notice received by the **Contractor** shall be transmitted forthwith to the **Owner**.

GIC9 PAYMENT OF DEDUCTIBLE

GIC9.1 The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the **Contractor**.

GIC10 OTHER INSURANCE

GIC10.1 If, in the event of any loss or damage to property insured by this Policy and there is any other insurance in force covering the same interest, this Policy shall be Primary Insurance. This Clause shall be subservient to the Property / Boiler & Machinery Insurance Joint Loss Agreement.

GIC11 AGENCY/TRUSTEE CLAUSE

GIC11.1 It is understood and agreed that the Named Insured who obtained this Policy and paid the premium therefore did so on his own behalf and as Agent and / or Trustee for the others insured hereby, including those referred to by general description. It is further acknowledged and agreed by the Insurer(s) as evidenced by their acceptance of the premium paid that any person, firm or corporation coming within the description of an unnamed person insured by this Policy may ratify such Agency and / or Trusteeship at any time subsequent to the issuance of the Policy for the purpose of entitlement to coverage granted by its terms for good consideration.

GIC12 DEFINITIONS

GIC12.1 “**Contractor**” and “**Consultant**” means any person, firm or corporation entering into a Contract with or agreeing with or being requested by the **Owner** to provide, supply or lease work, services, materials, or equipment, or any combination thereof, in connection with the project shown in the Declarations.

GIC12.2 “Subcontractor” means (i) any person, firm or corporation entering into a Contract with any **Contractor**, and (ii) any person, firm or corporation entering into a contract derived through any such contract with a **Contractor** to provide, supply or lease work, services, materials or equipment, or any combination thereof, in connection with the project shown in the Declarations. “**Contractor**” and “Subcontractor” shall not include consulting engineers or consulting architects nor shall they include suppliers who perform no work at the Project site or other insured location, except it shall include those whose only on-site function is the delivery of material or equipment.

GIC12.3 “Occurrence” means any one loss, disaster or casualty or series of losses, disasters or casualties arising out of one event, if the same event continues for a period of time, the event shall be deemed to be one occurrence. If the inception of the event causing the loss occurs prior to the date of the expiration of the Policy, then the Insurer(s) will be liable for any loss incurred after the expiration of this Policy if caused by such event.

GIC12.4 “Resultant Damage” means damage to the insured property other than the cost of repairing or replacing the part or component of the insured property whose failure caused the loss and which would have had to have been replaced or repaired even if no failure resulting in physical damage had occurred.

GIC12.5 "Contract Work Site" means the property within the property lines at the location of the project plus a further 100 meters (300 feet) outside the property lines.

PART II

COMPREHENSIVE GENERAL LIABILITY (CGL)

CGL1 SCOPE OF POLICY

CGL1.1 The policy shall provide for limits of liability of not less than \$5,000,000 inclusive of bodily injury, death and property damage for any one occurrence or series of occurrences arising out of one cause. Legal or professional costs incurred in respect of a claim or claims shall not operate to decrease the limits of liability.

CGL2 COVERAGE / PROVISIONS

The policy shall include but not necessarily be limited to the following coverage / provisions:

CGL2.1 Liability arising out of or resulting from the ownership, existence, maintenance or use of premises by the **Contractor** and operations necessary or incidental to the performance of this Contract.

CGL2.2 "Broad Form" Property Damage including the loss of use of property.

CGL2.3 Removal or weakening of support of any building, structure or land whether such support be natural or otherwise.

CGL2.4 Liability to third parties for bodily injury, death and property damage arising out of the use, maintenance and operation, including loading and unloading of vehicles and equipment which are not licensed for highway use and which are not covered by Automobile Liability insurance.

CGL2.5 Non-owned automobile.

CGL2.6 Elevator Liability (including hoists and similar devices).

CGL2.7 **Contractor's** Protective Liability.

CGL2.8 Contractual and Assumed Liabilities under this Contract.

CGL2.9 Completed Operations Liability. The insurance, including all aspects of Part II of these Insurance Conditions, shall continue for a period of at least one year beyond the date of the Final Certificate of Completion.

CGL2.10 Cross Liability.

The clause shall be written as follows:

The insurance as is afforded by this Policy shall apply in respect to any claim or action brought against anyone insured by any other insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. The inclusion herein of more than one Insured shall not increase the limit of the Insurer's liability. Furthermore, any breach of a condition of this policy by any Insured shall not affect the protection given by this policy to any other Insured.

CGL3 ADDITIONAL EXPOSURES

The policy shall either include, or be endorsed to include, the following exposures or hazards if the work is subject thereto:

- CGL3.1 blasting;
- CGL3.2 pile driving and caisson work;
- CGL3.3 underpinning;
- CGL3.4 radioactive contamination resulting from the use of commercial isotopes;
- CGL3.5 sudden and accidental pollution following specified perils;
- CGL3.6 damage to the existing building or structure not directly associated with an addition, renovation, repair or installation contract. (The Care, Custody and Control Exclusion to be deleted);
- CGL3.7 marine risks associated with the construction of piers, wharfs, walls and docks.

PART III

BUILDERS' RISK (BR)

INSTALLATION FLOATER ALL RISKS

BR1 SCOPE OF POLICY

- BR1.1 The policy shall be written on an "All Risks" basis granting coverage identical to those provided by the forms known and referred to in the insurance industry as "Builders' Risk Comprehensive Form" including the risks of flood and earthquake, or "Installation Floater All Risks".

BR2 PROPERTY INSURED

The property insured shall include:

- BR2.1 the work and all property, equipment and materials intended to become part of the finished work including off-site, while in transit and at the site of the project while awaiting, during and after installation, erection or construction including testing;
- BR2.2 Expenses incurred in the removal from the construction site of debris of the property insured, including demolition of damaged property, de-icing and dewatering, occasioned by loss, destruction or damage to such property and in respect of which insurance is provided by this policy.

BR3 INSURANCE PROCEEDS

- BR3.1 Insurance proceeds from this policy are payable in accordance with GIC 3.2 and within (30) days after filing of the Proof of Loss.
- BR3.2 The policy shall provide that the proceeds thereof are payable to the **Owner**.
- BR3.3 The **Contractor** shall do such things and execute such documents as are necessary to effect payment of the proceeds.

BR4 AMOUNT OF INSURANCE

- BR4.1 The amount of insurance shall be for the sum of the Contract value plus the declared value (if any) set forth in the Contract documents of all material and equipment supplied by the **Owner** to be incorporated into and form part of the finished work.

BR5 SUBROGATION

- BR5.1 The following clause shall be included in the policy:
 - BR5.1.1 "All rights of subrogation or transfer of rights are hereby waived against the Named Insures and their Associated, Affiliated or Related Companies."

BR6 THE FOLLOWING ADDITIONAL CLAUSES SHALL BE INCLUDED IN THE POLICY

- BR6.1 If any of the following Conditions are in conflict with any clause contained in the Policy the Conditions listed below shall prevail.

BR6.2 PERMISSIONS

BR6.2.1 The insurer(s) hereby grant permission to the insured to immediately carry out necessary and reasonable repairs for damage to the insured property where the damage does not exceed \$100,000 and such damage is insured by this Policy. Subject to the Deductible and any limit of liability stated in the Declarations, the Insurer(s) will reimburse the Insured for their proportion of the actual cost of such repairs. Nothing in this clause shall be deemed to have waived the requirement that notice of loss be given as soon as possible to the Insurer(s) as provided for elsewhere in this Policy.

BR6.2.2 Insurer(s) hereby grant permission for partial or full occupancy of the insured project.

BR6.3 LIBERALIZATION

BR6.3.1 If during the period that insurance is in force under this policy, or within forty-five (45) days prior to the inception date thereof, on behalf of the Companies there be filed with and approved or accepted by the insurance supervisory authorities, in conformity with law, any changes in the forms or endorsements attached to this policy, or the rules or regulations applying thereto, by which this insurance could be extended or broadened, without increased premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form has been made.

BR6.4 SUE AND LABOUR

BR6.4.1 In the event of any imminent or actual loss or damage insured by this Policy it shall be lawful and necessary for the insured, his or their servants and assigns to sue, labour and travel for, in and about the defence, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance, nor shall the acts of the Insured or the Insurer(s), in recovering, saving and preserving the property insured in case of loss or damage be considered a waiver or an acceptance of abandonment. The expense so incurred shall be borne by the Insured and the Insurer(s) proportionately to the extent of their respective interests.

BR6.4.2 The coverage provided by this clause does not increase the amount of insurance provided by this Policy and the Limit of Liability shown in the Declarations or amended by endorsement is the maximum amount payable by this Policy.

BR6.5 BREACH OF CONDITIONS CLAUSE

BR6.5.1 Where a loss occurs and there has been a breach of conditions relative to a matter before the happening of a loss which would otherwise disentitle the Insured to recover under the Policy, the breach shall not disentitle the Insured to recover:

BR6.5.1.1 unless the Insurer(s) establish that the loss was caused or contributed to by the breach of conditions; or

BR6.5.1.2 if the breach of conditions occurred in any portion of the premises over which the insured has no control.

BR6.5.2 Notwithstanding anything contained elsewhere in this Policy, any act or any breach of condition by one of the parties hereby insured shall not prevent recovery by any other party hereby insured who is innocent of such act or breach.

BR6.6 DEBRIS REMOVAL

BR6.6.1 If off-site coverage is provided by the policy, coverage is extended to the cost of removing debris of insured property damaged by a risk insured from such additional locations and, with respects to property in transit, from the site of the accident.

PART IV

AUTOMOBILE LIABILITY (AL)

AL1 SCOPE OF POLICY

AL1.1 The policy shall be written to cover all licensed automobiles, whether or not they belong to the **Contractor**, which are used directly, indirectly or incidentally, on the occasion of or in the performance by the **Contractor** of the work or operations mentioned in the Contract.

AL2 COVERAGE / PROVISIONS

The policy shall include but not necessarily be limited to the following coverage / provisions:

AL2.1 be written for a minimum amount of \$2,000,000 per occurrence for bodily injury, death and property damage;

AL2.2 shall be subject to the provisions of the Quebec *Automobile Insurance Act* or any successor legislation when the work is carried out in the Province of Quebec.

PART V

MARINE

PROTECTION & INDEMNITY (P&I)

P&I1 SCOPE OF POLICY

P&I1.1 The policy shall be written to cover legal liability of the insured for loss, damage or expense arising out of, or incidental to, the ownership, operation, chartering, maintenance or use of any vessel, craft in use on inland waterways, including liability of the insured for personal injury, illness or death, or for loss of or damage to the property of another person.

P&I2 COVERAGE

The policy shall include but not necessarily be limited to the following coverage:

P&I2.1 Hull & Machinery insurance, if carried by the **Contractor**, will be subject to the customary form currently in common usage for such vessel(s), including Tower's & Collision Liabilities;

P&I2.2 Protection & Indemnity Insurance must be carried by the **Contractor** and include Tower's & Collision Liabilities and excess Tower's & Collision Liabilities, for a minimum limit of \$10,000,000 for any one accident or occurrence, including a Cross Liability Clause;

P&I2.3 The **Owner**, The St-Lawrence Seaway Management Corporation and Her Majesty in Right of Canada to be named as Additional Insured under Hull & Machinery if carried by the **Contractor**, and Protection & Indemnity insurance which must be carried by the **Contractor** with respect to Third Party Liabilities;

P&I2.4 Hull & Machinery and Protection & Indemnity Insurance, if carried by the **Contractor**, shall include a clause indicating the insurers and the **Contractor** waive their rights of subrogation against the **Owner**, The St-Lawrence Seaway Management Corporation and Her Majesty in Right of Canada.

PART VI

PROFESSIONAL LIABILITY (PL)

PL1 SCOPE OF POLICY

PL1.1 The policy shall be written to cover pecuniary loss caused by a **Consultant** for alleged negligent act, error or omission arising from his / her professional duties.

PL2 COVERAGE

- PL2.1 The Consultant shall obtain and maintain Professional Liability Insurance coverage appropriate to the Contract as described in the Contract for a minimum amount of \$1,000,000 per claim and annual aggregate.
- PL2.2 In the event that a prior claim(s) and / or knowledge of a possible claim has reduced the Consultant Professional Liability insurance coverage prior to the commencement of the Contract, then the Consultant shall obtain prior to the start of the work at his / her own cost, a Professional Liability Insurance policy specific to this Contract.

PL3 PERIOD OF INSURANCE

- PL3.1 In addition to Section GIC 7 Proof of Insurance, the Consultant shall maintain the insurance coverage with the same insurer(s) on a continuous and uninterrupted basis during the term of the Contract for a period of twenty-four (24) months following date of completion of the work.
- PL3.2 In the event that the original insurer(s) is / are no longer available or willing to underwrite the policy, then the new policy must contain a clause providing retroactive coverage.

PART VII

WORKER'S COMPENSATION (WC)

- WC1 The **Contractor** commit itself to respect all the requirements of the applicable Workers Compensation Act and all the Ordinance on directives which could be emitted by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) including payments due thereunder.

END OF SECTION