

EnWin Utilities Ltd.
GENERAL CONDITIONS

A. DEFINITION OF TERMS

Wherever used in these General Conditions, or in Supplementary General Conditions, Agreement, Plans, Information To Tenderers, Specifications, or any other Document forming part of this Contract:

- (a) "CONTRACT" means the Contract to do the Work, Bonds, Securities, Specifications, General and Supplementary Conditions, Bulletins Specifications, Agreement, Information to Tenders, Plans and all other Documents referred to in or connected to said agreement.
 - ii "EnWin" means *EnWin Utilities Ltd.* accepting the Tender.
 - iii) "CONTRACTOR" means the person, persons or Corporation to whom the Contract has been awarded.
 - iv) "SUBCONTRACTOR" means the person, persons or Corporation having a Contract with the Contractor (i) for the execution of a part or parts of the Work included in the Contract or (ii) for the supply of material worked to a special design according to Plans and Specifications.
 - v) "OTHER CONTRACTOR" means any person, persons or Corporation who are not parties to this Contract.
 - vi) "WORK" means all labour, materials and other things required to be done, that are shown, described or implied in the Contract Documents, and includes all extra and additional work and material that may be ordered by the Engineer.
 - vii) "ENGINEER" means the Chief Engineer of *EnWin Utilities Ltd.* or such other *EnWin Utilities Ltd.* Employee or Agent Authorized by the Engineer.
 - viii) "INSPECTOR" means an inspector for the Engineer.
 - ix) "PLANT" means every temporary or accessory piece of equipment necessary or required to carry on or complete the work and extra work, in the time and manner herein provided.
- x) "DRAWINGS" means all Plans, Profiles, Shop Drawings, Setting Drawings, Drawings, Sketches or copies thereof exhibited, used or prepared for or in connection with the Work embraced under the

Contract.

- xi) The words “authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory”, unless some other meaning is obvious from the context, mean respectively authorized, directed, required, requested, approved, ordered or sanctioned by or satisfactory to the Engineer.
- xii) The words "shall", "may", "herein", "person", “writings”, “written”, "surety", and security" and words used in the singular number or the masculine gender, shall have the same meaning and effect as given in The Interpretation Act of the Revised Statutes of Ontario.

B. GENERAL ITEMS

G.C.1 DOCUMENTS

The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Documents is to include all plant, labour and materials, unless otherwise specified, necessary for the complete and proper execution of the Work.

Plans and Specifications shall be read and interpreted together. Work and materials not specifically described but obviously necessary for the satisfactory completion of the Work for the purpose intended shall be supplied and performed by the Contractor as though it had been described and shown in the Plans and Specifications.

G.C.2 INCORPORATION OF REFERENCES

Published Standard Specifications referred to in the Contract. Documents are included in the Contract Documents and shall be the edition current at the time of Contract signing.

G.C.3 LAWS, STATUTES, PERMITS

The construction of the Work and all operations are subject to the approval, inspection by-laws and regulations of all Municipal, Provincial, Federal and other Authorities having jurisdiction in respect to any matter embraced in this Contract. All fees payable in respect of these permits and approvals shall be at the Contractor's expense.

G.C.4 NOTICE TO CONTRACTOR

Any notice or communication to the Contractor shall be deemed to be legally and sufficiently given and served, if:

- i) handed to the Contractor or any of his clerks or agents, or
- ii) posted or sent to the address given in the Tender, the Contractor's domicile or usual place of business, or
- iii) posted or sent to the place where work is or is to be carried on, or
- iv) posted to or left at his last known address.

In any notice to the Contractor with respect to work and repairs of any nature required to be done under the Contract (or with respect to any other matter), it shall not be obligatory for the Engineer to specify minutely and in detail everything required, nor to specify by measurement the exact extent or place where the work and repairs are to be carried out.

Reference may be made in such a notice to the Clauses in the Contract Documents bearing upon the matter, the general location, and the general description of the Work and repair to be done.

G.C.5 OWNERSHIP OF DOCUMENTS

All Contract Documents, including all Drawings, Specifications, models and similar items supplied by the Engineer are (i) his property, (ii) not to be used on other work, (iii) to be returned to the Engineer on completion of the Work with the exception of the signed Contract Documents.

G.C.6 PLANT, LABOUR AND MATERIAL

The Contractor shall furnish all necessary storage ground, labour, materials, fuel, machinery, tools and plant such that all work required under the Contract can be continuously and expeditiously carried out to completion to the Engineer's satisfaction.

All material, plant, machinery, tools and equipment acquired, possessed or provided by the Contractor for incorporation into the Works shall be the property of *EnWin* Utilities Ltd. (A (ii)) when brought to or upon the Works or lands of *EnWin* Utilities Ltd. and said items shall not be removed from the site without the Engineer's consent in writing.

G.C.7 SHOP DRAWINGS

When required, the Contractor shall submit Shop Drawings for approval. Shop Drawings shall be (i) submitted in sufficient time to allow checking, (ii) revised as requested and resubmitted until approved. Any deviation from Contract Documents shall be noted as such and brought to the Engineer's attention.

G.C.8 APPROVAL OF SHOP DRAWINGS

The Engineer's approval of Shop and Setting Drawings shall not relieve the Contractor from responsibility for errors made in them, nor for changes made from the Contract Documents unless said changes are specifically approved by the Engineer.

G.C.9 VERBAL ARRANGEMENTS

In all cases of misunderstandings and disputes, verbal arrangements will not be considered and contentions and claims must be based on written authority.

G.C.10 SUBCONTRACTORS

Without the written approval of the Engineer, the Contractor shall not change the Subcontractors named in the Contract.

The Contractor shall be fully responsible to *EnWin* Utilities Ltd. for the acts and omissions of his Subcontractors.

The Contractor shall bind every Subcontractor to the terms of the Contract Documents, as far as applicable to the Subcontractor's work.

Nothing in the Contract Documents shall create any contractual relation between any Subcontractor and *EnWin Utilities Ltd.*

Any Division of the Specifications into Sections or Subsections shall be only for clarity of reading and reference, and shall not be taken to be a division into trades, sub trades or sections of work of any kind.

G.C. 11 ASSIGNMENT

The Contractor shall not assign (i) the Contractor or any part thereof (ii) any monies due, or to become due to him without the written approval of *EnWin* Utilities Ltd.

G.C. 12 SEPARATE CONTRACTS

EnWin Utilities Ltd. reserves the right to let other Contracts in connection with the undertaking of which the work is a part and the Contractor shall connect properly and co-ordinate his work with that of other Contractors. If any part of the Contractor's work depends for its proper execution or result upon the work of others, the Contractor shall report promptly to *EnWin* Utilities Ltd. any defects in their work. Should the Contractor fail to inspect and report, he shall have no claim against *EnWin* Utilities Ltd. by reason of the defective or unfinished work of any other Contractor, except defects not reasonably noticeable at the time of the commencement of the Contract work. Any such defects must be reported immediately to the Engineer.

G.C. 13 CONTRACTOR'S WARRANTIES

The Contractor declares that in tendering the Works and in entering into this Contract, he has investigated for himself the character of the Work and all local conditions which might affect his Tender and that he does thereby assume all risk of conditions arising or developing in the course of the work which might or could make the work, or any items thereof, more expensive in character, or more onerous to fulfill, than was contemplated when the Tender was made or the Contract signed.

The Contractor declares that he is familiar with all requirements of the Contract Documents and that the Work can be performed and completed as required by said Documents.

G.C.14 INFORMATION NOT IN CONTRACT DOCUMENTS

The Contractor also declares that he did not and does not rely upon information furnished by any methods whatsoever other than the Contract Documents, by *EnWin* Utilities Ltd. or its offices or employees and agents, being aware that any information from such sources was and is approximate and speculative only, and was not in any manner warranted or guaranteed by *EnWin* Utilities Ltd.

G.C.15 UTILITIES

The position of pole lines, conduits, watermains, duct, sewers and other underground and overhead utilities and structures is not necessarily shown on the Contract Drawings and where shown the accuracy of the position of such utilities is not guaranteed. The Contractor shall inform himself of the exact location of all such utilities and structures and shall assume all liability for damages to them.

G.C. 16 USE OF UTILITIES

The Contractor shall make his own arrangements for any utilities required for construction and testing purposes, such as water, power and telephone and shall bear all costs in this regard unless otherwise specified.

G.C.17 WEATHER CONDITIONS

When work is permitted or ordered to be done in cold weather, the Contractor shall carry out all necessary precautions at his own expense to protect the Works.

COMMENCEMENT AND COMPLETION

G.C. 18 COMMENCEMENT

The Work shall not be commenced, nor shall material be procured until the Contractor has signed the contract and received a written order from *EnWin* Utilities Ltd. to commence. Upon said order, the Contractor shall commence and carry on continuously to completion and full possession thereof given to *EnWin* Utilities Ltd. within the time specified or extended time approved by the Engineer.

G. C. 19 DELAY

The Contractor shall not be entitled to any compensation for delay that may be occasioned to his work from any cause whatsoever. The Engineer shall allow additional time for completion in the event of delay caused by acts of God, acts of Government, acts of public enemies, floods, epidemics, and strikes or from such other cause in the opinion of the Engineer, over which the Contractor has no control.

G.C.20 PROSECUTION OF THE WORK

The Contractor shall complete all the Work in accordance with a schedule set down in co-operation with the Engineer at the time of the award of the Contract. Amendments to this schedule may be made by the Engineer, on application by the Contractor.

Should the Engineer be of the opinion that the quantity or quality of labour or plant supplied by the Contractor is not sufficient, or that the methods being employed are not such as will ensure that the Work will be completed within the specified time, the Contractor shall forthwith improve the quality and increase the number of men employed, shall make revisions the plant, and shall employ work methods satisfactory to the Engineer.

In cases of the Contractor's failure to finish the Work or any part thereof properly, or fully, or expeditiously, *EnWin* Utilities Ltd. may have such work in whole or part completed by others as provided for in G.C.24 "Termination of the Work".

G.C.21 WAIVER BY *EnWin* Utilities Ltd.

No Progress Certificate nor extension of time granted for any reason shall release the contractor from any responsibility under the Contract, nor be taken as evidence of acceptance of work or material, nor as a waiver of any provisions of the Contract.

G.C.22 COMPLETION

The Contractor shall protect the Work from damage from every cause, and shall, on completion, leave the Work in a good and satisfactory condition. The Work shall be finished in all respects and shall comply with the Contract in every particular.

On completion, all surplus material and rubbish shall be removed, all damage to adjacent property caused by the Contractor shall be made good, and the site shall be made clean and neat.

G.C.23 SUSPENSION OF WORK

The Engineer may, by an order in writing, at any time stop, suspend or delete any part of the Work or direct any portion, or may cancel the order to proceed with the Work, or with any part thereof, and the Contractor shall not thereby be entitled to any additional payment or to any claim for loss or profit, or anticipated profit, or for damages or otherwise, howsoever, by reason of such order.

G.C. 24 TERMINATION OF THE WORK

EnWin Utilities Ltd. may terminate the employment of the Contractor, if the Engineer certifies that sufficient cause exists to justify such action. Such termination of employment may be made:

- i) if the Contractor should be adjudged as bankrupt, or
- ii) if he should make a general assignment for the benefit of his creditors, or
- iii) if a receiver should be appointed on account of his insolvency, or
- iv) if he should take the benefit of any Act relating to insolvent debtors, or

- v) If a winding up order be made against the Contractor, or
- vi) if he should refuse or fail to supply enough plant, properly skilled labour or proper materials after having received forty-eight (48) hours notice in writing from the Engineer to do so, or
- vii) if he should fail to make prompt payment Subcontractors and Suppliers, or
- viii) if he should persistently disregard laws, ordinances or the instructions of the Engineer, or
- ix) if he should otherwise be guilty of a substantial violation of the provisions of the Contract.

Should *EnWin* Utilities Ltd. terminate the employment of the Contractor, as above, (i) he shall give the Contractor forty-eight (48) hours written notice of such termination of employment, (ii) he may take possession of the premises and of all materials and plant on the premises, and may finish the Work by any method he may deem expedient, but without undue delay or expense. In such case, the Contractor shall not receive any further payment until the Work is complete.

If the unpaid balance of the Contract Price exceeds the expense of finishing the Work, (including compensation to the Engineer for his additional services), such excess shall be paid to the Contractor. If such expense exceeds the unpaid balance, the Contractor shall pay the difference to *EnWin* Utilities Ltd. The additional expense incurred by *EnWin* Utilities Ltd. due to the Contractors default shall be certified by the Engineer.

E. USE OF PREMISES

G.C. 25 USE OF SITE

The Contractor shall confine his plant, labour and materials within limits specified in the Contract or as otherwise indicated by Law or as directed by the Engineer. The Contractor shall not unreasonably encumber the site with plant and materials.

The Contractor shall not load, or permit to be loaded, any structure with a weight that may endanger its safety.

The Contractor shall comply with the Engineer's directions regarding signs, advertisements, fires and smoking.

The Contractor shall use the premises only for the construction of the Work forming the Contract.

G.C.26 TRESPASSING

The Contractor shall not trespass on private property. If it is necessary for the Contractor to enter private lands, the Contractor shall first obtain the landowner's written permission and shall assume responsibility for all claims that may result.

G.C.27 MAINTENANCE OF WATERCOURSES

The Contractor shall maintain the flow of water in ditches, culverts and watercourses. At the conclusion of construction, ditches, culverts and watercourses shall be restored in a neat and workmanlike manner to a condition at least equal to the original.

The Contractor shall take whatever measures necessary to ensure watercourses are not contaminated, fouled or obstructed by the construction undertaken the contractor.

G.C.28 SITE CLEANLINESS

During the progress of the Work, the Contractor shall keep the site and Work in as tidy a condition as practicable. The Contractor shall not deposit any material on any portion of a street, sidewalk, boulevard or other public property without the approval of the Engineer. Material so deposited shall be removed without delay as soon as possible and when directed.

If the work is closed, suspended or stopped for the winter (or for any other approved reason), the Contractor shall remove all material from streets, sidewalks, boulevards and other public property.

Unless otherwise specified, the Contractor shall restore all lands and other property to their original condition.

G.C.29 PUBLIC SAFETY

The Contractor shall provide, erect and maintain all barriers, fences and other proper protection necessary in the opinion of the Engineer, and shall provide and maintain watchmen and lights as may be necessary to ensure the safety of the public and others. Unless otherwise specified, the Contractor shall keep all streets and sidewalks open for use by the public, for such width as the Engineer may direct. The Contractor shall provide, erect and maintain a sufficient number of detour signs, and other proper notices, wherever the use of any street or sidewalk is dangerous due to the Contractor's operations.

When work is carried on at night, the Contractor shall provide, erect and operate a sufficient number of lights to enable the Work to be performed satisfactorily.

Lights, barriers, signs and barricades shall conform to Municipal requirements where applicable.

F. PAYMENTS BY OWNER

G.C. 30 MONTHLY PROGRESS

At monthly intervals, the Engineer shall make a valuation of work constructed and material supplied to the site or incorporated in the Works under this Contract. The Contractor shall assist in measurements, furnishing of details, and invoices as required.

The monthly valuations are approximate only and shall not bind *EnWin* Utilities Ltd. or the Contractor to any final valuation.

The Contractor shall be entitled to receive partial payment upon the certificate of the Engineer with holdbacks in accordance with the Construction Lien Act: 1983.

G.C.31 POSSESSION CERTIFICATE

When the Work required to be done under the Contract has been completed in every respect and is acceptable to the Engineer, a final valuation of the Contract will be prepared by the Contractor and the Engineer.

When the Engineer and Contractor have reached agreement as to the final value of the Work, the Engineer will issue a Possession Certificate, detailing the valuation of the Contract, and certifying its acceptance at a certain specific date, referred to as the "Possession Date".

Should the Engineer and Contractor be unable to reach agreement as to the final value of the Work within a reasonable period, the Engineer will issue his Possession Certificate detailing his valuation of the Contract and certifying acceptance of the Work at a certain specific date, referred to as the "Possession Date".

If, through no fault of his own, the Contractor is unable to complete the Work, the Engineer may issue the Possession Certificate with additional holdback equal to the value of uncompleted work.

EnWin Utilities Ltd. reserves the right to use part, or parts of the Work pending the completion of the whole. In the event of *EnWin* Utilities Ltd. exercising this right, the Contractor will no longer have access to these parts unless authorized by the Engineer.

G.C.32 PARTIAL RELEASE OF HOLDBACK CERTIFICATE

Forty-five (45) days after the Possession Date, the Engineer will issue a final payment Certificate entitling the Contractor to receive 100 per cent of the final value of the Work, and after the Contractor has submitted the following documents:

- i) Contractors Final Claim and a Contract Release, releasing *EnWin* Utilities Ltd. from all further claims relating to the Contract.
- ii) A Statutory Declaration that all liabilities incurred by him and his Subcontractors in carrying out this Contract have been paid and that there are no liens, garnishes, attachments or claims relating to the Work.
- iii) A Clearance Certificate from the Workplace Safety Insurance Board Act (W.S.I.B.).

No certificate other than the Final Payment Certificate shall be deemed to imply approval of any part of the Works.

G.C.33 ALTERATIONS TO CONTRACT

The Engineer shall have the right to make or order any alterations and changes, such as he may deem advisable, at any time, before or during the prosecution of the Works, in any line, grade, plan or detail thereof, or to suspend or omit any portion of the Work, or to increase or decrease the dimensions of any part of the Work or Works, or to vary in any way the Work herein contracted for; or to order any additional or extra work to be done, or additional or extra materials to be furnished; and the Contractor shall, in pursuance of written orders of the Engineer to that effect, proceed with, carry out and execute the Works as directed. In each and every case where additional or extra work or materials of any kind is ordered to be done or supplied, or where the Contractor does, or contemplates doing or supplying any Work or material which he considers extra or beyond the requirements of the Contract, or upon which he intends claiming any extra or additional payment, he is required, before commencing any such work, to obtain a written order therefore, stating that the same is an extra and will be paid for as such, and also clearly defining the nature of such extra work or material, and the amount the Contractor is to receive therefore, and the Contractor shall also notify the Engineer in writing, of his intention to commence work thereon or delivery thereof, so that a proper account or record of the same may be kept by the Engineer.

In case of the Contractor's neglect or failure to observe fully and faithfully the above conditions in this section contained, he shall forfeit all right to payment therefore.

G.C.34 VALUATION OF ALTERATIONS

The Engineer shall determine the amount, if any, to be added to, or deducted from the sum named in the Tender, in respect of any extra or additional work done, or work omitted by his order. All such work shall be valued at the price as set out in the Schedule of Items and Prices and the Schedule of Additional Unit Prices if, in the opinion of the Engineer, the same shall be applicable.

If the Contract does not contain any prices applicable to the extra, additional, or omitted work, then the Contractor and Engineer may agree on a price for extra work prior to its being performed, in which case the price shall be comparable to prices quoted on work of a similar nature.

If the methods of evaluating extras described in the above two paragraphs herein are clearly inapplicable, then the Engineer may direct that extra work shall be done by the Contractor on the basis of cost plus 10%. All extra work done on a force account basis will be paid as follows:

- a) The actual cost of all labour, including allowance for holiday pay and Unemployment Insurance and levy by Workplace Safety Insurance Board Act, required directly for the performance of extra work plus 10% of the same.
- b) The actual cost to the Contractor of all material including transportation charges required directly in the extra work, plus 10% of the same.
- c) A reasonable rental to be agreed upon before the work is begun for machinery and heavy equipment, such as tractors, bulldozers, ditching machines, air compressors, concrete mixers, graders, etc., furnished by the Contractor, for the actual time required in operation for the performance of the extra work, to which no percentage shall be added.

The compensation provided for on additional work items shall be payment in full for all charges including superintendence, overhead, the use of small tools and profit.

When work is performed under this Section, the Contractor shall supply daily full detail of labour and materials used.

No compensation shall be made for cost of repairs to equipment of any kind or for damage to anything used in performing alterations to the Contract.

G.C.35 CONTRACTOR'S DISCHARGE OF LIABILITIES

The Contractor shall discharge all liabilities incurred by him arising out of the performance of this Contract on the date upon which each becomes due.

The Contractor shall cause every Subcontractor engaged by him to discharge all liabilities incurred by such Subcontractor arising out of the performance of this Contract. Workmen employed by a Subcontractor shall be paid in full at intervals not less frequently than semi-monthly and other liabilities of the Subcontractor shall be discharged on the date upon which each becomes due. At the request of *EnWin* Utilities Ltd., the Contractor shall furnish *EnWin* Utilities Ltd. with evidence satisfactory to *EnWin* Utilities Ltd. that his liabilities and those of his Subcontractors have been discharged.

G.C.36 PAYMENTS TO OTHER THAN CONTRACTOR

No payment to which the Contractor under this Contract shall, in the discretion of *EnWin* Utilities Ltd., be payable to him so long as he or any of his Subcontractors are in default of payments for any work or materials.

The Engineer may notify the Contractor to discontinue all Work under the Contract and *EnWin* Utilities Ltd. shall have the same rights and privileges as are provided in Section D of these General Conditions.

EnWin Utilities Ltd. may, after giving notice in writing to the Contractor of its intention to do so, pay any such liability of the Contractor and of his Subcontractors and deduct the amount so paid from any monies due to that may become due to the Contractor; and if there is insufficient money due to become due to the Contractor to permit such deduction, the Contractor shall pay to *EnWin* Utilities Ltd. upon demand an amount sufficient to repay *EnWin* Utilities Ltd. .In making payments under this Section, *EnWin* Utilities Ltd. may act upon any evidence that it deems sufficient and may compromise any disputed liability and upon payment by *EnWin* Utilities Ltd. of a liability of the Contractor or a Subcontractor, it shall not be open to dispute or question by the Contractor. All monies payable to *EnWin* Utilities Ltd. by the Contractor under any stipulation whatsoever may be retained from monies due or to become due under this Contract.

G.C. 37 BOOKS AND RECORDS OF THE CONTRACTOR

- a) The Contractor shall keep proper books and records showing names, trades, and addresses of all workmen in his employ and wages paid to, and the time worked by, such workmen; also records, books and invoices showing all costs, expenditures, payments, settlements, receipts and balances in connection with the construction of the Works.

- b) All records of the Contractor relevant to the valuation of the Works including payrolls, time books of account, invoices, and statements, shall be maintained on the site or at some other place approved by the Engineer and shall be open at all reasonable times for inspection by the Engineer. The Contractor shall in every way assist such inspection for the purpose of establishing and determining labour costs, the cost of extra work, and progress payments to be made.

G.C.38 PERFORMANCE BOND & DEPOSIT

The Contractor, together with a Surety Company approved by *EnWin* Utilities Ltd. and authorized by Law to carry on business in the Province in which the Work is to be performed, shall furnish a Performance Bond, and a separate Labour and Material Payment Bond to *EnWin* Utilities Ltd. in the form attached in the amount of 100% of the Contract Price for each bond. The Bond shall unconditionally guarantee the performance of the Contract, shall be at the expense of the Contractor and shall remain in effect until the issue by the Engineer of the Final Payment Certificate.

The Performance Bond shall include the coverage of a 12-month maintenance period from the date of issuing of the Possession Certificate by the Engineer.

In addition to the Performance Bond and any other security, the Contractor shall deposit a sum equal to 10% of the Contract price (Performance Deposit) with *EnWin* Utilities Ltd. to pay for any additional costs or expenses incurred by *EnWin* Utilities Ltd. as a result of failure by the Contractor to perform any contractual obligation in a timely manner. This remedy shall be in addition to and without prejudice to any other rights under the Contract.

The Engineer will release 100% of the Performance Deposit along with the Possession Certificate.

G.C.39 LIABILITY

The Contractor shall assume the defence of and shall indemnify and save harmless *EnWin* Utilities Ltd., its officers, servants and agents, from all claims, the following actions and demands whatsoever which may be made or brought against *EnWin* Utilities Ltd., its officers, servants and agents.

- a) resulting from the prosecution of the Work, or
- b) resulting from any of the Contractor's operations, or
- c) caused by reason of the existence, location or condition of the Work, or
- d) caused by reason of any material, plant or labour used in the Work, or

- e) arising from any act of *EnWin* Utilities Ltd. or omission on the part of the Contractor, or
- f) relating to inventions, copyrights, trademarks, patents (and rights to them) used in doing the Work, or in the use and operation of work on completion, unless otherwise specified.

G.C.40 LIABILITY INSURANCE

The Contractor shall, at his expense, insure and maintain insurance against liability for bodily injury and property damage that may arise with respect to the Work being performed under the Contract. Any exclusion shall be disclosed to *EnWin* Utilities Ltd. Such insurance shall:

- a) name *EnWin* Utilities Ltd. and its Consultants, the Contractor and the Sub-Contractor as named insured;
- b) include coverage for:
 - i) Contractual Liability; and
 - ii) Cross Liability; and
 - iii) Contingent Employer's Liability; and
 - iv) Competed Operations Liability; and
- c) have an inclusive limit at least equal to \$2,000,000.00 unless otherwise specified, and
- d) remain in force until the issue by the Engineer of the Final Payment Certificate;
- e) contain no exclusions in respect of shoring, underpinning, demolition, pile-driving caissons, collapse of any structure, subsidence of any property, structure or land and use of explosives.

G.C.41 VEHICLE INSURANCE

The Contractor shall, at his expense, insure and maintain insurance against liability for bodily injury and property damage caused by vehicles owned by the Contractor and used on the Work. The Contractor shall also, at his expense, insure and maintain insurance against liability for bodily injury and property damage caused by vehicles not owned by the Contractor and used on the Work. Such insurance's shall each have an inclusive limit at least equal to \$1,000,000.00. A vehicle shall be as defined in the Highway Traffic Act.

G.C.42 INSURANCE POLICIES AND CERTIFICATES

- a) When the successful Tenderer is notified that his Tender has been accepted, and prior to any work being commenced in accordance with the Contract, he shall deposit with *EnWin* Utilities Ltd. copies of Liability and Vehicle Insurances, or Insurance Certificates.
- b) Insurance policies shall stay in force and not be amended, cancelled or allowed to lapse without thirty (30) days prior notice by registered mail to *EnWin* Utilities Ltd. and to the Engineer.
- c) The Contractor shall deposit certificates with *EnWin* Utilities Ltd. indicating that the Contractor has paid assessments under the Worker's Compensation Act when so requested by *EnWin* Utilities Ltd.

G.C.43 LOSS OR DAMAGE

EnWin Utilities Ltd. shall not be answerable or accountable for loss or damage by fire or otherwise of the Work, or part of the Work, or for any material, equipment, or similar items to be incorporated into the Work.

The Contractor shall properly guard the Works and make good all loss or damage of whatever nature or origin that may arise out of the Contract, until the Work is complete as indicated by the issue by the Engineer of the Acceptance Certificate.

H. MATERIALS

G.C.44 MATERIAL SAMPLES

Unless otherwise specified, the Contractor shall supply material as directed by the Engineer, and shall furnish for approval representative samples of any material when so requested by the Engineer at the Contractor's expense

G.C.45 CONDEMNED MATERIALS

Should any plant, appliances or material be condemned as unsatisfactory, the same shall be removed from the site within 24 hours of written notification by the Engineer to do so.

G.C.46 **MATERIALS SUPPLIED BY *EnWin* Utilities Ltd.**

All materials and equipment shall be supplied by the Contractor with the exception of such material or equipment as is specifically stated to be supplied by *EnWin* Utilities Ltd. In all cases where materials or equipment are supplied by *EnWin* Utilities Ltd., every effort will be made to have sufficient supply of such material or equipment tested, examined and approved and ready for use at such times as they may be required, but in case *EnWin* Utilities Ltd. fails to furnish a sufficient supply at any time, the Contractor will not be entitled to any recompense for such delay, other than an extension of the time of completion, the extent of which shall be determined by the Engineer and shall be as nearly as possible equivalent to the time delayed.

When the Contractor is required to make provision for and convey *EnWin* Utilities Ltd. supplied materials or equipment as above from railway cars, he shall do so as soon as the cars are delivered to the nearest siding. Any demurrage on account of his inattention will be borne by him.

Unless otherwise specified, all materials supplied by *EnWin* Utilities Ltd. shall be transported to the Work by the Contractor from the point designated for their supply, at the expense of the Contractor.

Once material has been supplied to the Contractor by *EnWin* Utilities Ltd., its storage prior to use is his responsibility. Any loss, theft, or damage occurring after the material is in the Contractor's custody shall be at his expense.

All excess material supplied by *EnWin* Utilities Ltd. shall remain the property of *EnWin* Utilities Ltd. and shall be returned to *EnWin* Utilities Ltd.'s storehouse at the expense of the Contractor.

Before taking delivery of *EnWin* Utilities Ltd. supplied materials, whether they are being delivered by truck or by rail, the Contractor shall examine such materials and satisfy himself as to possible damages, which they may have suffered in transit. Where damage has occurred, the Contractor shall immediately notify the Engineer so that a claim may be made against the carrier. Should the Contractor fail to notify the Engineer of damage to equipment, the Contractor will be liable for the cost of making good any damages subsequently found.

G.C.47 EQUIVALENTS

Where pursuant to the Specifications, the Contractor is required to supply an article designated by its trade or other name or an approved equal, the Tender shall be based upon only the price of the article so designated and the article so designated shall be regarded as the standard of quality required by the Specifications. After the acceptance of a Tender, the Contractor may apply to the Engineer in writing to substitute an article or group of related articles designated by a different trade or other name or names, as an approved equal, for an article or group of related articles designated in the specifications by a trade or other name or names. The application shall state the price for the proposed substitute article or group of related articles and for the article or group of related articles designated in the Specifications as aforesaid and such other information as the Engineer may require.

No ruling on a proposed substitution will be made prior to the acceptance of a Tender. No substitution will be made without the approval of the Engineer. The approval or rejection of the proposed substitution shall be at the discretion of the Engineer and his decision shall be final.

J. WORKMANSHIP

G.C.48 THE ENGINEER

- A) The Engineer will make such decisions as are necessary with respect to:
- i) Discrepancies in the Contract Documents, or
 - ii) Differences of opinion or misunderstanding that may arise as to the meaning of the Contract, or
 - iii) Omissions or misstatements in the Contract Documents, or
 - iv) quality, dimensions and sufficiency of plant, materials or work, or
 - v) The due and proper execution of the Work, or
 - vi) the measurements, quantity or valuation of the Work, including additional work, and deductions, or
 - vii) Any other questions or matters arising out of the Contract.

The Engineer's decision as to any matter referred to in this Clause shall be binding upon the parties concerned.

- B) When the Engineer makes a decision under this Clause, the Contractor shall immediately proceed with all work affected by the decision. Additions to or deductions from the Contract Price shall be made only as provided for in the Contract, and no revisions to the completion time shall be made, unless approved by the Engineer.
- C) The Engineer may at all reasonable times visit, enter and make inspections at any building, factory, workshop, work or site wherever materials are being prepared, made or treated, or where other work is being done in connection with the Contract. The Engineer may also take such samples, as he may consider necessary.

G.C.49 THE INSPECTOR

Inspectors are the agents of the Engineer and are required to see that the provisions of the Contract are complied with insofar as is reasonably possible. An Inspector may stop the Work entirely if there is not a sufficient quantity of suitable and approved material on the ground to carry it on properly, or for any good and sufficient cause. Any work done in the absence of an Inspector shall, if ordered by the Engineer, be opened up for thorough examination, and must be rebuilt or replaced as directed, and at the Contractor's sole expense, but no approval by any Inspector shall be taken as, or construed into, an acceptance of defective or improper work or material, which must, in every case, be removed and properly replaced, whenever discovered at any stage of the Work. Orders given by Inspectors relating to the quality of material and workmanship must be at once obeyed by the Contractor.

The Contractor is to furnish the Engineer or any of his assistants with any reasonable help, which he or they may require at any time in checking the Work. He shall also furnish the said parties, or any other Inspectors, at all times, with convenient means of access to all parts of the Works, and also with all required assistance to facilitate thorough examination of the same, and inspection, culling and removal of doubtful or defective material, and for any other purpose required in connection with the said Works or in the discharge of their respective duties, for which services no additional allowance will be made.

G.C.50 CONTRACTOR'S ABSENCE

In the absence of the Contractor from the Works (whether permanent or temporary) he must provide and leave a competent and reliable agent or foreman in charge for him, and such person shall be considered as acting in his place, and all notices, communications, orders or instructions given or sent to or served upon such person shall be taken as served upon and received by the Contractor.

G.C.51 **EMERGENCY**

If, in the opinion of the Engineer, any emergency situation arises, *EnWin* Utilities Ltd. or the Engineer may take whatever action may be required at the Contractor's expense without notice whatsoever.

G.C.52 **WORKER'S RIGHTS**

The Contractor and all Sub-contractors shall comply with all Provincial Department of Labour Statutes and Regulations and all applicable Municipal By-Laws, Statutes and Regulations.

G.C.53 **HOURS OF WORK**

Hours of work shall conform to applicable acts, statutes and regulations and shall not exceed same without the Engineer's approval.

Notwithstanding the above, the Engineer may prohibit the Contractor from carrying on operations during any hour or hours of the day in which the Engineer in his judgement deems such operations to be a disturbance or nuisance to the public.

Such prohibition may be made notwithstanding any prior consent, order, agreement or requirement in the Contract that stipulates maximum or minimum hours of work.

No Sunday work will be permitted, except in the case of emergency, and then only with the written permission of the Engineer and to such extent as he may judge to be necessary.

The Contractor shall, as far as possible, refrain from work on days, which are Legal Holidays in Ontario. In case he desires to work on any such Holiday, he shall notify the Engineer in writing at least four (4) days in advance of such holiday, that he desires to work, stating those places where said work will be conducted. If the Contractor fails to give such notice in advance of any Holiday, such failure shall be considered as an indication that no work requiring the presence of an Engineer or Inspector is to be done by the Contractor on such a holiday.

G.C.54 **MUTUAL RESPONSIBILITY OF CONTRACTORS**

Should the Contractor suffer damage by any act, neglect or default of any other Contractor employed by *EnWin* Utilities Ltd. upon the Work, the Contractor shall make his claim in writing against *EnWin* Utilities Ltd. within forty-eight hours after the happening of the event.

Should the Contractor cause damage to any other Contractor on the Work, the Contractor agrees to settle with such Contractor. If such other Contractor sues *EnWin* Utilities Ltd. on account of any damage alleged to have been sustained, *EnWin* Utilities Ltd. shall notify the Contractor, who shall defend such proceedings at his own expense and, if any judgements against *EnWin* Utilities Ltd. arises, the Contractor shall be responsible and pay all costs by *EnWin* Utilities Ltd.

G.C.55 OTHERS' RIGHTS

The Contractor must afford all necessary and reasonable facilities to *EnWin* Utilities Ltd. or any of its employees or workmen, as well as to any company, corporation, or person owning or operating any railway, tramway, wires, pipes or conduits, or works or property, on, along or near the line of the Works, or in their vicinity; he shall notify all such parties before interfering with any of their property, rights or privileges and must work in harmony with them; otherwise he shall notify the Engineer in writing of his failure so to do, or of any difficulty that may at any time arise which he may be unable to overcome, in which case the Engineer shall deal with the matter as in his judgement may seem right or proper, and the Contractor shall abide by the decision and the direction of the said Engineer. Any property of such parties which the Engineer orders to be moved by the Contractor must be handled with care, and must be neatly piled up and preserved free from injury or loss, and must be properly and satisfactorily replaced, all of which must be done by the Contractor without extra charge and to the satisfaction of the Engineer. The Engineer shall have the right, at any time before, during the construction, or after the completion of the work, to open up any portion of the Work or Works, or the ground or roadway, or to grant permission for such opening to be made or left by the Contractor, as he, the said Engineer, may deem advisable, for the purpose of examining, repairing or laying any water, gas or other pipe, sewer, drain, track or other underground or surface construction or to cause any such work as he may deem necessary or advisable to be done, and such permission, or the exercise of such rights, either by the Engineer or by any other person or corporation having the requisite authority (either statutory or otherwise), shall not relieve the Contractor from any of his responsibilities or obligations except only for the portion of the Work actually torn up and destroyed, and then only in case the Contractor applied in writing for such relief at the time the Work is being done or within ten days afterwards and can furnish sufficient cause, in the opinion of the Engineer, why such relief should be granted.

G.C.56 **WORKMANSHIP**

All workmanship and material shall be of good and workmanlike manner, in every particular and shall be to the approval of the Engineer. The Contractor shall pay due regard to the neat and attractive appearance of the finished Work.

If ordered by the Engineer, the Contractor shall make such openings in the Work as are needed to re-examine the Work, and shall forthwith make the work good again. Should the Engineer find the Work so opened up to be faulty in any respect, the whole of the expense of opening, inspecting and making good shall be borne by the Contractor. Should the Engineer find the Work opened up to be in perfect condition, such expense will be borne by *EnWin* Utilities Ltd.

The Contractor shall remove and make good all defective work and materials, and the entire cost of such removal and making good shall be borne by the Contractor.

G.C.57 **GUARANTEED MAINTENANCE**

The Contractor guarantees and warrants that with ordinary wear and tear the said Work shall, for a period of 12 months from the date of possession, remain in such condition as will meet with the approval of the Engineer, and that he will, upon being required by the Engineer, make good in a manner satisfactory to the Engineer any imperfections therein due to materials used in the construction thereof or workmanship. The decision of the Engineer as to the nature, extent and cause of such imperfections and the necessity for remedying the same shall be final. Should the Contractor fail to comply with the directions of the Engineer, the latter may, after giving the Contractor 24 hours written notice, perform the necessary work, provided that in the event of any emergency, of which the Engineer shall be the sole judge, the Engineer may forthwith without notice, perform the necessary Work and the cost of such Work shall be at the Contractor's expense.

If the Engineer notifies the Contractor in writing of imperfections prior to the termination of the guaranteed maintenance period, the Contractor shall make good the imperfections as specified above notwithstanding that the Work of making good may commence after or extend beyond the end of the twelve month period.

G.C.58 **AMENDMENTS TO PUBLIC AND EMPLOYEE SAFETY**

All regulations of the Occupational Health & Safety Act and Regulations for Industrial Establishments, pursuant to the revised Statutes of Ontario, 1980 c.321 and amendments thereto and, pursuant to the Revised Regulations of Ontario 1980 and amendments thereto.

All employees of a Contractor shall wear hard hats and C.S.A. approved safety shoes when on *EnWin* Utilities Ltd. property or on *EnWin* Utilities Ltd. work sites.

If above ground level work is being performed by the Contractor, the area of work must be clearly designated and roped off at the ground level to avoid hazard to *EnWin* Utilities Ltd. employees and members of the public.

When working on *EnWin* Utilities Ltd. property, all posted instruction signs dealing with smoking, vehicle speeds and restricted areas, shall be complied with by Contractor's employees.

Local conditions may require additional safety precautions as directed by *EnWin* Utilities Ltd.