

## Unknown Conditions - Industry Feedback

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These info-sheets are produced by Saskatchewan's construction industry to provide information to all parts of the construction supply chain. Each info-sheet focuses on one particular contract clause that is often seen as problematic and challenging. This info-sheet is intended to encourage discussion between all parties to construction contracts and to support the implementation of best practices wherever possible.

### Example Clause:

- *The contractor shall not be entitled to any reimbursement of any costs, losses, expenses, or any other form of damages incurred by the Contractor necessitated by a suspension or delay, where the suspension is due to a compliance with any order, directive, or recommendation of any Government Authority related to the COVID-19 Pandemic.*
- *No extension of the Contract Time shall be made and no adjustment in the Contract Price shall be made for any delay caused by a compliance with any order, directive, or recommendation of any Government Authority related to the COVID-19 Pandemic.*

### What the clause is intended to do:

Unknown condition clauses are intended to minimize the owners risk related to unknown/pandemic conditions, and to transfer that risk to the contractor.

### Why the clause is problematic for industry:

- It is not reasonable to hold a contractor accountable for something beyond their control. They can account for conditions in place at the time of tender, but evolving Government directions and mandates should be considered relief events.

### Better option for the owner:

- Allocate project risk to the party that is most in control of that risk and best positioned to assume it.
- Ensure contractors are aware that costs for conditions at the time of tender are to be included in pricing, but schedule and cost relief for changes in the work will be reviewed if encountered.

### What Industry can do:

As a contractor, when you face a clause putting unknown/pandemic risks on to you, you should consider a few mitigation strategies, including:

- Being aware of the impact of current protocols and Government regulations; and/or
- Requesting relief for changes encountered post-tender via a request for information (RFI).



For more information about this issue, or any issue related to procurement and contracts within Saskatchewan's construction industry, please reach out to the Saskatchewan Construction Association at 306-525-0171 or [sca@scaonline.ca](mailto:sca@scaonline.ca).

*Prepared by the Saskatchewan Industry Advisory Council, a committee of the Saskatchewan Construction Association, representing 19 industry and trade associations in the province, as a guideline of recommended industry practice.*