

Using the Standard Form Snow and Ice Maintenance Contract

Robert Kennaley

The Landscape Ontario Standard Form Snow and Ice Maintenance Contract is in two parts. The first part, the “General Conditions,” contains terms and conditions that can generally apply to all projects. The second part, the “Schedule A,” specifies the work to be performed and the manner by which the contractor is to be paid. The Schedule A will generally vary from project to project.

This summary is offered as a general review of the Standard Form Contract. The review is only cursory in nature, however, and deals only with portions of the contract. If you have any questions or concerns about how this contract might be applied in any particular circumstance, you are encouraged to seek independent legal advice in that regard.

The General Conditions

The Parties

The full and accurate names of the parties should be utilized. Care should be taken to ensure that the proper name of corporate entities are referenced. The “Contractor” is the party who will be performing the snow maintenance work. The party who will pay for that work is defined as the “Owner.” Actual ownership of the Premises, however, is not required. (Article 7 requires that the “Owner” acknowledge that he has physical possession of, is responsible for and has control over the condition of the premises).

The Schedules

Schedule A is a necessary part of the Contract. As discussed below, drawings and specifications should be added as additional Schedules. The reference to Schedule C should be struck out only if a Schedule B is to be used for both drawings and specifications.

NOTES:



Article 5

Contractors who are concerned about whether or not they have complied with their obligations in relation to worker's compensation legislation should contact a *Workplace Safety and Insurance Board* representative. Article 5 also requires that the Contractor be able to show that it has sufficient Comprehensive General Liability insurance in place. Contractors who are concerned that their insurance coverage may not be appropriate should contact a knowledgeable broker in that regard.

Article 6

Generally speaking, the parties to a snow maintenance contract expect the contractor to do only what he is being paid to do. With this in mind, Article 6 is structured so that the contractor will be potentially liable only if he breaches his contractual obligations or is negligent. Article 6 also limits the contractor's liability to damages for personal injury or property damage.

As the indemnity clauses in Article 6 focus on the contractor's performance of his work, it is extremely important that the Contractor's work be clearly and accurately described in the contract. This occurs in Schedule A.

Articles 8 and 9

Articles 8 and 9 of the General Conditions should be read in conjunction with Article 3 of Schedule "A." These Articles allow the parties to clarify what is perhaps the most confusing and troubling aspect of snow maintenance contracts: the Contractor's obligations with respect to ice melting products.

First, the Contract forces the parties to decide which of them will be responsible to decide if, when and how ice melting products are to be applied. Pursuant to Article 3.1 of Schedule "A," the Owner either gives unlimited discretion to the Contractor or retains the responsibility himself. (Article 3.1(A) or 3.1(B) of Schedule "A" should be struck out).

If Article 3.1(A) is selected, the Contractor assumes unlimited discretion and is obliged to monitor the weather in the vicinity of the premises and apply ice melting products as he believes is appropriate, applying the standards of the snow and ice maintenance trade. The Contractor can be liable for breach of Contract or negligence if he fails to do so. The Owner must pay the Contractor for whatever ice melting products the Contractor decides is appropriate.

NOTES:

If Article 3.1(B) is selected, the Owner’s responsibilities are detailed at Article 9 of the General Conditions. In this circumstance the Contractor is only responsible to apply the ice melting product as specifically directed by the owner and as described at Article 3.1(B). The Owner assumes all other responsibilities. Article 3.1(B) also requires that the parties determine how requests for the application of snow and ice products are to be made. It is preferable that these requests be made or confirmed in writing.

In some circumstances, an Owner may wish to predetermine when snow and ice products will be applied without giving the Contractor full discretion. The Owner, for example, may wish the Contractor to apply ice melting products whenever he attends to clear snow. In this circumstance, Article 3.1(B) should be selected. The Owner can then make a written request for the application of ice melting products in accordance with that Article. In that case, the request should be detailed, including drawings and specifications as appropriate. (See the comments below on drawings and specifications).

Article 8 of the General Conditions also confirms that the application of ice melting products will not instantly and completely remove all ice from a premises. This known fact is stated so as to avoid any suggestion that the Contractor guarantees the impossible, immediate and total removal of ice.

Schedule “A”

As the Contractor can be liable if he fails to perform his work in accordance with the Contract, the Contractor’s work must be clearly and accurately described. This is done through Schedule “A.”

1. Definitions

Drawings and Specifications should be attached to the Schedule “A,” detailing the scope of work. The drawings should include a site map of the premises and, if necessary, further detailed drawings. The drawings will generally be Schedule “B.” Specifications are the written descriptions of the work to be performed. In many circumstances the Specifications can be incorporated into the Drawings. If this is the case, there is no need for a Schedule “C” (and the references to Schedule “C” can be struck out). If additional written specifications are required, however, these should be attached as Schedule “C.”

The various tasks generally performed by snow maintenance contractors are defined. For the contract to be consistent and clear, the defined terms should be used to describe the work in the drawings and specifications. The drawings and specifications should be as detailed as possible, describing when and how the Contractor is going to deal with snow on the Premises.

NOTES:

2. The Fixed Price Work

Article 2.1

The Fixed Price Work is that work which the Contractor will perform for the contract price. The Schedule "A" allows the parties to cap the number of "snowfalls" for which the Contractor will be paid the contract price. If the contract price is to apply to unlimited snowfalls, the last sentence of Article 2.1 should be struck out.

Articles 2.2 and 2.3

The definition of "snowfall" in Article 2.2 must be read in conjunction with Article 2.3. These Articles anticipate that the maintenance contractor will be on a "route" when he performs his work. The Articles recognize that if it is still snowing after the Contractor has made one pass of the premises, he may be unable to return for a second pass until he has attended to each of the premises on his route. The approach of the Standard Form is to allow the Contractor to perform the work once, and then return within 24 hours of the end of the snowfall to do the clean up. If the Contractor is to offer a greater or lesser level of service than is described in Article 2.3, that Article should be altered accordingly.

3. Ice Melting Services

See above, in relation to Articles 8 and 9 of the General Conditions for a review of Article 3.1.

4. Extra Work

The Parties should ensure that any Extra Work requests describe the Extra Work in detail. If a request is vague or ambiguous, the Contractor should reply with a more detailed description, requesting that the Owner confirm that this is the Extra Work to be performed.

Further Comments

The contract is only one part of a reasonable risk management strategy. The contractor's training programs, record keeping and claims management protocols are equally important. For more information about these issues and about how the standard form contract relates to a contractor's potential liability, see "Standards for Snow Maintenance Contracts and the Contractor's Liability for Slip and Fall Claims," *Horticulture Review*, August 2002 and "Introducing the Landscape Ontario Standard Form Snow Maintenance Contract," *Horticulture Review*, October, 2002.

Robert Kennaley is a member of Landscape Ontario and a former landscape design build contractor who now practices Construction Law in Toronto. He is a member of the Maintenance Commodity Group's Snow Committee and took the lead role in drafting the Standard Form Snow and Ice Maintenance Contract. Robert speaks regularly on a range of construction law issues at Landscape Ontario workshops, Chapter meetings and Congress. He can be reached directly at (416) 368-2522.

Standard Form Snow and Ice Maintenance Contract between Owner and Contractor

_____ (the "Contractor")
and

_____ (the "Owner")

by this Agreement made this ___ day of _____, 20__ agree as follows:

GENERAL CONDITIONS

1. The Contractor shall perform the work and services described in Schedules "A", "B" and "C" to this Agreement (the "*Work*") at the lands and premises municipally known as _____ (the "*Premises*") for the period commencing the first day of ___ / ___ / ___, and ending the ___ day of ___ / ___ / _____. Schedules "A", "B" and "C" are to be read into and form part of this Agreement. (*Strike out Schedules that are not applicable*)
2. The Contractor shall have total control of the *Work* and shall provide all the labour, equipment and services necessary for its performance in accordance with this Agreement and in a good and workmanlike manner. The Contractor shall comply with all laws, rules, regulations and building and fire codes which relate to the *Work* and shall obtain any permits or licenses necessary for the performance of the *Work* as at the date hereof. The Contractor will also be responsible for and shall restore at its expense all damage to the property of the Owner caused by the Contractor in the performance of the *Work* which damage was not reasonably foreseeable as a consequence of the Contractor's performance of this Agreement. The Owner acknowledges that some damage to the property of the Owner is reasonably foreseeable as a consequence of the Contractor's performance of this Agreement. Such reasonably foreseeable damage includes, but is not limited to, damage to concrete, asphalt, sod, grass and planting materials due to the application of ice melting products and surface damage to curbs and asphalt due to the clearing and chipping of snow and ice.
3. If the Contractor is delayed in the performance of any portion of the *Work* by the presence of any vehicles, structures or equipment on the *Premises* which interfere with the Contractor's ability to perform the *Work*, or by an act or omission of the Owner, or by the application of a Municipal By-Law, or by a stop work order (providing the order was not issued as a result of an act or omission of the Contractor), or by labour disputes, lock outs, fire, or by any other circumstance reasonably beyond the contractor's control including heavy winter conditions, then the time for the performance of that portion of the *Work* shall be extended until such time as the Contractor is no longer so delayed. The Contractor shall not be responsible for any damages or losses caused by the failure of the Contractor to perform that portion of the *Work* during the time that the Contractor was so delayed.
4. This Agreement constitutes the whole of the agreement between the Parties and supersedes all prior negotiations, representations or agreements. No act or failure to act shall constitute a waiver of any right or duty under this Agreement nor constitute an approval of or acquiescence in any breach of this Agreement unless expressly agreed to in writing by the Parties.



This Standard Form Contract has been developed for use by Landscape Ontario members only. Landscape Ontario's goal in developing the Contract has been to establish wording that is fair to both the contractor and the property owner/manager. Landscape Ontario assumes no liability to anyone whatsoever arising out of the use of this Standard Form Contract.

5. If requested to do so by the Owner, the Contractor shall provide evidence of compliance with applicable workers' compensation legislation in Ontario, including payments due thereunder. The Contractor shall maintain at its own expense Comprehensive General Liability insurance in the minimum amount of \$ _____ per occurrence for bodily injury, death and property damage and evidence of such insurance shall also be provided by the Contractor to the Owner upon the request of the Owner.

6. The Contractor shall indemnify and hold harmless the Owner, its agents and employees from and against any claim for damages arising from an occurrence of bodily injury or the destruction of tangible personal property provided that the damages are caused by the negligence or breach of this Agreement by the Contractor, or by anyone for whom the Contractor is responsible in law, in the performance of this Agreement and provided that the Contractor is given notice of the claim by the Owner within a reasonable time following the occurrence but in any event within 48 hours of the Owner first acquiring knowledge of the circumstances of the claim. The Owner expressly waives the right to claim against for, or be indemnified by the Contractor from and against, any other claims and further agrees to indemnify and hold harmless the Contractor, its agents and employees from and against any claim for damages which are not caused by the negligence or breach of this Agreement by the Contractor, or by anyone for whom the Contractor is responsible in law.

7. The Owner expressly acknowledges that it has physical possession of, is responsible for and has control over the condition of the *Premises*.

8. The Owner acknowledges that the application of *Ice Melting Products* to ice or snow on the *Premises* will not and cannot result in the immediate or complete removal of ice from the *Premises*. The Contractor provides no guarantee or warranty that the application of *Ice Melting Products* will be effective in eliminating ice in any particular circumstance. The Contractor will not be responsible to apply *Ice Melting Products* unless the *Ice Melting Products* are commercially and reasonably available to the Contractor.

9. Where pursuant to Article 3 of Schedule "A" to this Agreement *Ice Melting Products* are not to be applied to the *Premises* at the sole discretion of the Contractor, the Owner acknowledges that the Contractor is not responsible for any damages or claims whatsoever relating to or caused in whole or in part by the failure to apply *Ice Melting Products* to the *Premises* in any particular circumstance and the Owner further agrees to indemnify and save harmless the Contractor and its agents and employees from and against any such claims and acknowledges that it has the sole responsibility to engage a reasonable and effective system to review and monitor the *Premises* in order to determine during the Term of this Agreement whether or not *Ice Melting Products* should be applied to the *Premises*.

10. Notices under this Agreement must be in writing and must be delivered in person or sent by facsimile transfer to the Owner at _____ or to the Contractor at _____

A notice will be considered to have been given or made on the day that it is delivered or faxed. Either party may give notice to the other of a change in the address or fax number set out above and if such notice is given the address or fax number specified in that notice will then apply for the purposes of giving notices under this Agreement.

<p>[CONTRACTOR]</p> <p>Per: _____ (Signature)</p> <p>_____ (Name of person signing.)</p> <p>I Have the Authority to Bind the Corporation</p>	<p>[OWNER]</p> <p>Per: _____ (Signature)</p> <p>_____ (Name of person signing.)</p> <p>I Have the Authority to Bind the Corporation</p>
---	--

Standard Form Snow and Ice Maintenance Contract between Owner and Contractor

Schedule "A"

1. Definitions

The *Drawings and Specifications* are attached as Schedule "B" and "C".
(Strike out Schedule "C" if not applicable).

The *Snow Clearing Areas* are described in the *Drawings and Specifications* and are those areas upon which snow *Clearing* is to occur.

Clearing involves moving snow from the *Snow Clearing Areas* to the perimeter of those areas. *Snow Clearing* will be done through *Plowing, Pushing* or *Shoveling* as specified in the *Drawings and Specifications*. "Clear" has a corresponding meaning.

Plowing involves the *Clearing* of snow through the use of a plow or blade attached to a truck vehicle. *Plow* has a corresponding meaning.

Pushing involves the *Clearing* of snow through the use of a plow or blade attached to a vehicle or motorized piece of equipment which is not a truck, including a front-end loader. *Push* has a corresponding meaning.

Shoveling involves the *Clearing* of snow through the use of hand tools, including shovels and brooms. *Shovel* has a corresponding meaning.

Relocation involves relocating snow from the perimeter of the *Snow Clearing Areas* to another location on the *Premises*. *Relocate* has a corresponding meaning.

Removal involves relocating snow from *Premises* to a location outside the *Premises*. *Remove* has a corresponding meaning.

2. The Fixed Price Work

- 2.1 Upon the commencement of a *Snowfall*, the Contractor shall perform the work described in the *Drawings and Specifications* (the "*Fixed Price Work*"). The Owner will pay the Contractor the price of _____ Canadian dollars (\$_____), plus GST to perform the *Fixed Price Work* in relation to up to _____ *Snowfalls*. For each additional *Snowfall*, the Owner shall pay the Contractor _____ Canadian Dollars (\$_____) per *Snowfall*, plus GST.
- 2.2 For the purposes of this Agreement, a *Snowfall* commences when ____ cm/inches or more of snow has accumulated upon the *Premises*, continues while the snow continues to accumulate upon the *Premises* and ends when the continuous accumulation upon the *Premises* has ceased for a period of ____ hours.
- 2.3 The Contractor will monitor the weather conditions in the vicinity of the *Premises* and perform the *Fixed Price Work* once in accordance with the *Drawings and Specifications* within ____ hours of the commencement of a *Snowfall*. If a further accumulation of ____ or more cm/inches of snow occurs during that *Snowfall*, the Contractor will return to perform the *Fixed Price Work* in accordance with the *Drawings and Specifications* within 24 Hours following the end of that *Snowfall*.
- 2.4 Where the Owner and Contractor cannot agree as to whether or not a *Snowfall* has occurred in any particular circumstance, the records of Environment Canada for the location nearest the *Premises* will be utilized to determine same.

3. Ice Melting Services

3.1 The Contractor shall perform Ice Melting Services (the “Ice Melting Services”) as follows:
(Select either A or B, below, by crossing out the inapplicable section).

A. The Contractor shall at his sole discretion apply Salt, Sand, Calcium or _____ (the “Ice Melting Products”) to the Premises in accordance with the Drawings and Specifications. In determining whether or not to apply Ice Melting Products in any particular circumstance, the Contractor shall act reasonably, shall monitor the weather in the vicinity of the Premises and shall apply the standards of the custom of the snow and ice maintenance industry.

or

B. The Owner shall at its sole discretion determine if it wishes to have Salt, Sand, Calcium or _____ (the “Ice Melting Products”) applied at the Premises. The Owner may request that Ice Melting Products be applied by

(describe how Owner is to contact Contractor to request applications) and upon receiving a request to apply Ice Melting Products, the Contractor shall respond to the request within a commercially reasonable period of time.

3.2 The Contractor will be compensated for applying the Ice Melting Products as follows:
(Select either A or B, below, by crossing out the inapplicable section).

A. The application of Ice Melting Products is included in the Price for the Fixed Price Work described at Article 2, above

or

B. The Contractor will be paid for the application of Ice Melting Products on the basis of unit rates as follows:

Spread By Truck

- Salt: \$ _____ Per Application or \$ _____ per tonne (select one)
- Sand: \$ _____ Per Application or \$ _____ per tonne (select one)
- Calcium: \$ _____ Per Application or \$ _____ per tonne (select one)
- Other [specify]: _____

Spread By Hand

- Salt: \$ _____ Per Application or \$ _____ per _____ kg Bag; (select one)
- Sand: \$ _____ Per Application or \$ _____ per _____ kg Bag; (select one)
- Calcium: \$ _____ Per Application or \$ _____ per _____ kg Bag; (select one)
- Other [specify]: _____

4. Extra Work

4.1 It is not intended that the Contractor should perform any work or services not described in or properly inferable from this Agreement. The Owner may request that the Contractor perform additional work or services (“Extra Work”), in writing, by

(describe how Owner is to contact Contractor to request that Extra Work be performed). The Contractor will not unreasonably withhold its agreement to perform *Extra Work*. If the Contractor agrees to perform *Extra Work*, the Contractor will be paid an amount as agreed between the Owner and Contractor for the performance of the *Extra Work*.

5. Payment Terms

5.1 The Contractor will be paid for the *Fixed Price Work*, the *Ice Melting Services* and *Extra Work* as follows:

(describe payment terms – attach a schedule if necessary).

<p>[CONTRACTOR]</p> <p>Per: _____ <i>(Signature)</i></p> <p>_____</p> <p><i>(Name of person signing.)</i></p> <p>I Have the Authority to Bind the Corporation</p>	<p>[OWNER]</p> <p>Per: _____ <i>(Signature)</i></p> <p>_____</p> <p><i>(Name of person signing.)</i></p> <p>I Have the Authority to Bind the Corporation</p>
--	---



This Standard Form Contract has been developed for use by Landscape Ontario members only. Landscape Ontario's goal in developing the Contract has been to establish wording that is fair to both the contractor and the property owner/manager. Landscape Ontario assumes no liability to anyone whatsoever arising out of the use of this Standard Form Contract.

**Standard Form Snow and Ice Maintenance Contract between Owner and Contractor
Schedule "B"**

(Drawings and site specifications. Attach additional documents and Schedule "C" if necessary.)