



(Tenderer)

AGREEMENT DETAILS			
Contract No	S201015	Award Date	TBA?
Client	Shape Australia Pty Limited	Submission due date	TBA?
Contract Name / Type	AS4906-2002 (Modified)	Review Date	5 April 2020
Nature of Contract	Lump Sum	Contract Value	
Location / Site	MYOB – Electrical Package	On Site Duration / Term of Engagement	TBA?
Scope Of Work	TBA?		

Checks	Client Position	Clause	Agree or Depart Suggestion	TCR Item
1. Limitation of liability	Silent		Depart Request cap on liability equal to of the total amounts payable under the Contract	
2. Consequential losses	Silent		Depart Request exclusion for consequential loss	
3. Liquidated damages	per day Uncapped may also be liable to LD's under the Head Contract and/or at common law	GC 20.5 GC 28	Depart Request cap on LD's to a total of of the Contract Sum Request deletion of clause 20.5(b)	
4. Insurance	Insurances required to be provided are: <ul style="list-style-type: none"> Public Liability insurance: Workers Compensation: \$an amount required by law Contract Works insurance: an amount equal to the contract sum plus 	GC 12	to advise	
5. Indemnity obligations	is required to indemnify SHAPE against claims directly or indirectly arising out of the coordination by SHAPE of WUC, SHAPE's responsibility	GC 10.1	Depart Request wording amendment Request for indemnities to be reduced proportionately to the extent any loss, cost, expense or claim is caused or contributed by SHAPE	



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Checks	Client Position	Clause	Agree or Depart Suggestion	TCR Item
	<p>for the management and control of the Site etc.</p> <p>is responsible for any costs and expenses of SHAPE including costs and expenses incurred prior to a claim being made.</p>			
6. Defects liability	<p>The DLP will commence when SHAPE achieves PC under the Head Contract and last 12 months.</p> <p>If the rectification of any defect results in SHAPE incurring any additional costs, losses or expenses, or having to commit extra resources to the project, such costs will be at APEC's expense</p>	GC 21	Depart	
7. Security and retention	0%	GC 3	Agree	
8. Payment terms	<p>must:</p> <p>On 25th day of each calendar month, issue its claim for payment.</p> <p>Within 14 days, the client must provide its payment schedule and determine the amount payable.</p> <p>Payment will be received on the first business day of the second month after the claim is submitted. For example, if the Contractor's payment claim is made on 25 July, SHAPE will process the electronic transfer on 1 September.</p> <p>Interest rate for late payments is 0.1% per annum – this is insufficient.</p>	23	<p>Depart</p> <p>Request reduced payment terms</p> <p>Request increase to applicable interest</p>	
9. Rights and liabilities upon termination	Silent		Depart	
10. Variations	If considers a Direction to constitute a variation, it must	GC 22.1	<p>Depart</p> <p>Request notice period of 7 days as opposed to 3 days</p>	

Checks	Client Position		Clause	Agree or Depart Suggestion	TCR Item
	give written notice within 3 days of receiving the Direction.				
	Failure to comply will result in time barring.				
11. Design responsibility	An onerous design provision exists		GC 5.3	Depart to review and consider	
12. Milestone / Key dates and durations					
13. Dispute resolution	A reasonable stepped dispute resolution process exists.		GC 27	Agree	
14. Delay Time Bars	<p>Should be delayed in reaching PC or a milestone or a critical date set out in Annexure F by a QCD, is to notify SHAPE within 4 days of when should have become aware of the first fact, a detailed written claim for an EOT, and setting out the detailed particulars.</p> <p>SHAPE can extend the program and is not entitled to claim any additional costs.</p> <p>Failure to comply will result in time barring.</p>		GC 20.2	Depart Request wording amendment	
15. Delay entitlements	Time	Cost	<div>✓</div> <div>✗</div>		
• Delays in Access by client	✓	✓	GC 20.5	Agree Claim act or omission	
• Suspension by client	✗	✗	GC 19.2	Depart There is no mention of having any entitlement to additional time and cost	
• Cyclones	Silent	Silent			
• Force Majeure	Silent	Silent		Depart	
• Inclement Weather	Silent	Silent		Depart	
• Change in Law	Silent	✓	GC 7	Agree	
• Latent Conditions (site only)	✗	✗	GC 17.2	Depart	

Checks	Client Position		Clause	Agree or Depart Suggestion	TCR Item
• Errors/ delays in client's documents	×	×	GC 5.2	Depart	
• Delays by client's other contractors	×	×	GC 17.1	Depart	
• Delays in client's free issued equipment	✓	✓	GC 20.5	Agree Claim act or omission	
• Acceleration	×	✓	GC 20.1 GC 20.3A	Depart	
• Disruption					
• Variations	✓	✓	GC 22.1	Refer comments above	
• Contaminated Material	×	×	GC 17.2	Depart	
• Heritage Discoveries	×	×	GC 17.2	Depart	
16. Other					

Commercial/Risk Observations, Recommendations and General Notes (please note, only the General Terms and Conditions has been reviewed)

1. Clarification Suggested – Clause 1A.1 puts unnecessary obligations on [REDACTED] as-to the Head Contract.
2. Clarification Suggested – Clause 1A.2 incorporates an onerous pass-through provision confirming that [REDACTED] is unable to make any claim unless SHAPE considers that it is entitled to make a corresponding claim upstream.
3. Clarification Suggested – Clause 4 confirms that while Shape can issue notices via email, [REDACTED] can only issue notices in person, post or facsimile. Therefore, if [REDACTED] issues a notice via email, the notice may not be valid.
4. Clarification Suggested – Clause 5.4 requires [REDACTED] to warrant that the works will be fit for purpose.
5. Clarification Suggested – Clause 9.1 confirms that [REDACTED] is responsible for the care of the whole of the WUC from the date of commencement until Head Contract Practical Completion.
6. Clarification Suggested – Clause 17.3 requires [REDACTED] to keep the Site and WUC clean and tidy and free from rubbish and surplus materials (to be removed at least daily). Failure of which, SHAPE may instruct [REDACTED] to remedy which it is contractually obligated to do within 2 hours. SHAPE may then engage others and the costs will be a debt due.
7. Clarification Suggested – Clause 18.1(b) requires [REDACTED] to warrant that its scope will integrate with the works of others on site. Also, [REDACTED] is responsible for coordinating the performance of the WUC to be performed by all other contractors on site.
8. Clarification Suggested – Clause 25.5 confirms that SHAPE can take possession of, and use, [REDACTED] construction plant and other things on or in the vicinity of the Site in the event [REDACTED] fail to remedy a breach (which could be within one calendar day from SHAPE's request). SHAPE may sell the construction plant until a debt is satisfied.

Tender Commercial Review – [REDACTED] (Tenderer)

9. Clarification Suggested – Clause 32 requires [REDACTED] to obtain all Approvals required for carrying out of WUC and pay and indemnify SHAPE against all fees, fines or other amounts payable. I presume this is [REDACTED] scope.
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