

Tender Clarification Register - Commercial

Subcontract No: S2010125	Tenderer: [REDACTED]
Project: 220127 – MYOB – HARCOURT PARADE	Rev: 0
Title: TBA	Date: 01/05/2020

Item No.	Section / Clause	Date	Comment By	Exception / Clarification	Status (Open/Closed)
COMMERCIAL CLARIFICATIONS					
1.	Limitation of Liability New Clause	01/05/20	[REDACTED]	<p>[REDACTED] requires the insertion of a provision that provides [REDACTED] with an exclusion for consequential loss and an overall cap on liability.</p> <p>[REDACTED] proposes the insertion of the following wording:</p> <p><i>“(a) Consequential Loss</i> <i>The Contractor and SHAPE will not be liable to each other for any Consequential Loss suffered by the Contractor or SHAPE arising out of or in connection with the Contract.</i></p> <p><i>(b) Loss Limitation</i> <i>Notwithstanding any other provision of this Contract, the maximum liability of the Contractor to all persons or entities (including but not limited to SHAPE or the Client and their respective personnel) listed under the Contract is limited to 50% of the Contract Sum, inclusive of any liability.</i></p> <p><i>Consequential Loss means loss of profits, loss of production, loss of revenue, and loss of business opportunities, or any special, contingent or penal damages.”</i></p>	OPEN
			CLIENT		
2.		01/05/20	[REDACTED]	[REDACTED] requires deletion of clauses 1A.1(b), (c), (d), (e) and (f).	OPEN

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	Contractor's back-to-back obligations Clause 1A.1			References to the Head Contract within the abovementioned clauses are too broad and unquantifiable.	
			CLIENT		
3.	Limitation on Contractor's ability to make claims Clause 1A.2	01/05/20	[REDACTED]	[REDACTED] requires deletion of clause 1A.2 in its entirety. [REDACTED] does not accept the pass-through provision(s) provided by way of clause 1A.2.	OPEN
			CLIENT		
4.	Service of notices Clause 4(b)	01/05/20	[REDACTED]	[REDACTED] requires the following amendment to clause 4(b): <i>"The Contractor may only serve notices on SHAPE by personal delivery, email, post or facsimile. A notice served by the Contractor in any other way will be invalid and have no effect and will be taken not to have been served."</i>	OPEN
			CLIENT		
5.		01/05/20	[REDACTED]	[REDACTED] requires the following amendment to clause 5.4(a)(i): <i>"are fit for their intended purpose as specified in the Contract; and"</i>	OPEN

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	Requirements for the Works, when completed Clause 5.4		CLIENT		
6.	Care of WUC Clause 9.1	01/05/20	[REDACTED]	[REDACTED] requires the following amendment to clause 9.1(a): <i>“the whole of WUC from and including the date of commencement of WUC until Head Contract PC completion of the WUC, at which time the responsibility for the care of the Works (except to the extent provided in paragraph (b)) shall pass to SHAPE; and”</i>	OPEN
			CLIENT		
7.	Indemnity by Contractor Clause 10.1	01/05/20	[REDACTED]	[REDACTED] requires the insertion of the following new clause 10.1(f): <i>“The indemnities provided by the Contractor will be reduced proportionately to the extent the loss, cost or expense was caused or contributed by, SHAPE or its Personnel”</i>	OPEN
			CLIENT		
8.	Contractor will not have exclusive possession	01/05/20	[REDACTED]	[REDACTED] requires the following amendment to clause 17.1: <i>“The Contractor acknowledges that it will be performing WUC concurrently with other contractors engaged by SHAPE and/or the Client and that it has made a full and sufficient allowance in the contract sum for achieving practical completion by the date for practical</i>	OPEN

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	Clause 17.1			<i>completion for delays potentially caused to its progress of WUC by those other contractors and/or the Client. The Contractor must coordinate WUC with the work of those other contractors, but if the Contractor is delayed by the work of other contractors, it will have an entitlement to claim an EOT and any associated delay costs. and SHAPE will not be liable for any claim resulting from the Contractor's failure to do so."</i>	
			CLIENT		
9.	Site Conditions Clause 17.2	01/05/20	[REDACTED]	[REDACTED] requires deletion of clause 17.2. [REDACTED] shall not be held accountable for any adverse Site conditions.	OPEN
			CLIENT		
10.	Site Conditions Clause 17.3	01/05/20	[REDACTED]	[REDACTED] requires the following amendment to clause 17.3: "The Contractor shall keep the site and WUC clean and tidy and shall regularly remove rubbish and surplus material (at least on a daily basis). If SHAPE is not satisfied with the cleanliness of the site, SHAPE may direct the Contractor to cease work and clean up. If within 2 hours 1 day of that direction the Contractor has not commenced cleaning the site, SHAPE may engage others to do so and the costs of that action will be immediately due and payable by the Contractor to SHAPE."	OPEN
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11.	Quality of material and work Clause 18.1	01/05/20	[REDACTED]	[REDACTED] requires deletion of clause 18.1(b). [REDACTED] shall not be responsible for integrating the Works with existing features of the site and other works being performed by separate contractors.	OPEN
			CLIENT		
12.	Suspension Clause 19.2	01/05/20	[REDACTED]	[REDACTED] requires the following amendment under clause 19.2: <i>“SHAPE may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as SHAPE thinks fit, if SHAPE, acting reasonably, is of the opinion it is necessary. If the Contractor receives a direction to suspend any part of the WUC, the Contractor will have entitlement to claim an EOT, and any additional costs”</i>	OPEN
			CLIENT		
13.	Progress Clause 20.1	01/05/20	[REDACTED]	[REDACTED] requires the following amendment under clause 20.1: <i>“The Contractor must immediately promptly (and in any event within 24 hours 5 days of becoming aware, or from when it ought reasonably to have become aware as a competent and experienced contractor, of any delay or potential delay to WUC) give written notice to SHAPE of any delay or potential delay to WUC.”</i>	OPEN

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				<p>[REDACTED] requires the following amendment under clause 20.2(b):</p> <p><i>“The Contractor has given SHAPE, within 4 days 10 days of when the Contractor should reasonably have become aware of the first fact, event or circumstance causing the delay, a detailed written claim for an EOT that, at a minimum, identifies.”</i></p> <p>[REDACTED] requires the following amendment to the last paragraph of clause 20.3:</p> <p><i>“The Contractor is not entitled to any delay costs or other compensation in respect of an EOT granted by SHAPE in the exercise of this discretion.</i></p>	
			CLIENT		
14.	Additional qualifying causes of delay Clause 20.2	01/05/20	[REDACTED]	<p>[REDACTED] requires the following additional qualifying causes of delay under item 10a of Annexure A:</p> <p><i><u>“(1) Latent conditions (meaning any physical condition at the Site including rock, contamination, artificial obstructions which differ materially from those which should have been anticipated by a professional and competent contractor);</u></i></p> <p><i><u>(2) Errors with or delays in providing any SHAPE’s supplied documents;</u></i></p> <p><i><u>(3) Errors with or delays in providing any SHAPE’s supplied materials;</u></i></p> <p><i><u>(4) Access delays or restrictions;</u></i></p> <p><i><u>(5) Any impact of COVID19;</u></i></p> <p><i><u>(6) Delays caused by other contractors;</u></i></p>	OPEN

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				<p><u>(7) Delays caused by inclement weather</u></p> <p><u>(8) Suspension directions; and</u></p> <p><u>(9) Force Majeure Events (meaning war, civil war, armed conflict or terrorism, nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the conduct of the Affected Party or its Personnel, riot, commotion, epidemic, disorder, strike or lockout by persons other than the Affected Party or its Personnel, natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity, storm, floods etc)</u></p>	
			CLIENT		
15.	Liquidated Damages Clause 20.5	01/05/20	[REDACTED]	<p>[REDACTED] requires deletion of clause 20.5(b) and deletion of the following wording under clause 20.5(b):</p> <p><i>“If WUC does not reach practical completion by the date for practical completion, in addition to its liability for liquidated damages above, the Contractor indemnifies SHAPE against any loss, liability or expense of the kind described in clause 20.5(b)”</i></p> <p>[REDACTED] requires a cap on the liquidated damages of [REDACTED] of the Contract Sum.</p>	OPEN
			CLIENT		
16.	Defects Clause 21	01/05/20	[REDACTED]	<p>[REDACTED] requires the following amendment to clause 21.1:</p> <p><i>“The defects liability period stated in Item 13 shall commence at Head Contract PC upon completion of the Contract Works”</i></p>	OPEN

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17.	Variations Clause 22.1	01/05/20	[REDACTED]	[REDACTED] requires the insertion of “7 days” in lieu of “3 days” under clause 22.1.	OPEN
			CLIENT		
18.	Payment Clause 23.2	01/05/20	[REDACTED]	[REDACTED] requires the insertion of “[REDACTED] per annum” as the rate of interest for any overdue amounts.	OPEN
			CLIENT		
19.	SHAPE’s notice to show cause Clause 25.3	01/05/20	[REDACTED]	[REDACTED] requires the following amendment to clause 25.3(d): “the date and time by which the Contractor must show cause (which shall not be less than one clear calendar day <u>seven calendar days</u> after the notice is received by the Contractor); and It is not practical to remedy the breach within one day.	OPEN
			CLIENT		
20.	Take out Clause 25.5	01/05/20	[REDACTED]	[REDACTED] requires deletion of clause 25.5. [REDACTED] does not agree to SHAPE taking control of [REDACTED] plant and equipment.	OPEN
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21.	Adjustment on completion of work taken out Clause 25.6	01/05/20	[REDACTED]	[REDACTED] requires deletion of the second paragraph of clause 25.6. [REDACTED] does not agree to SHAPE taking control of [REDACTED] plant and equipment, and having the ability to sell such plant and equipment.	OPEN
			CLIENT		
22.					