

Tender Clarification Register - Commercial

Subcontract No: [REDACTED]	Tenderer: [REDACTED]
Project: Kogarah RSL Mixed Use Development	Rev: 0
Title: Kogarah RSL Mixed Use Development	Date: 22/5/18

Item No.	Section / Clause	Date	Comment By	Exception / Clarification	Status (Open/Closed)
COMMERCIAL CLARIFICATIONS					
1.	Limitation on liability & Consequential Loss New Clause	22/5/18	[REDACTED]	<p>[REDACTED] requests the insertion of the following new clause:</p> <p><i>"Limitation of Liability</i></p> <p><i>(a) Consequential Loss</i> <i>The Subcontractor shall not be held liable to the Contractor or the Principal for any indirect, consequential, special or penal damages whatsoever caused or any loss of profits, loss of use, loss of revenue, loss of reputation, loss of opportunities or loss of anticipated savings or for any financial or economic loss suffered by the Contractor or the Principal arising out of or in connection with the Subcontract.</i></p> <p><i>(b) Direct Loss Limitation</i> <i>(i) The liability of the Subcontractor to the Contractor for liability under the Subcontract shall be limited to [REDACTED] % of the Subcontract Sum.</i> <i>(ii) The Subcontractor shall use its best endeavours to diligently recover the maximum amount possible from its insurers in respect of the liability referred to in clause (i) of this Sub-clause (b).</i></p> <p>Reason: A limit on liability is only requested in order to apply an aggregate cap on liability for uninsured events. [REDACTED] is seeking to limit its liability with respect to loss and damage for events which [REDACTED] is legally responsible for in instances where insurance cover is not available.</p>	OPEN

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			CLIENT		
2.	Warranties Clause 4	22/05/18	[REDACTED]	<p>[REDACTED] requests deletion of clause 4.1(c) in entirety. Reason: [REDACTED] does not accept any warranties associated with the buildability, suitability and appropriateness of any Design completed by others.</p> <p>[REDACTED] requests deletion of clause 4.1(k) in entirety. Reason: [REDACTED] has not inspected the Site and its surroundings.</p> <p>[REDACTED] requests deletion of clause 4.2(a) in entirety. Reason: [REDACTED] does not accept any warranties associated with the buildability, suitability and appropriateness of any Design completed by others.</p>	OPEN
			CLIENT		
3.	Security, Retention Moneys and Performance	22/05/18	[REDACTED]	[REDACTED] requests the option to provide bank guarantees or surety bonds as an approved form of security, in lieu of retention. [REDACTED] to nominate which option it intends on using.	OPEN

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	Undertakings Clause 5		CLIENT		
4.	Security, Retention Monies and Performance Undertakings Clause 5	22/05/18	[REDACTED]	[REDACTED] requests deletion of clauses 5.8(a)(i)(B) and (C), and 5.8(a)(ii), 5.8(a)(iii) and 5.8(b). Reason: [REDACTED] requests that clause 5.8(a)(i)(A) to be the only applicable clause associated with the reduction of Security.	OPEN
			CLIENT		
5.	Latent Conditions Clause 12.2	22/05/18	[REDACTED]	[REDACTED] requests an extension to the existing notification period of 3 Business Days to 7 Business Days.	OPEN
			CLIENT		
6.	Latent Conditions Clause 12.1(a)(C)	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 12.1(a)(C). Reason: [REDACTED] have not conducted an inspection of the Site and its surroundings.	OPEN
			CLIENT		
7.	Protection of	22/05/15	[REDACTED]	[REDACTED] requests the insertion of "reasonably" prior to the existing word "necessary" within	OPEN

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	People and Property Clause 15			<p>clause 15.1(a).</p> <p>[REDACTED] requests deletion of the following paragraph provided under clause 15.1:</p> <p><i>"Without limiting the generality of the Subcontractor's obligations, such measures include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services."</i></p> <p>Reason: [REDACTED] is of the opinion that measures such as the provision of temporary roads, footpaths etc are not considered reasonable measures to be undertaken by a Fire Protection subcontractor.</p>	
			CLIENT		
8.	Care and security of the work and reinstatement of damage Clause 16	22/05/18	[REDACTED]	<p>[REDACTED] requests deletion of the word <i>"negligent"</i> within clause 16.3(a).</p> <p>Reason: [REDACTED] is of the opinion that the word negligent is ambiguous.</p>	OPEN
			CLIENT		
9.	Damage to persons and property	22/05/18	[REDACTED]	<p>[REDACTED] requests the insertion of a new paragraph that provides indemnities will be reduced proportionally. [REDACTED] suggests the following wording:</p> <p><i>"Any claims in respect of death, injury, illness, disease or loss of or damage to any property, arising out of or as a consequence of the carrying out of the Works, the indemnities provided</i></p>	OPEN

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	Clause 17			<i>by the Subcontractor will be reduced proportionally to the extent that the act or omission of the Subcontractor may have contributed to such death, injury, illness, disease or loss of or damage to any property"</i>	
			CLIENT		
10.	Setting out of the works Clause 28	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 28 in entirety. Reason: Setting out and survey is not applicable to [REDACTED] scope of delivery.	OPEN
			CLIENT		
11.	Extension of Time for Practical Completion Clause 35.5	22/05/18	[REDACTED]	[REDACTED] requests an extension to the existing notification period of 5 Business Days to 10 Business Days.	OPEN
			CLIENT		
12.	Extension of Time for Practical Completion Clause 35.5	22/05/18	[REDACTED]	[REDACTED] requests the following amendment to clause 35.5(d): <i>"any delay caused by an owner or occupier of Neighbouring Land to the extent such delay impacts on the commencement of demolition or excavation works."</i> Reason: Should an owner or occupier of Neighbouring Land cause delay and/or disruption to the Works, [REDACTED] requests entitlement to claim an extension of time and any associated	OPEN

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				additional costs.	
			CLIENT		
13.	Liquidated Damages Clause 35.6	22/05/18	[REDACTED]	<p>[REDACTED] requests deletion of the existing nominated amounts associated with liquidated damages. [REDACTED] is willing to accept liquidated damages with the daily amounts reasonably in proportion to the Subcontract Sum. [REDACTED] proposes daily amounts of \$[REDACTED] per day.</p> <p>Reason: [REDACTED] is of the opinion that the current nominated amounts of \$[REDACTED] per day is excessive and not a fair representation of the works being executed by [REDACTED]</p>	OPEN
			CLIENT		
14.	Liquidated Damages Clause 35.7	22/05/18	[REDACTED]	<p>[REDACTED] requests a limit on liquidated damages of [REDACTED]% of the Subcontract Sum.</p> <p>Reason: [REDACTED] is of the opinion that unlimited liability to liquidated damages is not fair or reasonable.</p>	OPEN
			CLIENT		
15.	Liquidated	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 35.8 in entirety.	OPEN

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	Damages Clause 35.8			Reason: [REDACTED] is not willing to accept additional Main Contract daily damages of \$[REDACTED] per day and general damages. The amounts nominated by [REDACTED] above shall be the Contractor's sole remedy should [REDACTED] cause delay to the works.	
			CLIENT		
16.	Delay or Disruption Costs Clause 36	22/05/18	[REDACTED]	<p>[REDACTED] requests the following amendments to clause 36(a):</p> <p><i>"Where the Subcontractor has been granted an extension of time under Clause 35.5 for:</i></p> <p><i>(a) any delay or disruption caused by any of the events referred to in Clause 35.5(b)(i) prescribed in Clauses 35.5(a), (b), (c) or (d); or</i></p> <p><i>(b) any delay or disruption caused by any event referred to in Clause 35.5(b)(vi) to the extent such delay impacts on the commencement of demolition or excavation works caused by an owner or occupier of Neighbouring Land to the extent such delay impacts on the commencement of demolition or excavation works; or</i></p> <p><i>(c) any other event for which payment of extra costs for delay or disruption is provided for in Item 42 of Annexure Part A or elsewhere in the Subcontract"</i></p> <p>Reason: [REDACTED] requests entitlement to claim an extension of time and any associated delay or disruption costs for events outside of [REDACTED] reasonable control.</p>	OPEN
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17.	Defects Liability Clause 37	22/05/18	[REDACTED]	[REDACTED] requests the insertion of "Not Used" in lieu of the existing wording under clauses 37.2A and 37.2B, also Part K.	OPEN
			CLIENT		
18.	Set off by the Contractor Clause 42.8	22/05/18	[REDACTED]	<p>[REDACTED] requests the following amendments to clause 42.8</p> <p><i>"The Contractor may:</i></p> <p><i>(a) set-off or deduct from any amounts due to the Subcontractor under the Subcontract or otherwise at law, or under any other contract between the Subcontractor and the Contractor; or</i></p> <p><i>(b) have recourse to security provided by the Subcontractor under the Subcontract, or provided by the Subcontractor under any other contract between the Subcontractor and the Contractor,</i></p> <p><i>For any <u>demonstrable</u> amounts, losses, costs, claims, expenses or damages which:</i></p> <p><i>(c) the Subcontractor is liable to pay the Contractor in respect of the Subcontract;</i></p> <p><i>(d) will be <u>that are</u> due from the Subcontractor to the Contractor in respect of the Subcontract;</i></p> <p><i>(e) the Contractor believes that it has suffered, or is likely to suffer in the future, as a result of a default or breach of the Subcontract by the Subcontractor, or any other act or omission by the Subcontractor; or</i></p>	OPEN

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				(f) the Subcontractor is required to pay to the Contractor, or is likely or will likely to be required to pay to the Contractor, arising out of or in connection with the Subcontract or any other contract between the Subcontractor and the Contractor...	
			CLIENT		
19.	Procedure when the Contractor Takes Over Work Clause 44.5	22/05/18	[REDACTED]	<p>[REDACTED] requests deletion of clause 44.5 in entirety.</p> <p>Reason: [REDACTED] is of the opinion that should work be taken out of [REDACTED] hands, the Contractor's rights to taking possession of any [REDACTED] plant, equipment, tools etc is not considered fair or reasonable.</p> <p>Additionally, [REDACTED] requests deletion of the final paragraph of clause 44.6.</p> <p>Reason: Similarly with the above, [REDACTED] is of the opinion that should work be taken out of [REDACTED] hands, the Contractor's rights to taking possession of any [REDACTED] plant, equipment, tools etc, and selling such plant, equipment, tools etc is not considered fair or reasonable.</p>	OPEN
			CLIENT		
20.	Development Approval	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 50.3 in entirety.	OPEN
			CLIENT		

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	Bonds Clause 50.3				
21.	Building Services Clause 57	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 57 in entirety.	OPEN
			CLIENT		
22.	Demolition Clause 71	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 71 in entirety.	OPEN
			CLIENT		
23.	Sales Contracts Clause 72	22/05/18	[REDACTED]	[REDACTED] requests deletion of clause 72 in entirety.	OPEN
			CLIENT		
24.	Items Annexure Part A	22/05/18	[REDACTED]	<p>[REDACTED] requests for the following amendments within the Annexure Part A (which have not been addressed above):</p> <ol style="list-style-type: none"> Item 13: Please amend to reflect an option of retention, bank guarantees or surety bonds. Refer clarification above. [REDACTED]% shall be the maximum security to be provided by [REDACTED] 	OPEN

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				<p>2. Item 28: There appears to be a typo here which necessitates amendment. Please advise.</p> <p>3. Item 45: [REDACTED] requests the insertion of [REDACTED] %</p>	
			CLIENT		
25.	Part H Additional Requirements for PC	22/05/18	[REDACTED]	<p>[REDACTED] request the insertion of "Not Used" under Part H.</p> <p>Reason: The requirements for attaining PC are already outlined in the Subcontract.</p>	OPEN
			CLIENT		