

AGREEMENT DETAILS			
<b>Contract No</b>	A-MWC-v2.1	<b>Award Date</b>	TBA?
<b>Client</b>	Eastern Pacific Design & Construct Pty Ltd	<b>Submission due date</b>	TBA?
<b>Contract Name / Type</b>	Subcontract Agreement – Wet Fire Service	<b>Review Date</b>	15 June 2020
<b>Nature of Contract</b>	Design & Construct	<b>Contract Value</b>	

Checks	Client Position	Clause	Agree or Depart Suggestion	TCR Item
1. Limitation of liability	Silent		Depart Request cap on liability equal to [REDACTED] of the total amounts payable under the Contract	
2. Consequential losses	Silent		Depart Request exclusion for consequential loss	
3. Liquidated damages	If the Subcontractor fails to complete the Works or any stage of the works by any Target Date or by the Date for Practical Completion or fails to complete any stage of the Works by the due date specified by the Contractor or the Contractor's Representative or within any extended time approved in writing by the Contractor, the Subcontractor will then be indebted to the Contractor for Liquidated Damages at a rate of [REDACTED] with no cap/limit.	GC 11	Depart 1. Request [REDACTED] per week as opposed to each calendar day. 2. Request limit of [REDACTED] of the Subcontract Sum 3. Remove reference to LD's being applicable to a "Target Date". They shall only apply to a mutually agreed end date (Date for Practical Completion), and set date upon entering in to the Subcontract. 4. Request deletion of clause 11.5; General damages, in addition to the LD amounts shall not apply. The LD amounts shall be the clients sole remedy.	
4. Insurance	Standard insurance required to be provided are: • Public & Products	GC 30	[REDACTED] and its insurance advisors to confirm acceptance	



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	Liability insurance: \$ [REDACTED] • Professional Indemnity: \$ [REDACTED] • Workers Compensation: \$ [REDACTED]			
5. Indemnity obligations	[REDACTED] to indemnify the client against: (a) loss of or damage to property of the Contractor, including existing property in or upon which the Works are being carried out; and (b) claims by any person against the Contractor in respect of personal injury or death or loss of or damage to property, and (c) any claims for loss or damage by any person (including but not limited to the Principal) against the Contractor for any acts, defaults, omissions attributable to the Subcontractor and if applicable, the Secondary subcontractor,  No proportionate reduction provision exists.	GC 30.1	Depart Indemnities to be reduced proportionately to the extent any loss, cost or expense is caused by the Contractor	
6. Defects liability	Item 10 of Schedule 1 provides 104 weeks from Practical Completion.  Defects to be rectified within 2 Business Days (clause 14.3).  Defects to be rectified within 3 days (clause 29.5).	GC 14 GC 29.5	Depart 1. Request 52 weeks 2. Request deletion of clause 14.3 (2 days to remedy a defect is unreasonable, the requirements under this clause is covered under clause 14.5. 3. Include the words "reasonable" prior to "date" under clause 14.5. 4. Include the words "within a reasonable time" in lieu of "three (3) days" under clause 29.5.	
7. Security and retention	The Contractor may retain [REDACTED] of each Payment Claim up to a	GC 21	Depart Suggest insertion of "Not Used" in lieu of the amounts	



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	<p>maximum of [REDACTED] of the Subcontract Sum in accordance with Item 7 of Schedule 1 as a Retention Sum.</p> <p>Additionally, item 20 of Schedule contemplated a Deposit Bond and/or Cash Deposit (no amounts provided)</p>		provided in Schedule 1.	
8. Payment terms	<p>Payment Claim Reference Date: The completion of a stage of the Contractor's Construction Program; or Completion of the Project in accordance with Item 2 above, whichever is the earlier and subject to Clause 14 of this Contract; or the 25<sup>th</sup> day of each month.</p> <p>The Payment Claim shall be supported with an extensive amount of evidence, [REDACTED] to make sure it can comply with clause 15.1.</p> <p>Contractor to respond with Payment Schedule within 10 Business Days.</p> <p>Payment to be received at the end of the following month.</p>	15	<p><b>Depart</b></p> <ol style="list-style-type: none"> <li>1. Request deletion of clause 15.5 and 15.10; [REDACTED] should not accept payments on account. The works is on a LS basis, and not subject to a final measure of quantities.</li> <li>2. Request payment terms of 20 Business Days from issuing the claim for payment.</li> <li>3. Request provision to claim interest in the event of late payment in lieu of clause 20, which prevents [REDACTED] claiming interest.</li> </ol>	
9. Rights and liabilities upon termination	<p>If the Contract is terminated due to [REDACTED] not remedying a breach notice, the Contractor can take possession of the constructional plant, design documents or other things but not materials as described at Clause 24.19, the Contractor shall maintain them and on completion of the Works the Contractor shall return to the Subcontractor those documents and any things taken.</p>	GC 38	<p><b>Depart</b></p> <p>Request the ability to make a claim for cost</p>	
10. Variations	<p>[REDACTED] must, within seven (7) days of receiving a direction of a proposed variation pursuant to Clause 13.4, provide to the</p>	GC 13.5	<p><b>Depart</b></p> <ol style="list-style-type: none"> <li>1. Request deletion of clause 13.7</li> <li>2. Request deletion of clause 13.8 and</li> </ol>	





(Tenderer)

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	<p>Contractor or the Contractor's Representative, a Subcontractor's Variation Application (note, clause 13.16 makes reference to 10 Business Days).</p> <p>If the Subcontractor's Variation Application is not received by the Contractor in the time stipulated in this Clause 13, it is deemed that the Subcontractor has accepted the proposed variation at no cost to the Contractor.</p> <p>If [REDACTED] fails to give notice, it is forever barred from claiming a variation.</p>		<p>13.9; [REDACTED] shall not be held responsible for the clients failings to sign a variation.</p> <p>3. Request a new 13.15(a) to make reference to the rates and prices set out in the Subcontract (suggest [REDACTED] include a list of daywork rates as part of the Subcontract Sum breakdown).</p>	
11. Design responsibility	<p>Yes, [REDACTED] are to warrant that it has satisfied itself as to the accuracy of any designs, plans or specifications which is required to perform the Works and that the design, plan or specification will be fit for its intended purpose.</p> <p>[REDACTED] is also to satisfy itself as to the accuracy of any design, plan or specification which it is required to utilise in the performance of its Works whether the said design, plan or specification was prepared by the Subcontractor or by others and that the Works on completion, will be in accordance with the intended design, plan or specification aforesaid and will be fit for purpose.</p>	GC 3.2 Design references throughout contract	[REDACTED] to consider	
12. Milestone / Key dates and durations	Refer contractors program provided		[REDACTED] to confirm	
13. Dispute resolution	A reasonable stepped dispute resolution process exists.	GC 42	Agree	

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14. Delays / EOT	<p>████ must as soon as possible and in any case within two (2) Business Days after the delay occurs, give to the Contractor or the Contractor's Representative written notice seeking an extension of time for Practical Completion.</p> <p>28 days after receiving a notice for an extension of time, the Contractor shall provide its determination.</p> <p>If █████ fails to give notice, it is forever barred from applying for an EOT.</p> <p>No provision for claiming delay costs exists.</p>		GC 12.1	<p>Depart</p> <ol style="list-style-type: none"> <li>Request 10 Business Days to provide claim for EOT, as opposed to 2 Business Days</li> <li>Request deletion of clause 12.8(b); █████ should not accept pass through provisions.</li> <li>Request deletion of clause 12.8(c); █████ should not be obligated to increase resources to make up the time lost.</li> <li>Request deletion of clause 12.12; █████ should not be responsible for the first full day of any delay.</li> <li>Request insertion of clear entitlement to claim delay costs for each delay the program is extended due to a QCD.</li> </ol>	
15. Delay entitlements	Time	Cost	<div>✓</div> <div>✗</div>		
• Delays in Access by client					
• Suspension by client	✓	✓ ✗	GC 25	<p>Depart</p> <p>Include the words “unless the suspension is caused by an act or omission of the Contractor” following the existing wording under clause 25.6</p>	
• Cyclones					
• Force Majeure	✗	✗	GC 49 GC 61	<p>Depart</p> <p>Reduce termination period provided under clause 61.3. Suggest 30 as opposed to 90. Request FM events as a clear QCD</p>	
• Inclement Weather	✓	✗	GC 12.1	Accept	
• COVID	Silent	Silent		<p>Depart</p> <p>Request covid events as a clear QCD</p>	



Checks	Client Position		Clause	Agree or Depart Suggestion	TCR Item
• Change in Law	Silent	Silent		Depart Request covid events as a clear QCD	
• Latent Conditions (site only)	×	×	GC 6.2(e), (f) GC 6.3 GC 22.5	Depart Suggest wording amendment to allow entitlement Request latent condition events as a clear QCD	
• Errors/ delays in client's documents	×	×	GC 6.1 GC 6.6 GC 8.4 GC 36	Depart Suggest wording amendment to allow entitlement Request covid events as a clear QCD	
• Delays by client's other contractors	×	×	GC 34	Depart Suggest wording amendment to allow entitlement Request covid events as a clear QCD	
• Predecessor Works	×	×	GC 6.7(b)	Depart Suggest wording amendment to allow entitlement	
• Delays in client's free issued equipment					
• Acceleration	n/a	✓	GC 32	Accept	
• Disruption					
• Variations	✓	✓	GC 13	See above	
• Contaminated Material	×	×	GC 6.2(e), (f) GC 6.3 GC 22.5	Depart Suggest wording amendment to allow entitlement Request covid events as a clear QCD	
• Heritage Discoveries	×	×	GC 6.2(e), (f) GC 6.3 GC 22.5	Depart Suggest wording amendment to allow entitlement Request covid events as a clear QCD	
16. Other					

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

- Note for consideration – Clause 3.5(d) requires [REDACTED] to warrant that, any work and/or materials not expressly referred to in or required by this Contract but which is necessary for the satisfactory completion and performance of the Works shall be provided by the Subcontractor at its own cost without any adjustment to the Subcontract Sum.
- Clarification suggested – Clause 3.8 requires [REDACTED] to, before commencement of any of the Works under this Contract, the Subcontractor must issue a Subcontractor's Construction Program a minimum of seven (7) Business







Days prior to the Commencement of the Works on the Site. Suggest this is amended to 14 days after the Commencement of the Works on the Site.

3. Note for consideration – Clause 3.14 confirms that, if [REDACTED] is permitted to use any scaffolding or equipment belonging to or provided by the Contractor, then such is on the express condition that no warranty or other liability on the part of the Contractor will be created or implied as to the condition or suitability of the said scaffolding or equipment or otherwise.
  4. Clarification suggested – Clause 3.15 confirms that, if [REDACTED] is a company or a related or subsidiary corporate as defined in the Corporations Act 2001 (Cth), the Directors of the Subcontractor will be required to provide a duly executed and enforceable Deed of Guarantee and Indemnity on the date of this Contract. Suggest the insertion of “Not Used” is placed under Item 15 of Schedule 1 and Annexure E.
  5. Clarification suggested – Clause 3.16 requires [REDACTED] to acknowledge that such Deed of Guarantee and Indemnity will act as a joint and several guarantee, and in the event of default of the Subcontractor under this Contract, the Contractor may hold the Guarantors [REDACTED] jointly and/or severally liable for the performance of the Subcontractor. Suggest this clause is deleted in its entirety.
  6. Clarification suggested – Clause 4.1(c) and (d) confirms that [REDACTED] is the Principal Contractor on Site, and as such, [REDACTED] will have management and control over the Third Party Works, and the Site/Premises as a whole. I suspect [REDACTED] have not made appropriate allowances for this onerous responsibility, if my assumption is correct, suggest this clause is deleted.
  7. Clarification suggested – Clause 4.2(i) and (ii) requires [REDACTED] to ensure that it has adequate systems in place to assess and eliminate hazards associated with any Third Party Work, and ensure that where hazards associated with the Third Party Work cannot be eliminated, it does, or procures to be done, all things reasonably practicable to ensure that the risks involved are adequately controlled and minimised. I suspect [REDACTED] have not made appropriate allowances for this onerous responsibility, if my assumption is correct, suggest this clause is deleted.
  8. Clarification suggested – Clause 4.3 is similar to that outlined in item 6 above, confirming [REDACTED] as the Principal Contractor on Site. Suggest this clause is deleted.
  9. Clarification suggested – Clause 16.5 includes some unacceptable preconditions in order for [REDACTED] to achieve Practical completion, suggest the following amendments:
    - (a) ~~the Subcontractor has done all things that it is required to do under the Contract to enable the Contractor to obtain a certificate of occupation from the relevant Authority;~~
    - (b) ~~the Works are complete including rectification of defects;~~
    - (c) ~~any approvals required for occupation (if required by the Contractor) have been obtained from the relevant authorities and copies of documents evidencing the approvals have been provided to the Contractor;~~
    - (d) all certifications, indemnities and warranties have been provided to the Contractor’s Representative or the Contractor;
    - (e) ~~the expiration of any Defects Liability Period;~~
    - (f) ~~the Works are complete including rectification of any defects but for any defects which the Contractor’s Representative determines the Subcontractor has reasonable grounds for not promptly rectifying and the rectification of which will not prejudice the convenient use of the Works for the usual purposes;~~
    - (g) those tests which are required by this Contract to be carried out and passed before the Works reach Practical Completion;
    - (h) certificates, testing, documents and other information required under this Contract which, in the Contractor’s reasonable opinion, are essential for the use, operation and maintenance of the Works have been supplied and completed;
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- (i) the testing and commissioning of all electrical plant and equipment, electronic devices, light fittings and the like have been completed;
- (j) the Subcontractor has provided to the Contractor or the Contractor's Representative one pdf electronic copy and two hard copies of the completion folders including all certificates, as-built drawings, manuals, warranties, keys and the like to the satisfaction of the Contractor;
- (k) performance of all obligations by the Subcontractor pursuant to Clause 22.14 of this Contract; and
- (l) all of the matters referred to in Item 5 of Schedule 1 and the Scope of Works have been completed.

10. Clarification suggested – Clause 22.14(g) requires  to provide an executed Deed of Guarantee and Indemnity in order to attain Practical Completion. Request deletion.
11. Clarification suggested – Clause 24.7 (and clause 24.17) requires  to keep the Site and the Work clean and tidy, failure to do so, may result in the Contractor setting off monies due. Suggest reference to “Site” is deleted given its broad nature.
12. Clarification suggested – Clause 24.9 requires  to ensure that the Site is kept safe and secure. I suspect  have not made appropriate allowances for this onerous responsibility, if my assumption is correct, suggest this clause is deleted.
13. Note for consideration – Clause 26.1 confirms the working hours as Mon-Fri 0700-1800, Saturday 0800-1800.
14. Clarification suggested – Clause 31.1, suggest the following wording amendment:

*If in the reasonable opinion of the Contractor and if the Contractor is able to demonstrate that the Subcontractor at any time is not employing or providing sufficient suitable supervision, labour, men, plant, materials or goods to carry out the Works within the time provided for by the Contractor's Construction Program, the Contractor may after giving ~~three (3)~~ five (5) business days' written notice (or such lesser period as the Contractor shall in its absolute discretion deem sufficient in the circumstances) employ such number of additional supervision, labour, men, plant and purchase materials and manufacture goods as it considers reasonable and necessary and the cost of doing so shall be a debt due by the Subcontractor to the Contractor. The Contractor may apply the whole or any part of the monies, which may be or before due to the Subcontractor herein in repayment of such debt.*

15. Clarification suggested – Clause 31.3, suggest the following wording amendment:

*The Contractor shall be entitled to direct the Subcontractor to undertake any work or part of the Works in any sequence whatsoever whether in accordance with the Contractor's Construction Program or a Subcontractor's Construction Program approved by the Contractor or otherwise. Should any such direction cause the Subcontractor to incur any additional cost, the difference shall be valued by the Contractor's Representative and added to the Subcontract Sum.*

16. Clarification suggested – Clause 31.4 confirms that, where this Contract states an anticipated Date of Commencement or the Contractor's Construction Program states a date for commencement for a stage or stages of the Works and the Contractor fails to give the Subcontractor access to the Site on the day, such failure shall not be a breach of this Contract and the Subcontractor has no entitlement to claim and shall not claim any adjustment of the Subcontract Sum or of the Date of Practical Completion of the works or any stage thereof or any delay, cost, loss, expense or damage consequent upon such failure to provide access to the Site other than in accordance with Clause 10 of this Contract. Suggest deletion.
17. Clarification suggested – Clause 38 confirms that breach notice shall specify the time and date by which the party who committed the breach must show cause (being not less than 2 calendar days after the notice is given to that party) a party must remedy a substantial breach the Services to be completed in accordance with the Services. Suggest this is amended to 7 Business Days.
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18. Clarification suggested – Clause 44 provides an onerous provision pertaining to “Charge over personal property collateral of the Subcontractor”. Request deletion.
  19. Clarification suggested – Clause 45 provides an onerous provision pertaining to “Charge over real property of Subcontractor”. Request deletion.
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