



Engineering and Construction Contract

OPTION A: PRICED CONTRACT WITH ACTIVITY SCHEDULE

Contract Data Forms

June 2017

(with amendments January 2019)

Contract Execution

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

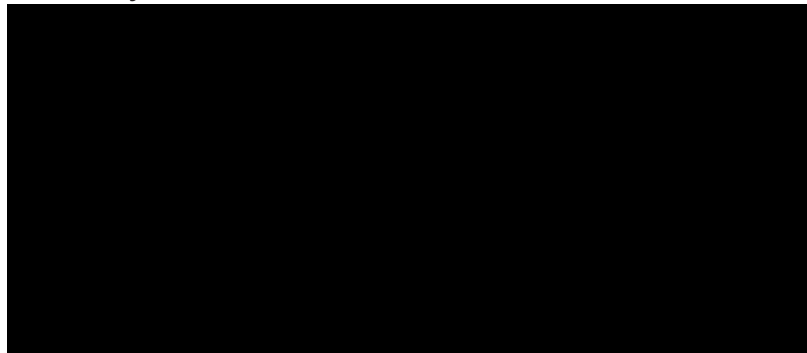
Terms in this agreement have the meanings given to them in the contract between the Environment Agency and J T Mackley & Co Ltd. for East Quay Pontoon & Slipway Works (the *works*).

The *Contractor* offers to Provide the Works in accordance with these conditions of contract and Award Letter "C21422 - Mackley -Award Letter - 231219" dated 19/12/2023 for an amount to be determined in accordance with these conditions of contract.

The *Contractor* was appointed to the framework and executed the framework agreement (with reference number RM6088).

Executed under hand

by



(Named Suppliers)

Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *conditions of contract* are the core clauses, the clauses for main Option A, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019)

Option for resolving and avoiding disputes

W2

Secondary Options

X2 Changes in law
X7 Delay Damages
X9 Transfer of Rights
X10 Information Modelling
X11 Termination by the *Client*
X15 the *Contractor's* design
X18 Limitation of Liability
Y(UK)2 - The Housing Grants, Construction and Regeneration Act 1996
Y(UK)3 The Contracts (Rights of Third Parties) Act 1999
Z: Additional conditions of contract

The *works* are

East Quay Pontoon & Slipway Works

The *Client* is

Name

Environment Agency

Address for communications

Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

[REDACTED]

The *Project Manager* is

Name

TBC

Address for communications

TBC

Address for electronic communications

TBC

The *Supervisor* is

Name

TBC

Address for communications

Jeremy Benn Associates
1 Broughton Park
Old North Lane
Broughton
Skipton
North Yorkshire
BD23 3FD

Address for electronic communications



The Scope is in

The Site Information is in

The *boundaries of the site* are

The *language of the contract* is

The *law of the contract* is the law of

The *period for reply* is except that

- The *period for reply* for is
- The *period for reply* for is

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than

2 The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are

	<i>condition</i> to be met	<i>key date</i>
(1)	<input type="text" value="N/A"/>	<input type="text" value="N/A"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>

3 Time

The *starting date* is

02 January 2024

The *access dates* are

part of the Site

date

(1) Asite

02 January 2024

(2) FastDraft

02 January 2024

(3) Sharepoint

02 January 2024

The *Contractor* submits revised programmes at intervals no longer than

4 weeks

If the *Client* has decided the *completion date* for the whole of the *works*

The *completion date* for the whole of the *works* is

24 July 2024

Taking over the *works* before the Completion Date

The *Client* is willing to take over the *works* before the Completion Date (Delete as applicable)

If no programme is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

4 weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is

4 weeks

The period between Completion of the whole of the *works* and the *defects date* is

104 weeks

The *defect correction period* is

2 weeks

except that

• The *defect correction period* for

Safety issue for the public

is

24 hours

• The *defect correction period* for

is

5 Payment

The *currency of the contract* is the

£ Sterling

The *assessment interval* is

Monthly

The *interest rate* is

2.0

% per annum (not less than 2) above the

Base rate (Bank Rate)

rate of the

Bank of England

Bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

The *Client* will make payment within 14 days of the date of the invoice.

6 Compensation events

The place where weather is to be recorded is

Hastings (50.855, 0.572)

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 09:00 hours GMT

and these measurements:

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The *weather measurements* are supplied by

Met Office

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

Hastings

and which are available from

Met Office

Where no recorded data are available

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

--

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is

%

If there are additional compensation events

These are additional compensation events

Wind speeds in excess of 24 miles per hour.

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's* liabilities

(1) Not used

(2) Not used

(3) Not used

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is

£5,000,000

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

£5,000,000 or the minimum amount required by law if that is greater

If the *Client* is to provide
Plant and Materials

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Nil

If the *Client* is to provide any
of the insurances stated in
the Insurance Table

The *Client* provides these insurances from the Insurance Table

(1) Insurance against

Minimum amount of cover is

The deductibles are

(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

If additional insurances
are to be provided

The *Client* provides these additional insurances

(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

The *Contractor* provides these additional insurances

(1) Insurance against	Contractor's all risk – loss or damage to the works, plant and material including cover for plant and materials provided by the Client.
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	Professional indemnity
Minimum amount of cover is	£2,000,000.00
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

N/A

The place where arbitration is to be held is

N/A

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

N/A

If Option W1 or W2 is used

The *Senior Representatives* of the *Client* are

Name (1)

[REDACTED]

Address for communications

Environment Agency
Horizon House, Deanery Road
Bristol
BS1 5AH

Address for electronic communications

[REDACTED]

Name (2)

N/A

Address for communications

N/A

Address for electronic communications

N/A

The *Adjudicator* is

Name

To be confirmed

Address for communications

To be confirmed

Address for electronic communications

To be confirmed

The *Adjudicator nominating body* is

The Institution of Civil Engineers

X5: Sectional Completion

If Option X5 is used

The *completion date* for each *section* of the *works* is

<i>Section</i>	<i>description</i>	<i>completion date</i>
(1)	N/A	N/A
(2)		
(3)		
(4)		

X7: Delay damages

If Option X7 is used without Option X5

Delay damages for Completion of the whole of the *works* are

per day

If Option X7 is used with Option X5

Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)		
(2)		
(3)		
(4)		
The delay damages for the remainder of the <i>works</i> are		

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

£2,000,000

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

6 years

X15: The Contractor's design

If Option X15 is used The *period for retention* following Completion of the whole of the *works* or earlier termination is 6 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim £2 million

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is 6 years

The Contractor's
design

X15

X15.1 The Contractor is not liable for a Defect which arose from its design unless it failed to carry out that design using the skill and care normally used by professionals designing works similar to the works.

X15.2 If the Contractor corrects a Defect for which it is not liable under the contract it is a compensation event.

X15.3 The Contractor may use the material provided by it under the contract for other work unless

- the ownership of the material has been given to the Client or
- it is stated otherwise in the Scope.

X15.4 The Contractor retains copies of drawings, specifications, reports and other documents which record the Contractor's design for the period for retention. The copies are retained in the form stated in the Scope.

X15.5 The Contractor provides insurance for claims made against it arising out of its failure to use the skill and care normally used by professionals designing works similar to the works. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data.

X15.6 Before the starting date and on each renewal of the insurance policy until the defects date, the Contractor submits to the Project Manager for acceptance a certificate which states that the insurance required by this clause is in force.

After the defects date and on each renewal of the insurance policy until the end of the period stated in the Contract Data for which insurance is to be maintained, the Contractor submits to the Client for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the Contractor's insurer or insurance broker.

The Project Manager or the Client accepts the certificate if the insurance complies with this clause and if the insurer's commercial position is strong enough to carry the insured liability.

The Client's acceptance of an insurance certificate provided by the Contractor does not change the responsibility of the Contractor to provide the insurance stated in this clause.

X16: Retention

If Option X16 is used

The retention free amount is

The retention percentage is

%

Retention bond

The Contractor may not give the Client a retention bond (Delete as applicable)

X18: Limitation of liability

If Option X18 is used

The Contractor's liability to the Client for indirect or consequential loss is limited to

£1,000,000

For any one event, the Contractor's liability to the Client for loss of or damage to the Client's property is limited to

£5,000,000

The Contractor's liability for Defects due to its design which are not listed on the Defects Certificate is limited to

£2,000,000

The Contractor's total liability to the Client for all matters arising under or in connection with the contract, other than excluded matters, is limited to

£5,000,000

The end of liability date is

6

years after the Completion of the whole of the works

Y(UK)1: Project Bank Account – NOT USED FOR THIS CONTRACT

Charges made and interest paid by the *project bank*

The *Contractor* **is** to pay any charges made and to be paid any interest paid by the *project bank* (Delete as applicable)

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is days after the date on which payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used

term

beneficiary

<input type="text" value="N/A"/>	<input type="text" value="N/A"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3

term

beneficiary

The provisions of Options Y(UK)1	<input type="text" value="N/A"/>
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Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

Z1 Correctness of Site Information and other documents

Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client*, but is not warranted correct. Clause 60.3 does not apply to such Site Information and the *Contractor* is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the works.

Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the *Contractor* is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the works.

Z3 Prevention: No change to prices

Delete first sentence of clause 62.2 and replace with:

"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the Contractor. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the Contractor."

Delete 'The' At start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."

Z10 Payments to subcontractors, sub consultants and Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works in excess of £25,000.00. Payment to subcontractors will be a maximum of 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

Z11 Transfer of Rights under Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999

Z11.1 The *Contractor* warrants all design complies with the contract whether undertaken by the *Contractor* or by sub-contractors.

Z11.2 All contracts for design employed by the *Contractor* must include:

- Y(UK)3 The *Contracts* Rights of Third Parties) Act 1999
- A requirement for the *Contractor's* sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the Contractor in this Call-off contract
- A clause to give the *Client* (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999,
- A clause to ensure that neither the *Contractor* nor their sub-contractor can alter the provisions of their sub-contract without the consent of the *Client*
- A clause to ensure that the *Client's* rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the *Contractor's* rights against the design consultant under this agreement
- A clause to state that except as provided in clause Z11.1, the agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but the clause does not affect any right or remedy of any other party which exists or is available apart from that Act.

Z21 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Project Manager's* certificate. Delete existing clause 51.2:

51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the *Project Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

Z22 Resolving Disputes

Delete W2.1

Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the Client on an annual basis.

Z111 ECC - Fee adjustment for non compliance with Scope

Delete existing 11.2 (10) and replace with the following clause

The Fee is the amount calculated by applying the fee percentage to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the fee percentage is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

PART TWO – DATA PROVIDED BY THE CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *Contractor* is

Name

JT Mackley & Co Ltd

Address for communications

Bankside house
Henfield Road
Small Dole
West Sussex BN5 9XQ

Address for electronic communications

[REDACTED]

The *fee percentage* is

[REDACTED] %

The *working areas* are

The site, all Mackley and sub-contractor offices, plant yard and fabrication facilities

The *key persons* are

Name (1)

[REDACTED]

Job

Contracts Manager

Responsibilities

Commercial, programme and SHEW performance of the contract. Provision of adequate resources to complete the works. Collaboration with the Client and other parties

Qualifications

BEng, SMSTS, CSCS, SEATS

Experience

20 yrs + civil engineering experience

Name (2)

[REDACTED]

Job

Project Manager

Responsibilities

Planning and management of the works, SHEW performance, management of sub-contractors on site

Qualifications

NVQ Level 4, SMSTS, SEATS, CSCS

Experience

15 years civil engineering experience

Name (3)

[REDACTED]

Job

Design Manager / Senior Design Engineer

Responsibilities

Design of the works including Coordination with specialist Designers (pontoons, services etc)

Qualifications

BSc Eng (Civil), M Eng (Ports and Coastal Engineering, Temporary Works Coordinator, Carbon in Construction

Experience

over 20 years Civil Engineering experience

The following matters will be included in the Early Warning Register

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2 The Contractor's main responsibilities

If the Contractor is to provide The Scope provided by the Contractor for its design is in Scope for its design

TBA

3 Time

If a programme is to be identified in the Contract Data The programme identified in the Contract Data is

T23.090 - CI31 -
FPFA01 - 20231219 -
Programme - Strand
Quay Pontoon & Slipway
works (2.0)

If the Contractor is to decide the completion date for the whole of the works The completion date for the whole of the works

N/A

5 Payment

The activity schedule is

Strand Quay Activity
Schedule v1

The tendered total of the Prices is

[REDACTED]

Resolving and avoiding disputes

If Option W1 or W2 is used The Senior Representatives of the Contractor are

Name(1)

[REDACTED]

Address for communications

Bankside House
Henfield Road
Small Dole
West Sussex, BN5 9XQ

Address for electronic communications

[REDACTED]

Name(2)

[REDACTED]

Address for communications

Bankside House
Henfield Road
Small Dole
West Sussex, BN5 9XQ

Address for electronic communications

[REDACTED]

If Option W3 is used and the number of members of the Dispute Avoidance Board is three

The Contractor's nomination for the Dispute Avoidance Board is

Name

[REDACTED]

Address for communications

[REDACTED]

Address for electronic communications

[REDACTED]

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

N/A

named suppliers are

N/A

Data for the Short Schedule of Cost Components

The *people rates* are

category of person

unit

rate

Technical Services
Manager

hour

Design Coordinator

hour

Senior Designer

hour

The published list of Equipment is the edition current at the Contract Date of the list published by

CECA

The percentage for adjustment for Equipment in the published list is

% (state plus or minus)

The rates for other Equipment are

Equipment

rate

DH25 Movax Impact
Piling Hammer

SG75V Movax Piling Unit
(Includes MCS Pro)

