



For The Attention of Martin Foerder  
Project Director  
Bilfinger Berger Siemens CAF Consortium  
9 Lochside Avenue  
Edinburgh Park  
Edinburgh EH12 9DJ

Our Ref: INF CORR 5764

Date: 9th August 2010

By fax and personal delivery

Dear Sirs,

**INFRACO CONTRACT  
REMEDIABLE TERMINATION NOTICE  
INFRACO DEFAULT (a): DEFECTS ON PRINCES STREET**

Enclosed is a Remediable Termination Notice in respect of Infraco Default under the Infraco Contract.

We look forward to receiving your rectification plan within 30 Business Days of the date of this Remediable Termination Notice.

Yours faithfully,



Steven Bell  
Project Director – Edinburgh Trams

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## REMEDIABLE TERMINATION NOTICE

### INFRACO DEFAULT (a): DEFECTS ON PRINCES STREET

#### 1. Infraco Default (a)

- 1.1 The Infraco has breached its obligations: under clause 7.2 of the Infraco Contract to ensure that, in carrying out and completing the Infraco Works, the Infraco exercises a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity.
- 1.2 The Infraco has breached its obligations: under clause 34.2 to ensure that the whole of the materials and the mode, manner and speed of construction of the Infraco Works are in accordance with the Infraco Contract.
- 1.3 The Infraco has breached its obligations: under clause 26.1 of the Infraco Contract to provide all necessary superintendence during the construction and completion of the Infraco Works and to ensure that such superintendence is given by sufficient persons having adequately knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe construction of the Infraco Works, and under clause 7.5.3 to minimise the potential for accidents.
- 1.4 Individually and cumulatively, these breaches materially and adversely affect the carrying out and completion of the Infraco Works.
- 1.5 This is an Infraco Default (a) under the Infraco Contract.

#### 2. Nature of Infraco Default which requires to be rectified

- 2.1 The Infraco carried out Infraco Works on Princes Street during March 2009 to November 2009.
- 2.2 The Infraco has installed seriously defective works on Princes Street and has failed to remedy this. There are significant faults in the works which (i) pose an appreciable physical health and safety hazard; (ii) are capable of creating further hazards; and (iii) will severely reduce the life of the pavement. There are failings in the areas which are constructed of granite setts. The Infraco has not provided adequately qualified superintendence of the Infraco Works which would have prevented the installation of defective works on Princes Street. **tie's** assessment, on the basis of inspections carried out to date, is that poor workmanship, an ill-advised choice of materials, inappropriate design and the Infraco's lack of supervision on Site have all contributed to these defects.
- 2.3 The nature of the seriously defective works on Princes Street includes:
  - 2.3.1 At a considerable number of locations on Princes Street, the bituminous bound pavement materials have cracked and broken apparently from a lack of support. From inspection, it is surmised that this is (in whole or in part) caused by poor compaction in and around the rail flange.

- 2.3.2 There are many locations where there is a significant step down from the top of the rail and wearing surface, causing a potential hazard to road users and pedestrians.
  - 2.3.3 The regularity and application of the joint sealant is unsatisfactory.
  - 2.3.4 The workmanship on the granite setts is of an inadequate standard.
  - 2.3.5 The pavement has a life expectancy of only months before maintenance is required.
  - 2.3.6 The Infraco has laid road surfacing which is not technically compatible with the track form installation in Princes Street and is already showing obvious dilapidation.
- 2.4 The Infraco's letter (ref: 25.1.201/BDo/5937) of 9 June 2010 admitted that the works carried out to Section 1C/D (i.e. on Princes Street) are not in accordance with the Infraco Contract. tie responded to this letter on 18 June 2010 (ref: INF CORR 5400) with instructions on this matter. As at the date of this Remediable Termination Notice, the Infraco has neither responded to this letter and the instructions in it, nor taken any steps to facilitate and commence the necessary rectification works. This will also lead to disruption to the City of Edinburgh and a breach by Infraco of clause 7.5.2 through failure to minimise disruption to a central shopping and transport thorough fare in the City of Edinburgh.
- 2.5 The occurrence of seriously defective works on Princes Street is a breach of the Infraco's obligations under clause 7.2, 7.5.2 and 34.2 of the Infraco Contract. Individually and cumulatively, these breaches materially and adversely affect the carrying out and completion of the Infraco Works.

tie looks forward to receipt of a comprehensive rectification plan from the Infraco within 30 Business Days of the date of this Remediable Termination Notice.

for and on behalf of tie Limited



Project Director

2/8/10 Date