

[to be typed on tie headed paper]

For the attention: Mr M Foreder

Project Director
Bilfinger Berger
9 Lochside Avenue
Edinburgh
EH12 9DJ

Dear Sirs

**EDINBURGH TRAM NETWORK
INFRACO CONTRACT - REMEDIABLE TERMINATION NOTICE**

This notice is given pursuant to clause 90.1.2 of the Infraco Contract and relates to the following Infraco Defaults.

1. **tie** has served [number] **tie** Notices of Change pursuant to clause 80.1 and 81.2. On [no] occasions as Infraco produced on time or at all a competent Estimate in compliance with clauses 80.4 and 80.5 to enable valuation of the notified Change under clause 80.6 and to enable any other efficient change management and implementation to take place, or proper and timely notices of expected late Estimates. The following provisions apply:
 - 1.1 Infraco is not approaching all Permitted Variations on a collaborative and Open Book Basis (as defined in the Infraco Contract) (clause 6.3.1).
 - 1.2 Infraco is not compliant with its obligations in respect of the delivery of Estimates. In particular, Infraco:
 - 1.2.1 has not provided **tie** with Estimates within 18 Business Days of receipt of the tie Notice of Change, or in the case of [alleged] Notified Departures, within 18 Business Days of the date of notification by the Infraco of the Notified Departure (clause 80.2.2);
 - 1.2.2 when submitting a request for a period of longer than 18 Business Days to submit its Estimate, the Infraco has not delivered to tie a reasonable request for a reasonable extended period of time for return of the Estimate (to be agreed between the Parties, acting reasonably). In particular, the Infraco has not stated the reasons why it considers the Estimate required to be too complex to be completed and returned within 18 Business Days (clause 80.3); and
 - 1.2.3 has not delivered valid Estimates in compliance with clause 80.
2. Infraco is refusing or in any event substantially failing to meet its obligations to carry out and complete the Infraco Works. [x number locations - describe].

Infraco has no technical or logistical reason not to progress the Infraco Works as originally described in the contract and has had no instruction from tie to suspend or otherwise delay the Infraco Works but Infraco has not progressed the Infraco Works in those locations [if work is not commenced at all or if certain activities short of breaking ground have been completed only, or other more progressed activities appear to be stopped - please give details]. Infraco have failed substantially to commence works in Princes Street [beyond - give activity details] and have confirmed their intention not to proceed with the Infraco Works (both originally - specified work and Change items) in that location. The following provisions apply:

- 2.1 Infraco have failed to progress the Infraco Works with due expedition and in a timeous and efficient manner without delay, to achieve timeous delivery and completion of the Infraco Works (or any part thereof) and its other obligations under the contract in accordance with the Programme. Clause 60.1.
- 2.2 [Infraco has refused and failed to implement the Change notified under [notice of change 12 January 2009 [no] instructed pursuant to clause 80.13 and 80.15 dated 19 February 2009].
- 2.3 [Infraco has failed and have refused to put forward and implement such steps as are necessary to expedite progress of the Infraco Works following notification pursuant to clause 61.1 dated [] to accelerate progress of the works.]
- 2.4 [Infraco has failed to implement notified Changes [details required] pursuant to tie instruction pursuant to clause 80.13, dated [].
- 2.5 [Infraco has failed to implement notified Changes [details required] pursuant to tie instruction pursuant to clause 80.15, dated [].
- 2.6 The Infraco is not exercising the reasonable level of professional skill, care and diligence to be expected from 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 (clause 7.2).
- 2.7 The Infraco has not complied with its obligations under clause 28 in respect of the appointment of Key Sub-Contractors, which directly impacts upon the ability to provide Estimates and Infraco has failed to comply with the tie notice dated [] requiring delivery of key subcontractor collateral warranties pursuant to clause 28.7.
- 2.8 The Infraco is not taking all reasonable steps to mitigate the effects of any [Infraco-driven] delay to the progress of the Infraco Works (clause 60.9).
- 2.9 The Infraco is not using its reasonable endeavours to adjust the order and sequence in which the Infraco proposes to execute the Infraco Works in such a manner as to minimise the effects of delay in the progress of the Infraco Works. The Infraco is not using its reasonable endeavours to avoid altogether any delay in the progress of the Infraco Works. The Infraco is not using its reasonable

endeavours to mitigate the costs (clause 65.8.2). Note that **tie** is obliged, in assessing any delay or extension of time or costs or relief for the purposes of Clause 65 (*Compensation Events*), not to take into account any event or cause of delay or costs which is caused by any negligence, default or breach of contract by the Infraco or any of the Infraco Parties (clause 65.8.1).

3. Infraco has failed substantially in its obligations as to communication, liaison, corporation and good faith, rendering impossible the efficient administration of the contract and the efficient project management of the Infraco Works. **tie** refers to the matters before set out in this notice and [needs other examples, not referred to in sections 1 and 2]. The following provisions apply:
 - 3.1 The Infraco is not working in mutual co-operation with **tie** to fulfil its agreed roles and responsibilities and apply its expertise to carry out and complete the Infraco Works in accordance with the Infraco Contract (clause 6.1).
 - 3.2 The Infraco is not co-operating with **tie** in order to facilitate the performance of the Infraco Contract (clause 6.3).
 - 3.3 The Infraco is not using reasonable endeavours to avoid unnecessary complaints, disputes and claims with **tie** (clause 6.3.2).
 - 3.4 The Infraco is not taking all reasonable steps to manage, minimise and mitigate all costs (clause 6.3.6).
 - 3.5 The Infraco is not using reasonable endeavours to ensure that in carrying out the Infraco Works it minimises costs (clause 7.5.5).

We look forward to receipt of any comprehensive rectification plan as you may decide to deliver pursuant to clause 90.2.

Yours faithfully,

Steven Bell
Project Director, Edinburgh Tram