



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 5819

Date: 16th August 2010

By fax and by hand

Dear Sirs,

**Edinburgh Tram Network- Infraco
Remedial Termination Notice – Infraco Default (a): Clause 60**

Please find enclosed a Remedial Termination Notice issued in accordance with Clause 60 of the Infraco Contract.

Yours faithfully



Steven Bell

Project Director – Edinburgh Tram

Citypoint Offices, 65 Haymarket Terrace, Edinburgh, EH12 5HD

Tel: +44 (0) 131 623 8600 Email: info@edinburghtrams.com Fax: +44 (0) 131 623 8601 Web: www.edinburghtrams.com

Registered in Scotland No: 230949 at City Chambers, High Street, Edinburgh, EH1 1YJ. Edinburgh Trams is an operating name of tie Ltd.

Direct dial: + 
e-mail: steven.bell@tie.ltd.uk
web: www.tie.ltd.uk

TIE00252793_0001

REMEDIAL TERMINATION NOTICE

INFRACO DEFAULT (a): CLAUSE 60

1. Infraco Default (a)

- 1.1 The Infraco has breached its obligations under Clause 60.2 of the Infraco Contract by not updating the Programme in accordance with the provisions of Schedule Part 2 (*Employer's Requirements*).
- 1.2 The Infraco has breached its obligations under Clause 60.9 of the Infraco Contract by not taking all reasonable steps to mitigate the effects of any delay to the progress of the Infraco Works.
- 1.3 Individually and cumulatively, these breaches materially and adversely affect the carrying out and completion of the Infraco Works. As a result of these breaches, the Infraco is not carrying out the Infraco Works to a meaningful or contractually compliant Programme. In breach of these provisions, and in breach of the Infraco's obligations under Clauses 6.1 and 7.2 of the Infraco Contract, the Infraco has failed to give **tie** any visibility of how the Infraco Works are progressing in accordance with the Programme (as defined in the Infraco Contract), any slippage or any mitigation measures to limit the over-run to the Programme. This denies **tie** the ability to exercise its rights under the Infraco Contract and denies **tie** the right to make a decision about instructing acceleration measures pursuant to Clause 61.2 of the Infraco Contract.
- 1.4 This is an Infraco Default (a) under the Infraco Contract.

2. Nature of Infraco Default which requires to be rectified

- 2.1 For the duration of the Infraco Contract (since 14 May 2008), the Infraco has failed to comply with the provisions of the Infraco Contract by:
 - 2.1.1 not updating the Programme in accordance with the requirements of Schedule Part 2 (*Employer's Requirements*); and
 - 2.1.2 not taking all reasonable steps to mitigate the effects of any delay to the progress of the Infraco Works by not applying measures to limit the over-run to the Programme and wrongly assuming that "Designated Work Area" means a full intermediate section of the Infraco Works.
- 2.2 **tie** has thereby been denied its contractual entitlement to consider whether it would be appropriate to issue instructions pursuant to Clause 61.2 of the Infraco Contract.
- 2.3 Repeatedly throughout the duration of the Infraco Contract to date, **tie** has corresponded with the Infraco on this matter and discussed this matter with the Infraco, in an attempt to uphold **tie's** contractual entitlements under Clauses 60.2 and 60.9 and Schedule 2 (*Employer's Requirements*) of the Infraco Contract. The Infraco has persisted in not complying with the terms of the Infraco Contract on this matter.
- 2.4 **tie** expressly instructed the Infraco in writing to properly update the Programme in accordance with the Infraco Contract, which includes allowing for mitigation measures, by the following letters:

Date	Reference
15 March 2010	Ref: INF.CORR. 4426
1 April 2010	Ref: INF.CORR 4648
20 May 2010	Ref: INF. CORR 5092

2.5 tie expressly required the Infraco in writing to comply with the Employer's Requirements, including inter alia Section 12, by the following letters:

Date	Reference
2 July 2010	INF. CORR 5449/MJ
16 July 2010	INF. CORR. 5632/MJ

2.6 As at the date of this Remediable Termination Notice, the Infraco has not complied with tie's instructions pursuant to any of the letters mentioned in paragraphs 2.4 and 2.5 above, thereby having a material and adverse effect on the carrying out and completion of the Infraco Works.

3. Rectification Plan

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

for and on behalf of tie Limited



Project Director

..16 August 2010... Date