

TORBAY COUNCIL

Conditions of Contract

Contract Reference

TPL0321

Contract Title

**Highway Surface Dressing
2021**

The Conditions of Contract shall be the **General Conditions of ICC Conditions of Contract 2011 prepared by the Association for Consultancy and Engineering and Civil Engineering Contractors Association** modified and added to as shown below, and those Conditions as amended shall be deemed to form and shall be read and construed as part of this Contract.

CLAUSE 17 Add to the Clause the following:

- (4) "The Contractor shall, at his own expense, provide such labour as is necessary to assist the Engineer's Representative in measuring, supervising, checking, testing, examining and setting out of Contractor's work in any way whatsoever."

CLAUSE 22 The following Sub-Clause to be added:

- (5) The Contractor shall maintain in the joint names of the Employer and the Contractor, insurance's in respect of any expense, liability, loss, claim, or proceedings which the Employer may incur or sustain by reason of damage to any property other than the Works caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works excepting damage:-
 - (i) caused by the negligence, omission or default of the Contractor, his servants or agents or of any sub-contractor, his servants or agents;
 - (ii) attributable to errors or omissions in the designing of the Works;
 - (iii) which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution;
 - (iv) arising from a nuclear risk or a war risk.

CLAUSE 32 This Clause is deleted in its entirety and substituted by the following:-

"Unless otherwise provided for in the Specification and/or the Bill of Quantities, all the old building materials on or in the site at the time the Contractor receives possession thereof shall remain the property of the Employer and shall not be removed by the Contractor from the site until permission for such removal has been given by the Engineer. All other materials or things of every description whatsoever including all fossils, coins, articles of value or antiquity and structures and remains or things of geological or archaeological interest and all timber, growing crops and the like found or being upon or excavated from the site shall remain the property of the Employer and shall be dealt with by the Contractor as the Engineer may direct."

CLAUSE 34 This Clause is substituted by the following:

- (1) "The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modifications or re-enactment thereof relating to discrimination in employment."

"The Contractor shall take all reasonable steps to secure the observance of the provisions of sub-Clause (1) of this Clause by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract."

- (3) "The Contractor shall keep proper wage books and time sheets, showing the wages paid to and the time worked by the work people in his employ in and about the execution of the Contract, and such wages books and time sheets shall be produced whenever required for the inspection of any Officer authorised by the Employer."

CLAUSE 45 This Clause is deleted in its entirety and substituted by the following:

"Subject to any provisions to the contrary contained in the Contract, no work shall save as hereinafter provided be carried on during the night or on Sundays without the permission in writing of the Engineer save when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer's representative. Where it is proposed to adopt rotary or double shifts in connection with tides, work will be permitted during the night provided that where such work is carried out, noise shall be reduced to a minimum.

If however, the noise is such as to give rise to objections and in the opinion of the Employer it shall appear necessary or desirable to prohibit the carrying out of noisy work during the night, the Engineer may order accordingly. The Contractor shall be deemed to have included for this in the rate and prices inserted in the Bills of Quantities or Schedule of Rates. Provided always that the Employer's decision as to whether or not it is necessary or desirable to prohibit the carrying on of any work during the night shall be final and not subject to arbitration. For the purposes of this Clause "work during the night" shall mean work carried out during a period of eight hours to be defined by the Engineer.

CLAUSE 60

Sub-Clause (7) is deleted and substituted by the following:

Interest on Overdue Payments

- (7) In the event of failure by the Engineer to certify or the Employer to make payment in accordance with sub-Clauses (2), (4) and (6) of this Clause the Employer shall pay to the Contractor interest upon any payment overdue thereunder at a rate per annum equivalent to one per cent plus the average of the Base Lending Rates announced by

Lloyds, Barclays, National Westminster and HSBC Banks which are current on the date upon which such payment first becomes overdue. In the event of any variation in the said Base Lending Rates being announced whilst such payment remains overdue the interest payable to the Contractor for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation.

CLAUSE 61 Sub-Clause (2) is deleted and substituted by the following:

- (2) "The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the contract or the execution of the Works unless before the giving of the Maintenance Certificate under this Clause the Contractor shall have made a claim in writing in respect thereof giving full and detailed particulars of the circumstances giving rise to the claim, of the amount of the claim and of the manner in which such amount is calculated."

Clause 68

In Sub-Clause (2) lines 2 and 3 the words "Employers last known address (or in the event of the Employer being a Company to or at its registered office)", are deleted and substituted by the following: "Town Hall, Torquay, Devon".

Clause 72 SPECIAL CONDITIONS

The following special conditions form part of the Conditions of Contract.

Clause 73 Corrupt Gifts and Payments of Commission

The Contractor or anyone employed by him or acting on his behalf shall note:

(a) Offer or give or agree to the giving to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract with the Employer or for showing or forbearing to show favour or disfavour of any person in relation to this or any other Contract with the Employer; or

(b) Enter into this or any other Contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

73(2) Any breach of the above prohibitions or the commission of any offence under the Prevention of Corruption Acts 1889 to 1916 or the giving of any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972 by the Contractor or anyone employed by him or

acting on his behalf (whether such breach or offence is with or without the knowledge of the Contractor) in relation to this or any other Contract with the Employer shall entitle the Employer to enter upon the Site under Clause 65 and expel the Contractor therefrom and thereupon the provisions of Clause 65 shall have effect as if such breach or offence as aforesaid were expressed in Clause 65(1) as a ground therefore. In that case the Contractor shall not be entitled to payments on the Contract or Contracts beyond those (if any) provided for by Clause 65. In addition to the costs and expenses recoverable by the Employer as provided for in Clause 65(5) the Employer shall also be entitled to recover from the Contractor any other costs or losses incurred by the Employer consequent upon such entry and expulsion under this Clause and to receive from the Contractor such sum as in the opinion of the Employer represents the amount or value of any gift consideration or commission paid or agreed to be paid in breach of this Clause.

73(3) In every sub-contract of any part of the Works the Contractor shall incorporate such provisions as will impose on the sub-contractor liabilities similar to those imposed on the Contractor by this Clause and such provisions as will entitle the Contractor to the sub-contract on terms equivalent to those contained in Clause 65. In the event of any breach by the sub-contractor of any such provision the Contractor shall without prejudice to any of his obligations under this Contract take action in accordance with the terms of the sub-contract to exercise his rights against the sub-contractor. Failure by the Contractor to take such action shall be grounds for the exercise by the Employer of his right under paragraph (2) of this Clause to enter the Site and expel the Contractor. When the Contractor exercises his rights against a sub-contractor in accordance with the Clause he shall make no claim nor agree to any claim being made on his behalf against the Employer in respect of any consequential delays and extra costs arising from the Contract.

73(4) Any dispute to the amount recoverable by the Employer from the Contractor under this Clause shall be settled in the manner provided by Clause 66.

CLAUSE 74 Recovery of Sums due from the Contractor

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with the Employer.

CLAUSE 75 Accounts for Audit

In accordance with the Employers Standing Order, the Contractor must provide for careful custody of all invoices, time sheets etc., and produce same if and when required by the Employer's Treasurer or to the Employer's Auditor when auditing

the Employer's accounts for the financial year in which the final payment is made.

CLAUSE 76 Labour only Sub-Contractor

The Employment on the works by the Contractor of a sub-contractor for labour only is subject to the following conditions:

- (1) That the Contractor shall require the labour only sub-contractor to observe and the sub-contractor shall observe the Clauses hereof relating to the payment of fair wages and the keeping of records.
- (2) That in the event of a default by the labour only sub-contractor the Contractor shall accept responsibility for:
 - (a) wages at the standard rate due (but not paid) to the sub-contractors operatives in respect of time worked on the site during the pay week immediately prior to the default, plus any time worked in the pay week in which the default occurs; and
 - (b) annual and public holidays credit stamps which should have, but have not, been affixed to the cards of the sub-contractor's operatives during the period of their employment on the site.
- (3) The Contractor shall satisfy himself that the operatives employed by the labour only sub-contractor are covered by a current employer's liability insurance policy, which policy shall be produced to the Employer before the commencement of any work by the labour only sub-contractor.

CLAUSE 77 Finance Act, 1971

The Contractor's attention is drawn to Sections 29-31 and Schedule 5 of the 1971 Finance Act. The provisions of this section and schedule are set out in the Board of Inland Revenue Pamphlets IR14 and IR15. The Contractor will be required to satisfy the Employer prior to signing the Contract that he is either a limited company or has a certificate of exemption from the Inland Revenue.

The Contractor is also specifically reminded that it is his duty and responsibility to satisfy himself as to the exemption status of all sub-contractors whether nominated or otherwise.

CLAUSE 78 Provisional Sums

Certain of the provisional sums in the Bill of Quantities or Schedule of Rates may relate to work to be carried out to the order of the Engineer or by the Employer's direct labour organisation. In these cases, the provisional sum will be deducted in whole from the Contract price and the Engineer will place orders for the work and pay all account in connection therewith. The Contractor will not therefore be allowed in relation to these items any additional sums in respect of charges or

profits referred to in Clause 58 of the General Conditions.

Should the Contractor require any payment to cover his obligations in connection with any of the above he should include such sums in the General Items of the Bill of Quantities or Schedule of Rates.

Clause 79 Employment of Local Labour

The Contractor, when employing persons other than his regular workforce or staff for the purpose of this Contract, shall where reasonably practicable give preference to persons bona fide resident or usually employed in the Borough of Torbay and to this end where reasonably practicable utilise the services of the Torbay Employment Services Agency.

Clause 80 Health and Safety at Work - Contractor's Responsibilities

- (1) The Contractor throughout the performance of the Contract shall comply with all the relevant Acts of Parliament, Statutory Regulations, Codes of Practice and all legislation connected therewith or made thereunder or any statutory modification or re-enactment thereof. The Construction (Design & Management) Regulations 1994 shall apply to this Contract.
- (2) The Contractor shall adopt safe methods of work for all operations coming within the scope of the Contract or any associated operations in order to protect the health and safety of their own employees, other employees, including the Employer's employees, and all other persons including members of the public. The safe methods of work shall be no less effective than that required by the Employer's Statement of Health and Safety Policy, the Council's Manual of Health and Safe Systems of Work and relevant HSE Codes of Practice & Guidance Notes.

A copy of the Statement of Health and Safety Policy and the Council's Manual of Health and Safe Systems of Work can be inspected during normal office hours at the Town Hall, Torquay by prior arrangement with the Engineer. Copies of relevant HSE Codes of Practice and Guidance Notes are available from HMSO.

- (3) The Contractor shall review his Health and Safety Policy and Safe Working Procedures as often as may be necessary and in the light of changing working practices, introduction of new equipment, etc and shall present the Employer with any revisions thereto when they occur.
- (4) The Contractor shall have full regard for the safety of all persons entitled to be associated with the Contract and shall keep all sites, depots, plant, vehicles and machinery (so far as the same is under his control) in an orderly state appropriate to the avoidance of danger to such persons and shall, inter alia, in connection with the Contract provide and maintain at his own cost all lights, guards, fencing,

warning signs and watching when and where necessary or required by the Engineer, the Employer's Safety Officer, or by a competent statutory or other authority for the protection or for the safety and convenience of the public or others.

CLAUSE 81(1) Precautions against Pollution of Rivers etc

In executing the works the Contractor shall take all necessary precautions to secure the efficient protection of rivers streams waterways lakes and the like against pollution which may be likely to contaminate water supplies or cause injury to fish or plant life.

(2) Precautions in Carrying out Works

In carrying out the Works the Contractor shall take every precaution to avoid injury to or improper interference with the use of any roads streets canals rivers watercourses sewers drain pipes or cables.

CLAUSE 82 Contractor to Comply with Special Requirements in Relation

to Statutory Bodies

The Contractor shall comply with the Special Requirements in relation to Powergen/National Power, South Western Power Distribution, Wells and West Utilities, British Telecom Open Reach, South West Water Services Ltd., Environment Agency, , Virgin Media Ltd, Torbay Council (as local Highway Authority), Environment Agency (as Waste Regulation Authority), Network Rail as set out in the pages immediately following these Conditions of Contract. Compliance with such Special Requirements shall not relieve the Contractor of any of his other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve him of his responsibility to comply with the said Special Requirements.

CLAUSE 83 Peacetime Emergencies/Civil Defence

- (1) Where an emergency or disaster involving destruction of or danger to life or property occurs, or is imminent, or there is reasonable ground for apprehending such an emergency or disaster, and the Employer is of opinion that it is likely to affect the whole or part of their area or all or some of the Borough of Torbay's inhabitants and/or where in the event of hostile attack by a foreign power or a threat of such an attack the Employer has a duty to carry out plant for the purposes of civil defence within the meaning of the Civil Defence Act 1948, then:
 - (a) The Contractor shall, immediately on receipt of an instruction from the Engineer, make all its resources organised to carry out its contract (staff including supervisory staff, plant and equipment, materials and premises) available to the

Employer to assist in dealing with the emergency, work in pursuit of this sub-Clause being hereafter referred to as "emergency work".

- (b) All emergency work to be carried out must be authorised by the Engineer.
 - (c) During the period the Contractor is engaged in carrying out emergency work, the whole or part of the work required to be carried out under this Contract may be suspended.
 - (d) Payment for emergency work shall be in accordance with the dayworks schedule incorporated within the Bill of Quantities or Schedule of Rates unless otherwise instructed by the Engineer.
- (2) From time to time and as instructed by the Engineer, the Contractor may be required to be involved in emergency training exercises.

Payment for such training shall be in accordance with the dayworks schedule incorporated within the Bill of Quantities or Schedule of Rates unless otherwise instructed by the Engineer.

CLAUSE 84 ENVIRONMENTAL PROTECTION ACT 1990 - DUTY OF CARE

The Contractor shall be required to comply, in all respects, with the Environmental Protection Act 1990 - Section 34, Duty of Care in conjunction with Control of Pollution (Amendment) Act 1989 - The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991.

The Contractor will need to be approved as a Registered Waste Carrier by the Waste Regulation Authority and shall forward, to the Manager before the start of the Contract, a copy of his Registered Carriers Certificate.

Before transferring any waste the Contractor shall prepare a Transfer Note for approval and signature by the Manager.

CLAUSE 85 PUBLICITY

The Contractor or any agents or servants in his employ shall not give any information concerning the Works for publication in the press or on radio, television or cinema screen or elsewhere without the written approval of the Manager.

CLAUSE 86 CONFIDENTIALITY

- a) The Contractor and his employees shall keep confidential any information contained in any material provided to the Contractor by the employer or prepared by the Contractor pursuant to the Contract and shall not make use of such information for his own purposes nor disclose to any person (except as required

by law) any such information.

- b) The Contractor shall not dispose nor part with possession of any material provided to him by the Employer pursuant to the Contract or prepared by the Contractor pursuant to the Contract other than in accordance with the express written instructions of the Employer.

CLAUSE 87 DATA PROTECTION ACT 1984

The Contractor shall comply in all respects with the provisions of the Data Protection Act 1984 and will indemnify the Employer against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor or his servants or agents.

CLAUSE 88 DEFAULTS

88 (1) The Contractor shall perform the work in accordance with the provisions of the Contract. In the event of the Contractor:

- (a) failing to begin or complete within the specified time period any part of the works specified in the Contract Documents or any additional works issued by the Engineer.

OR

- (b) failing to carry out any works to which this Contract relates to the satisfaction of the Engineer.

OR

- (c) failing to comply with any reasonable instruction from the Engineer.

The Engineer may at his discretion serve a notice of default (a Default Notice) under the provisions of this Clause and there shall be deducted from any sum remaining due to the Contractor or from the Contractors valuation of the amount owing at the end of the valuation period following the issue of the Default Notice or Notices, an amount or amounts ascertained in accordance with the provisions of Clause 88 (1) (b) of these conditions. A Default Notice may cover more than one default at any one time, at the discretion of the Engineer.

- (2) At any time during the Contract period the Engineer may investigate each instance where the Contractor has failed to perform part or the whole of the works in accordance with the provisions of the Contract.
- (3) Where the Engineer is satisfied that in any particular case the Contractor has

failed to perform the works in accordance with the provisions of the Contract he shall be entitled to instruct the Contractor to remedy the failure and to comply therewith within such period as the Engineer may determine provided that nothing herein shall oblige the Engineer to issue an instruction under this sub-Clause.

- (4) In the event of the Contractor failing to comply with an instruction of the Engineer issued under sub-Clause (3) of this Clause within the time specified therein the Engineer shall be entitled to serve a Default Notice which shall be sent to the Contractor.
- (5) In the case of a failure to comply with an instruction of the Engineer under sub-Clause (3) or under any other provision of the contract without prejudice to any other remedy continued therein the Employer may by its own or other workmen provide and execute such Works or part thereof which the Contractor has failed to execute to the satisfaction of the Engineer and all costs and charges properly incurred by the Employer in doing so shall on demand, be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.
- (6) Where the Engineer has issued an instruction under sub-Clause (3) thereof the provisions of sub-Clause (5) of this Clause will not be invoked for a period of 24 hours commencing from the time when the omission is first notified to the Contractor unless in the opinion of the Engineer the omission requires correcting immediately in which case the provisions of sub-Clause (5) of this Clause will be invoked in the absence of any response from the Contractor.
- (7) If in the opinion of the Engineer or the Engineer's Representative a safety hazard arises during the construction of the works, the defect or cause of the hazard shall be rectified immediately.

CLAUSE 89 DEFAULT REMEDIES

- (1) A deduction shall be made by the Engineer from the statement referred to in the Conditions in respect of Default Notice in accordance with the following. This deduction shall be calculated using the following figure.

Deduction from payment of £30 per notice.
- (2) In addition to any deduction which may be made under sub-Clause (1) of this Clause, where more than 25 Default Notices are issued in any 7 day period or more than 75 in any 28 day period, the Employer may terminate the Contract in accordance with the appropriate Conditions of Contract.

CLAUSE 90 CONTRACT PRICE FLUCTUATIONS

CIVIL ENGINEERING WORK

From 12 months after the Date of Commencement for the second year and

subsequent years of the contract period, the rates contained in the Bill of Quantities of the Tender documents shall be increased or decreased on the Review Dates by a factor calculated using the following sub-clauses, unless otherwise stated.

- (1) The amount payable by the Employer to the Contractor upon the issue by the Engineer of an interim certificate pursuant to Clause 60(2) or of the final certificate pursuant to Clause 60(4) (other than amounts due under this Clause) shall be increased or decreased in accordance with the provisions of this Clause if there shall be any changes in the following Index Figures compiled by the Department of the Environment Transport and the Regions and published by The Stationery Office in the Monthly Bulletin of Indices “1990 Series Civil Engineering Formula Indices” and “1990 Series Structural Steelwork Formula Indices”
 - (a) the Index of Labour and Supervision (Index 1)
 - (b) the Index of providing and maintaining Contractor’s Equipment (Index 2 – Plan and Road Vehicles)
 - (c) the Indices of material prices applicable to those materials listed in sub-clause (4) of this Clause.

The net total of such increases and decreases shall be given effect to in determining the Contract Price.

- (2) For the purpose of this Clause
 - (a) ‘Final Index Figure’ shall mean any Index Figure appropriate to sub-clause (1) of this Clause not qualified in the said bulletin as provisional
 - (b) ‘Base Index Figure’ shall mean the appropriate Final Index Figure applicable to the date 42 days prior to the date for the return of tenders
 - (c) ‘Current Index Figure’ shall mean the appropriate Final Index Figure to be applied in respect of any certificate issued or due to be issued by the Engineer pursuant to Clause 60 and shall be the appropriate Final Index Figure applicable to the date 42 days prior to each review date
 - (d) ‘Review Date’ shall mean 12 months after the date of Commencement of Contract.

Provided that in respect of any work the value of which is included in any such certificate and which work forms part of a Section for which the due date (or extended date) for completion of the date certified pursuant to Clause 48 of completion of such Section precedes the last day of the period to which the certificate relates the Current Index Figure shall be the Final

Index Figure applicable to the date 42 days prior to whichever of these dates is the earliest.

- (e) The 'Effective Value' in respect of the whole or any Section of the Works shall be the difference between
- (i) the amount which in the opinion of the Engineer is due to the Contractor under Clause 60(2) (before deducting retention) or the amount due to the Contractor under Clause 60(4) (but in each case before deducting sums previously paid on account) less any amounts for Dayworks Nominated Sub-Contractors or any other items based on actual cost or current prices and any sums for increases or decreases in the Contract Price under this Clause and
 - (ii) the amount calculated in accordance with (i) above and included in the last preceding interim certificate issued by the Engineer in accordance with Clause 60

Provided that in the case of the first certificate the Effective Value shall be the amount calculated in accordance with sub-paragraph (i) above.

- (3) The increase or decrease in the amounts otherwise payable under Clause 60 pursuant to sub-clause (1) of this Clause shall be calculated by multiplying the Effective Value by a Price Fluctuation which shall be the net sum of the products obtained by multiplying each of the proportions given in (a) (b) and (c) of sub-clause (4) of this Clause by a fraction the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure.
- (4) For the purpose of calculating the Price Fluctuation Factor the proportions referred to in sub-clause (3) of this Clause shall (irrespective of the actual constituents of the work) be as follows and the total of such proportions shall amount to unity.
- (a) 0.19 in respect of labour and supervision costs subject to adjustment by reference to the Index referred to in sub-clause (1)(a) of this Clause/ (Index 1)
 - (b) 0.12 in respect of costs of provision and use of Contractor's Equipment which shall be subject to adjustment by reference to the Index referred to in sub-clause (1)(b) of this Clause. (Index 2)

(c) the following proportions in respect of the materials named which shall be subject to adjustment by reference to the relevant indices referred to in sub-clause (1)(c) of this Clause

0.26 in respect of Aggregates (Index 3)

0.00 in respect of Bricks and Clay products (Index 4)

0.00 in respect of Cements (Index 5)

0.00 in respect of Ready Mixed Concrete (Index 6)

0.00 in respect of Cast and Spun Iron Products (Index 7)

0.01 in respect of Plastics Products (Index 8)

0.26 in respect of Coated Macadam and Bituminous Products (Index 9)

0.10 in respect of Fuel for plant to which the DERV Fuel Index will be applied (Index 10)

0.05 in respect of Fuel for plant to which the Gas Oil Fuel Index will be applied (Index 11)

0.01 in respect of Timber (Index 12)

0.0 in respect of Steel for Reinforcement (Index 13)

0.0 in respect of Metal Sections (Index 14)

0.0 in respect of Sheet Steel Piling (Index 15)

0.0 in respect of Structural Steelwork Materials for Civil Engineering Works (Index S3)

(d) 0.00 in respect of all other costs which shall not be subject to any adjustment

Total 1.00

(5) Provisional Index Figures in the Bulletin referred to in sub-clause (1) of this Clause may be used for the provisional adjustment of interim valuations but such adjustments shall be subsequently recalculated on the basis of the corresponding Final Index Figures.

- (6) Clause 69 – Tax Fluctuations – shall not apply except to the extent that any matter dealt with therein is not covered by the Index of the Cost of Labour in Civil Engineering Construction.

* To be filled in by the Employer prior to inviting tenders

CLAUSE 91 Contractor to Comply with Special Requirements in Relation to Statutory Bodies

The Contractor shall comply with the Special requirements in relation to The National Grid Company plc, Western Power Distribution (South West), British Gas Transco (South West), British Telecom Plc, South West Water Services Ltd., Environment Agency, Virgin Media Ltd, Torbay Council (as local Highway Authority), Environment Agency (as Waste Regulation Authority) and Network Rail Infrastructure Ltd.

The contractor shall obtain from the Statutory Bodies and comply with all special requirements relating to works carried out in the vicinity of plant or apparatus controlled by the appropriate statutory body.

Compliance with such Special Requirements shall not relieve the Contractor of any of his other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve him of his responsibility to comply with the said special requirements.

**SPECIAL REQUIREMENTS IN RELATION TO TORBAY COUNCIL (AS LOCAL
HIGHWAY AUTHORITY)**

In this Special Requirements the following terms shall have the meanings assigned to them:-

- (a) 'Highway Authority' means Torbay Council.
- (b) 'Highway Authority's Representative' means the Group Engineer (Highways).
- (c) 'Highway Authority's Engineer' means the Head of Highways and Street Services for the time being of Torbay Council.

When undertaking works in connection with any Public Highway a Contractor shall comply with the following:-

1. **SAFETY OFFICERS**

The Contractor shall inform the Highway Authority's Representative in writing within two days of the start of the Works, of the names of the responsible persons resident on the Site who will be undertaking the duties of Safety Officer and Safety Supervisor on Site.

2. **TRAFFIC MANAGEMENT AND CONTROL**

The Contractor must ensure that all works on or affecting the highway are supervised by a person certified as being competent in the signing, guarding and lighting of such works.

At least one person holding such a certificate is to be present on site at all times during the progress of the works.

The certificate of competence referred to above shall be issued by a Training Centre or other appropriate organisation approved by the Highway Authority's Engineer.

Prior to the commencement of the works, the Contractor shall submit to the Highway Authority's Representative details of certificated operatives, stating the Training Centre or other organisation responsible for the issue of the certificate, the certificate number and the issue date of the certificate.

3. **CONTRACTOR TO BE ON CALL**

The Contractor shall supply the Highway Authority's Representative with the name, address and telephone number of a person and his deputy who can be contacted at any time during the day or night and who will be in a position to put into immediate effect any measures necessary to ensure the safety of the Public.

4. **ACCESS TO FIRE HYDRANTS**

The Contractor shall ensure that the access to any fire hydrant within the limits of the Works is maintained at all times and under no circumstances shall any hydrant or its marker plate be permanently covered or obstructed.

5. HIGHWAY VERGES

The Contractor shall not use any highway verge for the purposes of operating plant, machinery or the storage of materials, without first obtaining the consent of the Highway Authority's Representative in accordance with Sections 171 and 181 of the Highways Act 1980. Such consent may be withheld or granted conditionally.

Special verge sites that have protected flora and fauna exist at various locations throughout the Country lists of which are available to Tenders from the Engineer.

Torbay Council adopts particular management regimes for these special verges and the Contractor shall confirm with the appropriate Highway Authority's Representative at least 7 days before his intention to commence the Works whether any special verge is affected. Subject to the above permission being granted, the contractor shall agree to any measures required to avoid damage to such special verges.

6. TRAFFIC SENSITIVE STREETS

Certain works ordered by the Engineer's Representative on the Roads in Torbay will have restricted working during times between 0.700 hrs and 19.00 hrs Monday to Fridays in compliance with the requirements of Traffic Sensitive Streets.

Any restricted working will be identified on site instructions issued by the Engineer's Representative and will generally be of the following:-

No works affecting traffic flows to be undertaken on Mondays to Fridays between:-

08.00 hrs and 09.30 hrs

16.30 hrs and 18.00 hrs

The permission of the Engineer's Representative will not normally be granted for Saturday, Sunday or Bank holiday working on sites where restricted working has been identified without additional restrictions being applied to these days.

7. ENVIRONMENTAL OFFICER

The Contractor shall inform the Engineer's Representative at the Works Centre in writing within two weeks of the start of the Contract the name of the responsible person to act as the Environmental Officer for the Contract whose principal duty is to ensure implementation of measures to comply with Environmental Statues.

SPECIAL REQUIREMENTS IN RELATION TO ENVIRONMENT AGENCY

(AS WASTE REGULATION AUTHORITY)

1. DISPOSAL OF ARISING

All material to be tipped off site shall be removed and disposed of in a manner fully acceptable to the appropriate Planning Authority and Waste Regulation Authority.

The tipping of industrial or domestic waste shall also be to the satisfaction of Environment Agency as Waste Regulation Authority. The Contractor must check with the relevant Planning Authority that the proposed site for tipping has a current Planning Permission for that use.

The contractor shall also check with the Waste Regulation Authority that the proposed site has a current and appropriate site licence for that use.

No tipping of such materials will be permitted until the contractor has demonstrated that all permissions and licences have been obtained.