

CONDITIONS OF CONTRACT AND ADDENDA

The Conditions of Contract shall be the **Infrastructure Conditions of Contract, (Based on the ICE Conditions of Contract) for Minor Works** modified by way of Special Conditions shown below.

Clause 14 SPECIAL CONDITIONS

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

Clause 15 Corrupt Gifts and Payments of Commission

Note:- Clause 63 as referred to in this Clause shall be Clause 63 as written in the ICC Minor Works Infrastructure Conditions of Contract as published by the Association for Consultancy and Engineering (ACE) / Civil Engineering Contractors Association (CECA).

The Contractor or anyone employed by him or acting on his behalf shall not:

(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 Engineer.

15(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 63 and expel the Contractor therefrom and thereupon the provisions of Clause 63 shall have effect as if such breach or offence as aforesaid were expressed in Clause 63(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 63. In addition to the costs and expenses recoverable by the Employer as provided for in Clause 63(4) 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.

(15(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 63. 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.

15(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 11.

CLAUSE 16 Recoveries 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 17 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 due.

CLAUSE 18 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 19 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.

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 20 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, Western Power Distribution, Wales and West Utilities, British Telecom Plc, South West Water Services Ltd., Environment Agency, Telewest Broadband Virgin Media, Torbay Council (as local Highway Authority), Environment Agency (as Waste Regulation Authority) and Network Rail Plc 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.

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.

CLAUSE 21 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 exercised.

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 22 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 Employer.

CLAUSE 23 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 24 Defaults

30(a) (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 Contractor's 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 31 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-Clauses (3) or (7) 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 25 Default Remedies

31(b) (1) A deduction shall be made by the Engineer from the statement referred to in the Conditions in respect of Default Notices 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 26

- (1) The Contractor shall be responsible for the security of all materials provided by the Employer for incorporation in the works from the date of the commencement of the works up to the date of issue of the Certificate of Practical Completion.

CLAUSE 27

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 28

The Contractor will note the Authority's current and future obligations under the Data Protection Act 1998, Freedom of Information Act 2000, Human Rights Act 1998, Disability Discrimination Act 1995 and Race Relations Act 1976 (all as amended from time to time) and any codes of practice and best practice guidance issues by the Government and the appropriate enforcement agencies.

CLAUSE 29

The Contractor will comply with the above legislation in so far as it places obligations upon the Contractor in the performance of its obligations under this Contract.

CLAUSE 30

Inspection and Maintenance of Brixham Harbour Moorings April 2020

The Contractor will facilitate the Authority's compliance with the Authority's obligations under these provisions and comply with any reasonable request from the Authority for that purpose.

CLAUSE 31

The Contractor will act in respect of any person who receives or requests service under this Contract as if the Contractor were a public authority for the purpose of the Human Rights Act 1998.

CLAUSE 32

The Contractor notes particularly that the Authority may be required to provide information relating to this Contract or the Contractor to a person in order to comply with its obligations under these provisions.

SPECIAL REQUIREMENTS IN RELATION TO SERVICES

1. Although it is not envisaged that any services will be encountered during these works, the Contractor must make adequate steps to thoroughly check the area before any excavation or construction work commences

REQUIREMENTS IN RELATION TO THE CDM REGULATIONS 2015

- 1 The 'As built and or Installed Details' will be provided to the Client no later than 30 days following the completion of the works

Infrastructure Conditions of Contract – 2011 (Based on the ICE Conditions of Contract) for Minor Works

APPENDIX TO THE CONDITIONS OF CONTRACT

(To be prepared before tenders are invited and to be included with the documents supplied to prospective tenderers)

1. Short description of the work to be carried out under the Contract.

Works to Harbour Moorings Brixham.

2. The payment to be made under Article 2 of the Agreement in accordance with Clause 7 will be ascertained on the following basis.

a) Bill of Quantities.

3. Where a Bill of Quantities or a Schedule of Rates is provided the method of measurement used is:

N/A

4. Name of Engineer (Clause 2.1)

Dave Stewart – Service Manager

5. Starting date (if known) (Clause 4.1)

April 2020

6. Period for completion (Clause 4.2)

36 months (Each or the three annual inspections is to be carried out over a 12 month period between April and the following March)

7. Period for completion of parts of the Works if applicable and details of the work to be carried out within each such part (Clause 4.2)

DETAILS OF WORK

PERIOD FOR COMPLETION

Part A

Part B

8. Liquidated damages (Clause 4.6)

None

9. Limit of liquidated damages (Clause 4.6)

None

10. Defects Correction Period (Clause 5.1)

12 months

11. Rate of retention (Clause 7.3)

5%

12. Limit of retention (Clause 7.3)

3%

13. Minimum amount of interim certificate (Clause 7.3)

£10,000

14. Bank whose base lending rate is to be used (Clause 7.8)

Average of Lloyds, Barclays, HSBC, National Westminster

15. Insurance of the Works (Clause 10.1)

Required/~~Not required~~

16. Minimum amount of third party insurance (persons and property) (Clause 10.6)

£5,000,000

For each and every occurrence

17. Name of the Principal Contractor (Clause 13(1)(1) (b))

Address

18. The Arbitration Procedure to be used is (Clause A.11(a))

(a) "The Institute of Civil Engineers' Arbitration Procedure (1997)"

or

~~(b) "The Construction Industry Model Arbitration Rules"~~

If no decision is made "The Institution of Civil Engineers' Arbitration Procedure (1997)" shall be used.

* *Delete as appropriate*

Infrastructure Conditions of Contract – 2011 (Based on the ICE Conditions of Contract) for Minor Works

AGREEMENT

THIS AGREEMENT is made the day of 20 between
..... of (or whose
registered office is at)

(called the “Employer”) of the one part

and

(called the “Contractor”) of the other part

WHEREAS the Employer wishes to have carried out the following:-

Inspection and Maintenance of Brixham Harbour Moorings for Period
April 2017 – March 2020

.....
..... and has accepted a Tender by the Contractor
for the same

NOW IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE 1

The Contractor will subject to the Conditions of Contract perform and complete the Works.

ARTICLE 2

The Employer will pay the Contractor such sum or sums as shall become payable under the Contract and in accordance with the Conditions of Contract.

ARTICLE 3

The following documents shall be deemed to form and be read and construed as part of this agreement namely:-

Inspection and Maintenance of Brixham Harbour Moorings April 2020

The Contractor's Tender (excluding any general or printed terms contained or referred to therein unless expressly agreed in writing to be incorporate in the Contract)

The Conditions of Contract
The design calculations, drawings and method statement.
The appendix to the Conditions of Contract

The Drawings

.....

.....

The Specification.

The priced Bill of Quantities

The daywork schedule

~~The following extra documents*~~

from to dated

from to dated

from to dated

from to dated

SIGNED on behalf of the saidLtd/plc (the Employer)

Signature

Position

In the presence of

SIGNED on behalf of the saidLtd/plc (the Employer)

Signature

Position

In the presence of

* Delete if not applicable

Tenderer Requirements

- **THE TENDERERS ATTENTION IS ALSO DRAWN TO SAFETY MEASURES THAT ALL WORKS / OPERATIONS SHALL BE UNDERTAKEN IN LINE WITH CURRENT HSE AND SPECIFIC INDUSTRY (CONSTRUCTION ETC) BEST PRACTICE ETC.**
- The Tenderer must comply with The Construction Design and Management Regulations 2015. (or as amended thereafter).
- The Tenderer must ensure that supervisory staff from Foreman upwards, will be the Tenders own employees.
- Operatives must be trained, certified and competent under the Diving at Work Regulations 1997 (or as amended thereafter).
- The Tenderer must ensure that no more than fifty percent (50%) of the Contract is delivered utilising sub contractors, unless there is prior agreement in writing from the Authority.
- The Tenderer must ensure that all materials used in the works and all workmanship shall conform to the relevant current British Standards and Codes of Practice where such exist, except where specifically stated otherwise in this Specification.
- Prior to commencing work on site the Tenderer shall submit a Risk Assessment, Safety Plan and Method Statement for the works, together with details of the personnel to be employed on the project and copies of training certification.