

1. DEFINITIONS

In these conditions, the following expressions shall have the following meanings;

“**BT**” shall mean British Telecommunications plc, its successors and assigns.
“**BT SUPPLIED ITEMS**” shall mean all materials supplied to the Contractor, by or on behalf of BT in connection with the Contract.
“**CONTRACT**” shall mean the agreement made between BT and the Contractor including these conditions.
“**CONTRACTOR**” shall mean the party with whom BT enters into the Contract.

“**DIARY RECORD**” shall mean a DIARY supplied by BT or other such means of recording the work as may be agreed.

“**LEGISLATION**” shall mean Acts of Parliament, Instruments, Rules, Orders, Regulations, Bylaws, or Statutory Codes of Practice.

“**QUALITY ASSURANCE**” shall mean all activities and functions concerned with the attainment of Quality.

“**STREET WORKS**” shall mean the same as defined in the New Roads And Street Works Act 1991, Section 48(3) in England and Wales, and Section 107(3) in Scotland, and expressions used in those subsections shall bear the same meaning as they bear for the purpose of those subsections.

“**WORK**” shall mean the tasks to be carried out specified in the Contract, including any ancillary work, all materials to be supplied, including any installation and obligations to be carried out by the Contractor in carrying out the Contract. Definitions of other terms used in this Contract are contained in engineering specifications, which form part of this contract.

2. STANDARD DRAWINGS AND SPECIFICATION

The standard drawings and specifications for all work where appropriate are as follows:

(i) PCD(L) 178D, (ii) CN diagrams, (iii) Plans and Drawings, (iv) Homebuilders Pack (Installation Guides)

3. STATEMENT OF WORK REQUIRED

The work consists of the laying of BT duct, construction of joint chambers and cabling of duct for each dwelling to a designated BT joint box, and other associated civil engineering work.

4. BT SUPPLIED ITEMS

4.1 All BT Supplied Items shall remain the property of BT. The Contractor shall (except in the case of items installed pursuant to the Contract) return them to BT upon termination of the Contract or earlier reasonable requests by notice given by BT. The Contractor shall keep the BT Supplied Items in safe custody and good condition, set aside and clearly and visibly marked as the property of BT.

4.2 Upon receipt of the BT Supplied Items, the Contractor shall satisfy itself that they are not defective or deficient for the purpose for which they are being provided, and within 14 days of receipt shall give notice to BT of any defects or deficiencies.

4.3 The Contractor shall not, without the prior written consent of BT, use the BT Supplied Items for any purpose other than is necessary for the performance of the Contract, or allow any other party to use, take possession of, or have other rights or lien over BT Supplied Items or other property of BT.

4.4 The Contractor shall not have, and shall ensure that no subcontractor shall have a lien on the BT Supplied Items or any other property of BT for any sum due. The Contractor shall take all reasonable steps to ensure the title of BT and the exclusion of such lien are brought to the notice of all subcontractors dealing with any BT Supplied Item or other property of BT.

4.5 In the event of any threatened seizures of any of the BT Supplied Items or other property of BT, or in the event of the Contractor going into receivership, administration or liquidation or equivalent, the Contractor shall;

(a) give notice to BT immediately; and,
(b) draw to the attention of the receiver, administrator, or liquidator, or other approved officials, by notice, that the BT Supplied Items or other property of BT, are the property of BT and do not form part of the Contractor's assets; and,

(c) allow BT to enter the Contractor's premises or those of any third party where the BT Supplied Items or other property are stored and take possession of the BT Supplied Items or other property of BT, that are at that time the property of BT.

4.6 All BT Supplied Items will be provided at such times and in such quantities as agreed between BT and the Contractor.

5. QUALITY ASSURANCE

5.1 The Contractor shall perform the Work to the highest professional standards in accordance with all relevant specifications, and to the satisfaction of BT. Work should also be completed to any attached specification. BT may, by serving notice to the Contractor's representatives, condemn the work or any part of it, which in the opinion of BT has not been performed in accordance with the Contract.

6. CONTRACTOR'S REPRESENTATIVE

The Contractor shall appoint a Site Representative who shall be fully conversant with the performance of the Contract and be authorised to represent the Contractor at such meetings as BT may require. This requirement is distinct from the Contractor's obligation under the Conditions headed "New Roads And Street Works Act 1991", to provide any personnel for the purpose of Section 67 and 126 of the New Roads And Street Works Act 1991.

7. TIMESCALES

7.1 The Contractor shall complete the work in accordance with the timescales stated in the Schedule of Work or as otherwise directed in a notice by BT from time to time. The Contractor shall take all reasonable (including temporary/permanent) steps to ensure BT is able to supply "on demand" Telecommunication service to its customers.

7.2 If the Contractor does not fulfil its obligations under this Condition, then BT may perform, or have performed, the work, and charge the cost of so doing to the Contractor.

8. VARIATION

BT may instruct the Contractor by notice to carry out a variation to the Contract. Any such variation shall form part of the contract.

9. ACCESS, ASSISTANCE AND PROGRESS REPORTS

The Contractor shall ensure that BT (or any person authorised by BT), shall have access at all reasonable times to the site to assess the progress of the Contract.

10. NOTICES

Notices required under the contract are to be given in writing, shall be delivered by hand or by post, to the Commercial Representative at the address specified in the Contract and shall be deemed to be given upon receipt except in the case of first class registered post which shall be deemed to be given within forty-eight hours (excluding Sunday and public holidays) of posting.

11. SAFETY

11.1 The Contractor shall be responsible for the execution of all safety precautions for the protection of all persons and property as may be affected during the execution of the Work on behalf of BT, whether required by legislation or otherwise necessary or desirable.

11.2 The Contractor shall comply with any safety instructions during the execution of the Work on behalf of BT as may be given by BT by notice but such instruction shall in no way relieve the Contractors of its responsibilities under this or any other Condition.

11.3 Without prejudice to the generality of the foregoing provisions in this Condition, the precautions to be taken by the Contractor during the execution of the Work on behalf of BT shall include among others all tests for the presence of electricity cables and other services.

11.4 The Contractor should take special note of the fact that the BT underground network may contain flammable, explosive and asphyxiating gases, and BT will install a gas seal in order to prevent the ingress of these gases into duct laid on the Contractor's site. However, there may be gases present in the duct that has been installed by the contractor that have originated from the Contractor's site and all necessary tests for the presence of gases should be made. BT will give advice to the Contractor on the methods of detection of gases if requested but will not carry out gas test on its behalf, and accepts no responsibility for the failure to detect gases that may be present, or damage or injury resulting from such failure.

11.5 The Contractor hereby indemnifies BT against any claim, damage, injury or any other occurrence caused by the failure to carry out suitable tests for gases, whether BT or any Representative of BT was aware of the lack of such tests or not.

12. RECORD OF WORK

12.1 The Contractor shall provide sufficient people and appliances to enable measurement/checking to be carried out by the Contractor on behalf of, or by, BT.

12.2 The Contractor shall keep a detailed record of all Work carried out during the execution of this Contract in the form of a Diary Record, which shall be made available to BT on request, or attached to the invoice submitted to BT for payment.

12.3 BT may sign the Diary Record but such signature shall not constitute acknowledgement that the Contractor has carried out the Work in accordance with the Contract, and all relevant specifications.

13. STATUTORY AND OTHER REGULATIONS

The Contractor shall at his own expense, comply with all Legislation and other laws applicable to the performance of the Contract.

14. NEW ROAD AND STREET WORKS ACT 1991

The Contractor shall comply with provisions of the New Road And Street Works Act 1991 as amended from time to time and any codes of practice and regulations which may, from time to time, be issued, prescribed, approved or amended under the provisions of the Act (together, "the Act and its provisions") on behalf of BT and the Contractor shall do all that would have been necessary to ensure compliance by the Contractor with the Act and its provisions in relation to the Work if the Contractor, instead of BT, had been the Undertaker for the purposes of the Act and its Provisions in relation to the Work, (except as BT otherwise specifically directs in a written notice). For the purpose "Undertaker" shall bear the same meaning as it bears (in Section 48(4) in England and Wales, and section 107(4) in Scotland) in the New Roads And Street Works Act 1991. The Contractor shall indemnify BT against any and all liabilities, obligations, claims, losses, demands, charges, proceedings, damages, costs, expenses or fines arising from or attributable to any breach of the foregoing.

15. GUARANTEE

15.1 The Contractor shall guarantee the quality and workmanship of all Work (including materials) and shall promptly and at its own expense make good all defects in the work, which arises, from faulty materials or workmanship. Such guarantee shall apply :-

(a) subject to (b) below, where any defects appear within 12 months of the completion of the Work; and,

(b) where the Work carried out is Street Works, the Contractor shall guarantee the Work in accordance with the provisions contained in the New Roads and Street Works Act 1991 specification titled "Specification For The Reinstatement Of Openings in Highways" or any amendment issued.

15.2 The Contractor shall carry out any Work on private property, which is not Street Works to the satisfaction of the owner.

15.3 The Contractor shall make all necessary arrangements to ensure that corrective action is taken without undue delay.

15.4 If the Contractor does not fulfil its obligations under this Condition, then BT may perform, or have performed, the work, and charge the cost of so doing to the Contractor.

16. TERMINATION

16.1 If the Contractor commits a breach of the Contract and fails to remedy the breach within such period as provided for by written notice from BT, then, without prejudice to any other rights or remedies it may have, BT shall have the right, at any time to terminate the contract forthwith as a whole or, at BT's option, in part, and to claim for any resulting losses and expenses.

16.2 Without prejudice to other rights or remedies it may have, BT shall have the right to terminate the Contract forthwith and to claim for any resulting loss or expense if;

- (a) the Contractor shall become insolvent or cease to trade or compound with its creditors; or,
- (b) a bankruptcy petition or bankruptcy order is presented or made against the Contractor; or,
- (c) a receiver or administrative receiver is appointed in respect of any of the Contractor's assets; or,
- (d) a petition for an administration order is presented or made in relation to the Contractor; or,
- (e) a resolution or petition or order to wind up the Contractor is passed or presented or made (otherwise than for reconstruction or amalgamation).

16.3 BT may at any time on written notice, without prejudice to any other rights or remedies it may have, terminate the Contract forthwith.

17. CONFIDENTIALITY

The Contractor shall keep confidential all information belonging to, or held by, BT, which may come into the Contractor's possession during the period of the Contract.

18. INDEMNITY GENERAL

Without prejudice to any other rights or remedies available to BT, the Contractor shall indemnify BT against;

- (a) all loss or damage to any property belonging to BT arising out of acts or omissions of the Contractor, its employees, agents or subcontractors in relation to the performance of the contract; and,
- (b) all claims, proceedings, damages, costs, and expenses arising or incurred in respect of;
 - (i) death or personal injury of any employee of the Contractor, its agents or subcontractors employed in or in connection with the performance of the Contract, except to the extent caused by negligence of BT; or,
 - (ii) death or personal injury of any person arising as a result of the acts or omissions of the Contractor, its employees, agents, or subcontractors in relation to the performance of the Contract, except to the extent caused by the negligence of BT; or,
 - (iii) loss or damage to any property arising as a result of the acts or omissions of the Contractor, its employees, agents or subcontractors in relation to the performance of the Contract; or,
- (ii) any other direct loss arising as a result of the acts or omissions of the Contractors, its employees, agents, or subcontractors in relation to the performance of the Contract.

19. INSURANCE

19.1 The Contractor shall at its own expense effect and maintain such insurance as it deems appropriate in respect of its obligations under the Contract but such insurance shall include as a minimum:

- (a) Employees Liability insurance in accordance with the Employees Liability (Compulsory Insurance) Act 1969 and any amendment thereto; and,
- (b) Public Liability (including Product Liability) insurance in respect of bodily injury or damage to property within an indemnity limit of not less than £1 million for each and every claim (unlimited in the aggregate as to the number of claims).
- (c) Damage to property or bodily injury that occurs above or below ground at any depth.

19.2 The Contractor shall produce to BT satisfactory evidence of the existence of the above mentioned insurance at any time on request.

19.3 This Condition shall not be deemed to limit in any way the Contractors liability under the Contract.

19.4 The Contractor shall notify BT as soon as it knows or becomes aware of any event arising in connection with the Contract which the Contractor believes may give rise to an obligation to indemnify BT in accordance with the Contract, or to a claim under any insurance policy falling within the terms of this Condition.

20. GENERAL

20.1 The invalidity or unenforceability for any reason of any provision of this contract shall not prejudice or affect the validity or enforceability of its other provisions.

20.2 The headings to these Conditions are for ease of reference only and shall not affect the interpretation of the Contract.

20.3 The Contract shall be the entire agreement BT and the Contractor in respect the subject matter of the Contract and no prior negotiations, representations relation to such subject matter shall have effect.

20.4 No delay, neglect or forbearance on the part of BT in enforcing against the Contractor any Condition of the Contract shall be deemed to be a waiver or in any way prejudice any rights of BT under the Contract. No waiver by BT shall be effective unless made in writing and any such waiver shall not constitute waiver of any subsequent breach.

21. COMMERCIAL

21.1 The rates in the Schedule of Rates include all ancillary work and charges incurred by the Contractor in carrying out the Work in accordance with the Contract.

21.2 For the avoidance of doubt, all rates include, but are not limited to, fuel, hire of equipment, labour, materials, (in accordance with the abridged LN 139) overheads and profit.

21.3

21.4 For the avoidance of doubt, all rates include, but are not limited to, fuel, hire of equipment, labour, materials, (in accordance with the abridged LN 139) overheads and profit.

21.5 The Contractor may submit an invoice (in duplicate) at any time following completion of one or more dwellings, provided each dwelling is ready for occupation and all BT work has been completed to ensure telephone service availability. A Quality Statement, which will be provided by the BT Liaison Officer (DLO), should be attached to each invoice once it has been authorised by both the DLO and your authorised representative.

The invoice should detail :-

- (i) **the Contract number, job number, with the "final" invoice to be clearly annotated "FINAL" and,**
- (ii) **the plot number(s), date(s) completed, and charge per dwelling.**
- (iii) **Sent complete invoices to, Invoice address on the attached Purchase Order**

21.6 BT will settle all authorised invoices within an average 45 days from the date of receipt of a valid invoice. All work completed to the quality standards and for which a valid invoice has been submitted within 12 months of the work completion date will be paid, after this period BT will have no liability.

21.7 All prices shown in the contract are exclusive of Value Added Tax.

The work executed on behalf of BT is deemed to be Zero-rated.

21.8 Whenever a sum of money due to BT from the Contractor, in relation to the Contract of otherwise, is not paid on the due date, it may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with BT.

22. SALE OF BT NETWORK TERMINATING EQUIPMENT AND ASSOCIATED INTERNAL EQUIPMENT

Where BT agrees to sell BT Network Terminating equipment and associated internal equipment to the Contractor for installation and re-sale the terms and conditions of such sale to the Contractor shall be subject to separate agreement. Any amounts due to BT as a result of such sale may be deducted from any sum due to the Contractor under this Contract or any other contract with BT.

23. LAW AND JURISDICTION

The Contract shall be governed by English law and subject to the non-exclusive jurisdiction of the English courts.

24. PAYMENTS

BT shall pay due and correct invoices on the first Monday (or, if that Monday is a public holiday, on the next day that is not a public holiday)

After the expiration of 42 days from the date BT receives the invoice.

Payment of 100% of the Contract Price shall become due upon complete performance of the Contract.

25. CONTACT POINTS IN BT

The names and telephone numbers of those persons within BT who are responsible for technical enquiries, please refer to the "Deliver To" details in the attached Purchase Order. For commercial enquires call 0161 216 3673. All invoicing queries call 0800515465

ORDERS OVER £1000 (NET) ARE SUBJECT TO C.I.S. REGULATIONS. For C.I.S. 4 & 6 please ring the Helpdesk on (NORTHERN IRELAND 02890 213 543) (UK 0800 616866). 02890 213 543 - if you need to arrange for your card to be viewed by a BT New Site Representative. C.I.S. 5 details can be typed on company letter headed paper and sent to the invoice address. (Mark F.A.O Bernie Wright)
SUPPLEMENTARY CONDITIONS FOR CONTRACTS CARRIED OUT IN NORTHERN IRELAND FOR WORK RELATING TO HOUSING DEVELOPMENTS

Condition 1 – For "Street Works" read the Department of the Environment for Northern Ireland

Throughout the document any reference to "New Roads and Streets Works Act 1991" read "Control of Opening and Reinstatement of Roads – BT Northern Ireland"

Condition 2 – Standard Drawings and Specification :

PCD (L) L178D should be amended to read LN178D