Engineering and Construction Short Contract

The NEC3 Engineering and Construction Short Contract is an alternative to NEC3 Engineering and Construction Contract and is for use with contracts which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the Employer and the Contractor.

An NEC document

April 2013

Construction Clients’ Board endorsement of NEC3

The Construction Clients’ Board recommends that public sector organisations use the NEC3 contracts when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of Achieving Excellence in Construction.

Cabinet Office UK
NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a family of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC3 Engineering and Construction Short Contract is one of the NEC family and is consistent with all other NEC3 documents. Also available are the Engineering and Construction Short Contract Guidance Notes and Flow Charts.

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FOREWORD

I was delighted to be asked to write the Foreword for the NEC3 Contracts.

I have followed the outstanding rise and success of NEC contracts for a number of years now, in particular during my tenure as the 146th President of the Institution of Civil Engineers, 2010/11.

In my position as UK Government’s Chief Construction Adviser, I am working with Government and industry to ensure Britain’s construction sector is equipped with the knowledge, skills and best practice it needs in its transition to a low carbon economy. I am promoting innovation in the sector, including in particular the use of Building Information Modelling (BIM) in public sector construction procurement; and the synergy and fit with the collaborative nature of NEC contracts is obvious. The Government’s construction strategy is a very significant investment and NEC contracts will play an important role in setting high standards of contract preparation, management and the desirable behaviour of our industry.

In the UK, we are faced with having to deliver a 15–20 per cent reduction in the cost to the public sector of construction during the lifetime of this Parliament. Shifting mind-set, attitude and behaviour into best practice NEC processes will go a considerable way to achieving this.

Of course, NEC contracts are used successfully around the world in both public and private sector projects; this trend seems set to continue at an increasing pace. NEC contracts are, according to my good friend and NEC’s creator Dr Martin Barnes CBE, about better management of projects. This is quite achievable and I encourage you to understand NEC contracts to the best you can and exploit the potential this offers us all.

Peter Hansford

UK Government’s Chief Construction Adviser
Cabinet Office
The NEC contracts are the only suite of standard contracts designed to facilitate and encourage good management of the projects on which they are used. The experience of using NEC contracts around the world is that they really make a difference. Previously, standard contracts were written mainly as legal documents best left in the desk drawer until costly and delaying problems had occurred and there were lengthy arguments about who was to blame.

The language of NEC contracts is clear and simple, and the procedures set out are all designed to stimulate good management. Foresighted collaboration between all the contributors to the project is the aim. The contracts set out how the interfaces between all the organisations involved will be managed – from the client through the designers and main contractors to all the many subcontractors and suppliers.

Versions of the NEC contract are specific to the work of professional service providers such as project managers and designers, to main contractors, to subcontractors and to suppliers. The wide range of situations covered by the contracts means that they do not need to be altered to suit any particular situation.

The NEC contracts are the first to deal specifically and effectively with management of the inevitable risks and uncertainties which are encountered to some extent on all projects. Management of the expected is easy, effective management of the unexpected draws fully on the collaborative approach inherent in the NEC contracts.

Most people working on projects using the NEC contracts for the first time are hugely impressed by the difference between the confrontational characteristics of traditional contracts and the teamwork engendered by the NEC. The NEC does not include specific provisions for dispute avoidance. They are not necessary. Collaborative management itself is designed to avoid disputes and it really works.

It is common for the final account for the work on a project to be settled at the time when the work is finished. The traditional long period of expensive professional work after completion to settle final payments just is not needed.

The NEC contracts are truly a massive change for the better for the industries in which they are used.

Dr Martin Barnes CBE
Originator of the NEC contracts
ACKNOWLEDGEMENTS

The first edition of the NEC Engineering and Construction Short Contract was produced by the Institution of Civil Engineers through its NEC Panel. It was mainly drafted by Dr Martin Barnes, Tom Nicholson and Nigel Shaw based on work by Andrew Baird with the assistance of Peter Higgins and advice from Professor Phillip Capper of Masons Solicitors and David Maidment of Willis Corroon Construction Risks Ltd. Contributions were also made by Ross Hayes and Jon Broome of the University of Birmingham.

The second edition of the NEC Engineering and Construction Short Contract was mainly drafted by Professor J. G. Perry with the assistance of members of the NEC Panel. The Flow Charts were produced by Robert Gerrard with assistance from Ross Hayes and Tom Nicholson.

The original NEC was designed and drafted by Dr Martin Barnes then of Coopers and Lybrand with the assistance of Professor J. G. Perry then of The University of Birmingham, T. W. Weddell then of Travers Morgan Management, T. H. Nicholson, Consultant to the Institution of Civil Engineers, A. Norman then of the University of Manchester Institute of Science and Technology and P. A. Baird, then Corporate Contracts Consultant, Eskom, South Africa.

The members of the NEC Panel are:

P. Higgins, BSc, CEng, FICE, FCIArb (Chairman)
P. A. Baird, BSc, CEng, FICE, M(SA)ICE, MAPM
M. Barnes, BSc(Eng), PhD, FReing, FICE, FCIOB, CCMI, ACIArb, MBCS, FInstCES, FAPM
A. J. Bates, FRICS, MIInstCES
A. J. M. Blackler, BA, LLB(Cantab), MIARB
P. T. Cousins, BEng(Tech), DipArb, CEng, MICE, MCIArb, MCSI
L. T. Eames, BSc, FRICS, FCIOB
F. Forward, BA(Hons), DipArch, MSc(Const Law), RIBA, FCIArb
Professor J. G. Perry, MEng, PhD, CEng, FICE, MAPM
N. C. Shaw, FCIP, CEng, MIMechE
T. W. Weddell, BSc, CEng, DIC, FICE, FIStructE, ACIArb

NEC Consultant:
R. A. Gerrard, BSc(Hons), MIRICS, FCIArb, FCInstCES

Secretariat:
A. Cole, LLB, LLM, BL
J. M. Hawkins, BA(Hons), MSc
F. N. Vernon (Technical Adviser), BSc, CEng, MICE
## AMENDMENTS APRIL 2013

The following amendments have been made to the June 2005 edition. Full details of all amendments are available on www.neccontract.com.

<table>
<thead>
<tr>
<th>Page</th>
<th>Clause</th>
<th>Line</th>
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<tbody>
<tr>
<td>3</td>
<td>Last paragraph: replace 'June 2005)' with 'April 2013'</td>
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<tr>
<td>CC 2</td>
<td>12.1</td>
<td>1 add new clause: 'In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.'</td>
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<td>12.1</td>
<td>1 '12.1' now '12.2'</td>
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<td>1 '12.3' now '12.4'</td>
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<tr>
<td>CC 5</td>
<td>51.1</td>
<td>1 replace: 'The Employer pays' with 'Each payment is made'</td>
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<tr>
<td>CC 7</td>
<td>62.3</td>
<td>1 new clause</td>
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<td>1 '62.3' now '62.4'</td>
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<td>1 '62.5' now '62.6'</td>
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<tr>
<td>CC 8</td>
<td>63.6</td>
<td>3 insert: 'The cost of preparing quotations for compensation events is not included in the assessment of compensation events.'</td>
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<td>63.9</td>
<td>1 new clause</td>
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<td>63.9</td>
<td>1 '63.9' now '63.10'</td>
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<tr>
<td>CC 10</td>
<td>90.4</td>
<td>1 replace: 'made a payment' with 'paid an amount due under the contract'</td>
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<tr>
<td>CC 12</td>
<td>Delete 94.1 and insert new clause 1.1 to 1.8</td>
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</table>
Short Contract

A contract between .......................................................

.......................................................

.......................................................

and .......................................................

.......................................................

.......................................................

for .......................................................

.......................................................

.......................................................

Contents

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Contract Data 2

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The Employer’s Acceptance 4

Price List 5

Works Information 6

Site Information 9

Conditions of Contract CC1

Notes about this contract are printed in boxes like this one. They are not part of the contract.
Contract Data

The Employer is

Name ........................................................................
Address ..................................................................
Telephone ............................................................ Fax ............................................................
E-mail address ..........................................................

The works are ..................................................................

The site is ..............................................................
The starting date is ...................................................
The completion date is ..............................................
The period for reply is ............................................ weeks.
The defects date is .................................................. weeks after Completion.
The defect correction period is ............................... weeks.
The delay damages are .......................................... per day.
The assessment day is the ........................................ of each month.
The retention is ..................................................... %.

Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply? Yes / No (delete as appropriate)

The Adjudicator is

Name ........................................................................
Address ..................................................................
Telephone ............................................................ Fax ............................................................
E-mail address ..........................................................
The interest rate on late payment is ................................ % per complete week of delay.

Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

The Contractor is not liable to the Employer for loss of or damage to the Employer’s property in excess of .......................................................... for any one event.

The Employer provides this insurance

Only enter details here if the Employer is to provide insurance.

The minimum amount of cover for the third insurance stated in the Insurance Table is ..........................................................

The minimum amount of cover for the fourth insurance stated in the Insurance Table is ..........................................................

The Adjudicator nominating body is ..........................................................

The tribunal is ..........................................................

If the tribunal is arbitration, the arbitration procedure is ..........................................................

The conditions of contract are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions

Only enter details here if additional conditions are required.
Contract Data

The Contractor’s Offer

The Contractor is

Name ........................................................................
Address .....................................................................
........................................................................
Telephone ................................................. Fax ............................
E-mail address ........................................................

The percentage for overheads and profit added to the Defined Cost for people is .......... %.
The percentage for overheads and profit added to other Defined Cost is .......... %.

The Contractor offers to Provide the Works in accordance with the conditions of contract for an amount to be determined in accordance with the conditions of contract.
The offered total of the Prices is ........................................................

Enter the total of the Prices from the Price List.

Signed on behalf of the Contractor

Name ........................................................................
Position ....................................................................
Signature ........................................................... Date ......................

The Employer’s Acceptance

The Employer accepts the Contractor’s Offer to Provide the Works

Signed on behalf of the Employer

Name ........................................................................
Position ....................................................................
Signature ........................................................... Date ......................
Entries in the first four columns in this Price List are made either by the *Employer* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Unit</th>
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The total of the Prices
The Works Information should be a complete and precise statement of the Employer’s requirements. If it is incomplete or imprecise there is a risk that the Contractor will interpret it differently from the Employer’s intention. Information provided by the Contractor should be listed in the Works Information only if the Employer is satisfied that it is required, is part of a complete statement of the Employer’s requirements and is consistent with the other parts of the Works Information.

1 Description of the works

Give a detailed description of what the Contractor is required to do and of any work the Contractor is to design.

2 Drawings

List the drawings that apply to this contract.

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<th>Drawing number</th>
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</table>
## 3 Specifications

List the specifications which apply to this contract.

<table>
<thead>
<tr>
<th>Title</th>
<th>Date or revision</th>
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## 4 Constraints on how the Contractor Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the Employer.
5 Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the works is intended to be at their Completion as defined in clause 11.2(1).

6 Services and other things provided by the Employer

Describe what the Employer will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

<table>
<thead>
<tr>
<th>Item</th>
<th>Date by which it will be provided</th>
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Site Information

Give information about the site such as the ground conditions and any other information which is likely to affect the Contractor’s work such as limitations on access and the position of adjacent structures.
## 1 General

### Actions

10.1 The Employer and the Contractor shall act as stated in this contract and in a spirit of mutual trust and co-operation.

### Identified and defined terms

11.1 In the conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

11.2 (1) Completion is when the Contractor has completed the works in accordance with the Works Information except for correcting notified Defects which do not prevent the Employer from using the works and others from doing their work.

(2) The Completion Date is the completion date unless later changed in accordance with this contract.

(3) A Defect is a part of the works which is not in accordance with the Works Information.

(4) The Defects Certificate is either a list of notified Defects which the Contractor has not corrected by the defects date or a statement that there are no such Defects.

(5) Defined Cost is the amount paid by the Contractor in Providing the Works (excluding any tax which the Contractor can recover) for:

- people employed by the Contractor,
- Plant and Materials,
- work subcontracted by the Contractor and
- Equipment.

The amount for Equipment includes amounts paid for hired Equipment and an amount for the use of Equipment owned by the Contractor which is the amount the Contractor would have paid if the Equipment had been hired.

(6) Equipment is items provided by the Contractor, used by him to Provide the Works and not included in the works.

(7) The Parties are the Employer and the Contractor.

(8) Plant and Materials are items intended to be included in the works.

(9) The Price for Work Done to Date is the total of:

- the Price for each lump sum item in the Price List which the Contractor has completed and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the Contractor has completed by the rate.

(10) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.
(11) To Provide the Works means to do the work necessary to complete the works in accordance with this contract and all incidental work, services and actions which this contract requires.

(12) Site Information is information which describes the site and its surroundings and is in the document called 'Site Information'.

(13) Works Information is information which either
   • specifies and describes the works or
   • states any constraints on how the Contractor Provides the Works

and is either
   • in the document called 'Works Information' or
   • in an instruction given in accordance with this contract.

Law 12
12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.

12.2 This contract is governed by the law of the country where the site is.

12.3 No change to this contract, unless provided for by the conditions of contract, has effect unless it has been agreed, confirmed in writing and signed by the Parties.

12.4 This contract is the entire agreement between the Parties.

Communications 13
13.1 Each communication which this contract requires has effect when it is received in writing at the last address notified by the recipient for receiving communications.

13.2 If this contract requires the Employer or the Contractor to reply to a communication, unless otherwise stated in this contract, he replies within the period for reply.

The Employer’s authority and delegation 14
14.1 The Contractor obeys an instruction which is in accordance with this contract and is given to him by the Employer.

14.2 The Employer may give an instruction to the Contractor which changes the Works Information.

14.3 The Employer’s acceptance of a communication from the Contractor or of his work does not change the Contractor’s responsibility to Provide the Works or his liability for his design.

14.4 The Employer, after notifying the Contractor, may delegate any of the Employer’s actions and may cancel any delegation. A reference to an action of the Employer in this contract includes an action by his delegate.

Access to the site and provision of services 15
15.1 The Employer allows access to and use of the site to the Contractor as necessary for the work included in this contract.

15.2 The Employer provides services and other things as stated in the Works Information.

Early warning 16
16.1 The Contractor and the Employer give an early warning by notifying the other as soon as either becomes aware of any matter which could

   • increase the total of the Prices,
   • delay Completion or
   • impair the performance of the works in use.
The Contractor may give an early warning by notifying the Employer of any other matter which could increase his total cost. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 The Contractor and the Employer co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.

2 The Contractor’s main responsibilities

Providing the Works 20
20.1 The Contractor Provides the Works in accordance with the Works Information.
20.2 The Contractor does not start work which the Contractor has designed until the Employer has accepted that the design complies with the Works Information.

Subcontracting and people 21
21.1 If the Contractor subcontracts work, he is responsible for Providing the Works as if he had not subcontracted.
21.2 This contract applies as if a subcontractor’s employees and equipment were the Contractor’s.
21.3 The Employer may, having stated reasons, instruct the Contractor to remove an employee. The Contractor then arranges that, after one day, the employee has no further connection with the work included in this contract.

Access for the Employer 22
22.1 The Contractor provides access for the Employer and others notified by the Employer to work being done for this contract and to stored Plant and Materials.

3 Time

Starting and Completion 30
30.1 The Contractor does not start work until the starting date and does the work so that Completion is on or before the Completion Date.
30.2 The Contractor submits a forecast of the date of Completion to the Employer each week from the starting date until Completion.
30.3 The Employer decides the date of Completion and certifies it to the Contractor within one week of the date.
30.4 The Employer may instruct the Contractor to stop or not to start any work and may later instruct him to re-start or start it.

The programme 31
31.1 The Contractor submits programmes to the Employer as stated in the Works Information.
4 Defects

Searching for and notifying Defects

40.1 Until the defects date, the Employer may instruct the Contractor to search for a Defect.

40.2 The Employer may notify a Defect to the Contractor at any time before the defects date.

Correcting Defects

41.1 The Contractor corrects a Defect whether or not the Employer notifies him of it.

41.2 Before Completion, the Contractor corrects a notified Defect before it would prevent the Employer or others from doing their work.

41.3 After Completion, the Contractor corrects a notified Defect before the end of the defect correction period. This period begins at the later of Completion and when the Defect is notified.

41.4 The Employer issues the Defects Certificate to the Contractor at the later of the defects date and the end of the last defect correction period.

Uncorrected Defects

42.1 If the Contractor has not corrected a notified Defect within its defect correction period, the Employer assesses the cost of having the Defect corrected by other people and the Contractor pays this amount.

Repairs

43.1 Until the Defects Certificate has been issued and unless otherwise instructed by the Employer, the Contractor promptly replaces loss of and repairs damage to the works, Plant and Materials.

5 Payment

Assessing the amount due

50.1 The Contractor assesses the amount due and, by each assessment day, applies to the Employer for payment. There is an assessment day in each month from the starting date until the month after the Defects Certificate has been issued.

50.2 The Contractor’s application for payment includes details of how the amount has been assessed. The first application for payment is for the amount due. Other applications are for the change in the amount due since the previous payment.

50.3 The amount due is

- the Price for Work Done to Date
- plus other amounts to be paid to the Contractor (including any tax which the law requires the Employer to pay to the Contractor)
- less amounts to be paid by or retained from the Contractor.

50.4 The Employer corrects any wrongly assessed amount due and notifies the Contractor of the correction before paying the Contractor.

50.5 The Contractor pays delay damages for each day from the Completion Date until Completion.
50.6 An amount is retained from the Contractor in the assessment of each amount due until Completion. This amount is the retention applied to the Price for Work Done to Date. The amount retained is halved in the first assessment made after Completion and remains at this amount until the assessment day after the Defects Certificate is issued. No amount is retained in the assessment made after the Defects Certificate has been issued.

50.7 If the Employer requires a programme to be submitted, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the Contractor has submitted a first programme to the Employer showing the information which the Works Information requires.

Payment
51.1 Each payment is made within three weeks after the next assessment day which follows receipt of an application for payment by the Contractor.

51.2 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate stated in the Contract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay.

6 Compensation events

Compensation events
60.1 The following are compensation events.

(1) The Employer gives an instruction changing the Works Information unless the change is in order to make a Defect acceptable.

(2) The Employer does not allow access to and use of the site to the Contractor as necessary for the work included in this contract.

(3) The Employer does not provide something which he is to provide by the date for providing it stated in this contract.

(4) The Employer gives an instruction to stop or not to start any work.

(5) The Employer does not work within the conditions stated in the Works Information.

(6) The Employer does not reply to a communication from the Contractor within the period required by this contract.

(7) The Employer changes a decision which he has previously communicated to the Contractor.

(8) The Employer instructs the Contractor to search for a Defect and no Defect is found.

(9) The Contractor encounters physical conditions which

- are within the site,
- are not weather conditions and
- an experienced contractor would have judged, at the date of the Contractor’s Offer, to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.
(10) The Contractor is prevented by weather from carrying out all work on the site for periods of time, each at least one full working day, which are in total more than one seventh of the total number of days between the starting date and the Completion Date. In assessing this event, only the working days which exceed this limit and on which work is prevented by no other cause are taken into account.

(11) The Employer notifies a correction to an assumption which he has stated about a compensation event.

(12) An event which stops the Contractor completing the works and which

- neither Party could prevent,
- an experienced contractor would have judged at the date of the Contractor’s Offer to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract.

(13) A difference between the final total quantity of work done and the quantity stated for an item in the Price List.

(14) A loss of or damage to the works, Plant and Materials which

- is not the fault or responsibility of the Contractor or
- could not have been prevented by any reasonable action of the Contractor.

60.2 In judging the physical conditions for the purposes of assessing any compensation event, the Contractor is assumed to have taken into account

- the Site Information,
- publicly available information referred to in the Site Information,
- information obtainable from a visual inspection of the site and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

Notifying compensation events

61

61.1 The Contractor notifies the Employer of an event which has happened or which he expects to happen as a compensation event if

- the Contractor believes that the event is a compensation event and
- the Employer has not notified the event to the Contractor.

If the Contractor does not notify a compensation event within eight weeks of becoming aware of the event he is not entitled to a change in the Prices or Completion Date unless the event arises from an instruction of the Employer.

61.2 If the Employer decides that an event notified by the Contractor

- arises from a fault of the Contractor,
- has not happened and is not expected to happen,
- has no effect upon the Defined Cost or upon Completion or
- is not one of the compensation events stated in this contract,

he notifies the Contractor of his decision that the Prices and the Completion Date are not to be changed.

If the Employer decides otherwise, he instructs the Contractor to submit a quotation for the event. The Employer notifies the decision to the Contractor or instructs the Contractor to submit a quotation within one week of the Contractor’s notification to the Employer of the event.

61.3 If the Employer decides that the Contractor did not give an early warning of the event which the Contractor could have given, the Employer notifies that decision to the Contractor when instructing the Contractor to submit a quotation.
61.4 If the Employer decides that the effects of a compensation event are too uncertain to be forecast reasonably, the Employer states assumptions about the event when instructing the Contractor to submit a quotation. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the Employer notifies a correction.

61.5 A compensation event is not notified after the defects date.

### Quotations for compensation events 62

62.1 A quotation for a compensation event comprises proposed changes to the Prices or rates and any delay to the Completion Date assessed by the Contractor. The Contractor submits details of his assessment with each quotation. The Contractor submits a quotation within two weeks of being instructed to do so by the Employer or, if no such instruction is received, within two weeks of the notification of a compensation event.

62.2 The Employer may instruct the Contractor to submit a quotation for a proposed instruction or a proposed changed decision. The Contractor does not put a proposed instruction or a proposed changed decision into effect.

62.3 If the Contractor does not provide a quotation for a compensation event within the time allowed, the Employer assesses the compensation event and notifies the Contractor of his assessment.

62.4 The Employer replies within two weeks of the Contractor’s submission.

For a proposed instruction or proposed changed decision, the Employer’s reply is

- notification that the proposed instruction will not be given or the proposed changed decision will not be made,
- notification of the instruction or changed decision as a compensation event and acceptance of the quotation or
- notification of the instruction or changed decision as a compensation event and notification that the Employer does not agree with the quotation.

For other compensation events, the Employer’s reply is

- acceptance of the quotation or
- notification that the Employer does not agree with the quotation.

62.5 If the Employer does not agree with the quotation, the Contractor may submit a revised quotation within two weeks of the Employer’s reply. If the Employer does not agree with the revised quotation or if none is received, the Employer assesses the compensation event and notifies the assessment.

62.6 After discussing with the Contractor different ways of dealing with the compensation event which are practicable, the Employer may instruct the Contractor to submit alternative quotations for a compensation event.

### Assessing compensation events 63

63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.

63.2 For other compensation events, the changes to the Prices are assessed by forecasting the effect of a compensation event upon the Defined Cost or, if the compensation event has already occurred, the assessment is based upon the Defined Cost due to the event which the Contractor has incurred. Effects on Defined Cost are assessed separately for

- people employed by the Contractor,
- Plant and Materials,
- work subcontracted by the Contractor and
- Equipment.

The Contractor shows how each of these effects is built up in each quotation for a compensation event. The percentages for overheads and profit stated in the Contractor’s Offer are applied to the assessed effect of the event on the Defined Cost.
63.3 The effects of compensation events upon the Defined Cost are assessed at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. The following are deducted from the Defined Cost for the assessment of compensation events:

- the cost of events for which this contract requires the Contractor to insure and
- other costs paid to the Contractor by insurers.

63.4 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed.

63.5 If the Employer has decided and notified the Contractor that the Contractor did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the Contractor had given early warning.

63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which are at the Contractor’s risk under this contract. The cost of preparing quotations for compensation events is not included in the assessment of compensation events.

63.7 Assessments are based on the assumptions that the Contractor reacts competently and promptly to the compensation event and that any additional cost and time due to the event are reasonably incurred.

63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the Party which did not provide the Works Information.

63.9 Assessments for changed Prices for compensation events are in the form of changes to the Price List.

63.10 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

7 Title

Objects and materials within the site 70

70.1 The Contractor has no title to an object of value or of historical or other interest within the site. The Contractor does not move such an object unless instructed to do so by the Employer.

70.2 The Contractor has title to materials from excavation and demolition only as stated in the Works Information.

8 Indemnity, insurance and liability

Limitation of liability 80

80.1 For any one event, the liability of the Contractor to the Employer for loss of or damage to the Employer’s property is limited to the amount stated in the Contract Data. The Contractor is not liable to the Employer for the Employer’s indirect or consequential loss except as provided for in the conditions of contract. Exclusion or limitation of liability applies in contract, tort or delict and otherwise and to the maximum extent permitted in law.
Indemnities  

81.1 The Employer indemnifies the Contractor against claims, proceedings, compensation and costs payable which are the unavoidable result of the works or of Providing the Works or which arise from

- fault,
- negligence,
- breach of statutory duty,
- infringement of an intellectual property or
- interference with a legal right

by the Employer or by a person employed by or contracted to the Employer except the Contractor.

81.2 The Contractor indemnifies the Employer against other

- losses and claims in respect of
  - death of or injury to a person and
  - loss of and damage to property (other than the works, Plant and Materials) and
- claims, proceedings, compensation and costs payable arising from or in connection with the Contractor’s Providing the Works.

81.3 The liability of one Party to indemnify the other is reduced to the extent that events which are the other Party’s responsibility contributed to the losses, claims, proceedings, compensation and costs.

Insurance cover  

82.1 The Contractor provides, in the joint names of the Parties and from the starting date, the insurances stated in the Insurance Table. The Contractor does not provide an insurance which the Employer is to provide as stated in the Contract Data.

| INSURANCE TABLE |
|-----------------|-------------------------------------------------|-----------------------------------|
| Insurance against | Minimum amount of cover or minimum limit of indemnity | Cover provided until |
| Loss of or damage to the works | The replacement cost | The Employer’s certificate of Completion has been issued |
| Loss of or damage to Equipment, Plant and Materials | The replacement cost | The Defects Certificate has been issued |
| The Contractor’s liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor’s Providing the Works | The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately | |
| Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract | The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event | |
9 Termination and dispute resolution

<table>
<thead>
<tr>
<th>Termination and reasons for termination</th>
<th>90</th>
</tr>
</thead>
<tbody>
<tr>
<td>90.1 If either Party wishes to terminate the Contractor’s obligation to Provide the Works, he notifies the other Party giving details of his reason for terminating. The Employer issues a termination certificate promptly if the reason complies with this contract. After a termination certificate has been issued, the Contractor does no further work necessary to Provide the Works.</td>
<td></td>
</tr>
<tr>
<td>90.2 Either Party may terminate if the other Party has become insolvent or its equivalent (Reason 1).</td>
<td></td>
</tr>
<tr>
<td>90.3 The Employer may terminate if the Employer has notified the Contractor that the Contractor has defaulted in one of the following ways and the Contractor has not stopped defaulting within two weeks of the notification.</td>
<td></td>
</tr>
<tr>
<td>- Substantially failed to comply with this contract (Reason 2).</td>
<td></td>
</tr>
<tr>
<td>- Substantially hindered the Employer (Reason 3).</td>
<td></td>
</tr>
<tr>
<td>- Substantially broken a health or safety regulation (Reason 4).</td>
<td></td>
</tr>
<tr>
<td>The Employer may terminate for any other reason (Reason 5).</td>
<td></td>
</tr>
<tr>
<td>90.4 The Contractor may terminate if</td>
<td></td>
</tr>
<tr>
<td>- the Employer has not paid an amount due under the contract within ten weeks of the assessment day which followed receipt of the Contractor’s application for it (Reason 6) or</td>
<td></td>
</tr>
<tr>
<td>- the Employer has instructed the Contractor to stop or not to start any substantial work or all work for a reason which is not the Contractor’s fault and an instruction allowing the work to re-start or start has not been given within eight weeks (Reason 7).</td>
<td></td>
</tr>
<tr>
<td>90.5 The Employer may terminate if an event which the Parties could not reasonably prevent has substantially affected the Contractor’s work for a continuous period of more than thirteen weeks (Reason 8).</td>
<td></td>
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</tbody>
</table>

<table>
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<tr>
<th>Procedures on termination</th>
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</tr>
</thead>
<tbody>
<tr>
<td>91.1 On termination, the Employer may complete the works himself or employ other people to do so. The Contractor leaves the site and removes the Equipment.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Payment on termination</th>
<th>92</th>
</tr>
</thead>
<tbody>
<tr>
<td>92.1 The amount due on termination includes</td>
<td></td>
</tr>
<tr>
<td>- an amount due assessed as for normal payments,</td>
<td></td>
</tr>
<tr>
<td>- the cost of Plant and Materials provided by the Contractor which are on the site or of which the Contractor has to accept delivery and</td>
<td></td>
</tr>
<tr>
<td>- any amounts retained by the Employer.</td>
<td></td>
</tr>
<tr>
<td>92.2 If the Employer terminates for Reason 1, 2, 3 or 4, the amount due on termination also includes a deduction of the forecast additional cost to the Employer of completing the works.</td>
<td></td>
</tr>
<tr>
<td>92.3 If the Contractor terminates for Reason 1, 6 or 7 or if the Employer terminates for Reason 5, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dispute resolution</th>
<th>93</th>
</tr>
</thead>
<tbody>
<tr>
<td>93.1 A dispute arising under or in connection with this contract is referred to and decided by the Adjudicator.</td>
<td></td>
</tr>
<tr>
<td>93.2 (1) The Parties appoint the Adjudicator under the NEC Adjudicator’s Contract current at the starting date. The Adjudicator acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.</td>
<td></td>
</tr>
</tbody>
</table>
(2) If the Adjudicator is not identified in the Contract Data or if the Adjudicator resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the Adjudicator nominating body to choose one. The Adjudicator nominating body chooses an adjudicator within four days of the request. The chosen adjudicator becomes the Adjudicator.

(3) The Adjudicator, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

The adjudication 93.3  

(1) A Party may refer a dispute to the Adjudicator if

- the Party notified the other Party of the dispute within four weeks of becoming aware of it and
- between two and four further weeks have passed since the notification.

If a disputed matter is not notified and referred within the times set out in this contract, neither Party may subsequently refer it to the Adjudicator or the tribunal.

(2) The Party referring the dispute to the Adjudicator includes with his referral information to be considered by the Adjudicator. Any more information is provided within two weeks of the referral. This period may be extended if the Adjudicator and the Parties agree.

(3) The Adjudicator may take the initiative in ascertaining the facts and the law related to the dispute. He may instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

(4) A communication between a Party and the Adjudicator is communicated to the other Party at the same time.

(5) If the Adjudicator’s decision includes assessment of additional cost or delay caused to the Contractor, he makes his assessment in the same way as a compensation event is assessed.

(6) The Adjudicator decides the dispute and notifies the Parties of his decision and his reasons within four weeks of the referral. This period may be extended by up to two weeks with the consent of the referring Party, or by any period agreed by the Parties.

If the Adjudicator does not notify his decision within the time allowed, either Party may act as if the Adjudicator has resigned.

(7) Unless and until the Adjudicator has notified the Parties of his decision, the Parties proceed as if the matter disputed was not disputed.

(8) The Adjudicator’s decision is binding on the Parties unless and until revised by the tribunal and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator’s decision is final and binding if neither Party has notified the other within the times required by this contract that he intends to refer the matter to the tribunal.

Review by the tribunal 93.4  

A Party may refer a dispute to the tribunal if

- the Party is dissatisfied with the Adjudicator’s decision or
- the Adjudicator did not notify a decision within the time allowed and a new adjudicator has not been chosen,

except that neither Party may refer a dispute to the tribunal unless they have notified the other Party of their intention to do so not more than four weeks after the end of the time allowed for the Adjudicator’s decision.
If the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the Act) applies to this contract, the following additional conditions apply.

**Definitions**

1.1 (1) The payment due date for an application for payment by the Contractor is the assessment day which follows receipt of that application.

(2) The final date for payment is three weeks after the payment due date.

**Assessing the amount due**

1.2 The Contractor’s application for payment is the notice of payment specifying the sum that the Contractor considers to be due at the payment due date (the notified sum). The Contractor’s application states the basis on which the amount is calculated and includes details of the calculation.

1.3 The following replaces clause 50.4

If the Employer intends to pay less than the notified sum, he notifies the Contractor of the amount which the Employer considers to be due not later than seven days (the prescribed period) before the final date for payment. The Employer’s notification states the basis on which the amount is calculated and includes details of the calculation. A Party pays the notified sum unless he has notified his intention to pay less than the notified sum.

**Compensation event**

1.4 If the Contractor exercises his right under the Act to suspend performance, it is a compensation event.

**The adjudication**

1.5 The following replaces clause 93.3(1)

A Party may issue to the other Party a notice of his intention to refer a dispute to adjudication at any time. He refers the dispute to the Adjudicator within one week of the notice.

1.6 The Adjudicator may in his decision allocate his fees and expenses between the Parties.

1.7 The Adjudicator may, within five days of giving his decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

1.8 If the Adjudicator’s decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.
Engineering and Construction Short Contract

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