

NEC4 Engineering and Construction Short Contract – review of changes from NEC3

Here is a review from GMH Planning Ltd of the significant changes within the NEC4 ECSC contract compared to that of the NEC3 version. We have not identified absolutely every single change, but picked out the main differences that if you are relatively experienced with NEC3 you should know/understand if you are to embark on an NEC4 contract anytime soon. In this document we do not generally go into substantial explanation why the changes have been made, but most should be relatively self-explanatory for those already experienced with these contracts. Any underlined words within this document are new NEC4 words added within an existing NEC3 clause.

For how these should be understood in practice, we regularly run public NEC4 Overview workshops to expand upon the practical application of this document. For details of the next training workshop please go to the blog section of our website - www.gmhplanning.co.uk:

Overall

- Better laid out with more separate paragraphs and more bullet points
- Gender neutral

Key:

Additional new NEC4 clause, Point of clarity (always intended), Change to previous clause wording, Same clause but changed number, Deleted NEC3 clause

Section 1 - General

- Clause 10.1 – the Parties shall act as stated in contract.
- Clause 10.2 – the Parties act in a spirit of mutual trust and cooperation
- Clause 11.2 new definitions 3no new ones:
 - Corrupt Act (new)
 - Fee (new) – applied to Defined Cost elements
 - People Rates (new) – those identified within *contract data*
 - Defined Cost (change) – introduces People Rates paid at proportion of their time spent on the site, Plant and Materials now confirms including delivery costs, Equipment includes delivery cost and references published list of equipment
 - Subcontractor – revised definition
- Clause 12.1 – amended to confirm contract is gender neutral
- Clause 14.3 - new clause where Client gives an instruction to correct a mistake in the Price List due to ambiguity or inconsistency (old 14.3/14.4 become 14.4/14.5)
- Clause 15 now early warnings not clause 16 – no change in content though
- Clause 16 – now Access to site rather than old clause 15 but no change in wording
- Clause 17 (new) Corrupt Acts – Contractor not allowed to do corrupt acts and nor are their subcontractors/suppliers. New reason to be able to terminate by Client

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Section 2 – Contractor’s Main Responsibilities

- No change

Section 3 - Time

- 30.4 – Client may also give an instruction to remove work from the Scope.

Section 4 – Quality Management

- Numbering changed
- Clause 40 (new) – Tests and inspections. Carried out as required by the Scope.
- Clause 41 – now searching for and notifying defects, previously clause 40 but otherwise no change in wording
- Clause 42 – correcting defects (used to be 41) – no change to wording
- Clause 43 – Accepting defects (new) – either Party can propose not to correct a defect and a saving offered to either cost or Completion Date, which Client can accept or not.

Section 5 - Payment

- Clause 50.4 – if the Contractor does not submit an application then the amount due will either be the amount at the previous application or whatever the Client assesses – whichever is lower i.e. Contractor obligated to put in an application if they want paying that month.
- Clause 51.3 – any tax law requires a Party to pay will be added to payment

Section 6 – Compensation Events

- Only 12 compensation events not 14
- Deleted:
 - 60.1(8) – Employer instructs Contractor to search for a Defect and none is found
 - 60.1(14) – loss or damage to works, Plant and Materials which was not Contractor fault or reasonably have been avoided
- Clause 60.1(10) – subtle change where either Party can notify the other of a correction of an assumption
- Clause 60.1(13) – reworded to say Client gives an instruction to correct a mistake in the Price List (subtle shift in risk which was previously down to the Contractor)
- Clause 61.2 reworded to say if Client notifies compensation event, Contractor submits quote within one week. If Contractor notifies, they issue quote at same time as notification.
- Clause 61.3 – introduces a time bar where by if Contractor fails to notify a compensation event within four weeks then that is time barred unless it is change to assumption or change to Scope by Client.
- Clause 62.1 now allows Contractor to state assumptions
- No option any more for a proposed instruction – guess not viewed as necessary under short contract

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- Clause 62.3 – now states that if a response is not received by Client then it is now instantly deemed accepted!
- Clause 62.4 – if no quote received, Client assess self and advises Contractor of assessment within one week of when it should have been received
- Clause 62.5 – Client includes details of assessment when notifying assessment. Allows Client to state assumptions, which can be revisited by either Party
- Section 63 generally simplified wording more aligned to ECC wording of assessing
- Clause 63.2 – clarifies CE will be assessed upon actual Defined Cost of work already done and forecast cost of work not yet done
- Clause 63.3 – may agree to use lump sums to assess change of Prices
- Clause 63.8 – ambiguities in Scope assessed in favour of the Contractor
- Clause 63.10 – adds in statement that assessment is not revised if Client has accepted quote, notified own assessment or it is treated as having been accepted.

Section 7 - Title

- No change

Section 8 - renamed Liabilities and Insurance

- Clause 80.1 now lists Client's liabilities
- Clause 81.1 – changed to Contractor Liabilities, and rather than say everything else is Contractor risk now list Contractor Liabilities: Claims or proceedings from Others in connection with the Contractor Providing the Works / Loss or damage to the works, Plant and Material and Equipment / damage to Client property in connection with Contractor providing the works / death or injury to employees of the Contractor.
- What if there is something that occurs that falls between gap of 80.1/81.1?
- Clause 82 details recovery of cost (new clause)
- Clause 83 old clause 82 which is insurance cover

Section 9 - Termination

- Clause 90.3 deleted right for Client to terminate for any reason but this is then stated as separate reason as option 9 in list
- Clause 90.6 adds in reason to terminate is for corrupt act
- Clause 90.4 right to terminate due to non-payment extended from ten to thirteen weeks
- Clause 91.8 - New additional reason to terminate (22) – corrupt act

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Contract Data – new layout which encourages it to be filled out electronically

Client's Contract Data

- Adds in address for electronic communications for individuals

New: Contractors Contract Data:

- Only one Contractor fee percentage
- Inclusion of people rate

Price List

- New space to state methods and rules used to compile Price List