

NEC4 ECS - High Level User Guide

Introduction

This NEC4 Engineering and Construction Subcontract (ECS) high-level overview is intended to be a quick reference guide as to where a particular subject matter can be found within the contract. This guide focuses on the most commonly used and relevant day to day clauses likely to be most relevant. For a specific project, any bespoke clause amendments introduced by a Contractor would have to be taken into account. Sections 1-8 are the core clauses for every ECS option A-E contract, followed by option specific clause details.

NEC4ECS Section 1 - General

Actions

- 10.1 Reminder that all Parties are to act as stated in the contract.
- 10.2 Obligation to also act in a spirit of mutual trust and cooperation.

Defined Terms

- 11.2 In alphabetical order.

Communications

- 13.1 All communications in a form that can be read, copied and recorded.
- 13.2 Communications are only valid if submitted by the system stated in Scope.
- 13.3 Responses within period for reply or as stated in contract.
- 13.5 Contractor may extend period for reply by agreement.
- 13.7 Any notification has to be separate from any other communication.

Contractor

- 14.1 Contractor acceptance does not transfer liability from Subcontractor.
- 14.2 Contractor must formally delegate actions in writing.
- 14.3 Contractor can issue instructions to change the Scope.

Early Warnings

- 15.1** Reasons for which an early warning should be notified.
- 15.2** Either party can instruct the other to an early warning meeting.
- 15.3** Actions expected of all parties at an early warning meeting.
- 15.4** Updating of the Early Warning Register by the Contractor.

Subcontractor's Proposals

- 16.1** Subcontractor can propose value engineering to reduce Prices.
- 16.2** Contractor responds to value engineering proposal within 5 weeks.
- 16.3** Subcontractor may propose a change to Working Areas.

Ambiguities

- 17.1** Notifying and resolving of an ambiguity between contract documents.
- 17.2** Notifying and resolving of an illegal or impossible requirement.

NEC4 ECS Section 2 - Subcontractors Responsibilities

Providing the Works

- 20.1** Subcontractor obligation to Provide the Works in accordance with Scope.

Design

- 21.1** Subcontractor design responsibility as stated in Scope.
- 21.2** Subcontractor to submit design and Contractor to accept/not accept.
- 21.3** Design submission can be submitted in parts if suitable.

People

- 24.1** Subcontractor to provide a key person stated in CD2 or equal replacement.
- 24.2** Contractor can instruct Subcontractor to remove any person.

Working with Contractor and Others

- 25.1** Requirement for Subcontractor to work with Others as instructed/in Scope.

25.3 Liable costs if Subcontractor fails to achieve Key Date in CD1.

Subsubcontracting

26.2 Requirement to submit proposed Subsubcontractor for acceptance.

26.2 Reasons under which a Subsubcontractor can be **not** accepted.

26.3 Also have to submit contract terms for Subsubcontractor for acceptance.

Other responsibilities

27.3 Subcontractor obeys written instructions given by Contractor.

27.4 Subcontractor acts in accordance with Health & Safety as stated in Scope.

Disclosure

29.2 Subcontractor may only publicise works with Contractor's agreement.

NEC4 ECS Section 3 - Programme

Date / Completion Date

30.1 Subcontractor does not start work on site until the first access date.

30.2 Contractor certifies date of Completion within 1 week of that date.

The Programme

31.1 Requirement for Subcontractor to submit first programme for acceptance.

31.2 Detailed list of what is required to be shown on programme for acceptance.

31.3 reasons for Contractor not to accept an programme.

Revising the Programme

32.1 List of what should be shown on a Subcontractor's revised programme.

32.2 Intervals for programme submissions to Contractor.

Acceleration

36.1 Either party can propose acceleration which is then instructed.

36.2 Subcontractor issues acceleration quote for acceptance.

NEC4 ECS Section 4 - Quality Management

Quality Management System

40.1 Subcontractor operates a quality management system in line with Scope.

40.2 Quality policy statement and plan issued for Contractor acceptance.

Tests and Inspections

41.1 Requirement to carry out tests and inspections as per Scope/applicable law.

41.3 Requirement to notify Contractor prior to tests being carried out.

41.5 Requirement for Contractor to carry out tests/inspections.

42.1 Requirement to carry out tests prior to delivery where required.

Searching/Notifying Defects

43.1 Contractor can instruct Subcontractor to search for a defect.

43.2 Requirement Contractor/Subcontractor to make each other aware of defects.

Correcting Defects

44.2 Requirement to correct a defect within the defect correction period.

44.3 Contractor to issue defects certificate at end of defects date.

Accepting Defects

45.1 Can propose for defect to not be corrected and Scope changed accordingly.

45.2 Subcontractor to submit resultant quotation saving for accept/not accept.

46.1 Contractor can assess costs of uncorrected defects and charge Subcontractor.

NEC4 ECS Section 5 - Payment

Assessing the Amount Due

50.1 Contractor to assess the amount due at each assessment date.

- 50.2** Definition of the amount due for each application.
- 50.4** If Subcontractor not submit application on time will be assessed as zero.
- 50.5** 25% PWDD can be withheld if no 1st accepted programme.

Payment

- 51.1** Contractor to certify payment within 2 weeks of assessment date.
- 51.2** Confirmation of period within which payment should be made.
- 51.3** Interest recoverable on items corrected on a later certificate.
- 51.4** Interest recoverable on late payments.

Defined Cost

- 52.1** Any Subcontractor's costs not identified in Defined Cost are in the Fee.
- 53** Final Assessment – section on how/when final assessment is made at end.

NEC4 ECS Section 6 - Compensation Events

Compensation Events

- 60.1** List of what events would be valid compensation events (21 reasons).
- 60.2** Ambiguity in Site Information favours Subcontractor.

Notification

- 61.1** Contractor notifies compensation event at time of issuing instruction.
- 61.2** Contractor instructs Subcontractor to produce quotation (and proceed).
- 61.3** Subcontractor can notify a CE and can be time barred after a period if late.
- 61.4** Contractor to accept or not accept if Subcontractor has notified a CE.
- 61.4** Deemed acceptance if the Contractor does not respond to reminder.
- 61.5** Contractor can advise that an early warning could have been given.
- 61.6** Contractor can state assumptions for Subcontractor to base the quote upon.
- 61.7** No compensation events can be issued after Completion.

Quotations

- 62.1** Contractor can request alternative quotations for dealing with a CE.
- 62.2** Subcontractor to provide a quote and alterations to programme (if relevant).
- 62.3** Subcontractor to provide quote within 2 weeks, C response within 4 weeks.
- 62.4** Contractor can instruct a revised quote (after explaining why).
- 62.5** Contractor can extend period for Subcontractor to produce quote.
- 62.6** Subcontractor's quote deemed accepted if no response to reminder.

Assessment

- 63.1** Basis of quotes in relation to if should be actual or forecast defined cost.
- 63.4** Only reasons stated for which Prices can be reduced.
- 63.5** Definition of reasons for contractual movement in Completion Date.
- 63.7** Contractor may assess as though early warning had been given if it wasn't.
- 63.8** Rules for allocation of risk within a compensation event quotation.
- 63.9** Requires Subcontractor to act promptly and competently to a CE.
- 63.10** How ambiguities will be assessed in terms of a compensation event.

Contractor's Assessments

- 64.1** Reasons under which Contractor can make own assessment of a CE.
- 64.3** Contractor to notify Subcontractor of their own assessment of a CE.
- 64.4** Deemed acceptance if Contractor no response to a notification reminder.

Proposed Instructions

- 65.1** Contractor can instruct a quotation for proposed instruction.
- 65.2** Subcontractor submits quotation within 2 weeks and Contractor to respond.
- 65.3** If quotation not accepted Contractor can still instruct (and assess as CE).

Implementation

- 66.1** Implemented when CE accepted/assessed/deemed accepted.
- 66.2** Prices/Completion Date changed accordingly following agreement.
- 66.3** Compensation event quote is not changed if later found to be wrong.

NEC4 ECS Section 7 – Title

- 70.1/2** Title of materials transfers from Subcontractor to Contractor.
- 71.1** Contractor marks Equipment, Plant and Materials outside Working Area.
- 73.1** Subcontractor has no title to anything found/existing on the site.
- 73.2** Subcontractor has title to materials from excavation and demolition.

NEC4 ECS Section 8 - Risks and Insurance

- 80.1** List of Contractor's liabilities.
- 81.1** List of Subcontractor's liabilities.
- 83** Insurance cover details.
- 84/5** Insurance policies and who needs to provide what to whom.

NEC4 ECS Section 9 - Termination

- 91.1** List of valid reasons for termination.
- 92** Procedures to follow upon termination.

NEC4 ECS Additional Option A clauses

- 11.2** Option A specific identified and defined terms.
- 31.4** Requirement for activity schedule to relate to items on programme.
- 31.4** Requirement for activity schedule to relate to items on programme.
- 55.1** Clarifies that Activity Schedule is not Scope.
- 55.3** Subcontractor may submit revised Activity schedule for acceptance.
- 55.4** Reasons Contractor has for not accepting a revised Activity Schedule.
- 63.12** Adjustment of Prices in line with value engineering percentage.
- 63.16** Ascertaining a new People Rate where required.

NEC4 ECS Additional Option B clauses

- 11.2** Option B specific identified and defined terms.
- 56.1** Clarifies that Bill of Quantities is not Scope.
- 60.4** Threshold at which a change in quantity is assessed as a CE.

- 60.5** If any change in quantity affects Completion, then it is a CE.
- 60.6** Reasons to correct a mistake in B of Q which will be a compensation event.
- 60.6** Reasons to correct a mistake in B of Q which will be a compensation event.
- 60.7** Hierarchy between B of Q and other documents (B of Q takes precedence).
- 63.12** Adjustment of Prices in line with value engineering percentage.
- 63.15** Adjustment of Bill of Quantities for compensation events.
- 63.16** Ascertaining a new People Rate where required.

NEC4ECS Additional Option C clauses

- 11.2** Option C specific identified and defined terms.
- 20.3** Subcontractor provides forecast of total Defined cost at contract intervals.
- 26.4** Subcontractor to submit pricing information for each Subsubcontractor.
- 41.7** Liability of costs for carrying out repeat test or inspection.
- 50.7** Payments in other currencies.
- 52.2** Opportunity for finalising Defined Costs for part of the works.
- 54.2** Requirement for Subcontractor to keep records.
- 54.1/2** C assesses Subcontractor's share of the Prices and actual defined cost.
- 54.3** Provisional assessment of Subcontractor's share following Completion.
- 54.4** Final assessment of Subcontractor's share following Completion.
- 55.2** Clarifies that information in Activity Schedule is not Scope.
- 63.13** Prices are not reduced if was a Subcontractor idea to reduce defined cost.
- 93.4** Rules on assessing share in event of termination of the contract.

NEC4ECS Additional option D clauses

- 11.2** Option D specific identified and defined terms.
- 20.3** Subcontractor provides forecast of total Defined cost at contract intervals.
- 26.4** Subcontractor to submit pricing information for each Subsubcontractor.
- 41.7** Liability of costs for carrying out repeat test or inspection.
- 50.7** Payments in other currencies.
- 50.9** Opportunity for finalising Defined Costs for part of the works.
- 52.2** Requirement for Subcontractor to keep records.

- 54.5/6** C assesses Subcontractors share of the Prices and actual defined cost.
- 54.7** Provisional assessment of Subcontractor's share following Completion.
- 54.8** Final assessment of Subcontractor's share following Completion.
- 56.1** Clarifies that information in Bill of Quantities is not Scope.
- 60.4** Threshold at which a change in quantity is assessed as a CE.
- 60.5** If any change in quantity affects Completion, then it is a CE.
- 60.6** Reasons to correct a mistake in B of Q which will be a compensation event.
- 60.7** Hierarchy between B of Q and other documents (B of Q takes precedence).
- 63.13** Prices are not reduced if was a Subcontractor idea to reduce defined cost.
- 63.15** Changes to Bill of Quantities for compensation events.
- 93.5** Rules on assessing share in event of termination of the contract.

NEC4 ECS Additional Option E clauses

- 11.2** Option E specific identified and defined terms.
- 20.3** Subcontractor provides forecast of total Defined cost at contract intervals.
- 26.4** Subcontractor to submit pricing information for each Subsubcontractor.
- 41.7** Liability of costs for carrying out repeat test or inspection.
- 50.8** Payments in other currencies.
- 50.9** Opportunity for finalising Defined Costs for part of the works.
- 52.2** Requirement for Subcontractor to keep records.

NEC4 ECS Secondary Options

X1 Price Adjustment for Inflation

- X1.1** Defined terms – Base Date Index, Latest Index, Price Adjustment Factor.
- X1.2** How Price Adjustment Factor is applied
- X1.3/4** Price adjustment for amount due.
- X1.5** Defined cost for compensation events.

X2 Changes in law

- X2.1** CE if occurs after the Contract Date.

X3 Multiple Currencies

X3.1/2 Payment and exchange rates.

X4 Ultimate Company Guarantee

X4.1/2 Given within 4 weeks of Contract Date.

X5 Sectional Completion

X5.1 Completion/Completion Date apply to sectional.

X6 Bonus for Early Completion

X6.1 Paid per day at rate in CD1.

X7 Delay Damages

X7.1 Charged at rate stated in CD1 until Completion or take over.

X7.2 Contractor repays overpayment of damages with interest.

X7.3 Delay damages are reduced with partial take over.

X8 Undertaking to Client or Others

X8.1-5 As stated in CD1.

X9 Transfer of Rights

X9.1 Contractor owns Subcontractor's rights over materials.

X10 Information Modelling

X10.1 Defined terms.

X10.2 Subcontractor collaborates with other Information Providers.

X10.3 Early warning requirement for anything could impact Information Model.

X10.4 Submission of Information Execution Plan.

X10.6 Compensation events.

X10.7 Client, Contractor and Subcontractor liabilities.

X11.2 X11 Termination by Contractor – procedures and amount due to be paid.

X12 Multiparty Collaboration

- X12.1** Identified and defined terms.
- X12.2** Actions to be taken by Partners and Core Group.
- X12.3** Collaboration by all Parties.
- X12.4** Incentives – amounts paid to Partner if KPI(s) achieved.

X13 Performance Bond

- X13.1** Required as stated in CD1.

X14 Advanced Payment to Subcontractor

- X14.1** Advanced payment made as stated in CD1 at the first assessment date.
- X14.2** Potential for advanced payment bond that may be required.
- X14.3** Advanced payment repaid to Contractor in instalments as stated in CD1.

X15 Subcontractor's Design

- X15.1-5** Liabilities and ownership of materials.

X16 Retention

- X16.1** Amounts retained in amounts due until Completion/take over.
- X16.2** Amount retained is halved in the next assessment after Completion.
- X16.3** Potential for an alternative retention bond if agreed by Contractor.

X17 Low Performance Damages

- X17.1** For defects that miss performance levels.

X18 Limitation of Liability

- X18.1-4** Limits of liability as stated in Contract Data part 1.
- X18.5** Excluded matters that remain unlimited liability.
- X18.6** Subcontractor only liable for matters notified before end of liability period.

X20 Key Performance indicators and Reporting Requirements

X20.1-5 As per CD1.

X21 Whole Life Cost

X21.1 Subcontractor can propose Scope change to reduce life cost of an asset.

X21.2 Subcontractor to submit quotation if C prepared to consider change.

X21.3 Contractor responds to quotation within period for reply.

X21.5 Contractor changes Scope/Prices/Completion Date accordingly.

Schedule of Cost Components (for use with options C/D/E)

11-14 Payments applicable for people.

21-28 Payments applicable for Equipment.

31/32 Payments applicable for Plant and Materials.

41 Payments applicable for Subsubcontractors.

51-54 Cost of charges paid or received by the Subcontractor.

61 Cost of manufacture of Plant and Materials by Subcontractor.

71/72 Subcontractor cost of design of works/Equipment outside Working Areas.

8 Insurance premiums and insurable events excluded from cost.

Short Schedule of Cost Components (for use with options A/B)

11 Payments applicable for people

21-27 Payments applicable for Equipment.

31/32 Payments applicable for Plant and Materials.

41 Payments applicable for Subsubcontractors.

51-54 Cost of charges paid or received by the Subcontractor.

61 Cost of manufacture of Plant and Materials by Subcontractor.

71/72 Subcontractor cost of design of works/Equipment outside Working Areas.

8 Insurance premiums and insurable events excluded from cost.

Abbreviations:

CD1 Contract Data part 1

CD2 Contract Data part 2

C Contractor

CE Compensation event

B of Q Bill of Quantities

- Glenn Hide, 17/03/2025

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