

CECA Member Bulletin, April 2025:

Bulletin Nr 52: NEC ECC High Level User Guide

Introduction

Training and development support is a key part of CECA's core offer for its membership and working in conjunction with GMH Planning it has delivered a programme of training events around the NEC Form of Contract across several CECA UK regions.

In addition to this training, a series of monthly NEC Contract Bulletins are being produced for both Contractors and Subcontractors to improve practical awareness on key topics within the NEC. The coverage, whilst not exhaustive, is intended as a general overview on some of the contractual principles to increase a wider understanding in support of more sustainable outcomes.

For the purposes of these bulletins a contractual relationship between a "Client" and "Contractor" is assumed. The same rules/principles also apply if the contractual relationship is between a "Contractor" and a "Subcontractor" and so the term "Contractor" will be used to describe both parties.

These bulletins are based on the latest NEC4 family of contracts, but the same principles and rules would apply where parties are engaged under an NEC3 form of contract.

Please respond to Lucy Hudson should you require any further information on the CECA NEC4 Bulletins via e-mail: lucyHUDSON@cecasouth.co.uk.

For further advice or guidance on the NEC details please visit gmhplanning.co.uk where you will find a wealth of free NEC Guidance Notes, NEC FAQs, and other helpful measures.

NEC4 ECC - High Level User Guide

Introduction

This NEC4 Engineering and Construction Contract (ECC) 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 Client would have to be taken into account. Sections 1-8 are the core clauses for every ECC option A-F contract, followed by option specific clause details.

NEC4 ECC 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 Project Manager may extend period for reply by agreement.
- 13.7 Any notification has to be separate from any other communication.

Project Manager

- 14.1 Project Manager acceptance does not transfer liability from Contractor.
- 14.2 Project Manager/Supervisor must formally delegate actions in writing.
- 14.3 Project Manager 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 Project Manager.

Contractor's Proposals

- 16.1 Contractor can propose value engineering to reduce Prices.
- 16.2 Project Manager responds to value engineering proposal within 4 weeks.
- 16.3 Contractor 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 ECC Section 2 – Contractor's Responsibilities

Providing the Works

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

Design

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

People

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

Working with Project Manage Client and Others

- 25.1 Requirement for Contractor to work with Others as instructed/in Scope.
- 25.3 Liable costs if Contractor fails to achieve Key Date in CD1.

Subcontracting

- 26.2 Requirement to submit proposed Subcontractor for acceptance by Project manager.
- 26.2 Reasons under which a Subcontractor can be **not** accepted (rejected).
- 26.3 Also have to submit contract terms for Subcontractor for acceptance.

Other responsibilities

- 27.3 Contractor obeys written instructions given by Project Manager or Supervisor.
- 27.4 Contractor acts in accordance with Health & Safety as stated in Scope.

Disclosure

- 29.2 Contractor may only publicise works with Client's agreement.

NEC4 ECC Section 3 - Programme

Date / Completion Date

- 30.1 Contractor does not start work on site until the first access date.
- 30.2 Project Manager certifies date of Completion within 1 week of that date.

The Programme

- 31.1 Requirement for Contractor 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 Project Manager not to accept (reject) a programme.

Revising the Programme

- 32.1 List of what should be shown on a Contractor's revised programme.
- 32.2 Intervals for programme submissions to Project Manager.

Acceleration

- 36.1 Either party can propose acceleration which is then instructed.
- 36.2 Contractor issues acceleration quote for acceptance for PM to accept/not accept.

NEC4 ECC Section 4 - Quality Management

Quality Management System

- 40.1 Contractor operates a quality management system in line with Scope.
- 40.2 Quality policy statement and plan issued for Project Manager acceptance.

Tests and Inspections

- 41.1 Requirement to carry out tests and inspections as per Scope/applicable law.
- 41.3 Requirement to notify Supervisor prior to tests being carried out.
- 41.5 Requirement for Supervisor to carry out tests/inspections.
- 42.1 Requirement to carry out tests prior to delivery where required.

Searching/Notifying Defects

- 43.1 Supervisor can instruct Contractor to search for a defect.
- 43.2 Requirement Supervisor/Contractor to make each other aware of defects.

Correcting Defects

- 44.2 Requirement to correct a defect within the defect correction period.
- 44.3 Supervisor 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 Contractor to submit resultant quotation saving for accept/not accept.

Uncorrected Defects

- 46.1/2 Project Manager can assess costs of uncorrected defects and charge Contractor.

NEC4 ECC Section 5 - Payment

Assessing the Amount Due

- 50.1 Project Manager to assess the amount due at each assessment date.
- 50.2 Definition of the amount due for each application.
- 50.4 If Contractor does not submit application on time will be assessed as zero that period.
- 50.5 25% PWDD can be withheld if no 1st programme issued showing information contract requires.

Payment

- 51.1 Project Manager to certify payment within 1 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 Contractor'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 ECC Section 6 - Compensation Events

Compensation Events

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

Notification

- 61.1 Project Manager notifies compensation event at time of issuing instruction.
- 61.2 Project Manager instructs Contractor to produce quotation (and proceed).
- 61.3 Contractor can notify a CE and can be time barred after a period if late.
- 61.4 Project Manager to accept or not accept if Contractor has notified a CE.
- 61.4 Deemed acceptance if the Project Manager does not respond to reminder.
- 61.5 Project Manager can state that an early warning could have been given.

- 61.6** Project Manager can state assumptions for Contractor to base the quote upon.
- 61.7** No compensation events can be issued after Completion.

Quotations

- 62.1** Project Manager can request alternative quotations for dealing with a CE.
- 62.2** Contractor to provide a quote and alterations to programme (if relevant).
- 62.3** Contractor to provide quote within 3 weeks, PM response within 2 weeks.
- 62.4** Project Manager can instruct a revised quote (after explaining why).
- 62.5** Project Manager can extend period for Contractor to produce quote.
- 62.6** Contractor'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** Project Manager 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 Contractor 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 Project Manager can make own assessment of a CE.
- 64.3** Project Manager to notify Contractor of their own assessment of a CE.
- 64.4** Deemed acceptance if Project Manager no response to a notification reminder.

Proposed Instructions

- 65.1** Project Manager can instruct a quotation for proposed instruction.
- 65.2** Contractor submits quotation within 3 weeks and Project Manager to respond.
- 65.3** If quotation not accepted Project Manager can still instruct (and assess as CE).

Implementation

- 66.1** Implemented when CE accepted/ Project Manager 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.

NEC4ECC Section 7 – Title

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

NEC4ECC Section 8 - Risks and Insurance

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

NEC4ECC Section 9 - Termination

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

NEC4ECC 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.
- 55.1** Clarifies that Activity Schedule is not Scope.
- 55.2** Contractor may submit revised Activity schedule for acceptance.
- 55.3** Reasons Project Manager 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.

NEC4ECC additional option B clauses

- 11.2 Option B specific identified and defined terms.
- 55.1 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.
- 60.7 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.

NEC4ECC additional option C clauses

- 11.2 Option C specific identified and defined terms.
- 20.4 Contractor provides forecast of total Defined cost at contract intervals.
- 26.4 Contractor to submit pricing information for each Subcontractor.
- 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 Contractor to keep records.
- 54.1/2 Project Manager assesses Contractor's share of the Prices and actual defined cost.
- 54.3 Provisional assessment of Contractor's share following Completion.
- 54.4 Final assessment of Contractor's share following Completion.
- 55.2 Clarifies that information in Activity Schedule is not Scope.
- 63.13 Prices are not reduced if was a Contractor idea to reduce defined cost.
- 93.4 Rules on assessing share in event of termination of the contract.

NEC4ECC additional option D clauses

- 11.2 Option D specific identified and defined terms.
- 20.4 Contractor provides forecast of total Defined cost at contract intervals.
- 26.4 Contractor to submit pricing information for each Subcontractor.

- 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 Contractor to keep records.
- 54.5/6** Project Manager assesses Contractor's share of the Prices and actual defined cost.
- 54.7** Provisional assessment of Contractor's share following Completion.
- 54.8** Final assessment of Contractor'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 compensation event.
- 60.5** If any change in quantity affects Completion, then it is 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** Prices are not reduced if was a Contractor 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.

NEC4ECC additional option E/F clauses

- 11.2** Option E/F specific identified and defined terms.
- 20.4** Contractor provides forecast of total Defined cost at contract intervals.
- 26.4** Contractor to submit pricing information for each Subcontractor.
- 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 Contractor to keep records.

NEC4ECC 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 Compensation event if one 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 each sectional completion.

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 Client 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 Client owns the Contractor's rights over materials prepared for the design.

X10 Information Modelling

X10.1 Defined terms.

X10.2 Contractor 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 and Contractor liabilities.

X11 Termination by Client

X11.2 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 Contractor

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 Client in instalments as stated in CD1.

X15 Contractor'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 Client.

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 Contractor 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 Contractor can propose Scope change to reduce life cost of an asset.

X21.2 Contractor to submit quotation if Project Manager prepared to consider change.

X21.3 Project Manager responds to quotation within period for reply.

X21.5 Project Manager changes Scope/Prices/Completion Date accordingly.

X22 Early Contractor Involvement

X22.1 Defined terms.

X22.2 Requirements for forecasts of Defined Costs for stage 1

X22.3 Proposals for Stage 2 and revisions to programme/dates/Prices

X22.4 Key persons not replaced during Stage 1 unless instructed by Project Manager.

X22.5 Notice to proceed (or to not to proceed) to Stage 2

X22.6 Changes to budget – situations and timescales

X22.7 Incentive payment if final Project Cost is less than the Budget.

X29 Climate Change

X29.1 Defined terms.

X29.3 Requirement to notify early warning if could impact Climate Change

X29.4 Details of issue/acceptance/changes to Climate Change Plan

X29.7-10 Compensation events process associated with Performance Table

X29.11 Contractor's proposals to impact on climate change

X29.12 Performance against targets in Performance Table

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 Subcontractors.

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

61 Cost of manufacture of Plant and Materials by Contractor.

71/72 Contractor 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 Subcontractors.

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

61 Cost of manufacture of Plant and Materials by Contractor.

71/72 Contractor 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

PM Project Manager

CE Compensation event

B of Q Bill of Quantities

- Glenn Hide, 02/04/2025

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