

# NEC4 ECSS - High Level User Guide

## Introduction

This NEC4 Engineering and Construction Subcontract (ECSS) 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 used and day to day clauses likely to be most relevant. For a specific project, any bespoke clause amendments introduced by a Subcontractor would have to be taken into account.

With this particular contract the first section to be filled in is all the elements of Contract Data. This includes:

- Contractor's Subcontract Data
- Subcontractor's Subcontract Data
- Subcontractor's Offer and Contractor's Acceptance
- Price List
- Scope
- Site Information

It is worth noting that Scope is further divided into separate sections again all of which need completing before entering into a signed agreement:

1. Description of the Works
2. Drawings
3. Specifications
4. Constraints on how Subcontractor provides the Works
5. Requirements for the Programme
6. Services and other things provided by Contractor

## 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** 16 no. listed in alphabetical order.

### Communications

- 13.1** All communications issued in a form that can be read, copied and recorded.

**13.2** Responses within period for reply or as stated in contract.

## **Project Manager**

**14.1** Subcontractor obeys written instructions given by Contractor.

**14.2** Contractor can issue instructions to change the Scope.

**14.3** Contractor gives an instruction to correct a mistake in Price List.

**14.4** Contractor acceptance of a communication does not change Subcontractor liability.

## **Early Warnings**

**15.1** Reasons for which an early warning should be notified.

**15.2** Both Parties co-operate in considering proposals to avoid or reduce the risk and deciding actions.

## **Access to site**

**16.1** Contractor allows access to site as necessary for the work.

**16.2** Contractor provides services and other things as stated in the Scope.

## **Corrupt Acts**

**17.1** Subcontractor does not do a Corrupt Act.

# **Section 2 – Subcontractor’s Responsibilities**

## **Providing the Works**

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

**20.2** Subcontractor does not start work which Subcontractor has designed, until Contractor has accepted.

## **Subsubcontracting and people**

**21.1** Subcontractor responsible to provide the works whether or not it has been subsubcontracted.

**21.3** Contractor may instruct Subcontractor to remove a person within one day from instruction.

## **Access for the Contractor**

**22.1** Subcontractor provides access to work being done and to stored Plant and Materials.

## Section 3 - Programme

### Starting, Completion and programme

- 30.1 Subcontractor does not start work on site until starting date and completes work by Completion Date.
- 30.2 Subcontractor submits weekly forecast of the date of Completion.
- 30.3 Contractor decides date of Completion and certifies within 1 week.
- 30.4 Contractor may instruct Subcontractor to stop or not start work, and to re-start or remove from Scope.
- 31.1 Subcontractor submits programme as stated in Scope

## Section 4 - Quality Management

### Tests and Inspections

- 40.1 Requirement to carry out tests and inspections as per Scope.

### Searching/Notifying Defects

- 41.1 Contractor can instruct Subcontractor to search for a defect.
- 41.2 Contractor can notify a defect up until the *defects date*.

### Correcting Defects

- 42.1 Subcontractor obligation to correct a defect.
- 42.2 Before Completion defects corrected within a timescale to avoid impact Contractor or others.
- 42.3 After Completion defects corrected within *defect correction period*.
- 42.4 Contractor obligation and timing to issue Defects Certificate.

### Accepting Defects

- 43.1 Can propose for defect to not be corrected and Scope changed accordingly for reduced Prices.

### Uncorrected Defects

- 44.1 Contractor can assess costs of uncorrected defects and charge Subcontractor.

## Section 5 - Payment

### Assessing the Amount Due

- 50.1** Contractor to assess the amount due at each assessment day.
- 50.2** Subcontractor to include in application explanation of build-up.
- 50.4** If Subcontractor does not submit application on time, it will be assessed as zero that period.
- 50.5** Contractor may make own assessment of application if they consider one submitted to be incorrect.
- 50.6** Subcontractor liable for delay damages for each day beyond Completion Date.
- 50.7** Retention amount will be withheld from applications and paid upon Completion/Defect Certificate.
- 50.8** 25% PWDD can be withheld if no 1<sup>st</sup> programme issued showing information Scope requires.

### Payment

- 51.1** Payment made within 3 weeks of assessment date and is a cumulative application.
- 51.2** Interest recoverable on late or corrected items.

## Section 6 - Compensation Events

### Compensation Events

- 60.1** List of what events would be valid compensation events (12 reasons).
- 60.2** Any ambiguity in Site Information favours Subcontractor.

### Notification

- 61.1** Contractor or Subcontractor may notify a compensation event.
- 61.2** Subcontractor submits quote within one week if Contractor notifies, or includes quote in their notification.
- 61.3** Subcontractor may be time barred if not notifying compensation event within three weeks.

### Quotations

- 62.1** Subcontractor can state assumptions upon which quotation is based.
- 62.2** Contractor replies to quotation within period stated in Subcontract data.
- 62.3** Non-response to quotation within contractual timescales means deemed acceptance.

- 62.4 Contractor assesses quotation within one week if Subcontractor does not issue on time.
- 62.5 Contractor may state assumptions if assessing the quotation value which may then be corrected later.

## **Assessment**

- 63.1 Price List used for compensation events that only change quantity.
- 63.2 Other events will be assessed upon actual/forecast Defined Cost.
- 63.3 Rates or lump sums may be used by agreement to assess compensation events.
- 63.5 New People Rates by agreement or by Contractor assessment for any missing categories.
- 63.7 Risk may be included within quotation and requires Subcontractor to react promptly to event.
- 63.8 Details how ambiguities will be assessed in terms of a compensation event.
- 63.10 Confirms agreed compensation events not revised.

## **Section 7 – Title**

- 70.1 Subcontractor has no title to anything found/existing on the site.
- 70.2 Subcontractor has title to materials from excavation and demolition.

## **Section 8 - Risks and Insurance**

- 80.1 List of Contractor's liabilities.
- 81.1 List of Subcontractor's liabilities.
- 82 Recovery of costs between Subcontractor/Contractor.
- 83 Insurance policies and who needs to provide what to whom.

## **Section 9 - Termination**

- 90.1 List of valid reasons for termination.
- 91 Procedures to follow upon termination.
- 92 Payment rules upon termination.
- 93 Dispute resolution adjudication process and rules.

- Glenn Hide, 07/05/2025

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