



# NEC: Engineering and Construction Contract

## Looking after the specialist contractors

The pen, the power and the payment: how employers can make NEC fairer along the supply chain

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## Yosof Ewing - The Contract Coach / Adjudicate

A mission to stop avoidable disputes by protecting the people who actually build the work

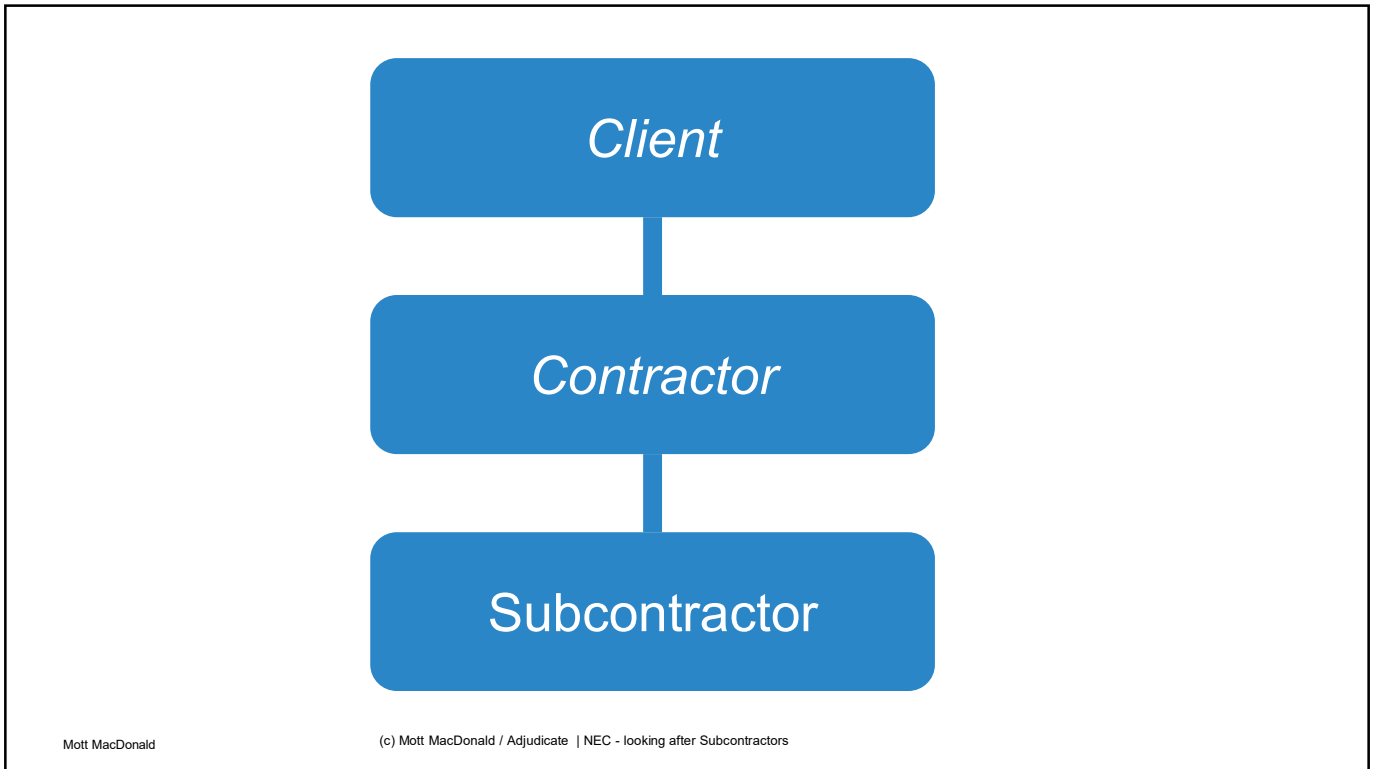
**"Every unfair amendment has a human consequence."**

- **Clients are not bystanders.** They write the rules of the game.
- When **Clients** preserve NEC intent and insist on fair payment, larger contractors have to behave reasonably.
- This is about cash flow, trust, family businesses and the health of the whole construction ecosystem.

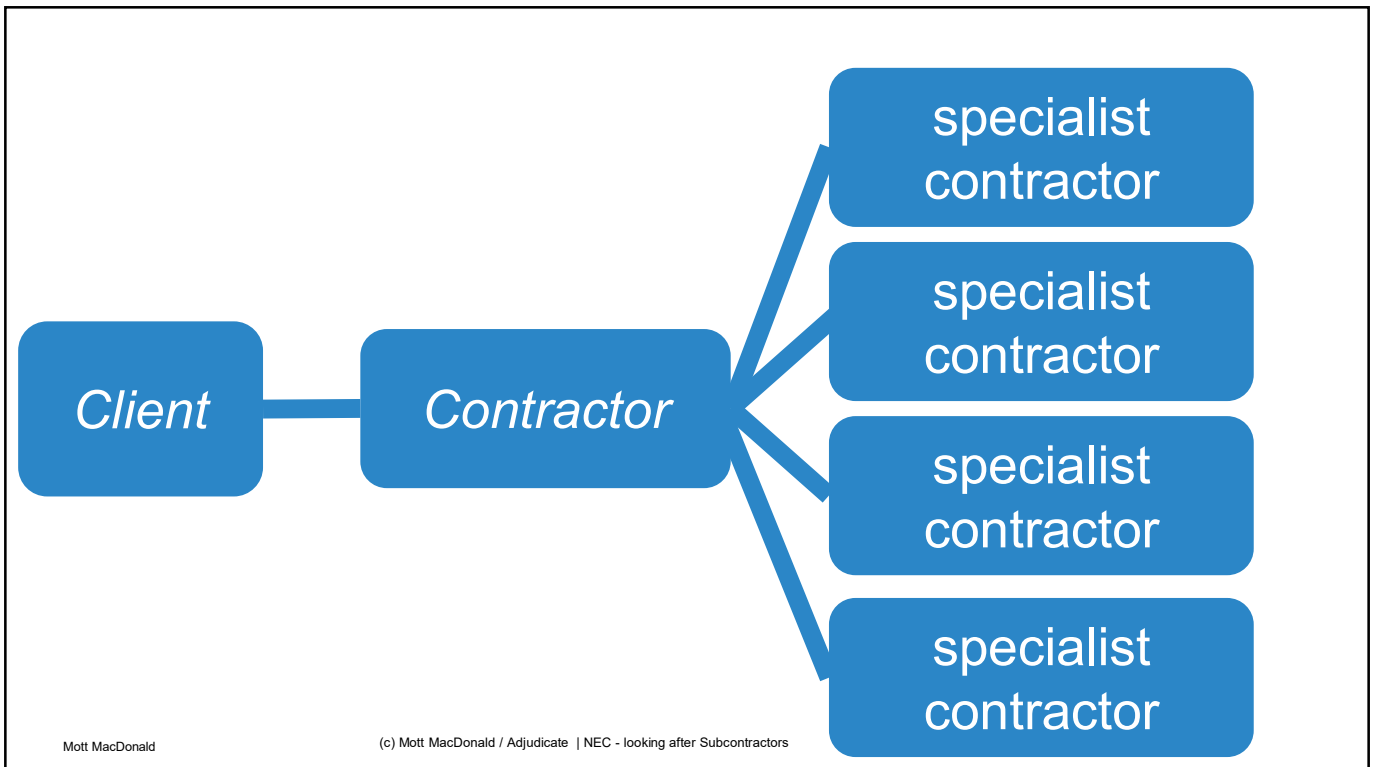
**Mission: stop the weaponisation of contract language and restore fairness to construction.**

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# How clients can set the rules for looking after subcontractors

The screenshot shows the top navigation bar of the NEC website. It includes a 'Global site' dropdown menu, 'Contact Us' and 'Sign in/Register' links, and a main menu with items: 'Why Choose NEC', 'Products', 'Projects', 'Resources', 'Support', 'News', and 'NEC Digital'. A shopping cart icon with a '0' badge and a search icon are also visible. Below the navigation, the date '24 November 2025' is displayed, followed by the main heading 'How clients can set the rules for looking after subcontractors'.

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## This is not a subcontractor problem

### It is an *Client* design choice.

- The **Client** decides the procurement model, the main contract and the tone of amendments.
- The **Client** can require NEC along the chain without risk shedding changes.
- The **Client** can make fair payment measurable, auditable and enforceable.

**If the rules reward domination, do not be surprised when collaboration disappears.**

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## To start

### A better way of doing business

- **Specialist Subcontractors**, the lifeblood of an NEC project ... sometimes **not treated with the respect and fairness they deserve.**
- *Contractor's* get away with **tiny profit margins** with a decent return on capital by **exploiting the financing of the job by Subcontractors**
- Fairness to specialist contractors starts with **how the Client sets up the NEC main contract.**
- *Clients* should mandate the use of **NEC contracts along the supply chain.**

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## Most disputes are born in a badly drafted contract

- Confusion, ambiguity and risk dumping create conflict long before the first payment dispute arrives.
- When a so called "standard form" is loaded with unnecessary amendments, the project moves away from clarity and closer to confrontation.
- If Clients want fewer disputes, they must insist on simpler drafting, a decent Scope and a fair allocation of risk.

**Bad drafting today becomes a payment dispute tomorrow.**

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## Clients have the

Power

Money

The  
pen!

With power, money and the pen comes responsibility.

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## The employer's red lines

*Reasonable contractors should have no problem with these.*

**No unnecessary amendments**

Make every Z clause earn its place.

**No payment games**

Align assessment dates and require payment within a fixed period.

**No hidden supply chain finance**

Specialists should not be used as the bank for the project.

**No risk shedding downstream**

Require NEC subcontracts without changes that defeat the form.

**Employers can force fairness simply by making fairness a condition of the contract.**

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## Three levers employers can pull

*The fair supply chain is not an aspiration - it is a set of settings.*



**Set the rules upstream. Measure compliance downstream.**

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**We have the**

**Passion!**

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Start with a

**Standard  
form -  
NEC**

## Construction Leadership Council (2025):

**only really  
necessary  
changes  
(Z clauses)**

**Explanation of  
changes to  
bidders  
(information only)**

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## Change the tune, not the song



**"I'm just a rich boy from a rich family..."**

That is deliberately the wrong lyric. Everyone notices when a classic tune is changed and the result feels wrong.

NEC is also a carefully engineered classic. So why do we keep changing the tune with avoidable Z clauses and risk shedding amendments?

**Preserve the intent. Use the form as it was designed to work.**

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## Bad Z Clause Hall of Shame

### AMENDMENTS THAT BREAK THE TUNE

- ~~Delete mutual trust and cooperation~~
- ~~Stretch payment beyond fair cash flow~~
- ~~Neuter compensation events~~
- ~~Make Scope vague but liability absolute~~
- ~~Push unlimited risk to specialists~~
- ~~Require openness upwards, silence downwards~~

These are not "commercial tweaks". They are behaviour signals.

- They tell the main contractor what the Client will tolerate.
- They tell specialists whether the project wants partnership or leverage.
- They tell the adjudicator where the dispute began.

**If you want collaboration, stop drafting for domination.**

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## What causes disputes?

- King's College London
- [2024 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform](#)
- *'The leading causes of disputes were inadequate contract administration and lack of competence of project participants'*
- So let's not make these STANDARD forms more complicated!

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## At its core, NEC is engineering

When engineering is side-stepped, what are we left with?

### NEC works because it engineers behaviour:

- early warning instead of ambush
- programme management instead of hindsight arguments
- compensation events instead of informal drift
- payment discipline instead of supply chain finance

**Take that engineering out and you are left with paperwork, leverage and disputes.**

Forget the engineering, and disputes will replace delivery.

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**Oh, and can we have a decent Scope?!!**

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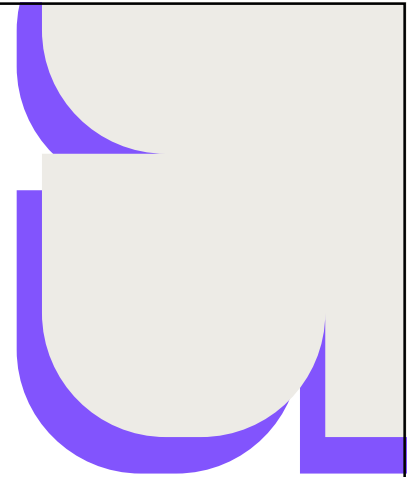
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## Make sure the *Contractor* uses those good specialists promised in the Bid

- Very simple.
- Use 'key subcontractors' named in Contract Data part two and required to be used in the same way as are 'key people'.
- [How to ensure that bid-winning supply chains \(and Subcontractors\) actually get used](#)
- Richard Patterson, Barry Trebes, Mott MacDonald
- NEC Newsletter, January 202

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Press release

## Time to Pay Up: Government unveils toughest crackdown on late payments in over 25 years

Small businesses to be backed by new, stronger measures to tackle late payments.

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News

## Government set to ban retentions

Grant Prior   3 weeks ago

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The Government is planning to ban retentions in construction as part of a major crack down on late payments.

It said: "We propose to ban the withholding of retention payments under the terms of construction contracts, consulting on its implementation.

"This will prevent small firms losing retentions to insolvency or non-payment."

Initial consultations showed the majority of the industry is in favour of a total ban rather than an alternative system like project bank accounts.

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## Retentions (X16)

- Traditionally used to build up a fund in case *Contractor* does not correct Defects
- Main contractors too often hold them back when they should be released
- Serious cashflow issue for specialist contractors
- Soon to be banned in UK law
- *Clients* can lead by:
  - Not using in main contract
  - One line in the Scope to ban them in subcontracts
- Or at least require in Scope that retentions to be held in a ring-fenced trust
- Or possibly allow a retention bond instead?

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## Project Bank Accounts (PBA) (Y(UK)1)

- Provide transparency and ensure timely payment to specialist contractors
- Becoming the norm for some Government clients
- **Digital Parallel Payment Accounts**
  - Ring fenced PBA that **pays the entire supply chain simultaneously**
  - All through the app
  - Demonstrates compliance
- Require (in the Scope) that **assessment dates** in subcontracts **to align** with those in the main contract

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## Conflict avoidance

**Obligation to sign up to RICS Conflict Avoidance Pledge**

**Consider option W3 – Dispute avoidance Board**

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## Subcontracts

- **Conditions:** Require the subcontracts over a stated value to be NEC without risk shedding changes
  - Engineering and Construction Subcontract (ECS) or (often better)
  - Engineering and Construction **SHORT** Subcontract (ECSS)
  
- **Retentions**
  - None or at least
  - required to be in ring-fenced trust or instead
  - retention bond

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## Subcontracts

### Payment – words in Scope

- Require **assessment dates to match** those in main contract
- Require **payments within 3 weeks** of the assessment date
- Require in Scope as '**records to be kept**' and so open book (52.2 and 52.4) (may want a Z for options A and B), for each payment
  - dates of Subcontractor applications for payment
  - final date for payment
  - actual dates of payment
  - ratio of amount paid to amount applied for
  - explanation of any under- payment

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## The Employer's Fair Payment Standard

*A practical pledge clients can put into Scope, procurement documents and contract governance.*

1. We will not permit unfair amendments to defeat NEC core intent.
2. We will not allow specialist contractors to fund our projects through delayed payment.
3. We will require aligned assessment dates, transparent records and payment within a clear period.
4. We will not tolerate retentions or deductions being used as working capital.
5. We will expect good contractors to prove fair treatment, not just promise it.

**Fair payment is not charity. It is leadership.**

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**All very  
simple**

**Clients need to  
lead the way**

**But good  
contractors  
should be  
doing all this  
anyway!**

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## The ask for employers

**Use your power.  
Use your money.  
Use your pen.**

**Insist on contracts that are  
clear, fair and engineered for  
delivery - not drafted for  
domination.**

**Good contractors should already be doing this.  
Great Clients will require it.**

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THANK YOU

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A Breadcrumb company

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