



The latest set of NEC4 amendments: What do you need to know?

Following publication of the NEC4 suite of contracts in June 2017, there has been substantial feedback from users and industry experts suggesting how the contracts could be further enhanced. In light of this feedback, NEC published a set of amendments in January 2019 and in October 2020. They have now issued a further set of amendments in January 2023. This bulletin explains the main changes and the effects they have on the NEC4 suite of contracts.

Climate Change

The most notable amendment is in relation to Secondary Option X29 regarding climate change. NEC published Secondary Option X29 as a standalone Option in July 2022 but, the latest January 2023 amendments have incorporated this into each relevant main contract.

This amendment is an attempt to help NEC users in their drive towards achieving net zero greenhouse gas emissions and other climate related targets. The Option enables users to state their climate change requirements in the Scope and provides a new climate change plan for suppliers to set out their strategy for achieving the requirements.

Working from home

As you will no doubt be aware, in recent years it has become increasingly common for people to work from home or from other locations outside of the Working Areas/Service Areas. NEC have acknowledged this change and have made amendments to the Schedule of Cost Components ("SCC") and the Short Schedule of Cost

Components ("SSCC") to address the issues surrounding this.

The SCC now includes an option for users to identify in the Contract Data people whose costs can be recovered as part of Defined Cost even if they are not normally based within the Working Areas/Service Areas and are working outside of the Working Areas/Service Areas. The SSCC has been amended to allow the cost of people who would normally be based in the Working Areas/Service Areas to be recovered as part of Defined Cost when they are not working within the Working Areas/Service Areas provided they are working on the contract.

Design obligation

Another important change introduced by these latest amendments, is to the Engineering and Construction Short Contract and the Engineering and Construction Short Subcontract regarding the Contractor/Subcontractor's liability for design.

As you will be aware, the default position regarding design responsibility under these contracts is that the Contractor/Subcontractor is liable for any failure. However, these contracts now include a new Option in the Contract Data allowing this liability to be reduced to exercising the level of skill and care normally used by professionals designing works similar to the works. This amendment has been introduced in light of the reluctance of suppliers to accept liability for design other than on a reasonable skill and care basis.

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Limit of liability

In order to bring the short form contracts in line with the main contracts, a new clause has been added to the Contract Data/Subcontract Data allowing the parties to specify a total limit on liability. This addition will be welcomed by contractors and sub-contractors.

Early Contractor involvement

Various amendments have been made to Secondary Option X22 in an attempt to enhance collaboration in Stage One and to provide further certainty when the works do not proceed to Stage Two. These amendments include:

1. The Project Manager and the Contractor can agree a change to the Site Information during Stage One;
2. Compensation Events under Stage Two are judged against the date of the notice to proceed rather than the Contract Date, allowing any information gathered during Stage One to be taken into account when assessing Compensation Events; and
3. Compensation Events before the date of the notice to proceed are deemed to be included within the changes in Prices and Completion Date in the notice to proceed. This allows settlement of outstanding Compensation Events before Stage Two works commence, providing greater clarity.

Adjudication

To ensure it is in keeping with the requirements of the Housing Grants, Construction and Regeneration Act 1996 (as amended), dispute resolution Option W2 has been amended to clarify that the Adjudicator decides the procedure and timetable for the adjudication.

Payment on termination

In order to bring the Supply Short Contract in line with the other NEC4 Contracts, NEC have made various amendments in respect of the payment that becomes due to the Supplier when the contract is terminated because of a Purchaser's default or for the Purchaser's convenience.

Loss and damage to property

New provisions have been added to both the Facilities Management Short Contract and the Facilities Management Short Subcontract to confirm that the Service Provider/Subcontractor is liable for loss or damage to the Client's property which arises from the Service Provider/Subcontractor providing the Service/Subcontract Services. Additional provisions have also been added to allow this aforementioned liability to be limited to an amount (if any) specified in the Contract Data.

Summary

These are welcomed amendments that demonstrate NEC's commitment to ensuring the NEC4 suite of contracts continue to suit the ever-changing construction industry.

If you require it, a schedule of amendments detailing all amendments being made is available for each contract on the NEC website. From January 2023 copies of all of the contracts published will contain the amendments and a table summarising them.

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