



NEC Contracts Further Changes to be aware of

It was only 2019 when we last published an article updating you on amendments to the NEC4 Contracts (first published June 2017) and here we are again, but as we see a rise in the use of this suite of contracts it is important to keep up to date with key changes.

October 2020 seen the NEC publish a series of new amendments to its NEC4 contracts. These come further to feedback from industry experts and suggestions on how the contracts can be improved.

The key amendments include:

Delay Damages

Every NEC4 contract that contains an option for delay damages has changed. The amendment clarifies that delay damages cease at termination (any further delay costs after termination would be dealt with as part of the general costs/damages resulting from termination).

If you are familiar with the Court of Appeal case Triple [Point Technology Inc v PTI Public Company Ltd \[2019\] EWCA Civ 230](#) you might recognise that the new wording has been included to deal with points made in that decision. This case illustrated how carefully liquidated damages clauses need to be drafted and it is a reminder that the parties to a contract need to be clear about the impact of delay and the allocation of risk.

Option Y(UK)2

This amendment again is linked to a recent decision of the courts in the case of [Rochford Construction v Kilhan Construction \(\[2020\] EWHC 941 \(TCC\)\)](#). The contract in this case provided that the final date for payment of any sum would

be 30 days from the date of service of a relevant invoice – the court decided that was not an adequate mechanism for determining the final date for payment in relation to the due date (because it was linked to a separate event i.e. the submission of an invoice). So careful if you are drafting amendments to these clauses!

Other Amendments

This series of amendments also included changes to:

- Clause 81.1 (Contractor's liabilities & use of equipment, Plant and Materials (TSC, TSS and DBOC)) - amended to confirm that the Contractor is liable for loss of or damage to any equipment provided by the Client to the Contractor. Those parts of clause 7 detailing the rights to use equipment, Plant and Materials and other materials provided by the Client has also been simplified.
- Option X22 (Early Contractor Involvement) - amended to provide greater flexibility in the development of a project in Stage One and to provide a more structured process for the Contractor's submissions and the notice to Proceed to Stage Two. As part of the changes the Project Manager and Contractor are required to agree any changes to the Access Dates, Key Dates and the Completion Date that may be necessary, in



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addition to agreeing any necessary changes to the total of the Prices.

- Option Y(UK)1 (Project Bank Accounts (ECC, ECS, PSC, PSS, TSC, TSS, SC and ALC) - updated to reflect user feedback, electronic banking methods and best practice.

In addition, there are some minor corrections to the wording in some of the contracts.

A full schedule of the amendments as published by the NEC can be downloaded [here](#).

For those of you who are still using the NEC3 standard forms of contract you might want to consider including amendments to incorporate the key changes catered for in the NEC4 suite, ideally with the help of someone with real NEC experience.

Finally, if you find yourself or your team at the start of a new NEC contract it is worthwhile considering training to familiarise yourself with these new amendments or just as a refresher.

Contract advice, drafting and training are key components of our work. If you would like advice on any of the abovementioned issues please contact Claire Mc Carry at Claire.McCarry@QuiggGolden.com

