

NEC4

The NEC4 suite of contracts were launched in June. These update the popular NEC3 suite of documents and have been described as an 'evolution not a revolution', so those familiar with the previous iteration should be comfortable with the layout and format of the new series.

Much is virtually identical and the same structure has been retained, consisting of:

- ▶ core clauses 1 to 9, with only two slight changes in nomenclature;
- ▶ main option clause (payment clauses) A to F;
- ▶ dispute resolution options (formerly options W1 and W2, now options W1, W2 and W3);
- ▶ X clauses (secondary option clauses);
- ▶ Y clauses (Project Bank Account, Construction Act 1996 and Third Party Rights Act 1999);
- ▶ Schedule and Short Schedule of Cost Components; and
- ▶ Contract Data Parts 1 and 2.

There are some notable changes in terminology:

- ▶ Employer has become Client;
- ▶ Works Information has become Scope;
- ▶ Risks Register has become Early Warning Register; and
- ▶ Employer risks has become Client liabilities.

There are also notable additions to the NEC4 core clauses, including: for the use of a [digital] communication system (Clause 13.3); for Contractor-initiated changes in Scope to reduce cost (clause 16); relating to corrupt acts (clause 18); for assignment (clause 28); as to confidentiality (clause 29); for a quality management plan (clause 40); requiring the Contractor to make applications for periodical payment (clause 50.2); relating specifically to the final payment following the issue of the Defects Certificate, including a 'conclusive effect' provision similar, in relation to the contract price, to such provisions in the JCT contracts (clause 53); and for the Contractor to be required to give quotations for proposed instructions (clause 65).

Some other key changes to note in the Engineering and Construction Contract (ECC) include:

- ▶ a new dispute resolution option (W3) involving a standing dispute avoidance board of three individuals, the function of which is to help avoid difficulties turning into disputes;
 - ▶ a new secondary option clause to allow for collateral warranties (X8);
 - ▶ expanded design and build options (X15) which includes, for the first time, the requirement for the Contractor to maintain professional indemnity insurance in respect of its design liabilities;
 - ▶ an option for early Contractor involvement (X22) for use with Options C and E; and
 - ▶ a simplified schedule of Cost Components.
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Alongside the updated suite of contracts, the NEC has produced a new Design, Build and Operate contract which will combine responsibilities for a single supplier from construction to operation. They are also consulting on a new Alliance Contract which plans to put partnership at the heart of the construction process. This includes expanding on the need for mutual trust and co-operation set out in clause 10.1 of the ECC, something that might help resolve some of the issues before the court in *Contain Limited v Tarmac Holdings Limited* [2017] EWHC 319 (TCC) reviewed in the April edition of *Constructive Comments*.

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