



NEC4 Y(IR)1 Clause

Optional contract clause and guidance for the **Engineering and Construction Contract** for use in Ireland on contracts which are subject to the Construction Contracts Act 2013

Clauses and guidance are also provided for other NEC4 contracts which may be subject to the Construction Contracts Act 2013. These are available for download from necontract.com.

Acknowledgements

The original NEC was designed and drafted by Dr Martin Barnes then of Coopers and Lybrand with the assistance of Professor J. G. Perry then of the University of Birmingham, T. W. Weddell then of Travers Morgan Management, T. H. Nicholson, Consultant to the Institution of Civil Engineers, A. Norman then of the University of Manchester Institute of Science and Technology and P. A. Baird, then Corporate Contracts Consultant, Eskom, South Africa.

The fourth edition of the NEC suite was produced by the Institution of Civil Engineers through its NEC4 Contract Board.

The NEC4 Contract Board is:

P. Higgins, BSc (Hons), CEng, FICE (Chair)
P. T. Cousins, BEng (Tech), DipArb, CEng, MICE, FCI Arb
I. Heaphy, BSc (Hons), FRICS, FCI Arb, FCI InstCES, MACostE
S. Jackson, LLB, LLM, MSc, FCI Arb, FCI InstCES
S. Rowsell, BSc, CEng, FCI HT, FICE, MCIPS

The Y(IR) drafting team consisted of:

J. N. Golden, BEng, LLB, CEng, FICE, FIEI, FCI Arb, MRICS, Solicitor

The Institution of Civil Engineers acknowledges the help given by the NEC4 Contract Board and the drafting team.

Guidance

If incorporated, this Option is used to supplement the core clause payment provisions and amend the dispute resolution provisions in order to ensure that they comply with the Construction Contracts Act 2013 (the Act). The effect of this Option is to keep all the payment and dispute resolution terms expressly within the contract and avoid additional terms being implied or imposed by the Act. This optional clause should be incorporated into the contract by including it in Contract Data as a Secondary Option as “Y(IR)1 Construction Contracts Act 2013”. In addition, Option W2 should be listed as the Option for resolving and avoiding disputes.

Y1.1 deals with definitions, and particularly dates for communications within the Option. In the Engineering and Construction Contract, this will affect things like payment dates, the date when any payment responses may be issued, dates for triggering dispute resolution or suspension and so on.

Y1.2 In order to comply with Sections 3 and 4 of the Act, this clause introduces a process that allows the *Contractor* to make payment applications later than permitted by clause 51, and allows the *Project Manager* to react to them within the contractual framework.

The provisions in clause 51 dealing with the date payment is due and notice of payment requirements are unchanged. Clauses 50 and 51 require that all certificates or assessments that form the notice of payment need to show the basis upon which any payment has been calculated.

Y1.3 and Y1.4 To comply with Section 4(3) of the Act, these clauses set out the requirement for advising the *Contractor* of any amount to be withheld and the date by which such advice is to be issued. In the Act this is described as a response to a payment claim. Y1.4 deals with the requirements of the Act for a specific response to be given where the reason for the reduction is due to a claim for loss or damage resulting from the *Contractor's* breach of contract. These additional express requirements add to those of clause 51.

Y1.5 Under Sections 5 and 7 of the Act the *Contractor* has the right to suspend performance if it is not paid in full the amount due under the contract, unless payment is subsequently made or the matter is referred to dispute resolution. The Option provides that suspension is a compensation event if suspension is made in accordance with the Act.

Y1.6 The Act is prescriptive about the system of adjudication that it allows and the enforcement regime in the Courts anticipates only Act compliant adjudication. Therefore, the Option incorporates the rights to adjudication and the procedures in the Act. It preserves the approach to dispute resolution in Option W2 otherwise.

NEC4 Y(IR) CLAUSE

Y(IR)1 Construction Contracts Act 2013

Definitions	Y1.1	Any communication in this Option which is to be made on a Saturday, Sunday or public holiday (within the meaning of Organisation of Working Time Act 1997) may be made on the next day which is not one of these.
Application for payment	Y1.2	<p>If an application for payment is submitted by the <i>Contractor</i> within 5 days after the assessment date which otherwise complies with the contract</p> <ul style="list-style-type: none"> • the <i>Project Manager</i> considers it in assessing the amount due, • the <i>Project Manager</i> delays certifying payment and issues the certificate within one week of the date of the submission and • the amount certified by the <i>Project Manager</i> is the amount due and not any lesser amount because the <i>Contractor</i> failed to submit an application before the assessment date.
Client's response	Y1.3	<p>If the <i>Client</i> decides not to pay the amount due, the <i>Client</i> responds to the <i>Project Manager's</i> certificate or the <i>Contractor's</i> application. The response is within 21 days of the assessment date and includes</p> <ul style="list-style-type: none"> • the amount the <i>Client</i> proposes to pay, • the reasons for the difference from the application, • the basis on which the amount proposed to be paid is calculated and • any other information that the contract requires. <p>The <i>Client</i> pays the sum stated in its response at the date for payment of certified payments.</p>
	Y1.4	<p>If the reason for a reduction in the amount the <i>Contractor</i> considers is due is attributable to a claim for loss or damage arising from a breach of any contractual or other obligation by the <i>Contractor</i>, the <i>Project Manager's</i> certificate or <i>Client's</i> response specifies</p> <ul style="list-style-type: none"> • when the loss was incurred or the damage occurred or how the other claim arose, • the particulars of the loss, damage or claim and • the portion of the reduction that is attributable to each such particular.
Suspension of performance	Y1.5	If the <i>Contractor</i> exercises its right under the Construction Contracts Act 2013 to suspend performance, it is a compensation event.
Disputes	Y1.6	<p>Option W2 is included in the contract with the following amendments.</p> <p>Any dispute is a payment dispute.</p> <p>Clauses W2.2 and W2.3 are deleted and replaced with:</p> <ul style="list-style-type: none"> • W2.2 Either Party may refer a payment dispute for adjudication in accordance with s6 of the Construction Contracts Act 2013 at any time. • W2.3 Not used