
Appendix 10

New Engineering and Construction Contract

NEC MAIN CONTRACT

REFERENCE: NEC/ECC/Y(UK)2/ APRIL 1998

Clause 90 is deleted and replaced by the following

90 Avoidance and settlement of disputes

90.1 The Parties and the *Project Manager* follow this procedure for the avoidance and settlement of disputes.

90.2 If a Party is dissatisfied with an action, a failure to take action by the *Project Manager*, he notifies his dissatisfaction to the other party no later than

- four weeks after he became aware of the action,
- four weeks after he became aware that the action had not been taken.

Within two weeks of such notification of dissatisfaction, the *Contractor* and the *Project Manager* attend a meeting to discuss and seek to resolve the matter.

90.3 If either Party is dissatisfied with any other matter, he notifies his dissatisfaction to the *Project Manager* and to the other Party no later than four weeks after he became aware of the matter. Within two weeks of such notification of dissatisfaction, the Parties and the *Project Manager* attend a meeting to discuss and seek to resolve the matter.

90.4 The Parties agree that no matter shall be a dispute unless a notice of dissatisfaction has been given and the matter has not been resolved within four weeks. The word dispute (which includes a difference) has that meaning.

90.5 Either Party may give notice to the other Party at any time of his intention to refer a dispute to adjudication. The notifying Party refers the dispute to the *Adjudicator* within seven days of the notice.

90.6 The Party referring the dispute to the *Adjudicator* includes with his submission information to be considered by the *Adjudicator*. Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of referral.

90.7 Unless and until the *Adjudicator* has given his decision on the dispute, the Parties and the *Project Manager* proceed as if the action, failure to take action or other matters were not disputed.

90.8 The *Adjudicator* acts impartially. The *Adjudicator* may take the initiative in ascertaining the facts and the law.

90.9 The *Adjudicator* reaches a decision within twenty eight days of referral or such longer period as is agreed by the Parties after the dispute has been referred. The *Adjudicator* may extend the period of twenty eight days by up to fourteen days with the consent of the notifying Party.

90.10 The *Adjudicator* provides his reasons to the Parties and to the *Project Manager* with his decision.

90.11 The decision of the *Adjudicator* is binding until the dispute is finally determined by the *tribunal* or by agreement.

90.12 The *Adjudicator* is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the *Adjudicator* is similarly protected from liability.

Clause 91 is amended as follows:—

Side heading “**The adjudication**” is replaced with “**Combining procedures**”

Clause 91.1 is deleted and replaced by the following:—

91.1 If a matter causing dissatisfaction under or in connection with a subcontract is also a matter causing dissatisfaction under or in connection with this contract, the subcontractor may attend the meeting between the Parties and the *Project Manager* to discuss and seek to resolve the matter.

Clause 91.2 line 4 “settles” is replaced with “gives his decision on”

Clause 92 is amended as follows:—

Clause 92.1 line 1 “settles” is replaced with “gives his decision on”

Clause 92.2 line 6 “settle” is replaced with “decide on”

Clause 92.2 line 7 “had not been settled” is replaced with “a decision had not been given”

Contract Data Part 1 – Optional statements

The fifth optional statement is deleted and replaced by the following:—

“If the period for payment is not twenty one days

- The period within which payments are made is ___ days”

NEC SUB-CONTRACT

REFERENCE: NEC/ECS/Y(UK)2/APRIL 1998

Clause 90 is deleted and replaced by the following:

90 Avoidance and settlement of disputes

90.1 The Parties follow this procedure for the avoidance and settlement of disputes.

90.2 If a Party is dissatisfied with an action, a failure to take action, or any other matter, he notifies his dissatisfaction to the other Party no later than

- four weeks after he became aware of the action,
- four weeks after he became aware that the action had not been taken or
- four weeks after he became aware of the matter he is dissatisfied with.

90.3 Within two weeks of such notification of dissatisfaction, the Parties attend a meeting to discuss and seek to resolve the matter.

90.4 The Parties agree that no matter shall be a dispute unless a notice of dissatisfaction has been given and the matter has not been resolved within four weeks. The word dispute (which includes a difference) has that meaning.

- 90.5 Either Party may give notice to the other Party at any time of his intention to refer a dispute to adjudication. The notifying Party refers the dispute to the *Adjudicator* within seven days of the notice.
- 90.6 The Party referring the dispute to the *Adjudicator* includes with his submission information to be considered by the *Adjudicator*. Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of referral.
- 90.7 Unless and until the *Adjudicator* has given his decision on the dispute, the Parties proceed as if the action, failure to take action or other matters were not disputed.
- 90.8 The *Adjudicator* acts impartially. The *Adjudicator* may take the initiative in ascertaining the facts and the law.
- 90.9 The *Adjudicator* reaches a decision within twenty eight days of referral or such longer period as is agreed by the Parties after the dispute has been referred. The *Adjudicator* may extend the period of twenty eight days by up to fourteen days with the consent of the notifying Party.
- 90.10 The *Adjudicator* provides his reasons to the Parties with his decision.
- 90.11 The decision of the *Adjudicator* is binding until the dispute is finally determined by the *tribunal* or by agreement.
- 90.12 The *Adjudicator* is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the *Adjudicator* is similarly protected from liability.

Clause 91 is amended as follows:—

Side heading “**The adjudication**” is replaced with “**Combining procedures**”

Clause 91.1 is deleted and replaced by the following:—

- 91.1 If a matter causing dissatisfaction under or in connection with a subcontract is also a matter causing dissatisfaction under or in connection with this contract, the subcontractor may attend the meeting between the Parties to discuss and seek to resolve the matter.

Clause 91.2 line 4 “settles” is replaced with “gives his decision on”

Clause 91.3 is renumbered to clause 91.4 and a new clause 91.3 inserted as follows:—

- 91.3 If the main contract provides for the *Subcontractor* to attend a meeting to discuss and seek to resolve a matter of dissatisfaction under or in connection with the main contract which is also a matter causing dissatisfaction under or in connection with this subcontract, the *Subcontractor* attends the meeting.

renumbered clause 91.4 line 10 “settles” is replaced with “gives his decision on”.

Clause 92 is amended as follows:—

Clause 92.1 line 1 “settles” is replaced with “gives his decision on”

Clause 92.2 line 6 “settle” is replaced with “decide on”

Clause 92.2 line 7 “had not been settled” is replaced with “a decision had not been given”

Subcontract Data Part 1 – Optional statements

The fifth optional statement is deleted and replaced by the following:—

“If the period for payment is not twenty one days

- The period within which payments are made is . . . days”