



To be, or not to NEC: that is the question

Part 2 – Arrangement of the NEC Contract

In the first part of our series, we looked at [the use of the NEC Contract in Australia](#). In part 2, we look at the arrangement of the NEC3 and how it differs from more traditional forms of contract.

Arrangement of the NEC3

With respect to the published documents, the NEC3 comprises the following sections of text:

1. The core clauses – common to all contracts (and best left unamended).
2. Six main Option clauses (A to F), which enable the most appropriate contracting strategy to be selected by the user insofar as they dictate the type of payment mechanism available. The main Option clauses comprise:
 - **Option A** – Priced contract with activity schedule (lump sum contract);
 - **Option B** – Priced contract with bill of quantities (re-measurable contract);
 - **Option C** – Target contract with activity schedule (target cost with pain/gain mechanism);
 - **Option D** – Target contract with bill of quantities (target cost with pain/gain mechanism);
 - **Option E** – Cost reimbursable contract (cost plus); and
 - **Option F** – Management contract (cost plus).
3. The dispute resolution Option clauses.
4. Nineteen secondary Option clauses that may be chosen by the user once the main Option has been selected including, for example:
 - **Option X3** – Multiple currencies (used only with Options A and B);
 - **Option X5** – Section completion;
 - **Option X6** – Bonus for early completion;
 - **Option X7** – Delay damages;
 - **Option X15** – Limitation of the Contractor’s liability for design to reasonable skill and care (as opposed to being fit for purpose under English law);
 - **Option X17** – Low performance damages;
 - **Option Y(UK)1** – Project Bank Account (whilst country specific, it is thought that a similar option can/will be introduced in Australia to satisfy the State Governments recent initiative to introduce project bank accounts for all State projects of \$1.5M+ as of 1 July 2019); and
 - **Option Z** – allowing for ‘bespoke’ conditions of contract to be introduced, where deemed necessary by the user.
5. The **Schedule of Cost Components** – defines those components of the contractor’s costs, which are included in Defined Cost (the basis for assessing Compensation Events) for all main Options (except F).

6. The **Contract Data** formats – analogous to articles of agreement under more traditional forms of contract insofar as the Contract Data defines the agreement which is the contract. Part 1 is completed by the Employer and part 2 by the Contractor.

Other documents include:

1. The **Works Information** – which includes the scope of works, drawings and specification references, the extent of the contractor's design obligations (if any), and details regarding arrangements for subcontracting, the programme and performance tests etc.
2. The **Site Information**.
3. Documents resulting from choosing secondary Options, such as details relating to a Project Bank Account.

The core clauses

The fundamental differences between other more traditional forms of contract and the NEC3 can be found in the core clauses, which are common to all six main Options. Some of the main options do, however, add to the core clauses, rather than alter or delete them. The core clauses are arranged in nine **sections** comprising:

1. General
2. The Contractor's main responsibilities
3. Time
4. Testing and defects
5. Payment
6. Compensation
7. Title
8. Risks and insurance
9. Termination

The clarity and simplicity of the NEC3 may not be immediately apparent because of the use of words and grammar that, although common in everyday speech and writing, are not usually found in formal contract documents or other legal papers. However, its logical, simple structure means that it is not only shorter than most other standard forms of contract, but the user can familiarise them self with its contents relatively quickly. More

importantly, according to the NEC guidance notes, the actions by the parties under the contract are defined precisely, so there should be few disputes about who is to do what and how. This would make a refreshing change in Australia given events that give rise to additional cost are not always dealt with appropriately in accordance with the relevant contractual provisions.

Additionally, the design of the NEC3 is based upon flow charts of the procedures to be followed by the parties named in the contract.



Whilst the provisions of each core clause are too numerous to discuss in this paper, it is sections 1 (General), 3 (Time), 6 (Compensation) and 8 (Risks and insurance) that are probably most unique. We will explore these core clauses further in part 3 of our series.

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