



# NEC3 THE ENGINEERING & CONSTRUCTION CONTRACT – “AN OVERVIEW”

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## NEC3 THE ENGINEERING & CONSTRUCTION CONTRACT – “AN OVERVIEW”

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The NEC is a division of Thomas Telford Ltd which is a wholly owned subsidiary of the Institution of Civil Engineers the owner and developer of the NEC

### Development/publication of NEC

- Consultative edition 1991
- First Edition 1993
- Second Edition 1995 (ie NEC 2) – name change
- Third edition June 2005 (ie NEC 3)
- Amendments issued in
  - June 2006
  - September 2011 - to comply with the HGCR Act 1996 as amended



## **NEC3 THE ENGINEERING & CONSTRUCTION CONTRACT – “AN OVERVIEW”**

### **NEC 3 documents**

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- The Engineering and Construction Contract
- The Engineering and Construction Subcontract
- The Engineering and Construction Short Contract
- The Engineering and Construction Short Sub-Contract
- The Professional Services Contract
- The Adjudicator’s Contract
- Term Services Contract
- Framework Contract
- Supply contract
- Detailed guidance notes and flow charts



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Its use stimulates good management of relationships between the two parties to the contract and hence of the work included in the contract

It can be used in a wide variety of commercial situations for a wide variety of types of work and in any location engineering/building/**contractor design/international projects**

Clear and simple document – using language and a structure which are straight forward and easily understood present tense/lack of mandatory language/short sentences



## NEC3 THE ENGINEERING & CONSTRUCTION CONTRACT – “AN OVERVIEW”

### Approach to drafting

defined terms – capitalised eg “**Works Information**” (cl.11.2.19)

specified Terms – are in italics (eg *works*) and identified within the Contract Data

clause 10.1

The **Employer**, the **Contractor**, the **Project Manager** and the **Supervisor** shall act as stated in the contract **and** in a spirit of mutual trust and cooperation  
[emphasis added]



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‘Pick & mix’ approach to creating a project specific contract

- core clauses
- main options clause
- secondary option clauses
  - general
  - UK specific
- dispute resolution option clauses

Contract Data – Part 1 and Part 2



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### Core clauses (structure of contract)

- Core clause 1 – General
- Core clause 2 - The Contractor's main responsibilities
- Core clause 3 – Time
- Core clause 4 - Testing and Defects
- Core clause 5 – Payment
- Core clause 6 - Compensation events
- Core clause 7 – Title
- Core clause 8 - Risks and insurance
- Core clause 9 - Termination



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### Main options

- Option A : Priced contract with activity schedule
- Option B : Priced contract with bill of quantities
- Option C : Target contract with activity schedule
- Option D : Target contract with bill of quantities
- Option E : Cost reimbursable contract
- Option F : Management contract

A main option must be selected





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### Secondary Options (17 Nr)

- Option X1 : Price adjustment for inflation
- Option X2 : Changes in the law
- Option X3 : Multiple currencies
- Option X4 : Parent company guarantee
- Option X5 : Sectional Completion
- Option X6 : Bonus for early Completion
- Option X7 : Delay damages
- Option X12 : Partnering



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### Secondary Options (17 Nr) (cont'd)

- Option X13 : Performance bond
- Option X14 : Advanced payment to Contractor
- Option X15 : Limitation of Contractor's liability for his design to reasonable skill and care
- Option X16 : Retention
- Option X17 : Low performance damages
- Option X18 : Limitation of liability
- Option X20 : Key Performance Indicators



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### Secondary Options (17 Nr) (cont'd)

- Option Y (UK)2 : Housing Grants Construction and Regeneration Act 1996
- Option Y (UK)3 : Contracts (Rights of Third Parties) Act 1999
- **Option Z : Additional conditions of contract**

### Dispute Resolution

- Option W1 : Dispute Resolution Procedure (Non HGCR Act 96)
- Option W2 : Dispute Resolution Procedure (HGCR Act 96 applies)

Note: references X8 to X11, X19 and Y(UK)1 are not used

- X8 to X11 in PSC / X19 in TSC / Y(UK) 1?



## NEC3 THE ENGINEERING & CONSTRUCTION CONTRACT – “AN OVERVIEW” Contract Documents?

- **Form of agreement** (see Guidance Notes Appendix 3)
  - Letter of acceptance (?)
  - **Contract data** : part one – completed by the Employer
  - Main option / Secondary options etc stated
  - **Contract data** : part two – completed by the Contractor
  - **The Contractor's pricing document**
  - \* Works Information \*
  - **Site Information**
  - Form of tender (see Guidance Notes Appendix 2)(?)



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### Administration

- **Project Manager** – delegation cl 14.2
- **Supervisor** (eg clause 4 Testing & Defects and clause 7 Title)
- **no** quantity surveyor or architect identified
- Certificates e.g.
  - **Completion certificate** (cl 30.20) / **Defects Certificate** (cl 43) /  
**Payment certificates** (cl 51)



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### Communications

- each instruction, certificate, etc, to be communicated in a form which - can be **read, copied and recorded** (cl.13.1)
- take effect when **received** by recipient at notified address (cl 13.2)
- Contractor and PM to **act within timescales** set out in contract (cl.13.3)
  - might be a specific period set out in the clause (eg cl 31.3) or reply within the period for reply
- if PM not accept then state reasons (cl 13.4 &13.8)
- Certificates to Employer and Contractor (cl.13.6)
- a **notification** to be a **separate** communications (cl.13.7)



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Early warning by Contractor or PM (cl.16) as soon as become aware that a matter **could**

- cause an increase in the total of Prices / cause a delay in Completion / cause a delay in meeting a Key Date / impair performance of works in use
- Contractor **may** give an early warning of any matter which could increase his total cost
- Risk Register is a register of risks listed in the Contract Data (cl 11 (14))
- PM to enter early warning matters on Risk Register (cl 16.1)
- Risk reduction meeting (cl.16.3) / PM to review Risk Register following decisions at meeting / issue to Contractor



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### Programme

- programme identified in Contract Data part one
  - Contractor submits a programme to PM for acceptance (cl.31.1)
- Accepted Programme (cl.11.2.1)
- PM has 2 weeks to accept or notify of reason for not accepting (cl.31.3)
- Cl.31.2 sets out what the Contractor is to show on each programme





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### Programme

- revised programme (cl.32)
  - content /submission procedure
- assessment of compensation events
- relationship between ‘programme’ and ‘activity schedule’
  - Contractor to provide information showing how each activity relates to the programme submitted for acceptance (cl 31.4)
- Contractor changes method of working
  - programme and activity schedule to relate to each other



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### Defects

- Terminology
  - Defect - a defined term (cl. 11.2(5))
  - defects date
  - defect correction period (weeks – one period)
  - **Defects Certificate** (cl. 11.2.(6))
- until defects date the **Supervisor** can instruct the Contractor to search for Defects (cl.42.1)
  - Contractor to correct Defects whether notified or not (cl. 43.1)
- the **Supervisor** may notify a Defect at any time before defects date (cl.42.2)



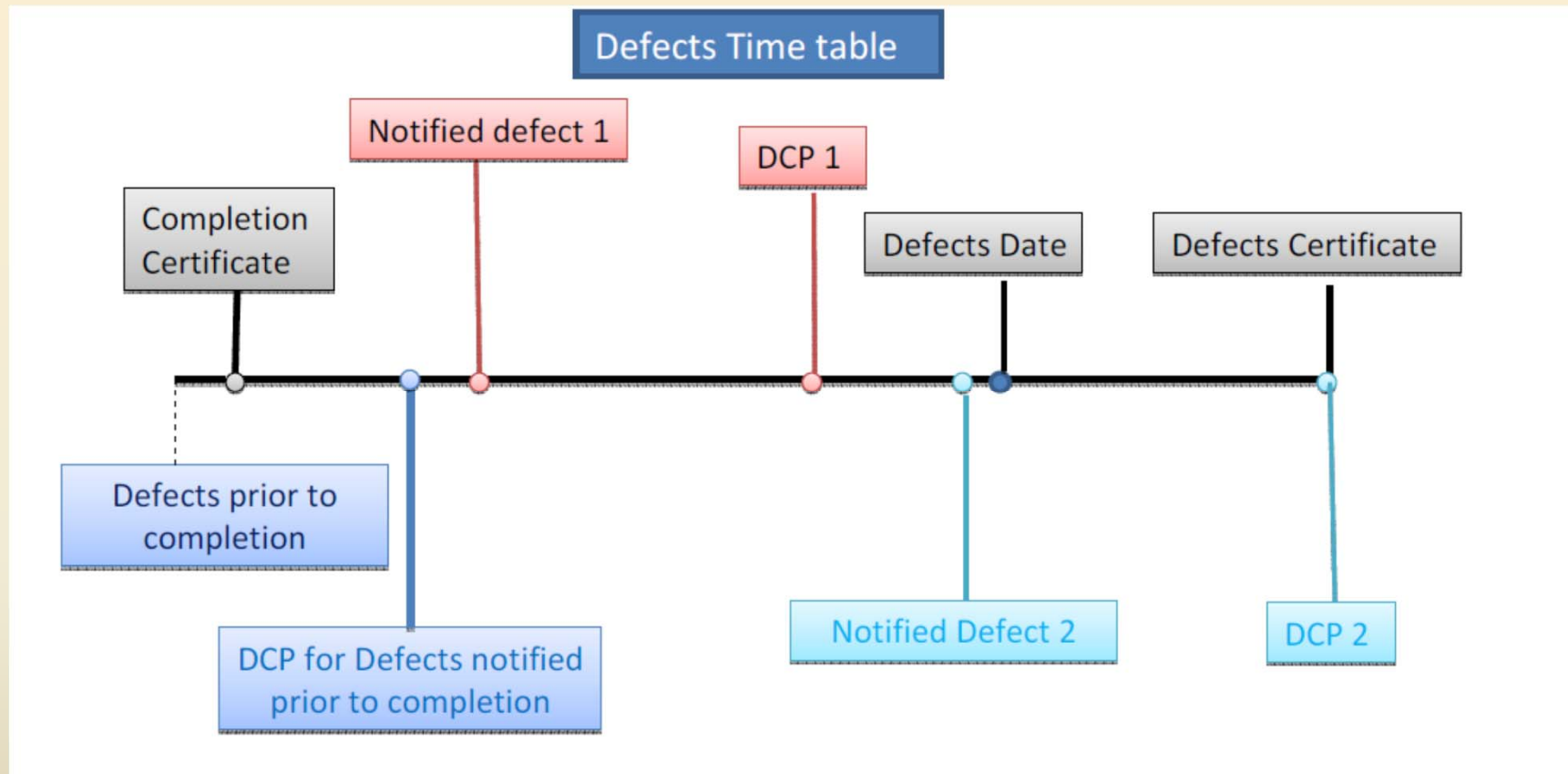
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### Defects

- prior to Completion Contractor to correct notified defects if it would prevent Employer/others doing their works (cl.11.2(2))
- after Completion Contractor to correct notified defects **before** end of defects correction period (cl. 43.2)
- **Supervisor** issues **Defects Certificate** at the later of the defects date or last defects correction period (cl. 43.3)
  - for the last notified defect
- accepting defects / uncorrected defects(45)
  - PM assessment



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### Payment (cl.50)

- PM assesses amount due at each assessment date and certifies amount within **1 week of assessment date**
  - first assessment date **decided by PM**
  - thereafter assessment interval as stated in Contract Data **until 4 weeks**
  - after issue of the Defects Certificate **and** at Completion of the whole of the works
- **Y (UK)2 HGCR Act 96 and September 2011 amendments**



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### Payment (cl.50)

- Amount due (50.2)
  - the Price of Work Done to Date
  - plus other amounts to be paid to the Contractor
  - less amounts to be paid by or retained from the Contractor
    - e.g. **delay damages**

including any tax e.g. VAT



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### Payment (cl.50)

- the amount due at the Assessment Date (50.1) - different terminology e.g. Price for Work Done to Date
  - **Option A** ( 11.2(22))
    - each group of completed activities
    - each completed activity not in a group
  - **Option C** (11.2(23))
    - amount of payments due to subcontractor
    - cost of components in Schedule of Cost Components
    - less **Disallowable Costs** (cl 11.2(25))



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### Payment (cl.50)

#### - Option C

- total which PM forecasts will have been **paid** by the Contractor
- before the next assessment date (11.2(29))
- Contractor to keep records and allows PM to inspect (52.2)
- Contractor's share (53)
  - 'pain/gain' mechanism
  - two assessments – Completion / final payment
- Contractor
  - prepares forecast of total Define Cost (cl 20.4)





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### Compensation events

- **no** separate ‘extension of time’ or ‘loss and/or expense’ provisions
- **both ‘time’ and ‘money’** addressed under ‘compensation events’ cl 60
- there are 19 compensation events (listed at cl.60.1) which if occur not the fault of the Contractor e.g.
  - change in Works Information (cl. 60.1(1)) - **Employer act**
  - weather (cl.60.1(13)) - **neutral!**
- Employer could add to the list at tender stage - set out in Contract Data



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### Compensation events

- notification of event by PM or Contractor (cl 61)
  - has happened or is expected to happen
  - event changes Prices/Completion Date/Key Dates
- procedure premised upon submission of Contractor's quotations
  - process prospective not retrospective?
- quotations (cl 62)
  - includes changes to Prices/Completion Date(s)/Key Dates – details to be included
  - alterations to Accepted Programme



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### Compensation events

- Price adjustments - valuation based on Defined Costs (cl 63.1)
  - assessment date - instruction or should have instructed
- delay - effect on planned completion (63.3)
- procedural timescales placed upon
  - Contractor to submit quotations
  - PM to respond - **consequences for PM !**
- PM can undertake his own assessment (cl.64) if
  - Contractor fails to submit a quotation
  - Contractor's assessment is not correct



## NEC3 THE ENGINEERING & CONSTRUCTION CONTRACT – “AN OVERVIEW”

### Compensation events

- changes to the Prices - valuation based on Defined Costs (cl 63)
  - actual Defined Cost on work done
  - forecast Defined Cost on work not yet done
- Fee

### Schedule of Cost Components or Shorter Schedule of Cost Components

People

Equipment

Plant & Materials

Charges

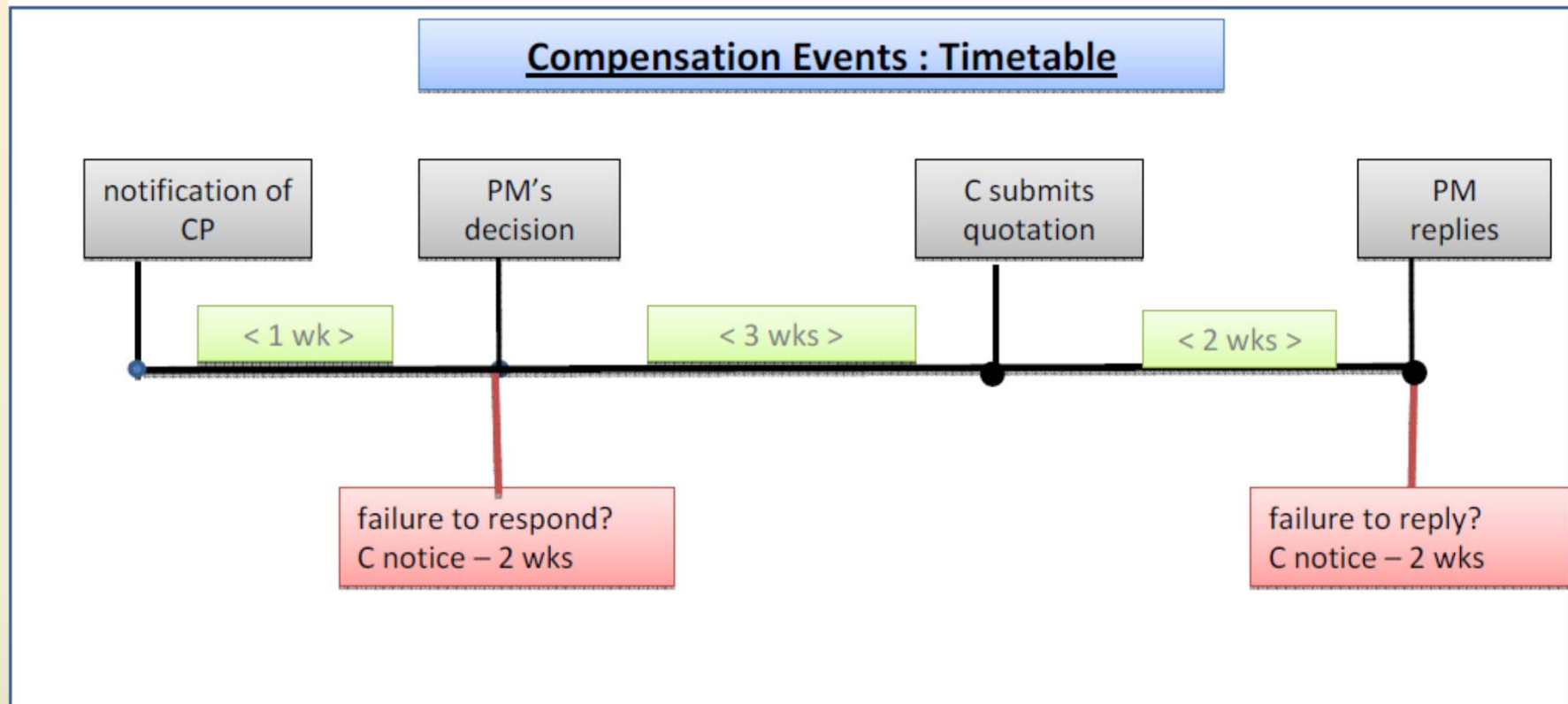
Manufacture & fabrication

Design

Insurance



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# Questions