

PART C1.4 : ADJUDICATOR'S CONTRACT

PREVIEW COPY ONLY



Adjudicator's Contract

This contract should be used for the appointment of an Adjudicator to decide disputes under the NEC family of contracts. It may also be used for the appointment of an Adjudicator under other forms of contract

PRIEVIEW COPY ONLY

An NEC document

June 2005

OGC endorsement of NEC3

OGC advises public sector procurers that the form of contract used has to be selected according to the objectives of the project, aiming to satisfy the *Achieving Excellence in Construction (AEC)* principles.

This edition of the NEC (NEC3) complies fully with the AEC principles. OGC recommends the use of NEC3 by public sector construction procurers on their construction projects.



Office of Government Commerce

NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a family of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship 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.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC3 Adjudicator's Contract is one of the NEC family and is consistent with all other NEC3 documents. Also available are the Guidance Notes and Flow Charts.

ISBN (complete box set) 0 7277 3382 6

ISBN (this document) 0 7277 3374 5

ISBN (Adjudicator's Contract Guidance Notes and Flow Charts) 0 7277 3375 3

First edition 1994

Second edition 1998

Third edition June 2005

PRIEVIEW COPY ONLY

Cover photo, Golden Jubilee Bridge, courtesy of City of Westminster

9 8 7 6 5 4 3 2 1

British Library Cataloguing in Publication Data for this publication is available from the British Library.

© Copyright nec 2005

All rights, including translation, reserved. The owner of this document may reproduce the Form of Agreement and Contract Data for the purpose of obtaining tenders, awarding and administering contracts. Except as permitted by the Copyright, Designs and Patents Act 1988, no part of this publication may be otherwise reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the NEC Director, NEC, Thomas Telford Ltd, 1 Heron Quay, London E14 4JD.

Typeset by Academic + Technical, Bristol

Printed and bound in Great Britain by Bell & Bain Limited, Glasgow, UK

CONTENTS

| | |
|------------------------|----|
| Acknowledgements | iv |
| Form of Agreement | 1 |
| Conditions of Contract | 2 |
| Contract Data | 5 |
| Index | 6 |

PREVIEW COPY ONLY

ACKNOWLEDGEMENTS

The first edition of the Adjudicator's Contract was drafted by Peter Higgins working on behalf of the Institution of Civil Engineers with the assistance of Frank Griffiths of the Chartered Institute of Purchasing and Supply and Michael Coleman of the Association of Project Managers. Dr Martin Barnes of Coopers and Lybrand advised on the co-ordination of the contract with the NEC.

The second edition of the NEC Adjudicator's Contract was produced by the Institution of Civil Engineers through its NEC Panel and was mainly drafted by Bill Weddell, with the assistance of Peter Higgins and Tom Nicholson, as members of NEC Panel with advice from Professor Phillip Capper then of Masons Solicitors. The Flow Charts were produced by John Perry, Ross Hayes and colleagues at the University of Birmingham.

The third edition of the NEC Adjudicator's Contract was mainly drafted by Peter Higgins with the assistance of members of the NEC Panel. The Flow Charts were produced by Robert Gerrard and Ross Hayes with assistance from Tom Nicholson.

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 members of the NEC Panel are:

P. Higgins, BSc, CEng, FICE, FCI Arb (Chairman)
 P. A. Baird, BSc, CEng, FICE, M(SA)ICE, MAPM
 M. Barnes, BSc(Eng), PhD, FEng, FICE, FCI OB, CCMI, ACI Arb, MBCS, FInstCES, FAPM
 A. J. Bates, FRICS, MInstCES
 A. I. M. Blackler, BA, LLB(Cantab), MCI Arb
 P. T. Cousins, BEng(Tech), DipArb, CEng, MICE, MCI Arb, MCM I
 L. T. Eames, BSc, FRICS, FCI OB
 P. Forward, BA(Hons), DipArch, MSc(Const Law), RIBA, FCI Arb
 Professor J. G. Perry, MEng, PhD, CEng, FICE, MAPM
 N. C. Shaw, FCIPS, CEng, MIMechE
 T. W. Weddell, BSc, CEng, DIC, FICE, FI StructE, ACI Arb

NEC Consultant:

R. A. Gerrard, BSc(Hons), MRICS, FCI Arb, FInstCES

Secretariat:

A. Cole, LLB, LLM, BL
 J. M. Hawkins, BA(Hons), MSc
 F. N. Vernon (Technical Adviser), BSc, CEng, MICE

neC 3 Adjudicator's Contract

FORM OF AGREEMENT

This Agreement is made on the day of between

• (name of company/organisation)
of
..... (address) and

• (name of company/organisation)
of
..... (address)

(the Parties) and

• (name)
of
..... (address)

(the Adjudicator)

1. The Parties appoint the Adjudicator in accordance with the conditions of contract and Contract Data attached to this Agreement.
2. The Adjudicator accepts this appointment and undertakes to carry out the Adjudicator's duties as described in the conditions of contract.

Signed jointly on behalf of the Parties by
..... (signature)

Name
Position
on behalf of

and
..... (signature)

Name
Position
on behalf of

and signed by the Adjudicator
..... (signature)

PREVIEW COPY ONLY

form of agreement
conditions of contract
contract data

CONDITIONS OF CONTRACT

1 General

| | | | |
|---|-------------------------------------|-----------------------|---|
| <div style="writing-mode: vertical-rl; transform: rotate(180deg);">form of agreement</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">conditions of contract</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">contract data</div> | Actions | 1.1 | The Parties and the Adjudicator shall act as stated in this contract and in the <i>contract between the Parties</i> . The Adjudicator shall act impartially. |
| | | 1.2 | The Adjudicator notifies the Parties as soon as he becomes aware of any matter which may present him with a conflict of interest. |
| | Identified and defined terms | 1.3 | In these conditions of contract, the Adjudicator and the Parties are those identified in the Form of Agreement. Terms identified in the Contract Data are in italics and defined terms have capital initials. |
| | | 1.4 | Expenses are the cost of <ul style="list-style-type: none"> • printing, reproduction and purchase of documents, drawings, maps, records and photographs, • telegrams, telex, faxes and telephone calls, • postage and delivery charges, • travelling, hotel and similar expenses, • room charges and • charges by others for help in an adjudication incurred by the Adjudicator for an adjudication. |
| | Interpretation and the law | 1.5 | In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter. |
| | | 1.6 | This contract is governed by the <i>law of the contract</i> . |
| | | 1.7 | If a conflict arises between this contract and the <i>contract between the Parties</i> then this contract prevails. |
| | | 1.8 | If as a result of the <i>contract between the Parties</i> another party has become a party to a dispute which is to be decided by the Adjudicator, references to Parties in this contract are interpreted as including the other party. |
| | | Communications | 1.9 |
| | 1.10 | | A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Form of Agreement. |

2 Adjudication

- 2.1 The Adjudicator does not decide any dispute that is the same or substantially the same as one that he or his predecessor has previously decided.
- 2.2 The Adjudicator decides a dispute referred to him under the *contract between the Parties*. He makes his decision and notifies the Parties of it in accordance with the *contract between the Parties*.
- 2.3 After notifying the Parties of his intention, the Adjudicator may obtain from others help that he considers necessary in reaching his decision. Before making his decision, the Adjudicator provides the Parties with a copy of any information or advice from others and invites their comments on it.
- 2.4 The Parties co-operate with the Adjudicator and comply with any request or direction he makes in relation to the dispute.
- 2.5 The Parties and the Adjudicator keep the Adjudicator's decision and information provided for an adjudication as confidential to those who have a proper interest in them.
- 2.6 After a decision has been made, the Adjudicator keeps documents provided to him by the Parties for the *period of retention*.

3 Payment

- Advanced payment** 3.1 Each time a dispute is referred to the Adjudicator, the Party referring the dispute makes an advanced payment to him of the amount stated in the Contract Data. The advanced payment is made within one week of the date when the dispute is referred.
- Assessing the amount due** 3.2 The Adjudicator assesses the amount due and submits an invoice to each Party for that Party's share of the amount due. Unless otherwise agreed, the Parties pay the Adjudicator the amount due in equal shares.
- 3.3 The Adjudicator submits invoices after each decision on a dispute has been notified to the Parties and after termination.
- 3.4 The amount due is
- the Adjudicator's fee multiplied by the total of the time spent on an adjudication and the time spent travelling, plus
 - the Expenses, less
 - the amount of the advanced payment and other previous payments.
- Any tax which the law requires the Parties to pay to the Adjudicator is included in the invoice.
- Payment of the amount due** 3.5 The Parties pay the amount due within three weeks of receiving the Adjudicator's invoice or, if a different period is stated in the Contract Data, within the period stated.
- 3.6 Payments are in the *currency of this contract* unless otherwise stated in this contract.

- 3.7 If a payment is late, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made. Interest is calculated on a daily basis at the *interest rate* and is compounded annually.
- 3.8 If one of the Parties fails to pay, the other Party pays the Adjudicator the amount due with interest. The defaulting Party repays to the other Party the amount paid to the Adjudicator together with interest.

4 Termination

- 4.1 The Parties may, by agreement, terminate the appointment of the Adjudicator for any reason. They notify the Adjudicator of the termination.
- 4.2 The Adjudicator may, by notifying the Parties, terminate his appointment if
 - he considers that he cannot act because of a conflict of interest,
 - he is unable to decide a dispute,
 - an advance payment has not been made or
 - he has not been paid an amount due within five weeks of the date by which payment should have been made.
- 4.3 Unless he has terminated his appointment or his appointment has been terminated by the Parties, the Adjudicator's appointment terminates on the date stated in the Contract Data.

form of agreement
 conditions of contract
 contract data

PREVIEW COPY ONLY

CONTRACT DATA

Statements given in all contracts

- The *contract between the Parties* is
- The *period of retention* is weeks.
- The *law of the contract* is the law of
- The *language of this contract* is
- The amount of the advanced payment is
- The Adjudicator's fee is per hour.
- The *interest rate* is % per annum above
- The *currency of this contract* is
- The Adjudicator's appointment terminates on

Optional statements

If the period for payment of invoices is not three weeks

- The period for payment of invoices is weeks.

If additional conditions of contract are required

- The *additional conditions of contract* are
-
-
-

PRIEVIEW COPY ONLY

| |
|------------------------|
| form of agreement |
| conditions of contract |
| contract data |


nec3 Adjudicator's Contract

Index by clause numbers (main clause heads indicated by bold numbers).

Terms in *italics> are identified in the Contract Data, and defined terms have capital initial letters.*

- actions 1.1, 1.2
- address for receipt of communications 1.10
- adjudication **2**
- Adjudicator
 - actions 1.1
 - advance payment 3.1
 - assessing amount of payment due 3.2–4
 - co-operation 2.4
 - confidentiality 2.5
 - fee 3.4
 - help from others 2.3
 - identified in Form of Agreement 1.3
 - impartiality 1.1
 - termination of appointment by 4.2
- advance payment, to Adjudicator 3.1
- amount due, payment of 3.5–8
- another party to dispute, inclusion in references to Parties 1.8
- assessing amount of payment due 3.2–4

- communications 1.9
- confidentiality 2.5
- conflict of interest (Adjudicator)
 - notification by Adjudicator 1.2
 - as reason for termination of Adjudicator's appointment 4.2
- conflicting contracts 1.7
- contract between the Parties*
 - actions stated in 1.1, 2.2
 - conflict with Adjudicator's contract 1.7
 - decision (Adjudicator's) 2.2
 - other party in dispute 1.8
- Contract Data
 - period for payment 3.5
 - termination date 4.3
 - terms identified in 1.3
- costs of printing/reproduction/purchase 1.4
- currency of this contract* 3.6

- decision (Adjudicator's) 2.2
 - confidentiality 2.5
 - help from others 2.3
 - payment after 3.3
 - same dispute 2.1
- defined terms 1.3
- documents
 - costs of printing/reproduction/purchase 1.4
 - keeping by Adjudicator 2.6
- drawings, costs of printing/reproduction/purchase 1.4

- Expenses
 - by whom payable 3.2
 - invoices for 3.4

- listed 1.4
- failure to pay Adjudicator's invoices 3.8
- fax, costs chargeable 1.4
- fee (Adjudicator's)
 - amount due 3.4
 - by whom payable 3.2
 - invoices for 3.4
 - taxation 3.4
- Form of Agreement, Adjudicator and Parties named in 1.3
- form of communications 1.9

- hotel expenses, costs chargeable 1.4

- identified terms 1.3
- impartiality of Adjudicator 1.1
- inability to act (Adjudicator), as reason for termination of Adjudicator's appointment 4.2
- interest on late payment 3.7
 - calculation of 3.7
- interest rate 3.7
- interpretation, legal 1.5, 1.6, 1.8
- invoices
 - when payable 3.5
 - when presented 3.3
 - to whom presented 3.2
- involvement of others in dispute 1.8

- language of this contract* 1.9
- late payment (of Adjudicator's invoices) 3.7
 - interest payable 3.7
 - as reason for termination of Adjudicator's appointment 4.2
- law of the contract* 1.6
- legal interpretation 1.5, 1.6, 1.8

- maps, costs of printing/reproduction/purchase 1.4

- notification
 - Adjudicator's decision 2.2
 - conflict of interest (Adjudicator) 1.2
 - termination of Adjudicator's appointment 4.1, 4.2

- other parties, involvement in dispute 1.8
- others, help obtained from by Adjudicator 2.3
 - charges made for 1.4

- Parties
 - actions 1.1
 - confidentiality 2.5
 - to include another party in dispute 1.8
 - named in Form of Agreement 1.3
 - termination of Adjudicator's appointment by 4.1

see also contract between the Parties; other parties
payment **3**
advance 3.1
of amount due 3.5–8
assessing amount due 3.2–4
by whom made 3.2
currency in which made 3.6
failure to make 3.8
late 3.7
terms 3.5
time to be made 3.5
period of payment of invoices 3.5
period of retention, documents 2.6
photographs, costs of printing/reproduction/purchase
1.4
postage and delivery charges, costs chargeable 1.4
printing expenses 1.4

purchases 1.4
receipt of communications 1.10
records, costs of printing/reproduction/purchase 1.4
reproduction expenses 1.4
room charges, costs chargeable 1.4
taxation, Adjudicator's fee 3.4
telegram/telex costs 1.4
telephone calls, costs chargeable 1.4
termination (of Adjudicator's appointment) **4**
by Adjudicator 4.2
at date stated in Contract Data 4.3
by Parties 4.1
payment due after 3.3
travelling expenses, costs chargeable 1.4
travelling time, payment for 3.4

PRIEVIEW COPY ONLY

PREVIEW COPY ONLY

CONTRACT DATA

- Statements given in all contracts**
- The *contract between the Parties* is **To be advised**.....
 - The *period of retention* is ...**N/A**..... weeks.
 - The *law of the contract* is the law of **the Republic of South Africa**
 - The *language of this contract* is **English**.....
 - The amount of the advanced payment is **N/A**.....
 - The Adjudicator's *fee* is...**To be advised**.....per hour.
 - The *interest rate* is **2%** per annum above the prime lending rate of the **Standard Bank of South Africa.**
 - The *currency of this contract* is **ZAR**.....
 - The Adjudicator's appointment terminates on **(To be advised)**.....

Optional statements **If the period for payment of invoices is not three weeks**

- The period for payment of invoices is **.four**.....weeks.

If additional conditions of contract are required

- The *additional conditions of contract* are

To be advised

.....

.....

.....

