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NEC4 YS(IR)1 Clause

Optional contract clause and guidance for the **Engineering and Construction Short 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 neccontract.com.

Acknowledgements

Guidance

This optional clause 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 clause 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. It should be incorporated into the contract by listing it in Contract Data as an additional condition of contract as "YS(IR)1 Construction Contracts Act 2013".

YS1.1 deals with definitions, and particularly dates for communications within the clause. In the Engineering and Construction Short 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.

YS1.2 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 *Client* to react to them within the contractual framework.

The provisions in clause 51 dealing with the date payment is due is unchanged. Clause 50 requires that assessments that form the notice of payment need to show the basis upon which any payment has been calculated.

YS1.3 and YS1.4 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. YS1.4 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.

YS1.5 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 clause provides that suspension is a compensation event if suspension is made in accordance with the Act.

YS1.6 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 clause incorporates the rights to adjudication and the procedures in the Act.

NEC4 YS(IR) CLAUSE

YS(IR)1 Construction Contracts Act 2013

Definitions	YS1.1	Any communication in this clause 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	YS1.2	If an application for payment is submitted by the *Contractor* within 5 days after the *assessment day* which otherwise complies with the contract

    • it is considered by the *Client* in assessing the amount due and

    • the amount assessed by the *Client* is the amount due and not any lesser amount because the *Contractor* failed to submit an application before the *assessment day*.

***Client's* response**	YS1.3	If the *Client* decides not to pay the amount due, the *Client* responds to the *Contractor's* application. The response is within 21 days of the *assessment day* and includes

    • the amount the *Client* 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 this contract requires.

The *Client* pays the sum stated in its response at the date for payment of amounts due.

	YS1.4	If the reason for a reduction in the amount the *Contractor* considers is due is attributable to a claim for loss or damage arising from a breach of any contractual or other obligation by the *Contractor* the *Client's* response specifies

    • 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	YS1.5	If the *Contractor* exercises its right under the Construction Contracts Act 2013 to suspend performance, it is a compensation event.
Disputes	YS1.6	Clause 93.3 is deleted and replaced with

    1. Any dispute is a payment dispute.

    2. Either Party may refer a payment dispute for adjudication in accordance with s6 of the Construction Contracts Act 2013 at any time.