

PRACTICE NOTE  
MARCH 2025

# NEC4 Engineering and Construction Contract conflict avoidance clauses

## THE CONFLICT AVOIDANCE PLEDGE

We believe in collaborative working and the use of early intervention techniques throughout the supply chain, to try to resolve differences of opinion before they escalate into disputes.

We recognise the importance of embedding conflict avoidance mechanisms into projects with the aim of identifying, controlling and managing potential conflict, whilst preventing the need for formal, adversarial dispute resolution procedures. We commit our resources to embedding these into our projects.

We commit to working proactively to avoid conflict and to facilitate early resolution of potential disputes.

We commit to developing our capability in the early identification of potential disputes and in the use of conflict avoidance measures. We will promote the value of collaborative working to prevent issues developing into disputes.

We commit to work with our industry partners to identify, promote and utilise conflict avoidance mechanisms.

The following clauses provide a procedure to be used in a NEC4 Contract to resolve disagreements at an early stage by using a conflict avoidance panel. Versions are provided for contracts incorporating dispute resolution Option W1 and Option W2.

The clauses can be used in any of the main forms of contract or subcontract.

To incorporate this clause into the contract, adjust the numbering to accommodate other "Z clauses", include "Option Z" in Contract Data part one in the list of Secondary Options and include the renumbered clause in Contract Data part one.

As an alternative to using this clause, dispute resolution Option W3 provides an equivalent procedure by using a Dispute Avoidance Board; the board carries out the functions of the conflict avoidance panel. For contracts in the UK which are subject to the Housing Grants Construction and Regeneration Act 1996, NEC Practice Note 5 - Using an independent Dispute Avoidance Board - provides a clause to use a Dispute Avoidance Board with option W2. A copy of this practice note can be found on the NEC contract website.

## CLAUSE FOR USE IF OPTION W1 APPLIES

<b>Conflict Avoidance</b>	Z1	
<b>Defined Terms</b>	Z1.1	(1) Conflict Avoidance Panel means the panel selected by the Parties or nominated by the <i>conflict avoidance nominating body</i> to provide a recommendation to resolve a disagreement between the Parties.
<b>Conflict Avoidance</b>	Z1.2	The <i>Client</i> and the <i>Contractor</i> cooperate in the early identification, notification and avoidance or resolution of any disagreement that may lead to a dispute. Where necessary, a dispute is referred to a Conflict Avoidance Panel.
<b>Conflict Avoidance Panel</b>	Z1.3	(1) A Party who disagrees with a matter in relation to the contract may notify the other Party of the disagreement it wishes to resolve within two weeks of the disagreement arising. If a matter is referred to a Conflict Avoidance Panel, the periods in the Dispute Reference Table for referral of the dispute to the <i>Senior Representatives</i> are deleted and replaced by the period for referral in this clause.

(2) Within one week of the notice, the Parties meet to decide

- a clear definition of the disagreement and the outcome sought from the Conflict Avoidance Panel and
- the member of the Conflict Avoidance Panel, or if three people are to be appointed, members of the panel.

(3) If the Parties fail to reach an agreement the Parties request the *conflict avoidance nominating body* to nominate the Conflict Avoidance Panel.

(4) A person selected to act as a member of the Conflict Avoidance Panel must

- be a natural person acting in a personal capacity,
- declare any interest, in any matter relating to the disagreement or this contract and
- be qualified and experienced in the subject matter on which a recommendation is sought.

(5) The appointment of a member to a Conflict Avoidance Panel includes a provision that the member does not disclose information obtained in connection with the Conflict Avoidance Process.

**Scoping meeting**

Z1.4

(1) The Conflict Avoidance Panel meets with the Parties within one week of appointment to establish and agree on a process that suits both Parties and is appropriate for the disagreement. The objectives of this scoping meeting include

- a clear definition of the disagreement and recommendation sought,
- deciding the timings and particulars of the referral process and
- providing a common understanding of the Conflict Avoidance procedure.

(2) The Conflict Avoidance Panel decides any matter on which the Parties cannot agree.

**Conflict avoidance process**

Z1.5

(1) Except as agreed by the Parties at the Scoping Meeting, the process for dealing with the disagreement complies with these provisions.

(2) Within one week of the scoping meeting, the referring party submits a referral to both the Conflict Avoidance Panel and the responding party. The submission provides brief particulars of the disagreement, the relief sought and the basis for claiming the relief sought, including the provisions of the contract that are relevant to the disagreement. The referral includes copies of, or relevant extracts from documents on which it relies.

(3) Within one week of receiving the referral, the responding Party submits a response to the referral. The response may include copies of, or relevant extracts from documents on which it relies.

(4) The Conflict Avoidance Panel may request additional submissions or clarifications from either Party.

(5) Within two weeks of receiving the response to the referral, the Conflict Avoidance Panel notifies the Parties of its recommendation for resolving the issue.

(6) The process can be changed subsequently by agreement of the Parties and the Conflict Avoidance Panel.

**Recommendation**

Z1.6

(1) The recommendation provided by the Conflict Avoidance Panel includes

- a summary of the Conflict Avoidance Panel's findings,
- the reasons for the recommendation and
- how the recommendation should be implemented

(2) If the Parties are satisfied with the recommendation of the Conflict Avoidance Panel, then this recommendation is implemented. Once implemented, the recommendation is legally binding on the Parties.

<b>Dispute</b>	Z1.7	If a Party does not accept the recommendation of the Conflict Avoidance Panel, the dispute is referred to the <i>Senior Representatives</i> within two weeks of receiving the recommendation.
<b>Costs</b>	Z1.8	(1) Each Party bears in equal shares the costs of the Conflict Avoidance Panel and any fees of the <i>conflict avoidance nominating body</i> .  (2) If Option C, D, E or F is used the cost of preparation for and conduct of the procedure in this clause is a Disallowed Cost.

**ENTRY IN CONTRACT DATA PART ONE:**

The *conflict avoidance nominating body* is

**CLAUSE FOR USE IF OPTION W2 APPLIES**

<b>Conflict Avoidance</b>	Z1	
<b>Defined Terms</b>	Z1.1	(1) Conflict Avoidance Panel means the panel selected by the Parties or nominated by the <i>conflict avoidance nominating body</i> to provide a recommendation to resolve a disagreement between the Parties.
<b>Conflict Avoidance</b>	Z1.2	The <i>Client</i> and the <i>Contractor</i> cooperate in the early identification, notification and avoidance or resolution of any disagreement that may lead to a dispute. Where necessary, a dispute is referred to a Conflict Avoidance Panel.
<b>Conflict Avoidance Panel</b>	Z1.3	(1) If the Parties agree, a disagreement concerning a matter in relation to the contract is referred to a Conflict Avoidance Panel. The Party who disagrees with the matter notifies the other Party of the disagreement it wishes to resolve.  (2) Within one week of the agreement, the Parties meet to decide <ul style="list-style-type: none"> <li>• a clear definition of the disagreement and the outcome sought from the Conflict Avoidance Process and</li> <li>• the member of the Conflict Avoidance Panel, or if three people are to be appointed, members of the panel.</li> </ul> (4) If the Parties fail to reach an agreement the Parties request the <i>conflict avoidance nominating body</i> to nominate the Conflict Avoidance Panel.  (3) A person selected to act as a member of the Conflict Avoidance Panel must <ul style="list-style-type: none"> <li>• be a natural person acting in a personal capacity,</li> <li>• declare any interest, in any matter relating to the disagreement or this contract and</li> <li>• be qualified and experienced in the subject matter on which a recommendation is sought.</li> </ul> (5) The appointment of a member to a Conflict Avoidance Panel includes a provision that the member does not disclose information obtained in connection with the Conflict Avoidance Process.

<b>Scoping meeting</b>	Z1.4	<p>(1) The Conflict Avoidance Panel meets with the Parties within one week of appointment to establish and agree on a process that suits both Parties and is appropriate for the disagreement. The objectives of this scoping meeting include</p> <ul style="list-style-type: none"> <li>• a clear definition of the disagreement and recommendation sought,</li> <li>• deciding the timings and particulars of the referral process and</li> <li>• providing a common understanding of the Conflict Avoidance Process procedure.</li> </ul> <p>(2) The Conflict Avoidance Panel decides any matter on which the Parties cannot agree.</p>
<b>Conflict avoidance process</b>	Z1.5	<p>(1) Except as agreed by the Parties at the Scoping Meeting, the process for dealing with the disagreement complies with these provisions.</p> <p>(2) Within one week of the scoping meeting, the referring party submits a referral to both the Conflict Avoidance Panel and the responding party. The submission provides brief particulars of the disagreement, the relief sought and the basis for claiming the relief sought, including the provisions of the contract that are relevant to the disagreement. The referral includes copies of, or relevant extracts from documents on which it relies.</p> <p>(3) Within one week of receiving the referral, the responding Party submits a response to the referral. The response may include copies of, or relevant extracts from documents on which it relies.</p> <p>(4) The Conflict Avoidance Panel may request additional submissions or clarifications from either Party.</p> <p>(5) Within two weeks of receiving the response to the referral, the Conflict Avoidance Process Panel notifies the Parties of its recommendation for resolving the issue.</p> <p>(6) The process can be changed subsequently by agreement of the Parties and the Conflict Avoidance Panel.</p>
<b>Recommendation</b>	Z1.6	<p>(1) The recommendation provided by the Conflict Avoidance Panel includes</p> <ul style="list-style-type: none"> <li>• a summary of the Conflict Avoidance Panel’s findings,</li> <li>• the reasons for the recommendation and</li> <li>• how the recommendation should be implemented</li> </ul> <p>(2) If the Parties are satisfied with the recommendation of the Conflict Avoidance Panel, then this recommendation is implemented. Once implemented, the recommendation is legally binding on the Parties.</p>
<b>Dispute</b>	Z1.7	<p>The Parties may agree to refer a dispute over the recommendation of the Conflict Avoidance Panel to the <i>Senior Representatives</i>.</p>
<b>Costs</b>	Z1.8	<p>(1) Each Party bears in equal shares the costs of the Conflict Avoidance Panel and the fees of the <i>conflict avoidance nominating body</i>.</p> <p>(2) If Option C, D, E or F is used the cost of preparation for and conduct of the procedure in this clause is a Disallowed Cost.</p>

**ENTRY IN CONTRACT DATA PART ONE:**

The *conflict avoidance nominating body* is

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The NEC Contract Board is:

P. Higgins, BSc (Hons), CEng, FICE (Chair)  
I. Heaphy, BSc (Hons), FRICS, FCI Arb, FCInstCES, MACostE  
S. Jackson, LLB, LL.M, MSc, FCI Arb, FCInstCES  
M. Garratt, BSc (Hons), MRICS, FCI Arb  
D. Evans, BSc, FICE, CEng, MBA