



NEC4 Y(NZ)1 Clause

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Optional contract clause, guidance and flow chart for the **Design Build and Operate Contract** for use in New Zealand on contracts which are subject to the Construction Contracts Act 2002.

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Guidance

- 1 This optional clause should be included in a contract for construction work as defined by the Construction Contracts Act 2002 ("the Act"). It is incorporated by its inclusion in Contract Data as a secondary Option as "Y(NZ)1: Construction Contracts Act 2002".

If incorporated, this Option supplements or replaces the core payment provisions and amends the dispute resolution provisions to provide compliance with the Act.

- 2 To comply with the Act, an application for payment, including the *Contractor's* assessment of the final amount due, if issued, must:

- be in writing,
- contain sufficient details to identify the construction contract to which the payment relates,
- identify the construction work and the relevant period to which the payment relates,
- state a claimed amount and the due date for payment,
- indicate the manner in which the payee calculated the claimed amount, and
- state that it is made under the Act.

It must also be accompanied by:

- an outline of the process for responding to that claim and
- an explanation of the consequences of
 - not responding to the claim and
 - not paying the claimed amount, or the scheduled amount, in full (whichever is applicable).

- 3 If the payment claim does not comply with these requirements, the *Contractor* may not be afforded the protection of the Act.

- 4 To comply with the Act, the *Service Manager's* certificate, including a certificate of final payment, must:

- be in writing,
- identify the payment claim to which it relates, and
- state a scheduled amount.

- 5 If the scheduled amount is less than the claimed amount, the certificate must indicate:

- the manner in which the payer calculated the scheduled amount,
- the payer's reason or reasons for the difference between the scheduled amount and the claimed amount, and
- in a case where the difference is because the payer is withholding a payment on any basis, the payer's reason or reasons for withholding payment.

- 6 Other than for the final payment, if the *Service Manager* does not issue a certificate within the relevant timeframe, or if the payment certificate does not contain the information above, the payer will become liable to pay the claimed amount on the due date for that payment.

- 7 For the final payment, if the *Contractor* issues an assessment of the final amount due from the *Client*, the *Client*, if it disagrees with the amount assessed, must issue a payment schedule as described above within the relevant timescales. If the *Client* fails to issue a payment schedule, the *Client* will become liable to pay the claimed amount on the due date for that payment.
- 8 If the *Client* fails to make payment of the relevant amounts by their due date, the *Contractor* could obtain a judgment debt against the *Client* for the unpaid portion of the debt. The *Client* should therefore ensure that it has adequate contract management procedures in place to deal with payment claims within the required time frames.

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Y(NZ)1: CONSTRUCTION CONTRACTS ACT 2002

Defined terms	Y1.1	The Act is the Construction Contracts Act 2002.
Payment claim	Y1.2	An application for payment to the <i>Service Manager</i> is treated as a payment claim issued to the <i>Client</i>. Clause 50.2 is deleted and replaced by: 'The <i>Contractor</i> submits an application for payment to the <i>Service Manager</i> on the assessment date setting out the amount the <i>Contractor</i> considers is due at the assessment date. The <i>Contractor's</i> application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.'
Payment schedule	Y1.3	A certificate issued by the <i>Service Manager</i> is treated as a payment schedule issued by the <i>Client</i> .
Suspension of performance	Y1.4	If the <i>Contractor</i> exercises its right under the Act to suspend performance, it is a compensation event.
Adjudication	Y1.5	W1.1(1) is deleted and replaced by: 'If the Parties agree, a dispute arising under or in connection with the contract is referred to the <i>Senior Representatives</i>. If the dispute is not resolved by the <i>Senior Representatives</i>, it is referred to and decided by adjudication under the Act. A Party may replace a <i>Senior Representative</i> after notifying the other Party of the name of the replacement.' The Dispute Reference Table, W1.2 and W1.3 are removed.

ADDITIONAL CONTRACT DATA ENTRIES

Contract Data part one

In section 1 of Contract Data part one, insert the following:

'Against "The *Adjudicator* is" state "the person appointed as adjudicator under the Act".'

FLOW CHART Y(NZ)1: CONSTRUCTION CONTRACTS ACT 2002

