



NEC4 YS(NZ)1 Clause

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Optional contract clause, guidance and flow chart for the **Facilities Management Short 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 listing it in Contract Data as an additional condition of contract as "YS(NZ)1: Construction Contracts Act 2002".

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

- 2 To comply with the Act, an application for payment, 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 *Service Provider* may not be afforded the protection of the Act.
 - 4 To comply with the Act, the *Client's* communication to the *Service Provider* informing it of an error in the assessment 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 communication 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 If the *Client* does not inform the *Service Provider* of an error in the assessment within the relevant timeframe, or if the communication does not contain the information above, the payer will become liable to pay the claimed amount on the due date for that payment.
 - 7 If the *Client* fails to make payment of the relevant amounts by their due date, the *Service Provider* 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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YS(NZ)1: CONSTRUCTION CONTRACTS ACT 2002

Defined terms	YS1.1	The Act is the Construction Contracts Act 2002.
Payment claim	YS1.2	An application for payment issued to the <i>Client</i> is treated as a payment claim. The first sentence of clause 50.1 is deleted and replaced by: 'The <i>Service Provider</i> assesses the amount due and applies to the <i>Client</i> for payment on each <i>assessment day</i>.'
Payment schedule	YS1.3	A communication issued by the <i>Client</i> informing the <i>Service Provider</i> of an error in the assessment of the amount due is treated as a payment schedule. Clause 50.5 is deleted and replaced by: 'If the <i>Service Provider</i> has incorrectly assessed the amount due in an application made on an <i>assessment day</i>, the <i>Client</i> corrects the amount due and gives details of how the corrected amount has been calculated to the <i>Service Provider</i> within two weeks after the <i>assessment day</i>.'
Suspension of performance	YS1.4	If the <i>Service Provider</i> exercises its right under the Act to suspend performance, it is a compensation event.
Adjudication	YS1.5	Clause 93.1 is deleted and replaced by: 'A dispute arising under or in connection with the contract is referred to and decided by adjudication under the Act.' Clauses 93.2 and 93.3 are removed.

ADDITIONAL CONTRACT DATA ENTRIES

In the *Client's* Contract Data insert the following:

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

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

