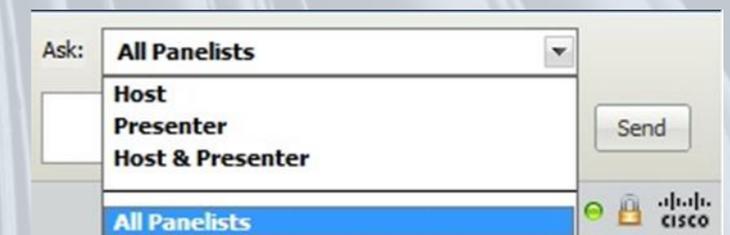


Helpful instructions for webinar attendees



1. Ensure you have clicked **Yes** to the Integrated Voice pop up when you entered. If No, then log out and join again. This will ensure you have sound. It will not connect your mic.
2. You should hear sound, possibly music a little time after the Host has entered. This ensures your speakers are functioning properly.
3. **Please make sure you can use the 'Q&A' function.** Look to the right of your screen and ensure the Q&A window is expanded. If not, click the small arrow to the left so that it is pointing down.
4. **Please do not use the Q&A window for any Chat.** The Chat pod will be open at the start for this and then removed once the presentation begins.
5. Once the presentations starts your **Questions to the Speaker** can begin and this is encouraged. You do not have to wait until the speaker finishes. Simply click in the small window at the bottom then click Ask and ensure you choose "All Panelists" (as shown below). Press Send.
6. We will endeavour to answer all questions.



NEC3 and Z clauses

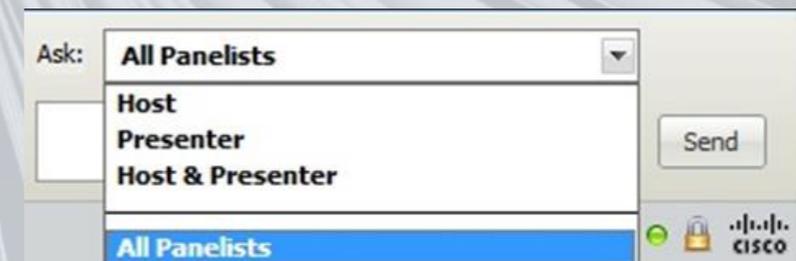
Why, when and how



Questions and discussions



1. **Ensure the Q&A window is expanded on the right of your screen.** If not, click the small arrow to the left of the question mark and Q&A, as shown here, so that the arrow now points down - the window will expand.
2. **To pose a question** simply click in the small window at the bottom of the screen, text your query, click Ask and choose **“All Panelists”**. Press Send.
3. **Please do not use the Q&A for any Chat.**
4. Keep your questions as short as possible
5. We will endeavour to answer all questions.....



Opening remarks



Robert Gerrard **NEC Users' Group Secretary**

NEC Users' Group



- The ultimate support for NEC users
- Made up of 500 organisations from across the supply chain
- Helpline facility & regular Newsletter
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NEC3 and Z clauses

Why, when and how



What are Z clauses?



- Additional conditions of contract
 - Have the same status as core and optional clauses
 - Incorporated through the Contract Data
- Examples of use
 - Contract specific requirements – eg Cabinet Office clauses on NEC web site
 - Unnecessary clauses – eg compliance with the law
 - Provisions which should have been in Works Information/ Service Information or Scope
 - Repetition of provisions covered by existing contract clauses, thus creating conflict/ ambiguity
 - Change to risk profile of contract

Why?



What is mischief that necessitates a Z clause?

‘Additional conditions should be used only when absolutely necessary to accommodate special needs such as those peculiar to the country in which the work is to be done.’

Mott Macdonald research – only 8% of Z clauses are valid – remainder are unnecessary or attempt to change the risk profile of the contract

What



The question why identifies any omission or need for addition to the contract.

It requires the drafter to understand the contract as a whole and recognise any issue that needs to be dealt with differently

Is additional condition of contract needed or can this be dealt with through the Works Information/ Scope?

Write down rationale for additional clause – “clause function statement”

How



Should always refer back to contract strategy, defining what the employer wishes to achieve, and the risk register, identifying risks to success

Flow chart changes to identify effects

Drafting by people experienced in NEC

Follow key NEC concepts

Key NEC concepts



- Flexibility
- Clarity and simplicity
- Stimulus to good management

A few thoughts on drafting



Add to not amend existing clauses

Use existing NEC provisions in drafting
eg use existing reason for termination, in preference to creating new reason

Adopt NEC text when possible
eg; "a reason or not accepting ... Is ..."

Examples



Good and bad examples of drafting

Extended liability period for Plant



1. If, prior to the issue of the Defects Certificate, the correction of a Defect in the Plant stated in the Contract Data requires the replacement of part of the Plant, the *Contractor* corrects any further Defect in the part which has been replaced during the *extended liability period*.
2. The *Contractor* carries the risk of loss or damage caused by or resulting from his work in correcting a Defect after the *defects date*.

Extended liability period for Plant



1. If, prior to the issue of the **Defects Certificate**, the correction of a **Defect** in the **Plant** stated in the **Contract Data** requires the replacement of part of the **Plant**, the *Contractor* corrects any further **Defect** in the part which has been replaced during the *extended liability period*.
2. The *Contractor* carries the risk of loss or damage caused by or resulting from his work in correcting a **Defect** after the *defects date*.

A Defect is

- a part of the *works* which is not in accordance with the Works Information or
- a part of the *works* designed by the *Contractor* which is not in accordance with the applicable law or the *Contractor's* design which the *Project Manager* has accepted
- any defect, shrinkage or other fault in the *works* which is due to failure of the *Contractor* to comply with his obligations under this contract or to frost occurring before Completion

No release from obligations



Notwithstanding any other provision of this contract, the *Contractor* is not relieved from any of his obligations or liabilities under or arising out of this contract nor are such obligations or liabilities removed, restricted, limited or qualified in any way by the presence of the *Employer*, the *Supervisor* or the *Project Manager* or any of their agents or representatives on the Site or the carrying out of tests on the instructions of the *Employer*, the *Project Manager* or the *Supervisor*, nor by any instruction, direction, admission, consent, approval, acceptance, confirmation, comment, certificate, sanction, acknowledgement, advice or inspection made or given by or on behalf of the *Employer*, the *Supervisor* or the *Project Manager*.

Early warning



The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices
- delay Completion
- delay meeting a Key Date or
- impair the performance of the *works* in use

.... continued



- interfere or affect the design and/or the work of the *Contractor*, the *Employer*, Other Subcontractors or Others
- delay or advance Completion
- delay or advance meeting a Key Date
- change the Accepted Programme
- constitute a Defect
- constitute a breach of this contract by the *Contractor*
- cause or contribute to the breach of any Applicable Law
- affect the safety of any person
- contribute to additional delay or expense in the course of maintenance, upgrading, extension, repair or renewal of the *works*

Ambiguity or inconsistency



The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. *The Project Manager* gives an instruction resolving the ambiguity or inconsistency.

..... continued



- If any ambiguity, inconsistency or discrepancy in or between the various documents included in the Works Information is found, the *Project Manager* decides in its absolute discretion which document or part of a document prevails.
- The *Contractor* is not entitled to any payment or any addition to the amount due to the *Contractor*, nor to any adjustment of the period or periods for the completion of the *works* or any part thereof, nor to any change to the date by which a Condition for a Key Date is to be achieved, arising out of or in any way in connection with such ambiguity, inconsistency or discrepancy or any decision made by the *Project Manager* under this clause, nor is any such decision by the *Project Manager* a compensation event under clause 60.1(1) unless the *Project Manager* in his absolute discretion decides otherwise.

Summary



- Decide what the problem is that needs an additional provision
- Recognise the effect of the new provision on the rest of the contract
- Use Works/Service Information or Scope for things within their definition
- Remember – Flexibility, clarity and simplicity, stimulus to good management
- Do not change the risk allocation simply because you do not like it – use a different contract!

Closing Remarks



Robert Gerrard
NEC Users' Group Secretary