

Additional public sector Z clauses required to comply with the requirements of The Public Contracts Regulations 2015

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Introductory Note

Additional clauses have been drafted for use by public bodies who award contracts subject to The Public Contracts Regulations 2015. These clauses deal with two issues – termination and payment.

The following notes explain the reasons for the additional clauses. They are written for the Engineering and Construction forms, but apply in the same way to other forms of contract.

Termination

Regulation 57 specifies certain grounds for excluding an organisation from being appointed as Contractor. Regulation 73 requires that the contract must include provisions allowing for termination if it is found that the Contractor should have been excluded under regulation 57.

The additional clause provides for termination in these circumstances, and identifies the different payment and procedures on termination depending on whether or not the Contractor withheld information at the Contract Date. If the Contractor withheld information which would have led to his exclusion, then the Contractor must pay the additional costs of the Employer in replacing the Contractor. Otherwise, the event is treated as a "neutral" event – the Contractor does not recover damages for termination, nor does the employer recover the additional cost under the replacement contract.

Regulation 71 applies similar principles to subcontractors and suppliers. The additional clause places an obligation on the Contractor to exclude a subcontractor or supplier if they meet the criteria for exclusion in regulation 57.

Regulation 71 also requires that the name, contact details and legal representation of subcontractors and suppliers are notified to the Employer. This is achieved under the NEC3 main forms through the submission and acceptance of subcontractors. However, under the NEC3 short forms an additional provision is included requiring the Contractor to provide this information.

Payment

Regulation 113 includes mandatory provisions for payment of subcontractor accounts. These require payment within 30 days of receipt of a valid invoice, and require that this be applied throughout the supply chain.

Again, under the NEC3 main forms, payment is required to be made within such timescales and therefore no modification is needed. However, under the NEC3 short forms, payment could be delayed if the Contractor fails to submit his application for payment in time. Accordingly, an additional provision is included for the NEC3 short forms of contract.

Finally, an additional clause provides for transferring the payment deadlines through the entire supply chain.

Additional public sector Z clauses required to comply with the requirements of The Public Contracts Regulations 2015

NEC3 Engineering and Construction Contract

The Public Contracts Regulations 2015

(1) The *Employer* may terminate the *Contractor's* obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with his obligations.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Contractor* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Contractor* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Engineering and Construction Short Contract

The Public Contracts Regulations 2015

(1) The *Employer* may terminate the *Contractor's* obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with this contract.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the *Contractor's* work for a continuous period of more than thirteen weeks.

(2) The *Contractor* notifies the *Employer* of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Employer* makes payment to the *Contractor* under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the *Employer* to make earlier payment to the *Contractor*.

(4) The *Contractor* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Contractor* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Engineering and Construction Subcontract

The Public Contracts Regulations 2015

(1) The *Contractor* may terminate the *Subcontractor's* obligation to Provide the Subcontract Works if the *Contractor's* obligation to Provide the Works under his contract with the *Employer* is terminated under the provisions of paragraph 73(1) of The Public Contracts Regulations 2015.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed to the *Contractor* by the *Subcontractor* at the Subcontract Date, the procedures and amounts due on termination are the same as if the *Subcontractor* has substantially failed to comply with his obligations.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The *Subcontractor* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subsubcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Subcontractor* to make earlier payment to the Subsubcontractor or supplier,
- invoices for payment submitted by the Subsubcontractor or supplier are considered and verified by the *Subcontractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subsubcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Engineering and Construction Short Subcontract

The Public Contracts Regulations 2015

(1) The *Contractor* may terminate the *Subcontractor's* obligation to Provide the Subcontract Works if the *Contractor's* obligation to Provide the Works under his contract with the *Employer* is terminated under the provisions of paragraph 73(1) of The Public Contracts Regulations 2015.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed to the *Contractor* by the *Subcontractor* at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the *Subcontractor* has substantially failed to comply with this subcontract.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the *Subcontractor's* work for a continuous period of more than thirteen weeks.

(2) The *Contractor* makes payment to the *Subcontractor* under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the *Contractor* to make earlier payment to the *Subcontractor*.

(3) The *Subcontractor* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subsubcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Subcontractor* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subsubcontractor or supplier are considered and verified by the *Subcontractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subsubcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Professional Services Contract

The Public Contracts Regulations 2015

(1) The *Employer* may terminate the *Consultant's* obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Consultant* at the Contract Date, the procedures and amounts due on termination are the same as if the *Consultant* has substantially failed to comply with his obligations.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the *Employer* no longer requires the *services*.

(2) The *Consultant* does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Consultant* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Consultant* to make earlier payment to the Subconsultant or supplier,
- invoices for payment submitted by the Subconsultant or supplier are considered and verified by the *Consultant* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Professional Services Short Contract

The Public Contracts Regulations 2015

(1) The *Client* may terminate the *Consultant's* obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Client* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Consultant* at the Contract Date, the procedures and amounts due on termination are the same as for a default by the *Consultant*.

If the *Client* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the *Client* no longer requires the *services*.

(2) The *Consultant* notifies the *Client* of the name, contact details and legal representatives of each subconsultant before appointing the subconsultant. The *Consultant* does not appoint a subconsultant if there are compulsory grounds for excluding the subconsultant under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Client* makes payment to the *Consultant* under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the *Client* to make earlier payment to the *Consultant*.

(4) The *Consultant* includes in any subcontract awarded by him provisions requiring that

- payment due to the subconsultant under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Consultant* to make earlier payment to the subconsultant or supplier,
- invoices for payment submitted by the subconsultant or supplier are considered and verified by the *Consultant* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Term Service Contract

The Public Contracts Regulations 2015

(1) The *Employer* may terminate the *Contractor's* obligation to Provide the Service if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to Provide the Service.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Contractor* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Contractor* to make earlier payment to the Subcontractor,
- invoices for payment submitted by the Subcontractor are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Term Service Short Contract

The Public Contracts Regulations 2015

(1) The *Employer* may terminate the *Contractor's* obligation to Provide the Service if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed to the *Employer* by the *Contractor* at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with this contract.

If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the *Contractor's* work for a continuous period of more than thirteen weeks.

(2) The *Contractor* notifies the *Employer* of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Employer* makes payment to the *Contractor* under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the *Employer* to make earlier payment to the *Contractor*.

(4) The *Contractor* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Contractor* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Supply Contract

The Public Contracts Regulations 2015

(1) The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Purchaser* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Supplier* at the Contract Date, the procedures and amounts due on termination are the same as if the *Supplier* has substantially failed to comply with his obligations.

If the *Purchaser* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The *Supplier* does not appoint a Subcontractor if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Supplier* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Supplier* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor are considered and verified by the *Supplier* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor for work included in this contract includes provisions to the same effect as these provisions.

NEC3 Supply Short Contract

The Public Contracts Regulations 2015

(1) The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the *Purchaser* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Supplier* at the Contract Date, the procedures and amounts due on termination are the same as if the *Supplier* has substantially failed to comply with this contract.

If the *Purchaser* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the *Supplier's* work for a continuous period of more than thirteen weeks.

(2) The *Supplier* notifies the *Purchaser* of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The *Supplier* does not appoint a Subcontractor if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The *Purchaser* makes payment to the *Supplier* under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the *Purchaser* to make earlier payment to the *Supplier*.

(4) The *Supplier* includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Supplier* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor are considered and verified by the *Supplier* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor for work included in this contract includes provisions to the same effect as these provisions.