



# NEC4 Y(SG) Facilities Management Contract Clauses

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Clauses and guidance are also provided for other NEC4 contracts. These are available for download from [neccontract.com](https://www.neccontract.com).



# Contents

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<b>Acknowledgements</b>	<b>v</b>
<b>Guidance Notes</b>	<b>1</b>
<b>Clauses</b>	<b>3</b>

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# Acknowledgements

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# Y(SG) FMC Guidance Notes

## OPTION Y(SG)1: THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

- 1 The Building and Construction Industry Security of Payment (the "SOP Act") came into operation on 1 April 2005. The Act aims to improve cash-flow in the built environment sector by giving parties the right to seek progress payment for work done. It also provides a fast and low-cost adjudication mechanism to resolve payment disputes.

Y1.1 and Y1.2 operate to bring the payment provisions in line with the payment claim and payment response processes prescribed by the SOP Act where the SOP Act applies.

Since the SOP Act only applies to payments for the carrying out of construction work or supplying goods and services for construction work in Singapore, the SOP Act may not be applicable to payments for all types of work performed or goods and services supplied under an integrated facilities management contract.

The requirements for a payment claim under the SOP Act are set out in section 10 of the Act and regulation 5 of the SOP Regulations; requirements for a payment response under the SOP Act are set out in section 11 of the Act and regulation 6 of the SOP Regulations.

The full legislation of the SOP Act and SOP Regulations may be found at Singapore Statutes Online – <https://sso.agc.gov.sg>

- 2 The Goods and Services Tax or GST is a broad-based consumption tax levied on the import of goods, as well as supplies of goods and services in Singapore. In other countries, GST is known as the Value-Added Tax or VAT.  
  
Y1.3 provides that if the *Service Provider* is registered as a taxable person for GST, the invoice submitted to the *Client* should include a component for GST calculated at the prevailing rate. Similarly, if the *Service Provider* is not registered as a taxable person, the invoice should not include a component for GST.
- 3 In certain situations, the *Client* may apply to the Comptroller of GST to approve an arrangement whereby it issues to itself tax invoices in respect of such certified payment amount. In such an event, Y1.5 provides that the *Service Provider* does not issue tax invoices in respect of such certificates.
- 4 The timelines for certification, payment and final assessment stated under Y1.6 to Y1.15 are amended to align with current industry practices.
- 5 Where the SOP Act is applicable, under SOP Act section 26, a *Service Provider* has the right to suspend construction work, or the supply of goods or services, under the contract where the *Client* fails to pay the adjudicated amount under the Act.  
  
Y1.14 adopts a principle similar to that in Y(UK) clause Y2.5, by providing that such suspension of performance under the SOP Act is a compensation event.
- 6 Y1.15 includes a right for the *Client* to set off payments from the amount due to the *Service Provider*.

## OPTION Y(SG)2: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

- 1 Y2.1 to 2.3 align with the industry practice that “Unless otherwise expressly stated in the contract, a person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms”.

## OPTION Y(SG)3: THE INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018

- 1 Y3.1 amends clause 90.2 to ensure that termination of the *Service Provider’s* obligation to Provide the Service is subject to any prohibition under existing laws. This is to align with the Insolvency, Restructuring and Dissolution Act 2018 where, if a company is insolvent, or has commenced any scheme of arrangement or judicial management (JM) proceedings, the counter party to the contract cannot (unless exempted):
  - a) terminate or amend, or claim for accelerated payment or forfeiture of the term under any agreement with the company; or
  - b) terminate or modify any right or obligation under any agreement with the company.

The full legislation of the Act may be found at Singapore Statutes Online – <https://sso.agc.gov.sg>

## OPTION Y(SG)4: THE PREVENTION OF CORRUPTION ACT 1960 AND THE PENAL CODE 1871

- 1 Y4.1 defines the interpretation of a Corrupt Act in accordance with the Prevention of Corruption Act 1960 and Penal Code 1871. The description of the activities is broad and reflects the commitment in eliminating corruption.

The full legislation of the Acts may be found at Singapore Statutes Online – <https://sso.agc.gov.sg>



# Y(SG) FMC Clauses

## OPTION Y(SG)1: THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

### The Building and Construction Industry Security of Payment Act 2004

#### Y(SG)1

#### Assessing the amount due

- Y1.1 An application for payment (including an application for final payment) submitted by the *Service Provider* must
- if the Building and Construction Industry Security of Payment Act 2004 ("SOP Act") applies, be made in compliance with the requirements applicable to a payment claim under such Act, and shall constitute a payment claim under such Act and
  - if the *Service Provider* is a taxable person under the Goods and Services Tax Act 1993 ("GST Act"), show the amount of GST chargeable by the *Service Provider* on the amounts in such application.
- Y1.2 If the SOP Act applies, the *Service Manager's* certificate in response to an application for payment (including an application for final payment) submitted by the *Service Provider* must be made in compliance with the requirements applicable to a payment response under such Act, and is a payment response under such Act.

#### Invoicing

- Y1.3 Where the effect of a payment certificate or final payment certificate is that the *Client* is the paying Party, unless the *Client* issues to itself tax invoices, within one week after the *Service Manager* issues the payment certificate or final payment certificate
- if the *Service Provider* is a taxable person under the GST Act, it submits to the *Client* a tax invoice under the GST Act in respect of such certified payment amount or
  - if the *Service Provider* is not a taxable person under the GST Act, it submits to the *Client* an invoice in respect of such certified payment amount.
- Y1.4 Where the effect of a payment certificate or final payment certificate is that the *Service Provider* is the paying Party, within one week after the *Service Manager* issues the payment certificate or final payment certificate
- if the *Service Provider* is a taxable person under the GST Act, the *Client* submits to the *Service Provider* a tax invoice under the GST Act in respect of such certified payment amount or
  - if the *Service Provider* is not a taxable person under the GST Act, the *Client* submits to the *Service Provider* an invoice in respect of such certified payment amount.
- Y1.5 If the *Service Provider* is a taxable person under the GST Act and the *Client* notifies the *Service Provider* that it has obtained approval from the Comptroller of Goods and Services to issue to itself tax invoices in respect of certified payment amounts, the *Service Provider* does not issue tax invoices in respect of such certified payment amounts, and no payment is made in respect of any tax invoices that the *Service Provider* may issue.
- The *Client* may at any time notify the *Service Provider* that it does not intend to issue to itself tax invoices in respect of any certified payment amount, in which case the *Service Provider* issues tax invoices in respect of such certified payment amounts.

<b>Payment</b>	Y1.6	In clause 51.1 first line replace “one week” with “two weeks”.
	Y1.7	In clause 51.1 delete “The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Service Manager</i> ’s certificate.”
	Y1.8	The first sentence of clause 51.2 is deleted and replaced by the following.  Unless a different period is stated in the Contract Data, each certified payment is made by the paying Party within <ul style="list-style-type: none"> <li>• three weeks after the <i>Service Provider</i> submits to the <i>Client</i> the invoice or tax invoice in respect of a certified payment amount payable to the <i>Service Provider</i>,</li> <li>• three weeks after the <i>Client</i> issues to itself a tax invoice in respect of a certified payment amount payable to the <i>Service Provider</i> or</li> <li>• three weeks after the <i>Client</i> issues to the <i>Service Provider</i> a tax invoice in respect of a certified payment amount payable to the <i>Client</i>.</li> </ul>
<b>Final assessment</b>	Y1.9	Clause 54 is deleted.
	Y1.10	The <i>Service Provider</i> submits an application for assessment of the final amount due within <ul style="list-style-type: none"> <li>• thirteen weeks after the end of the Service Period, or, if a different period is stated in the Contract Data, within such period stated or</li> <li>• ten weeks after the <i>Service Manager</i> issues a termination certificate.</li> </ul>
	Y1.11	The <i>Service Manager</i> makes an assessment of the final amount due and certifies a final payment, if any is due, no later than <ul style="list-style-type: none"> <li>• three weeks after the <i>Service Provider</i> submits an application for a final payment,</li> <li>• sixteen weeks after the end of the Service Period, if the <i>Service Provider</i> fails to submit an application for a final payment within the time allowed or</li> <li>• thirteen weeks after the <i>Service Manager</i> issues a termination certificate.</li> </ul> The <i>Service Manager</i> gives the <i>Service Provider</i> details of how the amount due has been assessed.
	Y1.12	Unless a different period is stated in the Contract Data, the paying Party makes payment of the certified final payment amount within <ul style="list-style-type: none"> <li>• three weeks after the <i>Service Provider</i> submits to the <i>Client</i> the invoice or tax invoice in respect of a certified final payment amount payable to the <i>Service Provider</i>,</li> <li>• three weeks after the <i>Client</i> issues to itself a tax invoice in respect of a certified final payment amount payable to the <i>Service Provider</i> or</li> <li>• three weeks after the <i>Client</i> issues to the <i>Service Provider</i> a tax invoice in respect of a certified final payment amount payable to the <i>Client</i>.</li> </ul>
	Y1.13	The certification of the final payment amount within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract, save insofar as its conclusive effect is modified by applicable law, or by the order of a competent court or the <i>tribunal</i> .
<b>Suspension of performance</b>	Y1.14	If the SOP Act applies and the <i>Service Provider</i> exercises its right to suspend Providing the Service under such Act, it is a compensation event.
<b>Set-off</b>	Y1.15	Where under the contract any sum of money (including any damages) is recoverable from or payable by the <i>Service Provider</i> , the same may be deducted from any sum then due or which at any time thereafter may become due to the <i>Service Provider</i> under the contract or in any other way.

## OPTION Y(SG)2: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

### Third party rights

#### Y(SG)2

- Y2.1 A *beneficiary* may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 2001.
- Y2.2 Other than the Parties or a *beneficiary*, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 2001.
- Y2.3 A *beneficiary* may be identified by class or description and not as a named person or organisation.

## OPTION Y(SG)3: THE INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018

### Termination

#### Y(SG)3

### Reasons for termination

- Y3.1 The first sentence of clause 90.2 is deleted and replaced by the following.
- To the extent permitted by law, a Party may terminate for a reason identified in the Termination Table.

## OPTION Y(SG)4: THE PREVENTION OF CORRUPTION ACT 1960 AND THE PENAL CODE 1871

### Corrupt Acts

#### Y(SG)4

### Definition

- Y4.1 Clause 11.2(4) is deleted and replaced by the following.
- 11.2(4) A Corrupt Act is
- the offering, promising, giving, receiving, agreeing to receive, or soliciting of a gratification as defined in the Prevention of Corruption Act 1960 or
  - engaging in any activity or conduct that has resulted or will result in a violation of
    - (a) Chapter 9 of the Penal Code 1871 or any section of the Penal Code 1871 prohibiting bribery,
    - (b) the Prevention of Corruption Act 1960 or
    - (c) any other applicable law including any foreign law which
      - (i) prohibits the conferring of any gift, payment or other benefit on any person or any personnel or adviser of such person or
      - (ii) is broadly equivalent to the laws set out in paragraphs (a) or (b) or which has as its objective the prevention of corruption.

