The following amendments have been made to the December 2009 edition. Full details of all amendments are available on www.neccontract.com.

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1 text replaced with: ‘For compensation events which arise from the Supply Manager giving an instruction, changing an earlier decision or correcting an assumption, the Supply Manager notifies the Supplier of the compensation event at the time of that communication. He also instructs the Supplier to submit quotations, unless the event arises from a fault of the Supplier or quotations have already been submitted. The Supplier puts the instruction or changed decision into effect.’

61.3

1 text replaced with:
The Supplier notifies the Supply Manager of an event which has happened or which he expects to happen as a compensation event if

- the Supplier believes that the event is a compensation event and
- the Supply Manager has not notified the event to the Supplier.

If the Supplier does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices or the Delivery Date unless the event arises from the Supply Manager giving an instruction, changing an earlier decision or correcting an assumption.’

61.4

1 text replaced with:

If the Supply Manager decides that an event notified by the Supplier

- arises from a fault of the Supplier,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost or Delivery or
- is not one of the compensation events stated in this contract

he notifies the Supplier of his decision that the Prices and the Delivery Date are not to be changed. If the Supply Manager decides otherwise, he notifies the Supplier accordingly and instructs him to submit quotations.

The Supply Manager notifies his decision to the Supplier and, if his decision is that the Prices and the Delivery Date are to be changed, instructs him to submit quotations before the end of either

- one week after the Supplier’s notification or
- a longer period to which the Supplier has agreed.

If the Supply Manager does not notify his decision, the Supplier may notify the Supply Manager of his failure. A failure by the Supply Manager to reply within two weeks of this notification is treated as acceptance by the Supply Manager that the event is a compensation event and an
instruction to submit quotations.

17  62.6  
63.2  2 replace: ‘to this effect’ with ‘of his failure’
1   text replaced with:

‘For other compensation events, the changes to the Prices are assessed as the effect of the compensation event upon
  • the actual Defined Cost of the work already done,
  • the forecast Defined Cost of the work not yet done and
  • the resulting amount calculated by applying the percentage for overheads and profit to the Defined Cost of the work.

Effects on Defined Cost are assessed separately for
  • people,
  • equipment,
  • plant and materials included in the goods,
  • work subcontracted by the Supplier and
  • transport.

The Supplier shows how each of these effects is built up in each quotation for a compensation event.

If the compensation event arose from the Supply Manager giving an instruction, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

The percentage for overheads and profit is applied to the assessed effect of the event on Defined Cost except that it is not applied to any tax charges for
  • customs clearance and
  • export and import.

The date when the Supply Manager instructed or should have instructed the Supplier to submit quotations divides the work already done from the work not yet done.’

19  64.4  
2 replace: ‘to this effect’ with ‘of his failure’

25  91.4  1 text replaced: ‘The Supplier may terminate if the Purchaser has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).’

34  Y(UK)1  1 insert new clause: ‘Project Bank Account’

Y1.1 Definitions
(1) Project Bank Account is the account established by the Purchaser and used to make payments to the Supplier.
(2) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.
(3) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.

Y1.2 Payments
The Supplier receives payment from the Project Bank Account of the amount due from the Purchaser as soon as practicable after the Project Bank Account receives payment.
A payment which is due from the Supplier to the Purchaser is not made through the Project Bank Account.

Y1.4 Effect of payment

Payments made from the Project Bank Account are treated as payments from the Purchaser to the Supplier in accordance with this contract.

If the Supplier is identified as a Named Supplier in the Contract Data for the Purchaser’s contract with his employer

Y1.5 Trust Deed

The Purchaser, his employer and the Supplier sign the Trust Deed before the first assessment date in the contract between the Purchaser and his employer.

If the Supplier is added as a Named Supplier after the Contract Date in the Purchaser’s contract with his employer

Y1.5 Trust Deed

The Purchaser, his employer and the Supplier sign the Joining Deed before the first assessment date.

Y1.6 Termination

If the Supply Manager issues a termination certificate, no further payment is made into the Project Bank Account.

Trust Deed

This agreement is made between the Employer, the Contractor and the Named Suppliers. Terms in this deed have the meanings given to them in the contract between . . . . . . . . . . . . . . . . . . and . . . . . . . . . . . . . for . . . . . . . . . . . . . . (the works).

Background

The Employer and the Contractor have entered into a contract for the works.
The Named Suppliers have entered into contracts with the Contractor or a Subcontractor in connection with the works. The Contractor has established a Project Bank Account to make provision for payment to the Contractor and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the Contractor and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the Contractor for distribution to the Contractor and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,

- further Named Suppliers may be added as parties to this deed with the agreement of the Employer and Contractor. The agreement of the Employer and Contractor is treated as agreement by the Named Suppliers who are parties to this deed,

- this deed is subject to the law of the contract for
the works,
• the benefits under this deed may not be assigned.
Executed as a deed on ........................ by
.................................................. (Employer)
.................................................. (Contractor)
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.................................................. (Named Suppliers)

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| 36|        |         | Joining Deed
This agreement is made between the Employer, the Contractor and ............ (the Additional Supplier).
Terms in this deed have the meanings given to them in the contract between ............ and ............ ............ for ............ (the works).

Background
The Employer and the Contractor have entered into a contract for the works.
The Named Suppliers have entered into contracts with the Contractor or a Subcontractor in connection with the works.
The Contractor has established a Project Bank Account to make provision for payment to the Contractor and the Named Suppliers.
The Employer, the Contractor and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

Agreement
The Parties to this deed agree that
• the Additional Supplier becomes a party to the Trust Deed from the date set out below,
• this deed is subject to the law of the contract for the works,
• the benefits under this deed may not be assigned.

Executed as a deed on ........................ by
.................................................. (Employer)
.................................................. (Contractor)
.................................................. (Additional Supplier)

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| 42|        | ‘If Option Y(UK)1 is used and the Purchaser is to pay any charges made and is paid any interest paid by the project bank’
   |        | • The Purchaser is to pay any charges made and is paid any interest paid by the project bank.’ |

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| 43|                   | If Options Y(UK)1 and Y(UK)3 are both used
<p>|                   | • term person or organisation |</p>
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<td>• <em>named suppliers</em> are ..........</td>
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