

RECENT CHANGES TO STANDARD CONSTRUCTION CONTRACT FORMS

PAPER BY

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1.0 Preface

From the beginning of humanity, construction has been essential to our efforts. It started with building shelters for survival and eventually progressed to developing cities and skyscrapers, as mentioned in the Bible, Genesis 11:3. Throughout history, monumental architecture has remained a key aspiration for humanity.

Wayne Martin QC highlighted that "Monumental buildings became the hallmark and legacy of the first great civilisation" (9). The Industrial Revolution significantly changed construction, facilitating the development of complex structures and necessitating strong infrastructure to accommodate these innovations. These transformations are ongoing and will continue indefinitely.

Change is an enduring constant; the construction industry serves as a prime example of this phenomenon through its continuous evolution. The standardised contract forms that delineate the relationships among stakeholders in construction projects play a crucial role in this transformation.

This paper analyses the latest revisions to the FIDIC, NEC, and JCT standard contracts, designed to encourage collaboration, improve clarity, and ensure fairness in projects. As societal, environmental, and technological challenges influence the industry, it is essential for quantity surveyors, construction experts, lawyers, and other stakeholders to grasp these updates. The paper acts as a resource for comprehending and applying these modifications, crafting effective contract terms, and managing the intricacies of construction agreements.

2.0 Definition: What Is a Construction Contract?

A construction contract constitutes a legally binding agreement that delineates the terms, conditions, and obligations of the parties involved in the execution of a construction project. This agreement is typically made between an employer or client (project owner or developer) and a contractor (or construction company), which may also involve suppliers or consultants. Among other aspects, key components of such contracts include:

1. Project Scope and Description: Detailed project description, including materials, labour, and deliverables
2. Delivery Timelines: Start and completion dates, milestones, and potential penalties for delays
3. Payment Terms: Contract price, payment schedule, and methods (lump sum, cost-plus, unit pricing, etc.). Contract price, payment schedule, and methods (lump sum, cost-plus, unit pricing, etc.).
4. Warranties & Guarantees: Quality assurances and defect liability periods
5. Dispute Resolution Mechanism: Methods for handling conflicts (mediation, arbitration, litigation).
6. Insurance & Liability: Risk allocation, indemnification, and required insurance coverage.
7. Variation or Change Mechanism: Procedures for handling modifications to the original scope and price.
8. Suspension or Termination Process: Conditions under which either party can end the contract.
9. Roles, responsibilities, and expectations

3.0 Introduction: Principles of Procurement

Successful project procurement should follow general principles, including:

- a) Cost-effectiveness: Ensuring value for investment
- b) Fairness and Transparency: Clarity and equality in processes

- c) Integrity and Ethics: Upholding Elevated Standards
- d) Risk Management: Fairly allocating and addressing risks
- e) Sustainability and Quality: Prioritising environmental and social factors.
- f) Innovative Competition: Promote competition to stimulate innovation and reduce costs.
- g) Responsibility: Ensure accountability for procurement decisions and actions.
- h) Legal Compliance: Ensure compliance with relevant laws, regulations, and standards.

The principles mentioned above, among others, are integral to the updated FIDIC 2017, NEC4, and JCT 2024 contracts.

3.1 Key Changes:

The recent revisions to these standard contracts are intended to address the evolving needs of users, to align with legislative updates, legal pronouncements, and judicial decisions, as well as to enhance overall clarity. Notable changes include an increased emphasis on collaboration, sustainability, and risk management, alongside the streamlining of agreements to:

- Modernise practices
- Address the recent legal issues and industry developments.
- Clearly define risk allocation, payment processes, and dispute resolution.

Adhering to these standards guarantees legal compliance, fosters fairness, reduces conflicts, and instils confidence in construction businesses regarding their operations.

3.2 Amendments to Standard Forms

Given that the utilisation of standard contract forms in their entirety is nearly unfeasible, any amendments must be meticulously evaluated and substantiated to avert inequitable risk distribution, conflicts, and other prospective complications.

Best practices for amending standard forms include:

- 1) Propose changes only when they serve the project's interests.
- 2) Elaborate on the reasoning for adjustments
- 3) Make sure the changes encourage teamwork and equitable sharing of risks.
- 4) Providing sufficient time for discussion and negotiation to define responsibilities regarding the amendments.

3.3 Risk Allocation in Construction Contracts

Effective risk management is of paramount importance. Contracts delineate the roles and benefits associated with risks, offering precise definitions that mitigate disputes and promote the efficient execution of projects while adhering to budgetary, quality, and timeline objectives.

4.0 FIDIC Contract Suite

4.0.1 Overview

The FIDIC contract suite, widely referred to as the "Rainbow Suite," provides a range of forms tailored to accommodate diverse project requirements and procurement strategies. This suite is internationally recognised, with each contract form facilitating clear delineation of roles, equitable distribution of risk, and the efficient execution of construction projects.

We will now examine the different types of FIDIC construction contracts.

4.0.2 Construction Contracts

1. Red Book: Conditions of Contract for Construction is appropriate for traditional design-bid-build projects where the employer provides the design and the contractor performs the work.
2. The Yellow Book: Conditions of Contract for Plant and Design-Build is intended for design-build projects where the contractor handles both design and construction.
3. Silver Book: Contract form for EPC/Turnkey Projects—designed for projects where the contractor oversees design, construction, and commissioning.

4.0.3 Specialised Contracts

1. Gold Book: This form is for design, build, and operate projects. Integrating the design, construction, and operational phases is most suited for long-term infrastructure projects.
2. Pink Book: This is generally adopted by the Multilateral Development Banks (MDB) and tailored for projects funded by these banks.
3. Turquoise Book: Primarily used for dredging and reclamation projects.

4.0.4 Short Form Contracts

- Green Book: This concise contract is designed for smaller, simpler projects. It includes limited clauses that minimise administrative demands in construction contracting.

4.0.5 Consulting Services Contracts

- The White Book: Model Services Agreement is designed to hire consultants for delivering professional services.

4.1 THE FIDIC 2017 Edition and Amendments

The 2017 edition, which follows the 1999 version, has undergone three amendments:

- December 2018: Initial corrections (errata).
- June 2019: Second set of revisions.
- November 2022: This is the latest revision, effective January 2023.

Additionally, FIDIC introduced the Golden Principles in 2019, which limit the extent of amendments to the contract forms. This aims to safeguard the integrity of these forms. The guidelines emphasise fairness, clarity, and balance, ensuring that roles and obligations are clearly defined without altering the core provisions of the contract forms framework.

4.1.1 Golden Principles: Key Requirements

1. Duties and Obligations: Require that the parties' responsibilities under the contract are specified.
2. Entitlement to Time: The procedures for extending the contract period are clearly defined.

3. Entitlement to Money: There should be clarity regarding payment processes, procedures, and compensation entitlements.

4.1.2 Limits to Amendments

1. Avoid contradicting essential core provisions and unfairly altering the risk balance.
2. Prohibit ambiguous language and ensure amendments align with the contract's purpose.

4.2 Key Changes in 2017 Edition

4.2.1 No-Objection Terms

FIDIC 2017 incorporates a "No Objection" clause as a formal acknowledgement by Engineers or Employers, allowing actions or submissions to proceed while holding the contractor accountable for compliance. This primarily appears in Clause 5 (design matters) and also in Sub-Clause 4.4.1 of the Red Book (manual preparation and review).

2.2.2 Notices

"Notices" should be written communications as defined under Sub-Clause 1.3 to address events affecting projects. Examples include:

1. Delay Notification: Updates on impacts to the project schedule.
2. Claim Notice: Requests for additional time or payment.
3. Notice of Determination: Decisions regarding disputes or claims.
4. Agreement/Disagreement Notifications: Communicating acceptance or disagreement.

4.2.3 Claims

In response to the challenges highlighted in the 1999 edition, FIDIC 2017 redefines claims as requests or statements for entitlements related to the contract or project execution. Sub-Clause 20.2.4 outlines the timelines and content requirements for detailed claims:

1. Timely Submission: Claims must be submitted within 84 days of the event unless otherwise agreed.
2. Content: Incorporate comprehensive descriptions, legal and contractual foundations, up-to-date records, and pertinent details.
3. Consequences of Non-compliance: Failing to meet the requirements invalidates the claim and frees the other party from liability.

Claims are articulated in these new forms as "a request or assertion by either Party to the other Party for an entitlement of relief under any Clause of these Conditions or otherwise in connection with, or arising out of, the Contract or the execution of the Works."

Sub-Clause 1.1.6 was revised to exclude matters that must be agreed or determined under Sub-Clause 3.7(a). This revision helps to distinguish "Claims" from other issues.

Sub-Clause 3.7 was revised to categorise matters and claims into sub-paragraphs (a) and (b). Specific clauses requiring agreement or determination are now itemised.

5.0 NEC Suite: Overview

5.0.1 Introduction to NEC4

The latest version of the NEC (New Engineering Contract) series, NEC4, offers an expanded range of solutions for projects of all sizes and complexities. Building on the foundation of NEC3, the suite maintains a consistent style, layout, terminology, and project management principles, making the transition seamless for NEC3 users.

Optional features provide flexibility, allowing for the development of straightforward short contracts that meet industry needs for better collaboration, contemporary work approaches, risk management, and dispute avoidance. NEC4 embodies progress in procurement and construction techniques, improving efficiency and fostering successful project results.

5.0.2 Key NEC4 Contract Forms

5.0.2.1 Works Contracts

1. Engineering and Construction Contract (ECC): Applicable for large-scale projects, including infrastructure, buildings, and process plants.
2. Engineering and Construction Subcontract (ECS): For subcontracting tasks within ECC.
3. Engineering and Construction Short Contract (ECSC): Designed for smaller, less complex projects.
4. Engineering and Construction Short Subcontract (ECSS): For subcontracting under ECSC.

5.0.2.2 Services Contracts

1. Professional Service Contract (PSC): For hiring consultants in engineering, architecture, and project management.
2. Professional Service Subcontract (PSS): For subcontracting consultancy tasks under the PSC.
3. Professional Service Short Contract (PSSC): Designed for smaller consultancy engagements.

5.0.2.3 Term Service Contracts

1. Service Contract (TSC): For continuous maintenance and support services.
2. Term Service Subcontract (TSS): For subcontracting within TSC agreements.
3. Term Service Short Contract (TSSC): Designed for simpler term services.

5.0.2.4 Facilities Management Contracts

1. Facilities Management Contract (FMC): For comprehensive management services.
2. Facilities Management Short Contract (FMSC): Suitable for smaller-scale facility management.

5.0.2.5 Supply Contracts

1. Supply Contract (SC): For the supply of high-value goods and services.
2. Supply Short Contract (SSC): For lower-risk and simpler supply agreements.

5.0.2.6 Other Contracts

1. Framework Contract (FC): Establishes contractual agreements for numerous projects.
2. Dispute Resolution Services Contract (DRSC): A framework for dispute resolution.

5.1 Key Updates in NEC4

5.1.1 Recent Amendments

1. January 2019: Clauses relating to design liability and limitations of liability were incorporated.
2. October 2020: Updated Option X22 for early contractor involvement.
3. January 2023: Introduced Option X29 on climate change, adjusted cost elements, and revised adjudication processes.

5.1.2 Other updates released include regional editions, such as:

1. NEC ECC HK Edition (Dec 2024): Addresses the financial and cash flow challenges of construction.
2. NEC4 Y Clauses: Customised updates for areas such as Australia, Ireland, and Northern Ireland.

5.1.3 Changes in terminology

1. "Employer" is now referred to as "Client" throughout the suite (except in Supply Contracts).
2. The term "Scope" has replaced various forms, including Works Information (ECC), Service Information (TSC), and Goods Information (SC).

5.2 Changes and Innovations to NEC4

The construction and engineering industry has significantly innovated over the last decade, moving away from traditional methods. NEC4 has played a vital role by:

1. Facilitating effective project management through risk and change mitigation.
2. Utilising flexible pricing options for shared risk management.
3. Providing simple, present-tense English for global accessibility.
4. Incorporating user feedback to improve efficiency and responsiveness.

5.2.1 Key Development:

5.2.1.1 NEC4 Design Build Operate (DBO) Contract

The new DBO contract offers a unified solution, consolidating design, construction, operation, and maintenance into one agreement. This holistic strategy allows for life-cycle delivery in engineering and construction projects.

This update highlights the importance of timely and comprehensive claim submissions to minimise disputes and improve project management.

5.2.1.2 NEC4 Alliance Contract (ALC): Consultation Form

The NEC4 Alliance Contract is designed for clients seeking complete integration of delivery teams for large-scale, complex projects. It enables clients to establish a collaborative agreement with multiple participants to achieve project or programme delivery.

Key Features:

1. Participants collaborate to achieve Client objectives while sharing risks and rewards.
2. Encourages deeper collaboration and minimises potential disputes.

3. Functions as a multi-party contract based on an integrated risk and reward model.
4. Retains familiar principles, management processes, and terminology from other NEC4 contracts.

5.3 Additional Features of NEC4

5.3.1 Contractor's Proposals

NEC4 introduces processes that enable both the Project Manager and Contractor to identify opportunities for enhancing project outcomes:

1. **Scope Changes:** The Contractor may suggest modifications to lower costs, while the Project Manager determines whether to accept, reject, or request quotations.
2. **Accelerated Completion:** The Contractor may propose acceleration to complete the project earlier.
3. **Cost-Saving Opportunities:** Contractors can propose scope changes that reduce the lifecycle costs of assets. When accepted, the contractor shares in the cost savings.

5.4 Defined Cost

Defined Cost: This concept is crucial to NEC4's target cost and cost-reimbursable contract options, enabling enhanced cost tracking and reimbursement. It refers to the actual costs incurred for work completed by the Contractor, which includes:

5.4.1 Components of Defined Cost

1. **People costs:** This includes salaries, wages, and benefits for employees who are directly involved in the project.
2. **Equipment costs:** These include the costs of equipment used for the project, encompassing depreciation, maintenance, and operating expenses.
3. **Plant and material costs:** Materials, goods, and services acquired for the project.
4. **Subcontractor costs** refer to expenses incurred for work performed by subcontractors.

5.4.2 Key aspects

1. **Actual costs:** Defined Cost is based on actual expenses incurred rather than estimates, projections, or forecast costs.
2. **Reimbursable Costs:** The Employer shall reimburse the Contractor for defined costs, under the payment provisions stipulated in the contract.

Contracts such as PSC, TSC, and SC now incorporate Defined Cost, aligning with ECC's Schedule of Cost Components. This promotes integration among teams and supply chains, ensuring consistency in cost assessment methods.

5.4 Contractor's Design Option

5.4.0 NEC4 enhances support for design-build contracts:

- 1) This form introduces the requirements for professional indemnity insurance, ensuring alignment with industry standards.

- 2) Addresses ownership and licensing of intellectual property within contractual provisions.
- 3) This document includes a clause for the retention of documents concerning design information, as desired by both the users and the insurance industry.

5.4.1 Dispute Resolution

Resolution Options W1 & W2

NEC4 provides two dispute resolution frameworks:

1. Option W1:
 - Adjudication leading to enforceable outcomes.
 - If unresolved disputes are referred to arbitration or a tribunal.
2. Option W2:
 - Adjudication resulting in binding decisions.
 - Negotiation by senior representatives shall be pursued if adjudication is deemed unsatisfactory.
 - Arbitration or a tribunal if negotiations fail.

5.4.2 Key Differences:

- 1) W2 includes a negotiation phase that W1 lacks.
- 2) Both options feature interim binding decisions, but W2 includes senior representative reviews.

5.4.3 Dispute Avoidance Board (W3)

A recently introduced alternative, known as W3, involves referring disputes to a Dispute Avoidance Board. This alternative is applicable in situations not covered by the UK Housing, Grants, Construction, and Regeneration Act.

- 1) The Board visits the project regularly to understand its dynamics.
- 2) Promotes friendly resolutions through recommendations.
- 3) Parties may refer unresolved disputes to tribunal proceedings.

5.4.4 Finality of Assessments

NEC4 introduces provisions for finalising amounts due under cost-based contracts (options C, D, E, and F):

1. Contractors may request reviews of defined costs.
2. Project Managers have thirteen weeks to conduct reviews and provide responses. Failure to respond will result in the automatic acceptance of incurred costs.
3. Final payment assessments must be issued within four weeks of the Defects Certificate, and disputes must be referred within four weeks of issuance if challenged.

This progressive review system ensures that payments are validated throughout the project's duration rather than deferred until completion, thereby promoting greater efficiency and accuracy.

5.5 NEC4: Ownership of Intellectual Property (IP)

5.5.1 IP Provisions in NEC4

Although NEC4 does not include a specific clause for intellectual property ownership, relevant provisions address this topic indirectly:

1. Clause X18 - Limitation of Liability:
 - Covers indirect or consequential losses, potentially including claims related to intellectual property (Clause X18.3).
2. Other Relevant Clauses:
 - Clause 2.1 outlines the Contractor's design obligations, which may involve IP considerations.
 - Clause 4.1 addresses liability for the works, potentially touching on IP ownership matters.

Further amendments may be necessary to define IP ownership explicitly based on project needs.

5.6 Cost and Payments

5.6.1 Compensation Events

NEC4 introduces flexibility by specifying additional compensation events in Contract Data Part One, which allows Clients to adjust risk profiles without needing Z-clause amendments. Key updates include:

- Compensation for preparing quotations when a Project Manager does not accept a proposed instruction.
- Widened compensation processes for contracts such as PSC, TSC, and SC, under ECC methods for evaluating costs through the Schedule of Cost Components.

5.6.2 Payment Provisions

Periodic assessments now require applications from contractors. Payments will be withheld if an application is not submitted by the assessment date. Short-term contracts incorporate streamlined compensation procedures, which facilitate quicker resolutions.

5.6.3 Schedules of Cost Components and Fee

Simplification of Cost Components

NEC4 has introduced several changes to simplify the Schedules of Cost Components (SCC) and their related Contract Data inputs:

1. In NEC4, the main options C, D, and E are now only one Schedule of Cost Components (SCC), with the Short Schedule of Cost Components (SSCC) removed.
2. Subcontractor costs have been included in the SCC, standardising payments across all options.
3. Defined Cost is derived from the actual amounts paid to subcontractors.

4. Overheads such as Working Areas Overhead and People Overhead have been eliminated, with relevant items instead covered as part of Defined Cost.
5. The design overhead has also been removed to streamline designer rates.

5.6.4 Personnel Costs

NEC4 now accommodates flexible work arrangements, considering personnel expenses for those operating from various locations. Employees whose primary worksite is within the Working Areas are included in the Defined Cost, based on the time spent "on this contract."

5.6.5 Fee Structure

- NEC4 features a single fee percentage, eliminating the need for separate percentages for subcontracted works.
- This standardisation ensures consistency in applying the Fee to the Defined Cost across all primary options.

5.6.6 Benefits:

The updated SCC and fee structure simplify the implementation of NEC4 contracts; however, detailed rules remain essential for effectively managing defined and Disallowed Costs.

5.7 Programme

Treated Acceptance

To address potential delays caused by non-responses, NEC4 introduces treated acceptance for contractor-submitted programmes when the project manager does not respond or acknowledge reminders.

Key Programme Adjustments

- i. The requirement to demonstrate the implementation of compensation events has been removed to prevent misunderstandings regarding non-implemented events.
- ii. The Contractor must still display the order and timing of operations for providing the works, including all changes, such as compensation events.

5.7.1 Contract Data

The NEC4 Contract Data has been restructured to improve navigability and is now better suited for computer software, enhancing usability during the drafting process.

5.8 Guidance Notes

NEC4 guidance has been consolidated into four volumes, covering:

1. Procurement Strategy
2. Contract Preparation
3. Supplier Selection
4. Contract Management

5.8 Other Key Features and Updates

5.8.1 Collateral Warranties

The NEC4 contract includes collateral warranties, allowing clients to secure commitments from contractors and subcontractors without needing Z-clause adjustments. Additionally, Option Y(UK)3 simplifies the warranty process in line with the UK Contracts (Rights of Third Parties) Act 1999.

5.8.2 Early Contractor Involvement (ECI)

The NEC4 Engineering and Construction Contract (ECC) now includes provisions for early contractor involvement (ECI), which were previously published in 2015. ECI facilitates the prompt appointment of a contractor to assist in developing designs and proposals, leading to significant improvements and innovations during the design phase. This approach effectively identifies and mitigates project challenges and risks while incorporating construction considerations from the outset and establishing a strong foundation for collaboration.

This alternative option promotes ECI, enabling contractors to provide innovative solutions during the design development phase. This collaborative approach minimises risks and improves project outcomes.

5.9 Building Information Modelling (BIM)

The NEC4 contract supports Building Information Modelling (BIM) by incorporating clauses mandating Contractors to develop an Information Execution Plan under the BIM requirements specified by the Client. Additionally, it addresses information ownership and liability issues, thereby ensuring the project's effective implementation.

6.0 Quality Management

Contractors must issue a quality management system and plan to uphold standards and accountability.

6.1 Governance Enhancements

Bribery and Corruption

The core clauses explicitly prohibit corrupt practices and stipulate remedies for termination, thereby eliminating the necessity for amendments to the Z-clause.

6.2 Confidentiality and Publicity

Contracts include clauses restricting disclosure of project information and maintaining confidentiality without requiring amendments.

6.3 Transfer of Benefits

Parties can transfer contractual benefits or rights, streamlining processes and eliminating amendment needs.

6.4 Miscellaneous Updates

6.4.1 Gender-Neutral Language

NEC4 replaces "he" and "his" with inclusive terminology, reflecting modern standards.

6.4.2 Early Warning Register

The Risk Register has been renamed to differentiate it from broader project risk registers.

6.4.3 Section 8 Revisions

Formerly known as "Risk," Section 8 is now titled "Liabilities and Insurance," highlighting liabilities rather than risk.

6.4.4 Renaming of Secondary Options

- X4: Now titled "Ultimate Holding Company Guarantee."
- X12: Updated to "Multi-party Collaboration" for clarity of purpose.

7.0 JCT Suite

7.1 Main Contracts

The Joint Contracts Tribunal (JCT) provides an extensive array of standardised contracts tailored to accommodate diverse construction projects and procurement strategies. These broadly acknowledged and comprehended contracts address various activities, from minor residential renovations to large-scale, intricate developments.

Key Features:

1. Clarity: Precisely outlines the roles, responsibilities, and obligations of everyone involved.
 2. Fair Risk Sharing: Ensures equitable risk distribution, reducing conflicts.
 3. Compliance: Adheres to applicable laws and industry standards.
 4. Flexibility: This concept can be customised to accommodate various project sizes and methodologies, thereby fostering collaboration and enhancing project management efficiency.
- a) Standard Building Contract (SBC): This contract is particularly suited for large-scale and complex projects where the employer provides designs. The available versions are as follows:
 - SBC/Q: With Quantities
 - SBC/AQ: With Approximate Quantities
 - SBC/XQ: Without Quantities
 - b) Design and Build Contract (DB): This refers to projects for which the contractor is responsible for design and construction.
 - c) Intermediate Building Contract (IC): Suitable for medium-sized projects involving recognised trades. Includes:
 - ICD: With Contractor's Design
 - Minor Works Building Contract (MW): Suitable for smaller projects, with an option for the Contractor's Design (MWD).

7.2 Subcontracts

1. Intermediate Subcontract (ICSub): For the Intermediate Building Contract.

2. Design and Build Subcontract (DBSub): For the Design and Build Contract.
3. Minor Works Subcontract (MWSub): For the Minor Works Building Contract.

7.3 Management Contracts

1. Management Building Contract (MC): For construction management procurement.
2. Management Works Contract (MWC): Contracts on the construction and management of a building.
3. Framework Agreement (FA): Establishes comprehensive agreements for numerous projects.
4. The Constructing Excellence Contract (CE): This form promotes collaborative working and integrated project delivery.

7.4 JCT 2024 KEY CHANGES

The JCT DB 2024 contract presents incremental updates instead of substantive or ground-breaking changes. Notably, the structure and numbering are consistent with previous editions, facilitating enhanced industry adoption and familiarity.

The 2024 edition of the JCT introduces significant updates aimed at modernising contracts, addressing legislative changes, and adapting to the industry's evolving needs. This initiative commences with the Design and Build (D&B) and Minor Works Contract.

Key Changes Include:

7.4.1 Gender-Neutral Language

Contracts now employ inclusive terms, replacing “he” with “they” to align with modern standards.

7.4.2 Electronic Communication

Specific regulations regarding email usage and the execution of electronic contracts significantly enhance operational efficiency.

7.4.3 Extensions of Time Simplified

Amendments to Clauses 2.24.4 and 2.25.2 have been implemented to streamline and expedite claims for Extension of Time (EoT).

The procedure for interim time extensions has been decreased from 12 weeks to 8 weeks, thereby expediting the management of delays.

1. Employer Requests for Additional Information: Employers may solicit further details from the Contractor within fourteen days of receiving the delay notice.

7.4.4 Target Cost Contract (TCC 2024)

Introduces various sharing arrangements that allow contractors to share savings and encourage collaboration for cost-effective project delivery.

7.4.5 Legislative Updates

1. Building Safety Regulations: Highlights updates in the Building Regulations 2010 (Part 2A), introducing new responsibilities for the Principal Designer and Principal Contractor.
 - o Assumes the Contractor performs both roles unless specified otherwise.
 - o Clarifies duties and notification responsibilities, ensuring better safety practices.
2. The Corporate Insolvency and Governance Act 2020 offers explicit directives concerning insolvency situations.

7.4.6 Additional Updates

- a) BR 2010 Notices: The contractor must serve notices under the Building Regulations.
- b) Information Sharing: Employers must provide the information necessary for compliance.
- c) Notification and Inspection Fees: The Contractor is responsible for this.
- d) Subcontract Compliance: Subcontracts must comply with BR 2010 requirements.

The above changes ensure that JCT contracts remain practical, equitable, and aligned with current legal standards, supporting the construction industry in managing projects effectively.

7.4.7 Building Safety Approach in JCT 2024

7.4.7.1 Higher-Risk Building (HRB) Projects

The Joint Contracts Tribunal (JCT) acknowledges that although reforms may not be pertinent to every project utilising its forms, higher-risk building projects necessitate supplementary building safety drafting. This acknowledgement illustrates the generic characteristic of standard forms, yet requires modifications for higher-risk buildings (HRBs) to address effectively:

- a) Declarations are mandated from duty holders as specified under Part 2A, particularly for the Building Regulations Principal Contractor (BR PC) and Building Regulations Principal Designer (BR PD), during the final certificate application process. This requirement arises due to the absence of statutory obligations for declarations in relation to these roles unless explicitly outlined within contractual agreements.
- b) Liability and Remediation: Orders under the Defective Premises Act 1972 (DPA 1972) and the Building Act 1984 (BA 1984), including extended limitation periods.

7.5 Role Conflation and Challenges

The JCT 2024 integrates the roles of BR PC/PD with CDM PC/PD (Construction (Design and Management) Regulations 2015) under a unified definition, presuming that identical entities will undertake both responsibilities (Clause 3.16).

- a) This assumption stems from regulation 11D(2) of BR 2010 but conflicts with current HRB market practices, as CDM PDs often refrain from taking on BR PD roles due to concerns about competence and insurance.
- b) Separate drafting amendments are required to delineate these roles and ensure sufficient protection for the parties involved.

7.6 Collaboration

7.6.1 Good Faith Provision

Article 3 now mandates collaboration in good faith, representing a considerable transformation from its previous designation as a supplemental provision in DB 2016. This development underscores an increasing focus on cooperative project management practices.

7.7 Environmental, Social, and Governance (ESG)

7.7.1 Sustainable Development and Environmental Considerations

JCT 2024 incorporates supplemental ESG provisions into the main contract body:

- a) Clause 2.1.5 encourages contractors to suggest feasible amendments that enhance environmental performance.
- b) Clause 2.2.2 mandates that contractors provide environmental impact information for materials and goods.

While the inclusion of Environmental, Social, and Governance (ESG) provisions by JCT signifies progress, it remains inadequate for stakeholders who seek rigorous adherence to environmental standards. Additional detailed clauses, akin to NEC's Option X29, are imperative to address ESG principles, encompassing social and governance aspects comprehensively.

7.8 Relevant Events and Matters

7.8.1 Epidemics and Statutory Powers

The JCT 2024 introduces additional optional Relevant Events and Relevant Matters that address:

1. Epidemics: Although the consideration is forward-looking, the absence of a clear definition for "epidemic" and the criteria for direct impact necessitate amendments for enhanced clarity.
2. Statutory Powers: The expanded coverage encompasses guidance from the Construction Leadership Council (CLC). However, it is advisable to implement tailored amendments to include guidance from pertinent authorities, such as the Building Safety Regulator (BSR), the Health and Safety Executive (HSE), or the Construction Industry Council (CIC).

These updates signify progress toward enhanced contractual frameworks; however, tailored amendments are advised for optimal implementation in building safety and other essential domains.

7.9 Design Liability and Liability Caps

7.9.1 Exclusion of Fitness for Purpose

The JCT DB 2024 introduces Clause 2.17.1, which excludes obligations of fitness for purpose in design.

The contract upholds the standard of reasonable skill and care on design liability.

7.9.2 Overall Liability Cap

Clause 2.17.3 stipulates an optional overall limit on the Contractor's liability for indirect losses, including loss of use and profits.

- a) These changes are driven by and reflect industry concerns following the Supreme Court's decision in *MT Højgaard A/S v E.ON Climate and Renewables UK Robin Rigg East Ltd [2017]*.
- b) While providing contractors a clearer understanding of risk exposure, these agreements may not be as advantageous for employers seeking comprehensive design-build liability.

8.0 Contaminated Land Provisions

Clause 3.15, once focused on where antiquities are discovered, now also covers unexploded ordnance (UXO), asbestos, and contaminated land.

- a) While including UXO makes sense, asbestos and contaminated land provisions conflict with existing UK site condition clauses.
- b) Such elements are generally identified before excavation, and parties should establish predetermined time and cost allocations for their removal, instead of categorising their presence as automatically constituting Relevant Events or Relevant Matters.

9.0 Extensions of Time (EoT): Streamlining Claims

Amendments to Clauses 2.24.4 and 2.25.2 simplify and expedite EoT claims:

1. Employer Requests for Additional Information: Employers may request further details from the Contractor within 14 days of receiving the delay notice.
2. Decision Period: Employers must notify their decision within 8 weeks (down from 12).

This change encourages contemporaneous assessment of claims, benefiting both parties.

10.0 Dispute Notification

Clause 9.1 introduces a proactive approach to potential disputes:

- a) Parties must inform one another of issues likely to escalate into disputes.
- b) Senior executives must convene immediately to conduct direct and good-faith negotiations.

This is consistent with JCT's emphasis on collaboration and the prevention of disputes; however, it cannot preclude referrals for adjudication.

11.0 Termination Accounting

Section 8 articulates explicit provisions to ensure compliance with the Housing Grants, Construction and Regeneration Act 1996:

- a) Payment Notices: This clarifies the due dates, final payment timelines, and notifications related to reduced payment amounts, contingent upon the circumstances of termination.
- b) Clauses 8.7, 8.8, and 8.12 guarantee transparency and procedural consistency regarding termination accounts.

11.1 Final Account Conclusiveness

JCT DB 2024 clarifies ambiguities found in DB 2016 by eliminating the suspension of Final Statement conclusiveness regarding specific dispute issues.

Suspension now applies fully to the Final Statement, reflecting court trends favouring procedural clarity.

11.2 Liquidated Damages: Triple Point Alignment

Following the ruling in *Triple Point Technology Inc v PTT Public Company Ltd* [2021], the JCT DB 2024 clarifies the provisions regarding liquidated damages in instances of contractor culpable delay:

- a) Before Termination: Liquidated damages are applicable from the Completion Date until termination, and they continue to be enforceable post-termination.
- b) Post-Termination: The Employer may seek additional delay-related damages as general damages.

This explicit inclusion guarantees contractual compliance with legal precedent.

Insurance Updates

Under Insurance Option A (all-risks by Contractor):

- a) Reinstatement work is regarded as a Change, which entitles the Contractor solely to an extension of time without additional costs.
- b) Employers may procure independent insurance to cover losses associated with liquidated damages not addressed under Option A.

12.1 Notable Omissions on JCT 2024

Several anticipated updates were not included in the new form, such as:

- a) Amendments related to retention provisions.
- b) Drafting to address the VAT reverse charge.
- c) Provisions for the new building control regime regarding higher-risk buildings (HRBs).
- d) Extended liability periods for statutory claims following the Building Safety Act 2022.

Additionally, insurance provisions remain largely unchanged, despite industry hopes for more accommodating arrangements for works on existing structures, especially under Option C.

References

1. Insight: *BSA 2022 - Recommended changes to construction contracts (Building regulations dutyholder regime for HRBs and non-HRBs)*.
2. Practice Notes: *CDM 2015: Construction (Design and Management) Regulations 2015; BSA 2022: Dutyholder regime*.

3. Osborne Clarke: Third time lucky: The Supreme Court allows the recovery of liquidated damages in Triple Point v PTT.
4. *JCT Standard Building Contracts 2024: What's new (Ross Galbraith 2024)*
5. *Seven key changes in the JCT 2024 suite of contracts (Jennie Jones 2024)*
6. *FIDIC 2017 (RED, YELLOW, GREEN & SILVER BOOK)*
7. *NEC4*
8. *JCT 2024*
9. *Contracts for infrastructure projects by Philip Loots and Donald Charrett 2022*
10. *Seven Types of Construction Contracts and Agreements by Hadi Mohammadi 2023*