

DURHAM COUNTY COUNCIL
STANDARD TERMS AND CONDITIONS FOR MINOR WORKS
(via Quick Quote or RFQ)

CONTRACT DATA AND ADDITIONAL CONDITIONS

The *conditions of contract* are the core clauses of the NEC3 Short Contract (June 2005).

Part One - The Data which will apply to Minor Works contracts let via Quick Quote or RFQ:

General The Employer is:

The Council of the County of Durham
County Hall
Durham
DH1 5UL

Contact Telephone No. [REDACTED]

E-mail [REDACTED]

The Works are The required Works as set out in the Specification contained in the Quick Quote or RFQ documentation.

Start Time is the Start Time stated in the Quick Quote or RFQ documentation, where stated – or as subsequently agreed by both parties following the award of the contract.

Completion Date is the Completion Date stated in the Quick Quote or RFQ documentation.

Period of Reply where relevant is stated in the Quick Quote or RFQ documentation.

Defects Date where relevant is stated in the Quick Quote or RFQ documentation.

Defect Correction Period where relevant is stated in the Quick Quote or RFQ documentation.

Delay Damages where relevant is stated in the Quick Quote or RFQ documentation.

Assessment Day where relevant is stated in the Quick Quote or RFQ documentation.

Retention (Percentage) where relevant is stated in the Quick Quote or RFQ documentation.

Adjudicator Details The Adjudicator nominating body is to be agreed. The tribunal is to be agreed.

Interest Rate on Late Payment is the Statutory Interest rate of 8% or as otherwise stated under the Late Payment of Commercial Debts (Interest) Act 1998.

Additional Conditions in respect of NEC3 Short Contract 2005

“SWMP Regulations” means the Site Waste Management Plans Regulations 2008 and any subsequent amendments or replacements.

Z1. Approvals

- Z1.1 No inspection, testing, approval or review nor any omission to inspect, test, approve or review on the part of the Employer shall limit any duty or liability hereunder of the Contractor.
- Z1.2 Whenever in these Additional Conditions there is a reference to any approval by the Employer, such approval shall not be withheld or delayed without reasonable cause

Z2. Set Off

- Z2.1 Nothing contained in this contract (other than as to giving notices) shall limit any right of the Employer under any statute or rule of law or of equity in the nature of set off or abatement of price.

Z3. Priority

- Z3.1 In the case of any inconsistency between these Additional Conditions and any other term of this contract the Additional Conditions shall prevail. In the case of any inconsistency between the *conditions of contract* and any other term of this contract and/or contract information (except these Additional Conditions) the Conditions shall prevail.
- Z3.2 Any reference in these Additional Conditions to a Schedule or Appendix is a reference to such Schedule or Appendix to these Additional Conditions

Z4. Liability period

- Z4.1 The obligations of the Contractor under this contract cease 12 years after Completion of the whole of the works save in respect of any claim under this contract where proceedings have been issued during such 12 year period

Z5. Severance/Waiver

- Z5.1 If any term, condition or provision of this contract shall be found by any court or body or authority of competent jurisdiction to be invalid, unlawful or unenforceable, such term, condition or provision shall be severed from the remainder of this contract which shall remain in full force and effect to the extent permitted by law
- Z5.2 If any provision of this contract is found to be invalid, unlawful or unenforceable, but would be valid, lawful or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification(s) as may be necessary to make it valid
- Z5.3 Failure by either Party or any time to enforce any provision of this contract against the other is not construed as a waiver of such entitlement and does not affect the validity of any provision of this contract

Z6 Site Admittance

- Z6.1 The Employer decision on whether any person is to be refused admission to a Site shall be final and conclusive and the Employer shall not be obliged to give reasons for its decision.
- Z6.2 The Employer reserves the right to refuse to admit to the Site and/or to require the removal from Site of any person employed or engaged by the Contractor or its Subcontractors whose admission or continued presence or continued presence would in the opinion of the Employer present a risk to themselves or the Employer's business and shall not be obliged to give any reasons for such refusal.
- Z6.3 The Employer may instruct the Contractor to take measures to prevent unauthorised persons being admitted to the Site. The instruction is a Compensation Event if the measures are additional to those required by the Works Information.

Z7 Photographs

- Z7.1 The Contractor shall not photograph the Site or the works or any part of them or publish such photographs unless he has obtained the permission of the Employer.

Z8. Equality Act compliance

- Z8.1 In this clause Z8 “the Act” shall mean the Equality Act 2010 and “Third Party Harassment” shall have the meaning given to it within Section 40 of the Act.
- Z8.2 The Contractor shall take all reasonable steps to prevent any act of Third Party Harassment from occurring.
- Z8.3 The Contractor confirms that all of its employees undertaking work at the Employer’s site have received equality and diversity training in line with the principles contained within the Act. The Employer reserves its right to request evidence that the Contractor’s employees have received equality and diversity training.
- Z8.4 The Employer reserves its right to inform the Contractor of any suspected act of Third Party Harassment and at its sole discretion to request the removal of any individual suspected of any act of Third Party Harassment from the site of the works.
- Z8.5 The Contractor shall indemnify the Employer against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) incurred in connection with or as a result of any claim or demand by any employee or by any third party in connection with any employee’s employment contract (whether in contract, tort, under statute, pursuant to European law or otherwise) in respect of any claim for any act of Third Party Harassment for which the Employer may be held liable under the Act as a result of the action / inaction of the Contractor.
- Z8.6 For the avoidance of doubt (but without limitation) the indemnity at Clause Z8.5 applies to:
- i. any liability for arrears of pay or damages awarded to any employee as a result of the Contractor’s contravention of the Act
 - ii. any liability for costs incurred by the Employer as a result of any legal action brought by an employee as a result of any act of Third Party Harassment
 - iii. any liability for unfair dismissal (including constructive unfair dismissal) wrongful dismissal, breach of contract, discrimination in respect of sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, disability, age, religion or belief, personal injury, or a claim or demand of any other nature in each case arising directly or indirectly from any act of the Contractor’s contravention of the Act;
 - iv. any error due to an act or omission made by the Contractor in dealing with resolving any issues raised by the Employer regarding the Contractor under the Act

Z9 Bribery Act compliance

The Contractor shall:

- Z9.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“the Relevant Requirements”);
- Z9.2 not engage in any activity, practice or conduct which would constitute an offence under section 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct has been carried out in the UK
- Z9.3 comply with the Employer’s ethics and anti-bribery policies and those of any relevant industry body included in the Works Information, in each case as the Employer or the relevant industry body may update them from time to time (“the Relevant Policies”);
- Z9.4 have and maintain in place throughout the duration of this contract its own policies and procedures including (but not limited to) adequate procedures under the Bribery Act to ensure compliance with the Relevant Requirements, the Relevant Policies and clause Z9 and shall enforce them where appropriate
- Z9.5 immediately notify the Employer if a foreign public official becomes and officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners as at the date of this contract
- Z9.6 ensure that all persons associated with the Contractor or other persons who are performing works, services or providing goods in connection with this contract comply with this clause Z9

- Z9.7 within one month of the date of this contract and annually thereafter for the duration of the works certify to the Employer in writing signed by an officer of the Contractor compliance with this clause Z9 by the Contractor and all persons associated with it and all other persons for whom the Contractor is responsible under clause Z9.6. The Contractor shall supply such supporting evidence of compliance as the Employer may reasonably request
- Z9.8 For the purposes of clause Z9 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of clause 8.11 a person associated with the Contractor includes but is not limited to the Contractor's employees and agents, as well as any subcontractor of the Contractor

Z10. Environmental

- Z10.1 Without prejudice to any express or implied warranties or conditions, the Contractor warrants to the Employer that:
- i. the Contractor sends to the Council a copy of every notice or other communication received from or sent to any person or body concerning health and safety and/or environmental matters and relating to the works
 - ii. the Contractor gives notice to the Council within a reasonable time prior to the removal from and/or delivery to the Site of anything which is toxic or explosive or otherwise hazardous to the health and safety of persons property or in the environment. The notice identifies the hazard(s) and gives full details of the precautions to be taken when using, handling or otherwise coming into contact with such thing, together with details of the safe manner of use, handling, transport and storage. The Contractor also ensure that at the time of removal and/or delivery every such thing is suitably packed and is identified on the outside as hazardous
 - iii. the Contractor does not treat, keep or dispose of any waste produced by this contract as a result of the works in a manner likely to cause harm to the health and safety of any person or harm to the environment and complies with every statutory duty which is relevant
 - iv. during the execution of the works the Contractor takes such steps as are reasonably practicable to avoid harm to the environment
 - v. the Contractor takes a positive approach to the protection of the environment in so far as it relates to or is connected with the works
 - vi. the Contractor ensures that all subcontractors comply with the provisions of this clause Z10
- Z10.2 The Contractor shall comply with all Environmental Laws when dealing with Waste. For the avoidance of doubt, the Contractor shall be designated the Waste Producer for the purposes of satisfying the Duty of Care Provisions of the Environmental Protection Act 1990 and the Waste (England and Wales) Regulations 2011
- Z10.3 The Contractor shall not remove controlled waste from the site of the Works using his own vehicle unless he does so in accordance with Environmental Laws and for the avoidance of doubt unless he is a Registered Waste Carrier under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 and The Waste (England and Wales) Regulations 2011
- Z10.4 The Contractor shall ensure that any person or firm removing from the site of the Works controlled waste arising out of or in connection with the Works does so in accordance with Environmental Laws and for the avoidance of doubt is a Registered Waste Carrier under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 and the Waste (England and Wales) Regulations 2011 whether such person or firm is employed by the Contractor or not
- Z10.5 The Contractor shall furnish the Council upon request with copies of transfer notes issued in connection with the Duty of Care Provisions of the Environmental Protection Act 1990 and the requirements of the Waste (England and Wales) Regulations 2011 and with any further evidence as the Council may reasonably request that the Contractor and any Subcontractor employed by the Contractor have satisfied the aforementioned provisions

Z11 Health and Safety: Contamination

- Z11.1 Without prejudice to any express or implied warranties or conditions, and subject to the exercise of reasonable skill and care the Contractor warrants to the Employer that:
- i. upon completion of the works the levels of contamination on the Site are less than the permitted levels referred to in this contract and will satisfy the requirements of the Environment Agency
 - ii. the remediation processes to be used on the Site as part of the works are undertaken in accordance with all relevant health and safety legislation and industry guidance (e.g. HSE, CITB, CIRIA etc.) in England and Wales
 - iii. the Contractor is not polluting or contaminating any watercourse in, underneath or adjacent to the Site
 - iv. the Contractor, in relation to all persons affected or likely to be affected by the execution of the works, takes such steps as are reasonably practicable to ensure the health and safety of all such persons
 - v. the Contractor carries out such tests and examination of equipment, plant and materials as may be necessary to ensure the health and safety of anyone who is in, or is likely to come into contact with, or otherwise be affected by the use of such items
 - vi. the Contractor makes available for inspection by the Employer's Agent at all times all registers, records and any other documentation concerning health and safety and/or environmental matters and relating to the works

Z12 Fair Payment

- Z12.1 The Contractor assesses the amount due to a Subcontractor without taking into account the amount certified by the Employers Agent
- Z12.2 The Contractor includes in the contract with each Subcontractor:
- i. a period for payment of the amount due to the Subcontractor not greater than 19 days after the due date. The amount due includes but is not limited to, work which the subcontractor has completed from the previous assessment date up to the current assessment date in this contract
 - ii. a provision requiring the Subcontractor to include in each sub-subcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date.
 - iii. a provision requiring the Subcontractor to assess the amount due to a sub-subcontractor without taking into account the amount paid by the Contractor
- Z12.3 For the purposes of Clause 8.14.2, the due date, is the date on which the Council certifies payment under this main contract.

Z13 Waste Management Regulations

- Z13.1 The Employer appoints the Contractor to be the principal contractor for the purposes of all environmental and waste management regulations relevant to the contract. In relation to the works, the Contractor will perform all of the duties of the principal contractor under any such regulations and, in addition, advise and provide support to the Employer to assist the Employer in performing any duties imposed on the Employer by such regulations.

Z14 Freedom of Information

- Z14.1 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Employer's compliance with its information disclosure requirements pursuant to the same in the manner provided for in clauses Z14.2 to Z14.3 (inclusive) below
- Z14.2 Where the Employer receives a Request for Information in relation to information that the Contractor is holding on its behalf, the Employer shall transfer to the Contractor such Request for Information as soon as practicable and in any event within 2 Working Days of receiving the Request for Information, and the Contractor shall
- i. provide the Employer with a copy of all such information, in the form that the Employer requires, as soon as practicable and in any event within 10 Working Days (or such other period as the Employer, acting reasonably, may specify) of the Employer request
 - ii. provide all necessary assistance as reasonably requested by the Employer in connection with any such Information, to enable the Employer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations

- Z14.3 The Contractor shall ensure that all Information held on behalf of the Employer is retained for disclosure for at least 12 years from the date it is acquired and shall permit the Employer to inspect such Information as requested from time to time
- Z14.4 The Contractor shall transfer to the Employer any Request for Information received by the Contractor as soon as practicable and, in any event, within 2 Working Days of receiving it
- Z14.5 The Contractor acknowledges that (notwithstanding the provisions of this clause Z14) the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the FOIA Code), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the works
- i. certain circumstances without consulting with the Contractor, or
 - ii. following consultation with the Contractor and having taken its views into account

provided always that where this clause Z14.5 applies, the Employer shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

Z15 Data Protection Indemnity to the Employer

- Z15.1 If during the subsistence of this contract the Contractor or any Subcontractor, or employee, servant or agent of them, is furnished by the Employer upon any medium with, or otherwise obtains (with or without the knowledge of the Employer), access to confidential or personal data or commercial data owned or held by the Employer either in relation to the Employer's own affairs or those of others and at any time either directly or indirectly discloses or copies or makes improper use of any such data to a third party or allows a third party unauthorised access to them or if the Contractor or any Subcontractor, or any employee, servant or agent of them, is responsible for or causes the loss, damage or destruction of all or any such data. The Contractor shall be liable in damages for any loss or damage suffered by the Employer and shall indemnify the Employer against all or any claims, proceedings, costs or expenses to which the Employer may be or become liable at any suit of any third party in respect thereof

Z16 Construction Industry Scheme (CIS)

- Z16.1 For the purposes of the CIS under the Finance Act 2004, the status of the Employer is as at the date of this contract, a 'Contractor'
- Z16.2 If the Employer at any time up to payment of the final certified payment becomes a 'Contractor' for the purposes of the CIS, his obligation to make any payment under this contract is subject to the provisions of the CIS

Z17 Anti-competitive practices

- Z17.1 The Employer shall be entitled immediately to terminate the employment of the Contractor under this contract and to recover from the Contractor the amount of any loss resulting from such determination if the Contractor (when tendering) fixed or adjusted the amount of the tender for the works ("the Tender") under or in accordance with any agreement or arrangement with any other person or before the hour and date specified for the return of this Tender:
- i. communicated to a person other than the Employer the amount or the approximate amount of his Tender (except where the disclosure in confidence of the approximate amount of his tender was essential to obtain insurance premium quotations required for the penetration of his Tender);
 - ii. entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any tender to be submitted
 - iii. offered or paid or gave or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender any act or thing of the sort described