

NEC Secondary Option X5 Sectional Completion

Presented by
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About Us




GVE Commercial Solutions Ltd are a commercial management consultancy providing quantity surveying and programming services. Our consultants specialise in the NEC forms of contract.

Our NEC capability has principally been acquired through practical application and experience within a 'live' project environment, assisting both contractors and subcontractors.

Our specialist NEC services include;

- Commercial and contract management of projects,
- Bespoke training,
- Project health check reviews,
- Contract reviews,
- Programme management,
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Phased Completion

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Sections

A client may want to take over one or more parts of the works without having to wait until the entire works are complete.

To achieve this the project is divided into sections with each section having its own specific date for completion.

A section may be any 'part' of the works but should be capable of being 'taken over' before the whole of the works is complete.

Under NEC a 'section' is not a defined term but is identified by the *Client (Contractor)* stating the sections in (Sub)Contract Data.

The description for each section should be comprehensive and clearly defined to prevent a possible dispute arising.

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Examples



Example 1

Construction of a building comprising retail units at ground floor level and apartments on upper floors.

Sectional completion would allow fit out of the retail units before completion of the entire building.

Example 2

Design of a new industrial facility adjacent to an existing one with a new access road serving the entire Site.

Sectional completion facilitates the design and construction of the new access road before the main works.

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Secondary Option X5

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NEC Suite



Secondary option X5 can be found in the following NEC forms of contract;

- Engineering and Construction Contract (ECC),
- Engineering and Construction Subcontract (ECS),
- Professional Services Contract (PSC),
- Professional Services Subcontract (PSS).

X5 – Contract Provision



In these *conditions of (sub)contract*, unless stated as the whole of the (subcontract) *works (service)*, each reference and clause relevant to

- the (subcontract) works (service),
- Completion, and
- Completion Date

applies, as the case may be, to either the whole of the (subcontract) works (service) or any section of the (subcontract) works (service).

There are no changes between NEC3 and NEC4.

(Sub)Contract Data Part 1



Each identified *section* is described along with a corresponding completion date.

'The ... completion date for each section ... is.'

<i>section</i>	<i>description</i>	<i>(subcontract) completion date</i>
(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>

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(Subcontract) Completion Date



This is stated in (Sub)Contract Data and is the date by which Completion is to be achieved.

Completion is essentially the 'condition' or 'state' of the work or service, as described at sub-clause 11.2 (2).

The (Subcontract) Completion Date may be changed as follows;

- Implemented compensation event,
- Acceleration quotation accepted,
- Accepting a quotation for an uncorrected Defect,
- Acceptance of a whole life cost proposal.

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Sectional Completion or Key Date?

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Comparison

Both these contract mechanisms require something to be done by a specified date.

They may also be linked to financial consequences where certain conditions are not met.

Differences

- The *Client (Contractor)* does not take over (ECC, ECS only) the relevant part of works in relation to a Key Date.
- Completion is not certified for a Key Date.
- The financial consequence for a Sectional Completion date is effectively predetermined, whereas for a Key Date it is the assessed additional cost paid or incurred at the time.

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Sectional Completion or 'take over'?

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Comparison

Both these contract mechanisms require formal certification and resultant transfer of liabilities for this part of the works to the *Client (Contractor)*.

The *Client (Contractor)* is responsible for providing access to this part to allow Defects to be corrected.

Differences

- Sectional Completion is predetermined with details set out in the conditions of contract.
- There are no specified financial 'penal' consequences associated with take over.

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Sectional Completion and delay damages

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X5 and delay damages

Sectional completion can be linked with delay damages under secondary option X7.

The (Sub)Contract Data makes provision for when secondary option X7 is used with X5.

For the delay damages mechanism to be enforceable the sectional completion provisions need to be clear and identifiable.

Re: Vinci Construction UK Ltd v Beumer Group UK Ltd (2017) EWHC 2196 (TCC).

Delay damages should also be proportionate to each section otherwise any claim may fail.

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Things to consider

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Issues

Defects
Access will need to be provided to correct Defects.
As the defects date is based on completion of the whole of the works, Sectional Completion extends the period of time between Completion and the defects date.

Contractual considerations
The sectional completion provisions should operate correctly throughout the supply chain.
A programme should identify 'resource driven' critical operations that are 'common' between different sections.
Retention amounts are only released at Completion of the whole of the works (services).

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Issues



Practical Issues

Logistical issues where different sections are in the 'possession' of different parties.

Health and safety responsibilities – CDM Regulations 2015.

Insurances.

Access and security arrangements.

Defining the section

The description of the section needs to be clearly defined.

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