

### NEC Y clauses

In this section of the course, we're going to understand what function Y clauses serve in the NEC. Y clauses are identified as secondary option clauses within the NEC. They're different depending on which country you are using the NEC as they deal with national legislation. For instance, in the UK, the following Y clauses are optional in the contract:

- Option Y(UK)1: Project Bank Account
- Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
- Option Y(UK)3: The Contract (Rights of Third Parties) Act 1999

We'll give you an example of how UK's Option Y3 clause may be used in practice. Collateral warranties used to be the only way that a party had obligations to a third party outside the contract. In the UK, this changed with the contract (rights of third parties) act 1999. The legislation within this act states the following:

“(1)Subject to the provisions of this Act, a person who is not a party to a contract (a “third party”) may in his own right enforce a term of the contract if—

(a)the contract expressly provides that he may, or

(b)subject to subsection (2), the term purports to confer a benefit on him.

(2)Subsection (1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.”

In other words, the contract only needs to state that the clauses are enforceable by a third party to become contractually obliging, rather than a separate collateral warranty agreement. However, it should be noted, the last sentence (point number 2) essentially says that the contract can include an opt out clause. This is unusual for legislation to include an opt out option. However, this is the case for this particular legislation. This legislation applies to all construction contracts concluded from 11th May 2000.

The Y clause option allows for the NEC contract to be easily adaptable for use in different countries. For example, the NEC states that “There has been significant interest in Australia following Sydney Water's decision to adopt NEC4 contracts for collaboratively delivering water and wastewater works and services over the next 10 years... The Australia Y(Aus) clauses will make NEC4 contracts comply with the various security of payment laws enacted in each state and territory. The clause will have separate provisions depending on where the work, service or supply is carried out, so that in any one contract only some parts of the clause will apply”.