



preparing and managing a framework contract

volume 2 & 4



June 2017

Expiry 20 July 2025

For South Lanarkshire Council project use only

Expiry 20 July 2025



PREPARING AND MANAGING A

Framework Contract

VOLUME 2 & 4

This document provides guidance on the preparation and management of an NEC4 Framework Contract

An NEC document

June 2017

(with amendments January 2023)

The Government Construction Board, Cabinet Office UK

The Government Construction Board (formerly Construction Clients' Board) recommends that public sector organisations use the NEC contracts and in particular the NEC4 contracts where appropriate, when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of the Government Construction Strategy.

The Development Bureau, HKSAR Government

The Development Bureau recommends the progressive transition from NEC3 to NEC4 in public works projects in Hong Kong. With suitable amendments to adapt to the Hong Kong local environment, NEC4 is expected to further enhance collaborative partnering, unlock innovations and achieve better cost management and value for money in public works projects.

NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a suite of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

This is a User Guide for the NEC4 Framework Contract.

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Foreword

Continuous improvement in project delivery is required to build confidence in the UK construction sector so that we can attract more investment. The Infrastructure and Projects Authority (IPA) is the government's centre of expertise for infrastructure and major projects. We sit at the heart of government, reporting to the Cabinet Office and HM Treasury.

The application of the right contract is central to the success of the overall project delivery system. The NEC suite of contracts has been in existence for over 20 years and has linked the projects, people and processes together to create the correct environment for successful delivery.

This new and updated NEC4 contract embraces the digital changes that are happening in the construction industry, especially around BIM, which I believe will be central to creating a step change in performance. Whilst looking forward it also builds on the fundamentals required for an effective contract.

The use of NEC4 on public sector projects will help to deliver the Government Construction Strategy as we seek to improve central government's capability as a construction client to deliver further savings in the order of £1.7bn across the Government estate. The IPA looks forward to collaborating with industry to make the delivery of projects more efficient and effective.

Tony Meggs, Chief Executive, Infrastructure and Projects Authority



Infrastructure
and Projects
Authority

Reporting to Cabinet Office
and HM Treasury

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Preface

NEC was first published as a new and innovative way of managing construction contracts in 1993 – some 24 years ago. It was designed to facilitate and encourage good management of risks and uncertainties, using clear and simple language.

The NEC approach to managing contracts was endorsed in “Constructing the team – The Latham Report”, which was a government/industry review of procurement and contractual arrangements in the UK construction industry. This led to a second edition in 1995 incorporating the further recommendations of that review. This contract was used increasingly in the UK and overseas, and a major revision was made with the third edition in 2005.

NEC has played a part in helping the industry do things differently and better. It has done so by introducing effective project management procedures into the contract itself. These require pro-active management of risk and change, and the day-to-day use of an up-to-date programme. The range of pricing options has given Clients flexibility in the allocation of risk and the ability to share risk and manage it, collaboratively.

The NEC suite has evolved over three decades, embedding consultation responses and user feedback, and reflecting industry development, including new procurement approaches and management techniques such as alliances, management of information (BIM) and supply chain engagement. This feedback and the new procurement approaches formed the driver for the development of the next generation contracts and the launch of NEC4.

There were three key objectives in drafting NEC4:

- provide greater stimulus to good management
- support new approaches to procurement which improve contract management and
- inspire increased use of NEC in new markets and sectors.

It was to be evolution, not revolution.

Some features of NEC4 include:

- a new design build and operate contract to allow flexibility between construction and operational requirements in timing and extent
- a new multi-party alliance contract based upon an integrated risk and reward model
- new forms of subcontract to improve integration of the supply chain.

Further enhancements include:

- finalising cost elements during the contract
- incorporating a party-led dispute avoidance process into the adjudication process
- increasing standardisation between contracts and
- providing enhanced guidance to give greater practical advice to users.

NEC has always been known for its innovative approach to contract management, and this revision continues that approach. No other contract suite has had such a transformative effect on the built environment industry as NEC. It has put the collaborative sharing of risk and reward at the heart of modern procurement. It is also unique in providing a complete, back-to-back procurement solution for all works, services and supplies in any sector and any country.

NEC4 continues to set the benchmark for best practice procurement worldwide.

Peter Higgins BSc (Hons), CEng, FICE
Chair of NEC4 Contract Board

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This fourth edition of the NEC suite was produced by the Institution of Civil Engineers through its NEC4 Contract Board.

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How to use the NEC4 user guides

The NEC4 User Guides have been designed to support users as they select the most appropriate NEC contract strategy, prepare the contract, select a supplier and manage the contract to deliver the *Client's* or *Purchaser's* objectives. The guides and the corresponding flow charts are not contract documents. They should not be used for legal interpretation of the meaning of the contracts.

They include a step-by-step process for setting up an NEC contract and managing it through to completion. The starting point assumes that the *Client* has resolved the following:

- the business case and contract objectives,
- the risk profile has been analysed and an overall management strategy established including, in broad terms, decisions made with regard who is best placed to manage the risks and
- a decision has been made to use the NEC, but the contract strategy has not been determined.

Users should work through the following sections of guidance in the logical sequence provided.

Volume 1 – Establishing a Procurement and Contract Strategy: guides users in identifying the best way of achieving the *Client's* or *Purchaser's* objectives through the selection of the most appropriate procurement route, NEC contract and main and secondary Options. This document applies across all contracts.

Volume 2 – Preparing an NEC Contract: guides users in preparing the particular NEC contract including Contract Data and other the documents required, ready for supplier selection to commence. There is a version of this document for each contract, except the subcontracts. For the subcontracts, the guidance is included in the relevant main contract version of the document.

Volume 3 – Selecting a Supplier: guides users through the supplier selection process including, where necessary, tendering, issuing an invitation to tender and subsequent evaluation and assessment. This document applies across all contracts.

Volume 4 – Managing an NEC Contract: guides users in managing the relevant contract correctly after it comes into existence. Detailed guidance is provided which explains the content of each NEC contract and its Options and how to operate them to achieve a successful outcome. There is a version of this document for each contract, except the subcontracts. For the subcontracts, the guidance is included in the relevant main contract version of the document.

Due to their size, Volume 2 and 4 have been combined into one book for both the Dispute Resolution Service Contract and the Framework Contract.

CHAPTER 1

Contract documents

The purpose of this guide is to explain the constituent parts of an Framework Contract (FC) and provide guidance on drafting and assembling them correctly.

The convention of using italics for terms which are identified in the Contract Data of the FC and capital initials for terms defined in the FC has been used in this guide.

Good quality contract documents are vital to achieving better outcomes for contracts and reducing misunderstandings and disputes. Contract documents should be prepared with individual contract requirements and the operation of the FC in mind. It is also important that the documents are logically structured and risk is clearly allocated.

The diagram below shows the relationship between the constituent parts of the FC. Contract Data identifies the documents forming the contract. The *conditions of contract* refers to each constituent part and requires information to be stated in them. A form of agreement may be used to record the agreement between the Parties on the basis of the Contract Data, or the Parties may rely on an exchange of correspondence to establish the contract.

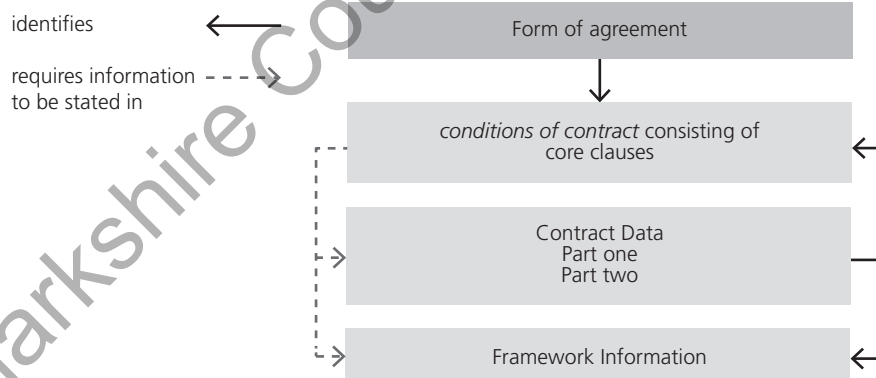


Figure 1 FC documents

Information and documents required for the contract must be in the right part of the contract. If documents are located in the wrong place, it may cause confusion and risk that the documents are not properly incorporated. For example, the *conditions of contract* require that information which specifies how the Parties work together must be identified in the Framework Information. The diagram shows that Framework Information is identified in Contract Data. Therefore, all documents and information which specifies how the Parties work together must be identified as Framework Information. Framework Information may consist of multiple documents and sections, in which case a contents list should be included in the Framework Information.

The clarity achieved by this contract structure and the separation of its parts is helpful to users and significantly reduces ambiguity and the potential for disputes.

The requirement for good 'information' describing the work or services to be provided applies to all contracting systems. It is an objective of NEC to provide a contract which is clear and simple and promotes effective management and delivery of the works, service or supply of goods.

CHAPTER 2

Contract Data

2.1 INTRODUCTION

Contract Data contains information which is necessary to operate the contract and is specific to a particular contract. Contract Data is the type of information often described in other forms of contract as the contract particulars or appendix. There are two parts. Part one identifies the information provided by the *Client* and part two identifies the *Supplier's* data. Clause 11.1 states that the terms in italics in the *conditions of contract* must be identified in Contract Data.

Completion of Contract Data in full is essential to create a complete contract.

The information set out in Contract Data is not Framework Information, but Contract Data identifies the document which contains the Framework Information. Where information is in non-documentary form such as models, they should be identified and their availability and location stated.

Contract Data also identifies information which is not Framework Information and such information should not be included in them. Examples include:

- Data which apply to all Time Charge Orders,
- Data which apply to all Work Orders and
- *quotation information*

Contract Data is available in digital format and this can be used when preparing contracts.

2.2 CONTRACT DATA CHECKLIST

The checklist below follows the order in which entries appear in Contract Data. The purpose of each entry is defined followed by guidance and an example of the entry required.

The example entries and data are imaginary and should not be taken as typical and certainly do not have the status of a recommendation. The entry examples are not necessarily consistent throughout.

A full worked example of Contract Data is given in Appendix 1.

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
CONTRACT DATA PART ONE – DATA PROVIDED BY THE CLIENT			
1 GENERAL			
The <i>Client</i> is Name Address for communications Address for electronic communications	Identifies the <i>Client</i> .	State the <i>Client's</i> legal name. State the address to be used for communications, which may not be the <i>Client's</i> registered office address, including an email address if necessary. Refer to Volume 1: Establishing a Procurement and Contract Strategy for guidance on the role of the <i>Client</i> .	Name Greenwheat County Council Address for communications County Hall, Greater Binding, Greenwheatshire GN7 3BB Address for electronic communications: themajor@greenwheatcc.com
The <i>Client's Representative</i> is Name Address for communications Address for electronic communications	Identifies the person who will be the <i>Client's Representative</i> .	State the name of the person who will be the <i>Client's Representative</i> . State the address to be used for communications, including an email address if necessary. It is essential that the person chosen as <i>Client's Representative</i> is sufficiently experienced in the type of work and has the time to carry out their duties effectively. They must also have sufficient authority to exercise the powers given to them under the contract. Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Client's Representative</i> .	Name Mr K Williams Address for communications County Hall, Greater Binding, Greenwheatshire GN7 3BB Address for electronic communications: kwilliams@greenwheatcc.com
The Framework Information is in	Identifies the document(s) containing the Framework Information.	The Framework Information is defined in clause 11.2(3). Refer to Chapter 3 for further guidance on preparing the Framework Information.	Volume 2
The <i>framework scope</i> is in	Identifies the document(s) containing the <i>framework scope</i> .	The <i>framework scope</i> defines the extent of the work that is covered by the contract. It might refer to a specific location, identify the type of work to be carried out or other relevant information. The <i>framework scope</i> should be sufficiently defined that the <i>Client</i> and <i>Supplier</i> are satisfied that the <i>Supplier</i> has resources and capability to carry out to work likely to be instructed. The <i>framework scope</i> might conveniently be included in Framework Information.	the Framework Scope section of the Framework Information.

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>selection procedure</i> is in	Identifies the document(s) containing the <i>selection procedure</i> .	The <i>selection procedure</i> defines how the <i>Supplier</i> for a Work Package is to be selected. This may include providing a quotation for the work be used in selection. The <i>selection procedure</i> might conveniently be included in Framework Information. Refer to Volume 3: Selecting a Supplier for further guidance on drafting a <i>selection procedure</i>.	the Selection Procedure section of the Framework Information.
The <i>quotation procedure</i> is in	Identifies the document(s) containing the <i>quotation procedure</i> .	The <i>quotation procedure</i> defines how the <i>Supplier</i> prepares its quotation and how the <i>Client</i> assesses the quotation received from the <i>Supplier</i> for a proposed Work Package. The <i>quotation procedure</i> might conveniently be included in Framework Information. Refer to Volume 3: Selecting a Supplier for further guidance on drafting a <i>quotation procedure</i>.	the Quotation Procedure section of the Framework Information.
The <i>end date</i> is	Identifies the <i>end date</i> for the contract	State the end date after which the <i>Client's Representative</i> does not issue a Time Charge Order or Work Order.	15 October 2020
The period for reply to a <i>Supplier's</i> quotation is	Identifies the period of time within which the <i>Client</i> , replies to a quotation submitted by the <i>Supplier</i> .	The period for time stated must be sufficient for the <i>Client</i> to assess the quotation received.	five weeks.
If additional conditions of contract are required The <i>additional conditions of contract</i> are	Identifies any <i>additional conditions of contract</i>	Only enter details if additional conditions are required. Refer to section 2.3 for guidance on drafting addition conditions of contract.	
The Data which will apply to all Time Charge Orders is (The NEC4 Professional Service Short Contract would normally be used for Time Charge Orders. Include the relevant Contract Data, Price List and Scope entries which apply to all Time Charge Orders.)	Identifies the Data that applies to Time Charge Orders	Normally the Professional Service Short Contract is used. Refer to Volume 2: Preparing a Professional Service Short Contract for further guidance on preparing the necessary documents to such payments being made on a time charge basis. If another contract is used, refer to the particular Volume 2 user guide for preparing the necessary documents to such payments being made on a time charge basis.	in Volume 3
The Data which will apply to all Work Orders is (Include the relevant Contract Data part one entries for the NEC4 contracts that may be used for a Work Order. If NEC4 short contracts are to be used also include relevant entries for the Contract Data, Price List and Scope)	Identifies the Data that applies to Work Orders	Any contract from the NEC family can be used for Work Orders. Refer to the particular Volume 2 user guides for further guidance on preparing the necessary document.	in Volume 4

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
CONTRACT DATA PART TWO – DATA PROVIDED BY THE SUPPLIER			
1 GENERAL			
The <i>Supplier</i> is Name Address for communications Address for electronic communications	Identifies the <i>Supplier</i> .	State the <i>Supplier's</i> legal name. State the address to be used for communications, which may not be the <i>Supplier's</i> registered office address, including an email address if necessary. Refer to Volume 1: Establishing a Procurement and Contract Strategy for guidance on the role of the <i>Supplier</i>.	Name Woodstone Construction Ltd Address for communications Woodstone House, Collingbourne Bellinger, Wincanton AB3 7TT Address for electronic communications: canwefixit@woodstone.com
The <i>quotation information</i> is in	Identifies the document(s) containing the <i>quotation information</i> .	The <i>quotation information</i> states the data to be used when the <i>Supplier</i> prepares a quotation for a proposed Work Package. The <i>quotation procedure</i> might conveniently be included in Framework Information. Refer to Volume 3: Selecting a Supplier for further guidance on drafting a <i>quotation procedure</i>.	Volume 5
The Data which will apply to all Time Charge Orders is (The NEC4 Professional Service Short Contract is normally used for Time Charge Orders. Include the relevant entries for the <i>Consultant's Offer</i>.)	Identifies the Data that applies to Time Charge Orders	Normally the Professional Service Short Contract is used. Refer to Volume 2: Preparing a Professional Service Short Contract for further guidance on preparing the necessary documents to such payments being made on a time charge basis. If another contract is used, refer to the particular Volume 2 user guide for preparing the necessary documents to such payments being made on a time charge basis.	in Volume 6
The Data which will apply to all Work Orders is (Include the relevant Contract Data part two entries for the NEC4 contracts that may be used for a Work Order. If an NEC4 short contract is to be used include the relevant entries for the <i>Contractor's</i>, <i>Consultant's</i>, or <i>Supplier's Offer</i>)	Identifies the Data that applies to Work Orders	Any contract from the NEC family can be used for Work Orders. Refer to the particular Volume 2 user guides for further guidance on preparing the necessary documents.	in Volume 7

2.3 ADDITIONAL CONDITIONS OF CONTRACT

Additional conditions should be used only when absolutely necessary to accommodate special needs, such as those specific to the jurisdiction in which the work is to be done. Additional conditions should never be used to limit how the *Supplier* is to do the work in the contract as this is part of the function of the Scope.

If the *Client* wishes to include additional conditions, the following checklist may be used when drafting them.

Why	• Why is the clause needed? • What is the issue that the standard contract does not deal with or not deal with adequately? • Is this something that should be included in the Scope? • Prepare a “brief statement” – specification for and justification of additional provision.
What	• What is needed by way of additional provisions? • The drafter must understand the contract as a whole and recognise how the new provision will affect/ be affected by other clauses. • Prepare a “clause function statement” – what the clause is required to achieve.
How	• Maintain NEC key principles: – Flexibility - the contract should be as flexible as possible. It should be capable of being used for any type of work in any legal jurisdiction. – Clarity - the contract should be written in ordinary language, using as far as possible words which are in common use, to make it easier to understand by people who are not used to using formal contracts or whose first language is not English. – Stimulus to good management - every procedure should contribute to, rather than detract from, the effectiveness of management of the work. Clear division of function and responsibility helps accountability and motivates people to play their part. • Follow NEC style: – Use the same NEC language and style - further guidance on this is included in section 3.2 sub-section on general drafting advice. – Use the same defined and identified terms. – Adopt NEC text when possible – e.g. “a reason for not accepting ... is ...” – Avoid cross references. – Add to existing conditions, avoid amending them. – Carefully checked for consistency and compatibility with other conditions.
Review	• Are the additional clauses helpful to <u>all</u> of the parties involved, are they understandable, and easy to use? • Verify that the needs have been met by referring back to the brief statement. • Test by flow charting.

CHAPTER 3

Framework Information

3.1 THE STATUS OF THE FRAMEWORK INFORMATION

The function of the Framework Information

Framework Information is defined as:

“11.2(3) Framework Information is information which specifies how the Parties work together and is in the document which the Contract Data states it is in.”

Framework Information should be a complete and precise statement of the *Client's* requirements. Subjective terms should be avoided. If it is not there is a risk that the *Supplier* will interpret it differently to the *Client's* intention.

The relationship between Framework Information and Contract Data

Framework Information should not contain information which repeats, contradicts or creates an ambiguity with any information contained within Contract Data or with the *conditions of contract*.

Framework Information as a contract document

Some forms of contract use provisions creating a hierarchy or priority of documentation as a means of resolving ambiguities and inconsistencies in or between documents. This is not the approach taken by NEC.

Priority clauses can interfere with the natural interpretation of documents as intended by the Parties. Such an indiscriminate approach to resolving ambiguities and inconsistencies can cause problems.

As explained in Chapter 1, the FC describes the function of each document forming part of the contract. This provides clarity as to the relevance and purpose of each document in the contract.

3.2 DRAFTING FRAMEWORK INFORMATION

Framework Information may consist of several documents drafted by different contributors. Typically in preparing the contract, and in particular Framework Information, it may be helpful to identify an individual who is responsible for ensuring all documents are drafted in a coherent and consistent way and who checks and resolves any ambiguities or inconsistencies before the contract is issued.

General drafting advice

The following description of NEC drafting style will help compilers draft Framework Information and other contract documents clearly.

1. A basic objective of NEC contracts is that they should be clear and simple. The drafting delivers clarity and simplicity of language. Simplicity also follows from the design of the management processes in the contracts.
2. One of the objectives of using simple language in the Framework Information is that it should be easy for people whose first language is not English to use. A further advantage is that the Framework Information can be translated into other languages accurately.

Vocabulary

3. Use the simplest possible words. Simple words have few syllables.
4. Don't use words which are not needed.

Sentences

5. Sentences should be as short as possible. Twenty words is fine. Never have more than forty. Use several short sentences instead of one sentence with several connectors.
6. Many statements are conditional. 'If this happens, the *Supplier* does this'. Put the condition first, not last, and use 'if', not 'when'. 'If this happens, the *Supplier* does this.' [not: 'The *Supplier* does this when this happens.'] Use 'when' only if timing is implied as in ECC clause 36.3.
7. Use commas properly. The pause which a comma creates can help understanding.

Bullets

8. Bullets are used when a sentence includes a list. Don't use bullets for short lists with short descriptions. The following does not need to be bulleted:

'The *Supplier* arranges for 'Hail to the Chief' to be played by a brass band outside the *Client's Representative's* office at 9 a.m. on

- **Mondays,**
- **Wednesdays,**
- **Fridays and**
- **his birthday.'**

9. A useful check is that punctuation of bulleted sentences should work if the bullets are removed. Bullets end with a comma except the last but one which ends with 'and' or 'or' and the last which ends with a full stop. Do not put a comma before 'and'. 'And' replaces the comma before the last item on a list as above.

10. Whenever possible, put bullets at the end of a sentence. Having a bit more of the sentence after a bulleted list is clumsy as the reader does not expect the text and the sentence can become very long and not easy to understand.
11. Bullets are indented. Bullets within bullets should be avoided if possible. If used, as in ECC clause 31.2, use a double indent.

Adjectives and Adverbs

12. Old-fashioned contracts use a lot of adjectives and adverbs. NEC contracts use the absolute minimum, which is hardly any. This is perhaps the most important drafting convention for NEC. Use an adverb or adjective only if it is really unavoidable.
13. Verbs and nouns are usually precise, adverbs and adjectives are usually imprecise. 'The *Supplier* does all urgent work quickly' is easy to understand. Unfortunately, you can argue about the meaning of 'urgent' (adjective) and 'quickly' (adverb). 'The *Supplier* (noun), 'does' (verb) and 'work' (noun) are precise. To make the point absurdly, 'George ate a hefty meal unhurriedly' is vague but not meaningless. 'George ate a meal of 42 mouthfuls in 21 minutes' is boring but precise. The Framework Information is not intended to be a good read. It has to state what is required in words of unarguable precision and clarity.
14. Some adverbial phrases are as imprecise as adverbs, e.g. 'quickly' in 'come quickly' is obviously an adverb. So, in effect, is 'as soon as you can' in 'come as soon as you can'.
15. This text, for example, about extension of time, comes from clause 44(1) of the ICE conditions fifth edition, adverbs and adjectives in italics.

'..... or exceptional adverse weather conditions or other special circumstances of any kind be such as *fairly* to entitle the contractor to an extension of time the contractor shall within 28 days after the cause of the delay has arisen or as soon thereafter as is reasonable in all the circumstances deliver to the engineer full and detailed particulars of any claim to extension of time.....'
16. It is impossible to decide whether an extension of time should be given and, if so, for how much, when and how described until the courts have decided what the adjectives and adverbs mean.
17. NEC drafting requires the absolute minimum of adverbs and adjectives. Some are innocuous as in ECC clause 61.6 which uses the adjective 'wrong' as in 'wrong assessment'.

Statements

18. Statements should be as short as possible with no more than two sentences. They should cover only one subject.

Tenses

19. Use the present tense for all statements of what somebody must do or not do. It is seldom necessary to use another tense. 'If the sky has fallen down, the *Client Representative* decides what the *Supplier* will do' uses three tenses. 'If the sky falls down, the *Client's Representative* decides what the *Supplier* does' uses only the present.

Capitals

20. Capital initials show that a term is defined in the contract. When drafting, test that a definition is right by putting it into the sentences where the defined term is used. These definitions are only abbreviations and must only be abbreviations. If there is anything to say about the defined term, it has to be in the sentence.

21. There are exceptions. *Client's Representative*, *Client* and *Supplier* have capital initials but are not defined.

Particular words

22. 'May' in NEC means 'is allowed to' as in 'the *Client* **may** replace.....' Do not use it to mean that something might happen.
23. 'Any' can usually be deleted.

Multiple Alternatives

24. *a, b, c* or *d*. Bullet the alternatives if they are phrases of some length.

Gender

25. Use gender neutral words and phrases.

3.3 FRAMEWORK INFORMATION CHECKLIST

There are many different ways to structure Framework Information. Unlike Contract Data, the FC does not prescribe how the information is structured. This is because the FC can be used for a wide range of works procured domestically or internationally.

The following provides a checklist of topics to help compilers prepare the Framework Information. Things which might need to be included in Framework Information include:

- Purpose and objectives of the framework.
- Details of the framework including its structure and the number of suppliers appointed.
- Details of how the Parties will work together which may include:
 - The number, purpose and frequency of meetings the *Supplier* attends and who attends.
 - Whether the *Supplier* identifies a person as its representative.
 - *Supplier* performance review and measurement requirements.
 - Communication system to be used.

CHAPTER 4

Form of agreement

A contract can be created in a number of different ways and further guidance is provided in Volume 3 – Selecting a Supplier.

Some *Clients* may require a formal agreement. The form of agreement used will depend upon the jurisdiction and even within a jurisdiction there may be a number of different forms of agreement that can be used. *Clients* often have their own standard forms. If necessary legal advice should be obtained.

The purpose of the form of agreement is to record the agreement between the two Parties and identify the documents which form the contract. Consequently whatever form of agreement is used, it only need refer to Contract Data, within which the documents forming the contract are identified.

An example form of agreement is provided below showing the key requirements:

This agreement is made on the day of 20..... between

- (the *Client*) and
- (the *Supplier*)

The *Client* and *Supplier* shall act as stated in the documents forming this agreement which are:

- Contract Data part one
- Contract Data part two and
- the documents identified in Contract Data.

Executed by the *Client*

by (name)
 (signature)

Executed by the *Supplier*

by (name)
 (signature)

CHAPTER 5

Conditions of contract

5.1 INTRODUCTION

The purpose of this section of the guide is to explain the clauses of the FC from a practical management perspective.

Good management is important to achieve better outcomes for contracts and reducing misunderstandings and disputes. The *Client's* objectives (refer to Volume 1 - Establishing a Procurement and Contract Strategy) for the framework should be fully understood and reflected in a clear and simple contract document to promote effective management and delivery of the framework.

5.2 CORE CLAUSES

Actions	10	
	10.1	This clause obliges the Parties (who are the <i>Client</i> and the <i>Supplier</i> - see clause 11.2(1)) and the <i>Client's Representative</i> to do everything which the contract states they do. It is the only clause which uses the future tense. It is also the only clause that uses the word 'shall', which is quite different to other standard forms of contract and, as written, it means this word is not required to be used again anywhere else in the conditions. For simplicity, everything else is in the present tense. Where actions are permitted but not obligatory, the term 'may' is used.
	10.2	The same parties named in clause 10.1 are also required to act in a spirit of mutual trust and co-operation. This clause does not change the obligations of the Parties and the <i>Client's Representative</i> as set out in the contract.
Identified and defined terms	11	
	11.1	The main definitions used in the contract are given in clause 11.2. Capital initial letters are used in the FC for the defined terms to distinguish them from undefined terms. Any term that is identified in the Contract Data is written in italics. The <i>Client's Representative</i> cannot change identified or defined terms.
Communications	13	The FC requires various communications to be given. These might include an instruction, an acceptance or a notification, to name a few. These communications are threaded into the contract processes alongside the obligations of the various parties. For example, clause 23.1 of the FC states "If the <i>Supplier</i> is to be considered for a proposed Work Order, the <i>Client's Representative</i> provides the additional Contract Data, Scope, Site Information and pricing document as applicable for the work and instructs the <i>Supplier</i> to provide a quotation " The communications here take the form of the <i>Client's Representative</i> providing the additional Contract Data, Scope, Site Information and pricing document as applicable to the particular NEC contract being used for a Work Order and an instruction to the <i>Supplier</i> to provide a quotation. Clause 13.1 details the communications the contract requires to be given and what form they take. "Each communication which the contract requires is communicated in a form which can be read, copied and recorded." Below are a few useful tips for users to help comply with the FC requirements for communications: • Follow the processes carefully – use 'notify', 'accept', 'instruct' etc as the clause requires. • If not already stated in the Framework Information, decide if a manual system or technology based system is best for the contract. – If manual system, agree whether the simple communication forms will be used, fill in the repetitive data; decide on the use of a tracker schedule. – If technology based system, which one is best for the Parties on this contract. • Finally, and when completing the communication forms, use the present tense and write in a simple, straightforward and unambiguous manner.
	13.1	The phrase 'in a form which can be read, copied and recorded' includes a document sent by post, telex, cable, electronic mail, facsimile transmission, and on disk, magnetic tape or other electronic means.

	13.2	If the <i>Client</i> requires communications or information to be provided in a particular electronic or paper form, this should be set out in the Framework Information or in the <i>quotation information</i> if it relates to the provision of quotations.
The Client's Representative	14	The <i>Client's Representative</i> is the key person involved in the management of the framework from the <i>Client's</i> point of view. The <i>Client's Representative's</i> duties and authority are described in the clauses of the contract. They are not summarised in a single clause. The authority to select the <i>Supplier</i> for a Time Charge Order or a Work Order belongs exclusively to the <i>Client's Representative</i>.
Corrupt Acts	15	A Corrupt Act is defined in clause 11.2(2). The <i>Supplier</i> does not do a Corrupt Act and takes positive action in respect of suppliers to stop such acts.
The Parties' obligations	20	
	20.1	This clause states the <i>Supplier's</i> basic obligations, to obey instructions given by the <i>Client's Representative</i> , to attend meetings as stated in the Framework Information, and not do any work until it has received a Work Order or Time Charge Order for that work.
Supplier selection	21	
	21.1	When the <i>Client</i> has identified the need for some work within the <i>framework scope</i> of the FC, the <i>Client's Representative</i> provides the necessary additional Contract Data and selects the <i>Supplier</i> for the work using the <i>selection procedure</i> . This procedure sets out how a supplier is to be selected for a Time Charge Order and for a Work Order, and identifies at what stage a quotation is to be provided.
Time Charge Order	22	
	22.1	If advice is needed before the work for a Work Order can be fully defined, the selected <i>Supplier</i> can be instructed to help using a Time Charge Order. The work under a Time Charge Order is normally carried out under the NEC Professional Service Short Contract. When a Time Charge Order is issued, the <i>Client's Representative</i> must include the further Contract Data, Scope and Price List. If any alternative NEC contract is used, when a Time Charge Order is issued, the <i>Client's Representative</i> must include the further Contract Data, Scope, Site Information and pricing document as applicable to the particular contract.
Quotation	23	
	23.1	When the work for a Work Order is sufficiently defined, the <i>Client's Representative</i> follows the <i>selection procedure</i> to identify the <i>Supplier</i> who will carry out the proposed work. This procedure may include obtaining quotations for the work and using the quotations as part of the selection process. Alternatively, where it is possible to select a <i>Supplier</i> using other criteria, a quotation will be obtained from the chosen <i>Supplier</i> using the <i>quotation procedure</i>. In either case, the quotation has to be prepared using the quotation information provided at tender, which will provide the source of the data to be used in the quotation. The quotation must comply with the <i>quotation procedure</i> set out by the <i>Client</i>. This will set out the basis for preparing the quotation, and explain the amount of detail needed by the <i>Client</i> for it to be assessed. The <i>Client's Representative</i> must provide the additional Contract Data, Scope, and pricing document applicable to the particular contract for the proposed Work Order when seeking a quotation. The pricing document provided will be either a Bill of Quantities or Price List. If either the Engineering and Construction Contract or Engineering and Construction Short Contract is being used the <i>Client's Representative</i> must also provide the Site Information. The <i>Client</i> can, when it receives the quotation, take a number of actions depending on its objectives. If the quotation is acceptable, it can be accepted by issuing a Work Order to the appropriate <i>Supplier</i>. If the quotation is not acceptable, the Work Package may be changed and a revised quotation may be requested, or if the cost of the work is such that the Work Package should not be carried out, then the <i>Supplier</i> may be notified that the Work Order will not be issued.

The work under a Work Order is carried out under the NEC conditions of contract identified in the Contract Data of the FC, supplemented by the additional Contract Data provided by the *Client*.

Further work can be instructed until the *end date*, unless termination takes place at an earlier date.

Completion	30	
	30.1	After the <i>end date</i> , no further work can be ordered. Work already instructed, under either a Time Charge Order or a Work Order, continues until it has been completed.
Termination	90	
	90.1	Either Party is entitled to terminate at will. This means that no further work will be ordered under the framework contract, but any work already ordered, under either a Time Charge Order or a Work Order, continues, and can only be terminated under the contract conditions governing that work.

APPENDIX 1

Contract Data – Worked Example

PART ONE – DATA PROVIDED BY THE CLIENT

The Data which will apply to all work under the Framework Contract is

The *conditions of contract* are the clauses of the NEC4 Framework Contract June 2017 and any *additional conditions of contract*

The *Client* is

Name

Greenwheat County Council

Address for communications

County Hall, Greater Binding,
Greenwheatshire GN7 3BB

Address for electronic communications

themajor@greenwheatcc.com

The *Client's Representative* is

Name

Mr K Williams

Address for communications

County Hall, Greater Binding,
Greenwheatshire GN7 3BB

Address for electronic communications

kwilliams@greenwheatcc.com

The Framework Information is in

Volume 2

The *framework scope* is in

the Framework Scope section of the
Framework Information.

The *selection procedure* is in

the Selection Procedure section of the
Framework Information.

The *quotation procedure* is in

the Quotation Procedure section of the
Framework Information.

The *end date* is

15 October 2020

The period for reply to a *Supplier's*
quotation is

five weeks

The Data which will apply to all Time Charge Orders is **in Volume 3**

The Data which will apply to all Work Orders is **in Volume 4**

PART TWO – DATA PROVIDED BY THE SUPPLIER

The Data which will apply to all work under the Framework Contract is

The *Supplier* is

Name

Woodstone Construction Ltd

Address for communications

Woodstone House, Collingbourne Bellinger,
Wincanton AB3 7TT

Address for electronic communications

canwefixit@woodstone.com

The *quotation information* is in

Volume 5

The Data which will apply to all Time Charge Orders is **in Volume 6**

The Data which will apply to all Work Orders is **in Volume 7**