

NEC3 and NEC4 Compared

Revised edition



Robert Alan Gerrard

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Amendments January 2019, October 2020 and January 2023

The NEC4 suite of contracts was published in June 2017. Following publication there has been discussion and feedback from users and industry experts on the new features, forms and changes which were introduced. The feedback has been extremely positive overall and has provided many constructive suggestions as to how the contracts could be further enhanced.

To build on the constructive feedback and further improve the contracts the NEC published a set of amendments in January 2019 and October 2020 and have now issued a further set of amendments in January 2023. The principal amendments are detailed below; in addition there are some minor corrections to the wording in some of the contracts.

A schedule of amendments is available for each contract on the NEC contract website. The schedules detail all amendments being made except minor typographical amendments which do not affect the interpretation or application of the contracts. Copies of the contracts published from January 2023 will contain the amendments and a table summarising them. Updated versions of the User Guides have also been produced to reflect the amendments made to the contracts.

In May 2023 this guide was updated to reflect the amendments made in January 2019, October 2020 and January 2023. On each page where the NEC4 contract was amended in 2019, 2020 and 2023 there is now a footnote alerting readers to the amendments: "This page has been amended in 2023".

Introduction

NEC3 and NEC4 Compared is a clause-by-clause comparison of the changes between the *NEC3 Engineering and Construction Contract (ECC3)* and the *NEC4 Engineering and Construction Contract (ECC4)*. There has been considerable feedback since the launch of NEC3 and, to ensure a comprehensive review of all users' contributions, a number of working groups were set up to appraise comments and recommend actions. NEC then debated the principles of change and concluded that the time was right to produce updated versions of existing NEC3 documents together with new forms of contract to cover design build and operate contracts. These have now been published as the NEC4 suite of documents.

The aim of this book is to show those already using NEC3 the scale of changes between the NEC3 and NEC4 editions of the ECC, how these changes will affect them, and the implications of using NEC4. The principle behind the book is that the reader will be able to identify at first glance all information that is new and what has been deleted between the two editions.

The book presents the wording of ECC3 against that of ECC4 and provides a comprehensive guide to clauses in ECC3 that have been deleted, those that have been changed, and the clauses in ECC4 which are entirely new. It also shows where clauses have been re-ordered.

All information that has been deleted from ECC3 can be found on the left-hand side shaded in grey. Additional information or substantial changes that are new to ECC4 are underlined on the right-hand side. Where there is no corresponding ECC3 clause on the left-hand side, the ECC4 clause is entirely new. Where the position of a clause has changed, the ECC3 clause has been re-ordered to align with the corresponding clause in the ECC4 contract. The book will therefore be easier to use if the reader refers back from clauses in ECC4 to the relevant ECC3 clause, rather than starting with the amended version of ECC3.

For completeness, the final version of ECC3 as published in April 2013 has been used for a direct comparison. There are additional explanatory notes under appropriate clauses in ECC4, giving details of more significant changes including January 2019, October 2020 and January 2023 amendments. These can be found in shaded boxes with an information symbol.

NEC4 comprises a suite of entirely consistent documents. The guide covers in detail the differences between the *NEC3 Engineering and Construction Contract* and the *NEC4 Engineering and Construction Contract*. However, principles of the changes it introduces have been applied across the main contracts in the suite of NEC4 contracts. So, anybody wishing to understand the new provisions applied across the suite of NEC4 contracts will benefit from this book.

SCHEDULE OF OPTIONS

The strategy for choosing the form of contract starts with a decision between six main Options, one of which must be chosen.

Option A	Priced contract with activity schedule
Option B	Priced contract with bill of quantities
Option C	Target contract with activity schedule
Option D	Target contract with bill of quantities
Option E	Cost reimbursable contract
Option F	Management contract

One of the following dispute resolution Options must be selected to complete the chosen main Option.

Option W1	Dispute resolution procedure (used unless the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies).
Option W2	Dispute resolution procedure (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies).

The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

Option X1	Price adjustment for inflation (used only with Options A, B, C and D)
Option X2	Changes in the law
Option X3	Multiple currencies (used only with Options A and B)
Option X4	Parent company guarantee
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X12	Partnering
Option X13	Performance bond
Option X14	Advanced payment to the <i>Contractor</i>
Option X15	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill and care
Option X16	Retention (not used with Option F)
Option X17	Low performance damages
Option X18	Limitation of liability
Option X20	Key Performance Indicators (not used with Option X12)

Schedule of Options

MAIN OPTIONS

The strategy for choosing the form of contract starts with a decision between six main Options, one of which must be chosen.

- Option A Priced contract with activity schedule
- Option B Priced contract with bill of quantities
- Option C Target contract with activity schedule
- Option D Target contract with bill of quantities
- Option E Cost reimbursable contract
- Option F Management contract

RESOLVING AND AVOIDING DISPUTES

One of the following procedures for resolving and avoiding disputes must be selected to complete the chosen main Option.

- Option W1 Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply
- Option W2 Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies
- Option W3 Used when a Dispute Avoidance Board is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply

SECONDARY OPTIONS

The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

- Option X1 Price adjustment for inflation (used only with Options A, B, C and D)
- Option X2 Changes in the law
- Option X3 Multiple currencies (used only with Options A and B)
- Option X4 Ultimate holding company guarantee
- Option X5 Sectional Completion
- Option X6 Bonus for early Completion
- Option X7 Delay damages
- Option X8 Undertakings to the *Client* or Others
- Option X9 Transfer of rights
- Option X10 Information modelling
- Option X11 Termination by the *Client*
- Option X12 Multiparty collaboration (not used with Option X20)
- Option X13 Performance bond
- Option X14 Advanced payment to the Contractor
- Option X15 The *Contractor's* design
- Option X16 Retention (not used with Option F)
- Option X17 Low performance damages
- Option X18 Limitation of liability
- Option X20 Key Performance Indicators (not used with Option X12)
- Option X21 Whole life cost
- Option X22 Early *Contractor* involvement (used only with Options C and E)
- Option X29 Climate change

	The following Options dealing with national legislation should be included if required.
Option Y(UK)1	Project Bank Account
Option Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996
Option Y(UK)3	The Contracts (Rights of Third Parties) Act 1999
Option Z	<i>Additional conditions of contract</i>
Note	Options X8 to X11 and X19 are not used.

The following Options dealing with national legislation should be included if required.	
Option Y(UK)1	Project Bank Account
Option Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996
Option Y(UK)3	The Contracts (Rights of Third Parties) Act 1999
Option Z	<i>Additional conditions of contract</i>
Note	Option <u>X19</u> is not used

CORE CLAUSES

1 General

Actions

10

- 10.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

Identified and defined terms

11

- 11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

- 11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.

(2) Completion is when the *Contractor* has

- done all the work which the *Works Information* states he is to do by the Completion Date and
- corrected notified Defects which would have prevented the *Employer* from using the *works* and Others from doing their work.

If the work which the *Contractor* is to do by the Completion Date is not stated in the *Works Information*, Completion is when the *Contractor* has done all the work necessary for the *Employer* to use the *works* and for Others to do their work.

(3) The Completion Date is the *completion date* unless later changed in accordance with this contract.

(4) The Contract Date is the date when this contract came into existence.

(5) A Defect is

- a part of the *works* which is not in accordance with the *Works Information* or
- a part of the *works* designed by the *Contractor* which is not in accordance with the applicable law or the *Contractor's* design which the *Project Manager* has accepted.

(6) The Defects Certificate is either a list of Defects that the *Supervisor* has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

(14) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Project Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(7) Equipment is items provided by the *Contractor* and used by him to Provide the *Works* and which the *Works Information* does not require him to include in the *works*.

Core Clauses

1. GENERAL

Actions

10

10.1 The Parties, the *Project Manager* and the *Supervisor* shall act as stated in this contract.

10.2 The Parties, the *Project Manager* and the *Supervisor* act in a spirit of mutual trust and co-operation.

Clause 10.1 is now spilt into two clauses, the 'shall' being retained in only one of these clauses and only in relation to acting as stated in the contract.



Identified and defined terms

11

11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.

11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.

(2) Completion is when the *Contractor* has

- done all the work which the Scope states is to be done by the Completion Date and
- corrected notified Defects which would have prevented the Client from using the works or Others from doing their work.

If the work which the *Contractor* is to do by the Completion Date is not stated in the Scope, Completion is when the *Contractor* has done all the work necessary for the Client to use the works and for Others to do their work.

(3) The Completion Date is the completion date unless later changed in accordance with the contract.

(4) The Contract Date is the date when the contract came into existence.

(5) A Corrupt Act is

- the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or
- abusing any entrusted power for private gain

in connection with this contract or any other contract with the *Client*. This includes any commission paid as an inducement which was not declared to the *Client* before the Contract Date.

This new defined term sets out what a Corrupt Act is. It is later referred to in clause 18, which forbids such acts, and again in clause 91.8, where the contract now provides for termination as a remedy.



(6) A Defect is

- a part of the works which is not in accordance with the Scope or
- a part of the works designed by the *Contractor* which is not in accordance with the applicable law or the Contractor's design which the *Project Manager* has accepted.

(7) The Defects Certificate is either a list of Defects that the *Supervisor* has notified before the defects date which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

(8) The Fee is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work.

(9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the *key date* stated in the Contract Data and the Condition is the *condition* stated in the Contract Data unless later changed in accordance with *this contract*.

(10) Others are people or organisations who are not the *Employer*, the *Project Manager*, the *Supervisor*, the *Adjudicator*, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

(11) The Parties are the *Employer* and the *Contractor*.

(12) Plant and Materials are items intended to be included in the *works*.

(13) To Provide the Works means to do the work necessary to complete the *works* in accordance with *this contract* and all incidental work, services and actions which *this contract* requires.

(19) *Works Information* is information which *either*

- specifies and describes the *works* or
- states any constraints on how the *Contractor* Provides the Works

and is *either*

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with *this contract*.

(15) The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in *this contract*.

(16) Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.

(17) A Subcontractor is a person or organisation who has a contract with the *Contractor* to

- construct or install part of the *works*,
- provide a service necessary to Provide the Works or
- supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *works*.

(18) The Working Areas are those parts of the *working areas* which are

- necessary for Providing the Works and
- used only for work in *this contract*

unless later changed in accordance with *this contract*.