

NEC contracts tick IACCM's 'top ten' boxes

How the NEC family of contracts addresses what members of the International Association for Contract & Commercial Management (IACCM) state to be the most important terms in their contracts.

Introduction

The IACCM states on its website¹ that it 'enables both public and private sector organizations and professionals to achieve world-class standards in their contracting and relationship management process and skills.'

The IACCM carries out an annual survey amongst its 36,000+ members, which is, of course, of interest to many. They ask for the top ten terms in contract that cause (and one could argue 'waste') the most time in negotiation and, separately the top ten 'most important terms'. The output from a recent such survey² is summarised below.

No	Most negotiated term	Most important term
1	Limitation of liability	Scope and Goals
2	Price / Charge / Price Changes	Responsibilities of the Parties
3	Indemnification	Change Management
4	Service Levels and warranties	Delivery / acceptance
5	Payment	Communications and reporting
6	Service withdrawal / termination	Price / Charge / Price Changes
7	Warranty	Service levels and warranties
8	Intellectual Property	Performance / Guarantees / Undertakings
9	Performance / Guarantees / Undertakings	Payment
10	Delivery / Acceptance	Limitation of liability

This document briefly explains at a high level how the NEC contracts perform against the IACCM membership's 'most important terms'.

Given the range of IACCM membership it can be surmised that many of the respondents are dealing with contracts that

- are for services or supply of goods, rather than projects and
- are bespoke rather than a standard form.

The NEC (www.neccontract.com) is a family of standard forms of contract specifically designed to be:

¹ <https://www.iaccm.com>

² '2013/2014 Top Terms' at <https://www.iaccm.com/resources/?id=7619>

- clear and simple,
- flexible (and globally applicable³) and
- a stimulus to good management.

As such they are genuinely unlike all other forms of contract.

The NEC family includes forms for:

- supply
- physical services
- professional services and
- projects.

There is also a 'framework contract' allowing the client (the 'Employer') to let contracts for any of the above over a defined period.

In each case there is a 'main' form and a simpler 'short contract'.

Scope and goals

Clarity of scope is always critical in any contract. Poor scope is the cause of most disputes. Each NEC contract includes a specific document for the details of the Employer's (the buyer's) requirements and constraints. The conditions of contract expressly calls for certain things to be stated in that document to encourage good practice. Each contract is also accompanied by specific guidance on how to professionally structure and draft that particular requirements document.

Responsibilities of the Parties

NEC contracts are each designed as a series of processes relating, for example, to programme, defects, payment and change. The project and physical services contracts include for a specific role of a contract manager (this is an option in the professional services contract). The clauses are written as a series of direct actions for the parties to the contract and that contract manager. In the case of the project contract the management role relating to testing and defects is intentionally separated from the role relating to programme, payment and change management. In this way the responsibilities of the parties are crystal clear. Indeed they are so clear that the processes are all mapped out as a series of flow charts and 'in the cloud software' is available to manage all the communications required by the contracts.

Change management

The NEC contracts recognise the importance of change. In essence each is a change management process – as well as being a contract. Anything that the supplier was not required to price at the time of award (including a change from the Employer) is called a 'compensation event'. All compensation events are treated in the same way with:

³ NEC Newsletter, Issue No.47, July 2009, Use of NEC in legal jurisdictions other than English law; at www.neccontract.com

- clear rules for the assessment of the cost and time impact of the compensation event and
- clear and flexible rules, processes and timescales for agreeing those impacts.

There are also a number of options for the employer (or contract manager) relating to how and when he or she requests quotations for compensation events and manages the risk in those quotations.

Delivery / acceptance

The NEC contract for supply of goods has clear definitions of 'Delivery', 'Delivery Date' and 'Delivery Place'. The acceptance requirements have to be clearly stated in the Employer's requirements document, the 'Goods Information'.

Communications and reporting

All NEC contracts share similar provisions relating to communications. All communications must be in writing and kept separate from other communications required by the contract. There is a clearly defined period within which each party must respond to any communication from the other. The fact that the processes and communications requirements are so well defined allows all the communications required by the contracts to be managed as a database by 'in the cloud' software.

There are very clear provisions for programme and cost reporting. Any further reporting must be set out specifically in the requirements document.

Price / Charge / Price Changes and Payment

The main (ie not short) NEC contracts for physical services, professional services and projects have a modular structure. They consist of 'core clauses' covering eg defects, the payment process and change. The Employer then chooses a payment option to set out how the Contractor is paid. The supply contract is a fixed price contract although a mix of lump sum items and items with quantities can be included in the price schedule. This is one of the key ways in which the NEC shows its flexibility. The resulting options are illustrated in the table below.

	NEC contract for			
Payment type available	supply (Supply Contract (SC))	physical services (Term Service Contract (TSC))	professional services (Professional Services Contract (PSC))	projects (Engineering and Construction Contract (ECC))
Lump sum	•	•	•	•
Remeasurement of priced quantities	•			•
Target cost		•	•	•
Reimbursable		•	•	•
Management contract				•

The main reason for changes to the price are the 'compensation events' mentioned above and the mechanism for evaluating the change to the price is clearly set out in the contracts.

Service levels and warranties – and Performance / Guarantees / Undertakings

The performance or service levels must be clearly set out in the requirements document. It is the Contractor's obligation to meet those requirements. In signing up to the contract the Contractor warrants that he will meet the required levels performance or service. Each of the main contracts includes an option for predefined performance damages for not meeting the performance or service levels set in the employer's requirements. The Employer may select this option if appropriate for the contract.

Limitation of liability

The supply contract includes clearly stated limits to certain types of liability. For each type the Employer may state a certain figure or may state 'unlimited'. The same effect may be included in the other main contracts by including the secondary option clause, X18. In this way the levels of liability are very clear.

Conclusion

The NEC's aim is to 'promote and facilitate global best practice in procurement and project management'. That seems rather supporting of IACCM's aims to 'enable both public and private sector organizations and professionals to achieve world-class standards in their contracting and relationship management process and skills'.

This short article has shown how NEC contracts are very good at the things that IACCM members state are the most important terms in their contracts. One that is oddly missing is the management of risk – on which the NEC is also very clear and very flexible. The NEC is also very clear on the terms that IACCM members state they spend (and perhaps therefore waste?) most of their time negotiating.

NEC achieves its aims with a series of related and very similar contracts for supply, projects and physical and professional services. It is suggested that IACCM members, wherever they are in the world, should take a good look at what NEC has to offer.

Author

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