Contents

1 Introduction 1
  1.1 General 1
  1.2 Mechanics not law 2
  1.3 A simple formula for understanding a contract 2
  1.4 Mandatory or discretionary 3
  1.5 Conditions precedent 4
  1.6 Note on use of upper case in key words and phrases 4

2 Background to the NEC Family of Contracts 6
  2.1 The background: First editions 6
  2.2 The second edition 7
  2.3 The third edition 8
  2.4 Endorsement of NEC3 by the Office of Government Commerce 8
  2.5 General philosophy: Aims and objectives 9
  2.6 Flexibility 9
  2.7 Clarity and simplicity 10
  2.8 Stimulus to good management 11
  2.9 Other characteristics 12

3 The Options: An Overview 13
  3.1 General arrangement of the PSC 13
  3.2 Other documents referred to 15
  3.3 Contract Data 16
  3.4 The published documents 16
  3.5 Main options: General outline 17

4 ‘Spirit of Mutual Trust and Cooperation’ 18
  4.1 Introduction 18
  4.2 Core clause 10.1 18
  4.3 What does it mean? 20
  4.4 Practical issues 21

5 The Cast of Characters 25
  5.1 Introduction 25
  5.2 The Employer 25
  5.3 The Employer’s Agent 27
## Contents

5.4    The Consultant  
5.5    The Adjudicator  
5.6    Subconsultants  
5.7    'Others’  
5.8    CDM Coordinator  
5.9    Principal Contractor  
5.10    Practical issues

6    Communications, Early Warnings and other General Matters  
6.1    Introduction  
6.2    Communications: The clause  
6.3    Communications: Practical issues  
6.4    Early warnings: The clause  
6.5    Early warnings: Practical issues  
6.6    Other matters: The clauses  
6.7    Other matters: Practical issues

7    The Parties’ Main Responsibilities  
7.1    Introduction  
7.2    The Employer’s obligations  
7.3    The Consultant’s obligations  
7.4    Other matters  
7.5    Practical issues

8    Subconsulting  
8.1    Introduction  
8.2    Definition of a Subconsultant  
8.3    The core clauses  
8.4    Provisions in the main options  
8.5    Practical issues  
8.6    Using the PSC as a Subcontract

9    Quality  
9.1    Introduction  
9.2    Quality management system  
9.3    What is a Defect?  
9.4    The Defects procedure  
9.5    Uncorrected Defects  
9.6    Practical issues

10    Rights to Material  
10.1    Introduction  
10.2    The core clauses  
10.3    Secondary option X9  
10.4    Practical issues
## Contents

### 11 Indemnity, Insurance and Liability
- 11.1 Introduction  68
- 11.2 The core clauses  68
- 11.3 Secondary option X18: Limitation of liability  70
- 11.4 Practical issues  71

### 12 Time
- 12.1 Introduction  74
- 12.2 The programme: Contents  75
- 12.3 The programme: Submitting, accepting and revising  79
- 12.4 The programme: Practical issues  82
- 12.5 Starting and finishing  90
- 12.6 Other matters  93
- 12.7 Secondary options related to Time  95
- 12.8 Practical issues  97

### 13 Payment
- 13.1 Introduction  100
- 13.2 The payment process  100
- 13.3 Payments in multiple currencies  102
- 13.4 The amount due and the Price for Services Provided to Date  103
- 13.5 Supporting documents and records  107
- 13.6 The Consultant’s share  111
- 13.7 The Consultant’s share: Practical issues  112
- 13.8 Special provisions for the UK  114
- 13.9 Related secondary options  116
- 13.10 Practical issues  118

### 14 Compensation Events: Theory and Events
- 14.1 Introduction  120
- 14.2 The theory  120
- 14.3 The events  122
- 14.4 Practical issues  130

### 15 Compensation Events: Procedures
- 15.1 Introduction  132
- 15.2 Notification by the Employer  133
- 15.3 Notification by the Consultant and the Employer’s reply  136
- 15.4 Other matters associated with notifying compensation events  139
- 15.5 Quotations: Substance  141
- 15.6 Quotations: Submission and reply  142
- 15.7 Assessments by the Employer  147
- 15.8 Implementing compensation events  148
- 15.9 Practical issues  149
Contents

16 Compensation Events: Assessment 154
   16.1 Introduction 154
   16.2 Changes to the Prices 155
   16.3 Changes to the Completion Date and any Key Dates 159
   16.4 Employer's assumptions 162
   16.5 Other related matters 163
   16.6 Practical issues 165

17 Termination 168
   17.1 Introduction 168
   17.2 Reasons for termination 168
   17.3 Secondary option X11: Termination by the Employer 171
   17.4 Implementing termination 171
   17.5 Procedures after termination 172
   17.6 Payment on termination 173
   17.7 Practical issues 174

18 Dispute Resolution 176
   18.1 Introduction 176
   18.2 Option W1 177
   18.3 Option W2 180
   18.4 Practical issues 185

19 Secondary Options 188
   19.1 Introduction 188
   19.2 X2: Changes in the law 188
   19.3 X4: Parent company guarantee 189
   19.4 X8: Collateral warranty agreements 189
   19.5 X12: Partnering 190
   19.6 X13: Performance bond 194
   19.7 X20: Key Performance Indicators 195
   19.8 Y(UK)3: The Contracts (Rights of Third Parties) Act 1999 196
   19.9 Z: Additional conditions of contract 196
   19.10 Practical issues 197

20 Completing the Contract Data 199
   20.1 Introduction 199
   20.2 Purpose and form of the Contract Data 199
   20.3 Part One: Data for the core clauses 200
   20.4 Part One: Data for the main option clauses 204
   20.5 Part One: Data for the secondary option clauses 205
   20.6 Part Two: Data for the core clauses 209
   20.7 Part Two: Data for the optional statements 209
   20.8 Practical issues 211
## Contents

21 **The Supporting Documents: Need and Content** 214  
21.1 Introduction 214  
21.2 Scope 214  
21.3 Practical issues 221  

Bibliography 224  
Further Reading 225  
Appendix 1 Tables of Clause Numbers, Case Law and Statutes 226  
Appendix 2 Tables of Employer’s, Consultant's and Adjudicator’s Actions 233