

Comparison of the Term Service Short Contract (TSSC) with the Term Service Contract (TSC)

Introduction

The TSSC is a simplified and shortened version of the TSC. It includes procedures which are simpler to manage and is appropriate for priced contracts of low risk and low complexity.

In this guidance note, which details the differences in the structure and procedures between the TSC and the TSSC, the convention of using italics for terms which are identified the Contract Data and capital initials for terms defined in the relevant NEC4 contracts has been used.

The NEC family includes many forms of subcontract. However, although there is a Term Service Subcontract (TSS), there is no short form subcontract. There is therefore no direct comparison for the subcontract forms.

General

The TSSC has forms for *Client's Contract Data*, *Contractor's Contract Data*, Price List, Scope, *Contractor's Offer* and *Client's Acceptance*, all integrated into a single document. If required, they can be developed as separate documents as would be done for the TSC, but in that case the Scope and Price List need to be identified within the Contract Data.

The TSC allows a choice of payment options: prices for items of work, target cost and cost reimbursable. There are no payment 'options' in the TSSC, instead there is a 'Price List'. The TSSC gives a template Price List in two parts; for the general *service* not requiring a Task Order and for work which does require a Task Order. In both cases the TSSC prices can be a mix of lump sums and quantities multiplied by rates.

The risk of any quantities in the Price List of the TSSC lies with the *Client*. The risk of prices in the Price List lies with the *Contractor*. Unlike the TSC, there is no adjustment to Prices in the TSSC if the quantities can be shown to have a significant cost effect (TSC clause 60.2). The Price List is required to include the 'rules used to compile the Price List', and an instruction to correct a mistake in the Price List is a compensation event (clause 60.1(8)).

Whilst the TSC has several secondary Options, there are none in that form in the TSSC. However, the TSSC allows for four of the TSC's Options to be considered by choosing whether to adopt them or not with entries in the Contract Data:

- adjustment of the Price List for inflation (the TSC Option X1), managed by optional clause 52,
- the inclusion of clauses to provide for contracts subject to the UK Housing Grants, Construction and Regeneration Act, affecting payment and adjudication provisions (the TSC Options W2 and Y(UK.2)) and
- the addition of limits of liability for damage to the *Client's* property and total liability, stated in the Contract Data (part of the TSC Option X18).

Main differences

The following lists where the TSSC differs from the TSC, taking the TSC as the standard approach. The numbering follows the nine sections in the contracts' core clauses.

1 General

- There is no *Service Manager* in the TSSC. All management roles are undertaken directly by the *Client*. The *Client* may appoint a *Client's Agent* and delegate specific actions to it.
- The TSSC has a simpler definition of 'Defined Cost' (used only for compensation events). There is no Schedule of Cost Components.
- There is no formal 'Early Warning Register' or 'early warning meetings', but clause 15.2 requires cooperation in considering proposals and for creating a record of 'actions to be taken'. This could be recorded in a register like the TSC's Early Warning Register' and regular early warning meetings could be held to review the register.
- Both the TSC (clause 19) and TSSC (clause 14) have Task Orders, but the TSSC has a much simpler approach to Task Orders. This reflects the nature of TSSC Tasks – they will not be large complex pieces of work. For both contracts the *Contractor* provides a quotation for the proposed Task, and the *Client* (TSSC) or *Service Manager* (TSC) has to accept the quotation or make its own assessment. TSC Task Orders can have delay damages attached to them, TSSC Task Orders do not.

2 The *Contractor's* main responsibilities

- There is no explicit control over subcontracting by the *Client* and no requirement for the *Contractor* to seek acceptance of a Subcontractor from the *Client*.
- The TSSC does not have any restrictions on disclosure or publicity. If required, this could be included in the Scope.

3 Time

- The TSSC does not include provisions for an extension to the *service period*, but there is no reason why the contract period cannot be extended by agreement.
- The requirements for a plan and the amount of detail it is to include should be stated in the Scope (clause 31.1).
- There is no provision for accepting or updating plans.
- For simpler contracts a plan may not be needed.
- There is no requirement for Task Order programmes in the TSSC. If a programme is needed, the requirement should be added into the Task information.

4 Defects

- The TSSC does not include a requirement for a quality management system.
- Provisions for testing or inspections, if required, should be included in the Scope.
- The TSSC allows Defects to be notified until the later of the end of the *service period* and the latest date for completion of a Task. Unlike the TSC, it is therefore possible to notify any Defect until this latest date. The TSC would only allow the notification of a Defect in the Task, not any other *service*, beyond the end of the Service Period for the general *service*.

5 Payment

- The *Contractor* assesses the amount due (rather than the *Service Manager* under the TSC). The *Client* corrects the amount due if it has been incorrectly assessed.

- The regularity of assessment and therefore payment, specified in the TSC as the *assessment interval* in the Scope, is fixed at monthly in the TSSC.
- The TSSC has no provision for a final assessment; the last assessment made under clause 50.1 becomes the final assessment.
- An additional clause (TSSC clause 52) allows for adjustment for inflation if this has been stated as applying in the Contract Data.
- An additional clause provides payment provisions in contracts subject to the UK Housing Grants, Construction and Regeneration Act (1996).
- The TSSC has a default interest rate of 0.5% per complete week of non-payment, which can however be adjusted in the Contract Data. At 26%, this is a much higher annual rate than anticipated in the TSC.

6 Compensation events

- The TSSC has a shorter list of compensation events, and the process is simpler than that in TSC.
- If the *Contractor* notifies a compensation event it is required to include its quotation with the notification. There is no separate stage of accepting the event as a compensation event before instructing a quotation.
- If the *Client* notifies a compensation event and instructs a quotation, the quotation is required in only one week (compared with three weeks in the TSC).
- The *Contractor* can include assumptions in its quotation, which if corrected prompts another compensation event. (In the TSC assumptions can only be stated by the *Service Manager*).
- There is no revised quotation. The *Client* has to accept the quotation, including the *Contractor's* assumptions, or make its own assessment. It is expected that the Parties will collaborate over a quotation so that the *Contractor's* assessment can be accepted.
- If the *Client* does not respond to a quotation in two weeks, the quotation is 'treated as accepted'. There is no need for a prompt from the *Contractor* as is the case in the TSC.

7 Rights to material

- The TSSC includes the same provisions as in the TSC except that the TSSC does not include provisions for transferring title to Plant and Materials to the *Client*.

8 Liabilities and insurance

- The approach to allocating liabilities and the requirements for insurance in the TSSC are broadly the same as in the TSC.
- Unlike in the TSC, *Client* liabilities are not compensation events.
- There are no provisions for submitting certificates of insurance or for dealing with failure to provide insurance.
- Unlike the TSC which uses X18 to set a number of different limits of liability, the TSSC only sets two, both in the Contract Data - for damage to the *Client's* property and total liability for the contract.

9 Termination and resolving disputes

- There is no termination certificate. Either Party notifies the other of terminating the *Contractor's* obligation to Provide the Service and states the reason.
- The termination procedures are similar in the two contracts, but simplified in the TSSC. The TSSC has:
 - fewer reasons for termination,
 - a common procedure for all terminations, not procedures which depend on the reasons for termination and
 - a fixed percentage of loss of profit for *Client* fault termination, rather than using a tendered fee percentage.
- Dispute resolution is by adjudication using a simplified version of Option W1 from the TSC.
- An additional clause is provided for adjudication in contracts subject to the UK Housing Grants, Construction and Regeneration Act (1996), affecting payment and provisions.

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