

€ TRAINING

Contractual Risk, Insurance and Indemnities



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Introduction

In every organization, care is taken to manage risks, by seeking to eliminate those that can be removed, and reducing and managing the remainder. Part of this process involves developing robust contracts which apportion risk equitably and include a structure of indemnities with contractors, supported by a comprehensive insurance regime. In addition, it is important that contract personnel understand contractual risks and what insurance can and cannot do to remove the financial consequences of such risk; always remembering that insurance only mitigates the effect of risk, it does not make the risk itself go away.

Course Objectives:

At the end of this course, the participants will be able to:

- A more in-depth understanding of the elements of a contract.
- How to analyze complex contract documents, and understand the inter-relationship between clauses.
- How to develop effective indemnity regimes.
- Appropriate types and forms of indemnities in different contracts.
- How to use indemnities to manage risks.
- The limitations of indemnity clauses.
- How to link indemnity and insurance arrangements.
- What types of insurance are available in a contracting context.
- How to develop insurance clauses.
- The latest thinking in dispute resolution techniques.

Targeted Audience:

- Contracts, Tendering, Purchasing, Procurement, and Project Professionals
- Contract Administration, Engineering, Operational and Maintenance Professionals
- Risk, Claims, Financial, and Audit Professionals
- Project Management Professionals
- And all others who are involved in the planning, evaluation, preparation, and management of tenders, specifications, awards, and contracts that cover the acquisition of materials, equipment, and services and who are in organizations whose leadership want high levels of competency in those involved in these activities

Course Outlines:

Unit 1: Commercial Risk and Mitigation through the Contract:

- The need for contracts.
- Identifying risk.
- Risk mitigation or impact mitigation?
- Title.
- Incoterms.
- Intellectual property.
- Types and nature of contracts.

- Definition of terminology i.e. Conditions of contract & terms of contract etc.
- Different legal systems - how to look for common practices but understand the differences.

Unit 2: How and why Contracts are Drafted:

- Why we use contracts.
- Formation of a Contract.
- Oral or written?
- The key elements of a contract:
- Terms and Conditions of contract.
- Liquidated damages/penalties.
- Limits of liability.
- Suspension and termination.
- Acceptance and Certificates.
- Guarantee/Warranty/Maintenance.
- Agency issues.
- The basic structure of a contract.
- Incorporating documents by reference.
- Standard Forms.
- Incorporating tender documents.
- Letters of Intent or Award.
- Letters of Comfort or Awareness.
- Side Letters.
- Bank bonds and Guarantees.
- Parent Company Guarantees.
- Insurance:
- The purpose of insurance.

Unit 3: What insurance covers, and what it does not:

- Limits on the cover.
- Duty to disclose information.
- Meaning of "All Risks".
- Relationship with risk management.
- Types of insurance used in contract clauses.
- Workmen's compensation/employers' liability.
- Third party/liability insurance.
- Property damage.
- Professional indemnity/errors and omissions.
- Construction All Risks.
- Motor and aviation.
- Marine insurance.
- Hull and machinery.
- Protection and indemnity "P&I Clubs".
- Pollution.
- Goods in transit.
- Business interruption.
- Unfair calling cover bonds and guarantees.
- Export credit insurance.
- Who arranges?
- For whose benefit?
- Extension to subcontractors National Oilwell case.

- Terms - involving contractors.
- Other relevant insurances.
- Insurance for projects.
- Indemnities:
- Meaning of indemnities.
- Making indemnities work - irrespective of negligence or breach of duty the Piper Alpha litigation.
- Link with insurance.
- Cross indemnities.
- Personnel.
- Property.

Unit 4: Catastrophe risks:

- Value of covenant.
- Issues with indemnities under the Civil Law system.
- Third parties.
- Liability in negligence - relationship with contract conditions
- Claims handling.
- Managing claims under project policies.
- Making timely claims.
- Information.
- Involving insurers.
- Resolving disputes.
- Self-insurance.

Unit 5: Resolving Disputes:

- Negotiation.
- Staged Dispute Resolution clauses.
- Litigation.
- Arbitration.
- Enforcement of Judgments and Awards.
- New best practices in dispute resolution
- Mediation.
- Conciliation.
- Early Neutral Evaluation.
- Expert determination.
- Pendulum Arbitration.