

€ TRAINING

Contract Excellence for Non-Legal
Professionals



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Introduction:

In every organization, the commercial and business structure is based on contracts. These may vary from simple purchase orders, or even handshakes, through to highly-complex financing agreements. The development, negotiation, and management of these contracts are often in the hands of skilled professionals, but the general managers handling the delivery of the product, service, or project may not be fully familiar with the complexities of the documents concerned. This course is intended to allow professional managers with a background other than law or contracts to better understand the processes and issues involved, and therefore improve their overall management skills.

Course Objectives:

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

- Improve understanding of the structure and purpose of contracts
- Show how different structures can be used in different situations
- Improve the ability of managers to communicate with and instruct legal and contracts personnel
- Explain some of the pitfalls that exist within commonly-used contract clauses
- Explore the reasons why we use contracts, and how they can be developed.
- Examine different contracting structures, and how they allocate and manage risk.
- Review some of the major provisions in contracts, and discuss why they are drafted as they are, and what pitfalls there maybe if they are not managed properly

Targeted Audience:

- Project or Construction professionals
- Tenders, Contracts, Buyers, Purchasing, Financial personnel
- Those from a Project Management or General Management background
- Those new to the function or preparing for a major project or contract

Course Outlines:

Unit 1: The Basis of Contracting:

- Why we use contracts
- How contracts are formed
- Legal requirements for a valid contract
- Oral contracts
- Electronic contracts
- Incorporating other documents by reference
- Terms and conditions of the contract
- Authority to contract
- The role of agents
- Proving authority
- Methods of signing - seals, chops etc.
- Internal contracts within a Group - some dangers from ignoring the need for formal arrangements

Unit 2: Risk and Different Contracting Types:

- Different types of risk
- How to assess and manage risk
- Commercial risk within the contract
- Risk of damage
- Use of ICC Incoterms to determine when risk passes
- Other risks
- Selecting appropriate contract types
- Traditional
- Lump-sum
- Bill of Quantities/Schedule of Rates
- Reimbursable
- Hybrid
- Fixed Fees
- Economic Price Adjustment clauses
- Escalation
- EPC/Turnkey
- Convertible LSTK
- Build Operate Transfer
- Alliance/Partnering
- No Cure No Pay
- Bonds/Bank Guarantees
- Parent Company Guarantees
- Letters - Intent; Instruction/Award; Comfort; Awareness
- Side Letters
- Which Law?
- Which Courts?
- Non-Traditional
- Collateral documents
- Law

Unit 3: Major Contract Terms:

- Obligation to perform
- Testing and acceptance/rejection
- Defective goods
- Patent and Latent Defects
- Limits of liability
- Consequential loss
- Overall caps
- Connection with negligence
- Liquidated damages and penalties
- People
- Property
- Indemnities - what they mean, and why they are important
- Ownership of existing rights
- Ownership of rights created under the contract
- Dealing with claims of breach
- Insurance, and how this links with indemnities
- Intellectual property
- Warranty and rework

- Force Majeure
- Notices
- "Entire Agreement" clauses
- Implied Terms - some examples

Unit 4: Legal Aspects of a Contract and its Relation to Changes, Variations, and Payment and Close-Out Issues:

- Changes to the Contract Terms "Amendments"
- Changes to the Scope of Work "Variations"
- Keeping control of change - and examples of what happens when you get it wrong
- Impact of Variations
- Cost
- Delay
- Responsibility
- Extension of Time
- Payment
- Amount
- Timing
- Method of payment
- Risk in international trade
- Letters of Credit
- Warranty claims
- Set Off and contra charges
- Suspension and Termination
- Contractual issues on closeout

Unit 5: Negotiation, Avoidance, and Resolution of Disputes:

- Negotiation, compromise, and settlement
- Traditional approaches to third party resolution
- Litigation
- Arbitration
- Alternative Dispute Resolution
- Mediation
- Conciliation
- Mini-Arbitration
- Expert Determination
- Early Neutral Evaluation
- Pendulum Arbitration
- Dispute Review Boards
- Good record keeping and notices