

€ TRAINING

Drafting Legal Memorandum and
Correspondence



Drafting Legal Memorandum and Correspondence

Introduction:

The critical importance of effective and appropriate contract drafting catered to the specific needs of the particular business and the situation cannot be emphasized enough. Robust contracts identify and minimize risk for the organization and ensure that projects and procurement are carried out efficiently and without costly disputes.

All too frequently contract wording used is not properly understood which ultimately detrimentally affects the performance of the project and even possibly leads to contract failure.

Course Objectives:

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

- Provide an understanding of contract structures, and why contracts are drafted in a particular manner
- Explain the commercial impact of key contractual provisions
- Develop an understanding of the interaction between contractual provisions and the need for consistency.
- Identify where things can go wrong, and learn how to avoid problems, or mitigate their effects through well-drafted contracts and good management.
- Understand how to avoid disputes but learn how to deal with them if they arise.
- Use appropriate contract structures for different projects
- Use appropriate contract structures for different projects
- Examine the commercial impact of particular terms and conditions
- Use contract provisions to reduce the risk of disputes or contract failure.
- Deal efficiently and effectively with disputes including analysis of the methodology used in international contracting

Targeted Audience:

- Commercial Managers
- Contract Managers
- Legal Secretaries
- Lawyers
- Anyone who must draft, amend or update contracts, legal letters and legal opinion

Course Outlines:

Unit 1: The Importance of Contracts:

- The Importance of Contracts
- Controlling the contract process
- Understanding the deal
- Controlling the negotiation
- Tips for effective negotiation
- Contract Formation
- Offer and Acceptance
- Battle of the forms

- Consideration and Intention
- Oral or written?
- Electronic contracts
- The value of due diligence and financial stability

Unit 2: Tender Process & Different Contract Types:

- Auctions and Bids
- Tender Process
- Invitations to tender
- Request for Proposal
- Request for Quotation
- Pre-qualification
- Compliance
- Letters of Award
- Heads of Terms and Letters of Comfort
- Which contract type to select?
- Advantages and disadvantages of the main contract types
- The problem with fixed fees?
- Modern methodology
- Economic Price Adjustment clauses
- Bonds and Guarantees
- Compliance with law/change of law

Unit 3: Main Contract Clauses:

- Obligation to deliver/perform
- Controlling subcontractors
- Monitoring and Milestones
- Securing Payment
- Ensuring prompt payment
- Non-payment remedies
- The use of Letters of Credit
- Parent Company Guarantees
- Time and place of delivery
- Transfer of title and risk - ICC Incoterms
- What is the retention of title clauses?
- Why is "time of the essence" important?
- Delivery, Ownership, and Risk in Procurement
- Liquidated Damages/Penalties and the dangers

Unit 4: Other Key Considerations During the Commissioning Process:

- Variations and changes
- Liability beyond contract
- The value of Intellectual property
- When do contracts end?
- Limiting liability
- Warranty
- Which law to apply to the contract?
- Final contract review and closeout process

Unit 5: Dealing with Disputes:

- Compromise and settlement
- Dispute Resolution clauses
- Litigation
- Arbitration
- Modern methods of resolving disputes
- Mediation
- Conciliation
- Early Neutral Evaluation
- Expert Determination