



## Construction Contracts Master Class



21 July - 8 August 2024



Kuala Lumpur (Malaysia)

# Construction Contracts Master Class

course code: P4054 From: 21 July - 8 August 2024 Venue: Kuala Lumpur (Malaysia) - Royale chulan hotel course Fees: 6750 Euro

## Introduction

Construction projects have a history of contractual disputes and conflict. These problems have reduced the efficiency and profitability of developments, and have not been to the benefit of either clients or contractors. Construction tends to attract contractual problems because of the complex nature of the work and commercial arrangements involved.

The purpose of this course is to help delegates understand the reasons why such problems arise, and how to avoid them in the future. Many contracts are now being conducted in a different way to the traditional approach, with more openness between the parties, and this has, in some cases at least, reduced conflict and increased profitability for all parties.

## Course highlights will include:

- A review of major issues in construction contracting
- An examination of why things so often go wrong
- A consideration of ways to improve
- Detailed discussion as to how a more collaborative approach might benefit construction projects
- Examination of real issues, from real projects

## Objectives

- Understand how contracts work, and why they sometimes cause problems
- Address some specific clauses and provisions that are a common source of problems
- Develop thinking around more collaborative approaches to working on construction contracts
- Recognise the dangers that such approaches bring, and how to minimise problems
- Look at construction contracting in an international context
- Understand how to resolve disputes quickly and efficiently

## Training Methodology

The course will be delivered using a mixture of trainer-led discussion, using real examples wherever possible, and group exercises to develop new ways of thinking around the whole issue of construction contracts and their associated problems.

## Organisational Impact

### The course will deliver the following benefits to the organisations to which the delegates belong:

- Delegates will have obtained a better understanding of the contractual issues involved in construction contracts
- Better communication between commercial and legal personnel
- A wider range of possible contracting options
- Better ways to resolve disputes

- Construction projects will be more successful
- Reduced project times and improved profitability

## Personal Impact

### The course will deliver the following benefits to the delegates:

- Better understanding of construction contracts, and the problems that can arise
- Deeper appreciation of the main clauses that can cause problems, and how they can be reduced or avoided
- Greater choice of methods for contracting for construction projects
- Understanding how greater collaboration can, if handled properly, reduce conflict
- Better skills and techniques for resolving disputes
- Wider skill base, meaning greater scope for career development

## SEMINAR OUTLINE

### The Fundamentals of Construction Contracts

- Why Contracts are Necessary
- How Contracts are Formed
- Particular issues with Construction Contracts
  - Use of Standard Forms
    - FIDIC
    - NEC
    - LOGIC
  - Differences in bargaining positions
  - Problems with competitive tendering
  - Problems with different industries
  - And different regions/countries
- Issues with different Legal Systems

### Some major problem clauses in Construction Contracts

- Design Responsibility
  - Requiring contractors to warrant the design of others
- Standard of work
  - Fitness for purpose
  - International/National/Company standards
  - Standards for Professional Services
- Variations
  - Time
  - Money
- Force Majeure
- Intellectual Property
- Limits of Liability
- Indemnities
- Insurance
- Some minor problems:
  - Notices
  - Entire Agreement

- Incorporation by Reference

### Traditional Approaches to Construction Contracts

- Lump Sum/Fixed Price
- Bill of Quantities/Schedule of Rates
- Adding incentive fees
- Escalation
  - Dealing with general price inflation
- Economic Price Adjustment
  - Problems with volatile materials (or labour) markets
  - Selecting the right index
- Call-off Contracts

### Looking beyond the traditional approaches

- Risk and Reward Structures
- Build Operate Transfer (and similar models)
- Open Book Approaches
- Collaborative Working
  - Advantages
  - Dangers – and how to avoid them
- This session will involve delegates in developing their own ideas as to different ways in which construction contracts could be structured, so that commercial drivers are focused on the goals of the parties, not on conflict

### Disputes - Avoidance and Resolution

- How disputes arise
- Methods to avoid disputes, or deal with them quickly as they arise
- Negotiation techniques
- Traditional third party approaches
  - Courts (litigation)
  - Arbitration
  - Adjudication
- Some Alternative Approaches
  - Mediation
  - Conciliation
  - Early Neutral Evaluation
  - Expert determination
  - Dispute Review Boards and similar arrangements
  - Pendulum arbitration
  - Mini-arbitration
- Final questions and wrap-up