



Contracts: Reading, Writing and Negotiating



13 - 24 October 2024



Kuala Lumpur (Malaysia)

# Contracts: Reading, Writing and Negotiating

course code: P4025 From: 13 - 24 October 2024 Venue: Kuala Lumpur (Malaysia) - Royale chulan hotel course Fees: 4500 Euro

## The Course

Understanding contract law has become an essential part of conducting our daily business functions. Whether you are in purchasing, contract management, subcontracts, project management, general management or sales, you are constantly involved with legal and contract principles, sometimes without even realizing it.

Too often the wording used in Contracts is not properly understood by those who are making decisions relating to those Contracts, and non-specialists are reluctant to get involved in the process of drafting and amending the documents which are critical to their company's success. There may also be problems in assessing amendments proposed by the other party, and determining whether these are reasonable, or are eroding your company's position.

The course will deal with Contracts written in the English language, and follow principles widely used in international contracting. This will have a wide application across different businesses, and in different countries, while recognising that there are special requirements in specific cases.

## The Process

Training will involve a high level of interaction and delegate participation. The intention is that the trainer will explain issues, using real examples, either from standard forms, or actual bespoke contracts, but will then involve the delegates in drafting or amending clauses, using the information provided. There will also be sessions on negotiating contract amendments, where delegates will work as teams to seek to agree contract clauses in realistic scenarios.

There will also be opportunities to discuss examples of types of dispute resolution in practice, showing the difference between adversarial and collaborative approaches, and the use of external facilitation in dispute resolution, either through mediation or otherwise.

Delegates are encouraged to bring real problem examples with them, for discussion on a confidential basis, and to share their experience of particular issues in their company or industry. Time will be allowed for general discussions, and for one-to-one discussion with the trainer.

## The Benefits

### *Attending this seminar will help you to learn how to:*

- Provide an understanding of contract structures, and how and why contracts are drafted in particular ways
- Enhance understanding of the legal principles behind contracts
- Provide an understanding of some of the main clauses in different types of agreements
- Explain the commercial impact of particular provisions
- Discuss the differences between similar clauses in different international standards
- Show how to write contract clauses clearly to avoid conflict
- Develop an understanding of when to accept proposed amendments, and when to reject them, including how to give clear reasons for such rejection

- Give practice in amending documents to meet particular requirements, including the use of Special Conditions
- Provide strategies and tactics for negotiating on possible contract amendments
- Explain how to use contract provisions to reduce the risk of disputes.
- Where disputes do arise, show how the contract can be used to minimise these disputes, and some of the methods by which disputes are resolved in international contracting (including non-traditional approaches, such as mediation)

## The Results

- Expanding the expertise of personnel involved in contract negotiation and management will allow tender preparation to be more effective, as clearer instructions can be given to lawyers, and the final document can be more focused to the company's needs
- Documents will also be more effective if all parties involved in their preparation and approval are confident in their understanding of the potential effect of important clauses, and of best practice in the area concerned
- Skills learned on the course will allow contract negotiations to be conducted with more confidence, and with the ability to deal with issues quickly and with certainty, thus reducing the time taken to bring negotiations to a conclusion
- Non-lawyers will find it easier to instruct and work with specialist lawyer colleagues, improving the performance of both parties
- Dispute avoidance skills will be enhanced, as will the ability to manage such disputes as do arise in an effective manner
- Delegates will be introduced to some of the latest international practices in dispute resolution, and shown how to build such practices into their contract documents
- Heighten understanding of the meaning of contract wording, and the inter-relationship between clauses, and why contract law is important to you as either a Buyer or a Seller
- Increase working knowledge of legal implications and liabilities
- Improve drafting skills, and confidence in handling negotiations on contract wording, and an understanding of how contract wording is developed
- Improve understanding of different approaches to important issues in contracts
- Improve ability to reduce the risk of disputes, develop a better understanding of the differences between dispute resolution practices in international use, and understand when to seek legal advice

## The Core Competencies

- Understanding contract wording
- Drafting
- Negotiating
- Analysing complex documents, and the inter-relationship between clauses
- Commercial awareness

## The Programme Content

### Day One

#### *How and why contracts are drafted?*

- Why we use contracts
- Formation of a Contract

- The key elements of a contract
- Oral or written?
- Electronic contracts
- Terms and Conditions of contract
- Agency issues
- The basic structure of a contract
- Incorporating documents by reference
- Standard Forms - International and Company
- Form of Agreement
- Precedence of documents - Special Conditions

## Day Two

### *Main Contract Clauses*

- Obligation to deliver/perform
- Rework/re-performance
- Risk of Damage
- Title
- Compliance with law/change of law
- Indemnities
- Insurance
- Third parties
- Liability in negligence - relationship with contract conditions

## Day Three

### *Main Contract Clauses - continued*

- Variations and changes
  - To the scope of work
  - To the contract
- Product liability and defective goods - rejection of goods
- Intellectual property
- Taxation
- Suspension and termination
- Acceptance and Certificates
- Payment
- Liquidated damages/penalties
- Limits of liability
- Guarantee/Warranty/Maintenance
- Which law to apply in international contracts

## Day Four

### *Other Documents*

- Incorporating tender documents
- Letters of Intent or Award
- Letters of Comfort or Awareness
- Side Letters
- Bank bonds and Guarantees
- Parent Company Guarantees

## **Writing Contracts**

- Clarity of language
- Legal terms
- Definitions
- Translation
- Resolving conflict with a document or between sections

## **Day Five**

### **Negotiation and Resolution of Disputes**

- Contract negotiation
- Dispute Resolution clauses
- Unequal bargaining positions
- Negotiation, compromise and settlement
- Litigation
- Arbitration
- Alternative methods of resolving disputes
  - Mediation
  - Conciliation
  - Early Neutral Evaluation
  - Expert Determination
  - Mini-arbitration
  - Pendulum arbitration
- Final review and questions