

CIPS L4M3

Commercial Contracting Exam

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Question: 1

Which of the following is the model form of contract for construction which is recommended by World Bank?

- A. ITC
- B. JCT
- C. CIPS
- D. FIDIC

Answer: D

Explanation:

FIDIC is the International Federation of Consulting Engineers (or Fédération Internationale des Ingénieurs Conseils in French). FIDIC has produced many publications, including the model form contracts, best practice guidances, research on sustainability, integrity and risk management. FIDIC model form contracts have been developed by this organisation since 1999, now they consist of several different books which are marked by colours. Thus, FIDIC model contracts also have the nickname "Rainbow suite of contracts". Basically, the "Rainbow Suite" include the following books:

- * Yellow book: Plant and Design-Build Contract (2 editions: 1999 and 2017)
- * Silver book: EPC/Turnkey Contract (2 editions: 1999 and 2017)
- * Red book: Construction Contracts (2 editions: 1999 and 2017)
- * Emerald book: Conditions of Contract for Underground Works (1st Ed 2019)
- * Blue-Green book: Dredgers Contract (2 editions: 2006 and 2016)
- * Gold book: Design, Build and Operate Contract Guide
- * Pink book: Construction Contract Multilateral Development Bank Harmonised Ed (2 editions: 2005 and 2010)

This type of model contract is commonly used around the world because its author, International Federation of Consulting Engineers, collaborates closely with development banks such as World Bank, Africa Development Bank, Asia Development Bank, etc. Every construction project that is financed by these institutions must adopt the FIDIC contracts.

The Joint Contracts Tribunal, also known as the JCT, produces standard forms of contract for construction,

guidance notes and other standard documentation for use in the construction industry in the United Kingdom. From its establishment in 1931, JCT has expanded the number of contributing organisations. ITC (International Trade Centre) produces contracts specifically designed for small companies doing international business, covering the sale of goods, distribution, services and joint ventures. Many small companies are now engaged in international trade, but don't have access to the necessary contract forms to protect themselves. ITC and leading legal experts developed eight generic contract templates that incorporate internationally recognized standards and laws for most small business situations.

CIPS has several model forms of contract designed specifically for IT buying and servicing.

Reference: CIPS study guide page 142

LO 3, AC 3.1

Question: 2

Which of the following are likely to feature within an outcome-specification?

1. Dimension
2. Performance requirement
3. Input material
4. Product function

- A. 2 and 4 only
- B. 3 and 4 only
- C. 1 and 2 only
- D. 1 and 3 only

Answer: A

Explanation:

There are two main types of specification: performance specification and conformance specification (sometimes called prescriptive or technical specifications).

Performance specifications have following features:

- Focus on outputs
- Set out result to be achieved
- The 'what', not the 'how'
- Give supplier flexibility to present solutions that the buyer may not have considered

Reference: CIPS study guide page 8-10

LO 1, AC 1.1

Question: 3

XYZ Ltd is negotiating a long-term supply contract of important parts with a supplier. Dave, procurement manager teams up with Alla, legal manager to construct a service level agreement. Dave is concerned that poor performance of supplier may cause damages to the operations of the organisation. Which of the following can be used in conjunction with SLA to compensate the buying organisation in case of supplier's poor performance?

1. Warranties
2. Force majeure clauses
3. Penalty clauses
4. Service credits

- A. 1 and 3 only
- B. 3 and 4 only
- C. 1 and 2 only
- D. 4 and 2 only

Answer: C

Explanation:

Service level agreement often sets out the minimum quality standards of the services provided, remedies if that standards are not met, consequences if the targets are exceeded. Penalty clauses and service credits are remedies that are often used in conjunction with service level agreement to ensure the performance and to compensate the purchaser if targets are not met.

Reference: CIPS study guide page 110

LO 2, AC 2.2

Question: 4

In which of the following section of a specification, requirements for training to use the equipment will be set out?

- A. Performance
- B. Consultation requirements
- C. Implementation
- D. Issue reference

Answer: C

Explanation:

Implementation is a substantive requirement which covers the following areas:

- Will there be a need to train the staff to use the equipment?
- Are there integration requirements with other systems or processes?
- How will this work?
- What are the timescales?
- Are detailed method statements required?

Consultation requirements regards to explicitness of compliance with any national or local legal requirements

Reference: CIPS study guide page 90-92

LO 2, AC 2.1

Question: 5

In common law, which of the following documents is legally binding without the need for consideration?

- A. One-off contract
- B. Hire purchase agreement
- C. Deed
- D. Blanket order

Answer: C

Explanation:

In common law (the legal system in which most rules come from case law or precedents, such as UK, US, Australia, etc), the contract is legally binding if it has the following requirements:

- Offer
- Acceptance
- Certainty & Intention to Create Legal Relations
- Consideration & Promissory Estoppel
- Legal capacity

According to these rules, 'Blanket order', 'One-off purchase', and 'Hire purchase agreement' are contractually binding. One of the reason is that they have consideration.

However, there is a type of legal instruments that does not need consideration to be legally binding. They are called 'Deeds'. A deed (anciently "an evidence") is any legal instrument in writing which passes, affirms or confirms an interest, right, or property and that is signed, attested, delivered, and in some jurisdictions, sealed. It is commonly associated with transferring (conveyancing) title to property. At common law, to be valid and enforceable, a deed must meet several requirements:

- It must state on its face that it is a deed, using wording like "This Deed..." or "executed as a deed".
- It must indicate that the instrument itself conveys some privilege or thing to someone.
- The grantor must have the legal ability to grant the thing or privilege, and the grantee must have the legal capacity to receive it.
- It must be executed by the grantor in presence of the prescribed number of witnesses, known as instrumentary witnesses (this is known as being in solemn form).
- In some jurisdictions, a seal must be affixed to it. Originally, affixing seals made persons parties to the deed and signatures optional, but seals are now outdated in most jurisdictions, so the signatures of the grantor and witnesses are primary.
- It must be delivered to (delivery) and, in some jurisdictions, accepted by the grantee (acceptance).

Reference:

- Deed - Wikipedia
- Formation of the contract
- CIPS study guide page 40

LO 1, AC 1.2

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