



## **UNIX Trainers & Consultants**

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### **Enhancement of Skills on Contractual Risk, Insurance and Indemnities for Public Sector Projects**

#### **Course Coverage:**

In every organization, care is taken to manage risks, by seeking to eliminate those that can be removed, and reducing and managing the remainder. Part of this process involves developing robust contracts, which apportion risk equitably and include a structure of indemnities with contractors, supported by a comprehensive insurance regime. It is important that contract personnel understand contractual risks and what insurance can (and cannot) do to remove the financial consequences of such risk; remembering always that insurance only mitigates the effect of risk, it does not make the risk itself go away

#### **Course Objectives:**

At the end of this course, the participants will be able 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
- Explore the usual models for indemnity regimes in international contracts
- Enable participants to understand the significance, and limitations of such regimes
- Help participants to understand the meaning of insurance arrangements, and the terminology used
- Ensure participants appreciate the effect of insurance and its limitations in the management of risk
- Explain how to use contract provisions to reduce the risk of disputes
- Understand where disputes do arise, show how the contract can be used to minimize these disputes, and some of the methods by which disputes are resolved in international contracting (including non-traditional approaches, such as mediation)
- Link indemnity and insurance arrangements
- Recognize types of insurance available in a contracting context
- Maximize the latest thinking in dispute-resolution techniques

## **Course Coverage:**

### **Topic 1: Commercial Risk and Mitigation through the Contract:**

- The need for contracts
- Identifying risk
- Risk mitigation or impact mitigation?
- Title
- Incoterms
- Intellectual property
- Types and Nature of Contracts
- Definition of terminology i.e. Conditions of contract & terms of contract etc.
- Different legal systems - how to look for common practices but understand the differences

### **Topic 2: How and Why Contracts are Drafted:**

- Why do we use contracts
- Formation of a Contract
- Oral or written?
- The key elements of a contract
- Terms and Conditions of the contract
- Liquidated damages/penalties
- Limits of liability
- Suspension and termination
- Acceptance and Certificates
- Guarantee/Warranty/Maintenance
- Agency issues
- The basic structure of a contract
- Incorporating documents by reference
- Standard Forms
- Incorporating tender documents
- Letters of Intent or Award
- Letters of Comfort or Awareness
- Side Letters
- Bank bonds and Guarantees
- Parent Company Guarantees

### **Topic 3: Insurance:**

- The purpose of insurance
- What insurance covers, and what it does not
- Limits on cover
- Duty to disclose information
- Meaning of "All Risks"
- Relationship with risk management
- Types of insurance used in contract clauses
- Workmen's compensation/employers' liability
- Third-party/liability insurance
- Property damage
- Professional indemnity/errors and omissions
- Construction All Risks
- Motor and aviation

- Marine insurance
- Hull and machinery
- Protection and indemnity (“P&I Clubs”)
- Pollution
- Goods in transit
- Business interruption
- Unfair calling cover (bonds and guarantees)
- Export credit insurance
- Who arranges?
- For whose benefit?
- Extension to subcontractors (National Oilwell case)
- Terms - involving contractors
- Other relevant insurances
- Insurance for projects

#### **Topic 4: Indemnities:**

- Meaning of indemnities
- Making indemnities work - irrespective of negligence or breach of duty (the Piper Alpha litigation)
- Link with insurance
- Cross indemnities
- Personnel
- Property
- Catastrophe risks
- Value of covenant
- Issues with indemnities under the Civil Law system
- Third parties
- Liability in negligence - relationship with contract conditions
- Claims handling
- Managing claims under project policies
- Making timely claims
- Information
- Involving insurers
- Resolving disputes
- Self-insurance

#### **Topic 5: Resolving Disputes:**

- Negotiation
- Staged Dispute Resolution clauses
- Litigation
- Arbitration
- Enforcement of Judgments and Awards
- New best practices in dispute resolution
- Mediation
- Conciliation
- Early Neutral Evaluation
- Expert determination
- Pendulum Arbitration

**Targeted Participants:**

- Contracts, Tendering, Purchasing, Procurement, and Project Professionals
- Contract Administration, Engineering, Operational and Maintenance Professionals
- Risk, Claims, Financial, and Audit Professionals
- Project Management Professionals
- And all others who are involved in the planning, evaluation, preparation and management of tenders, specifications, awards, and contracts that cover the acquisition of materials, equipment, and services and who are in organizations whose leadership want high levels of competency in those involved in these activities