

L4M3 Summarised Note

1. Legal issues in relation to commercial contracts

1.1. Analyse the documentation that can comprise a commercial agreement for the supply of goods or services

- a. Invitation to tender or request for quotation
 - What is a firm offer?
 - Advantages and disadvantages of ITT and RFQ
 - Other considerations: administration costs, audit trail, transparency, urgency, and speed
- b. Specification
 - Types of specification and their implications
 - Typical sections in a specification
 - Specification as a contract document
- c. Key performance indicators (KPIs) and performance management framework
 - Components of performance management framework: KPIs, targets, consequences
 - How to embed into a contract
- d. Contractual terms
 - Formal contract
 - Standard terms and model contracts
 - Key sections of a contract
 - Informal contract
- e. Pricing and other schedules
 - Pricing schedules
 - Other possible schedules
- f. Contract variations
 - Process for contract variations
 - Template of contract variations

1.2. Analyse the legal issues that relate to the creation of commercial agreements with customers or suppliers

- a. Rules relating to offer and acceptance, consideration, intention to create legal relations and capacity to contract
 - Offer
 - Definition
 - What is not an offer
 - Duration of an offer
 - Acceptance
 - Definition
 - Conditions of an acceptance

- Mailbox rule
 - Harmonise the differences regarding mailbox rule in a commercial contract
 - Consideration
 - Definition
 - What is or is not a consideration
 - Sufficiency and adequacy of consideration
 - Right of the third party
 - Collateral warranty
 - Where considerations are not required – a deed
 - Intention to create legal relations
 - Under purely domestic affair
 - Under commercial agreement
 - Capacity to contract
 - To individual
 - Ultra vires
- b. Battle of the forms and the precedence of the contract terms
- ‘The last shot’ rule and its exceptions
 - Precedence of contract terms
 - Rule of interpretation
 - Standard terms and specific terms
 - Order of precedence clauses
- c. Risks presented by contracting on suppliers’ terms or through oral contracts
- Risks presented by suppliers’ terms: quality, limited liability, ...
 - Risks presented by oral contracts: uncertainty
- d. The Vienna Convention on Contracts for the International Sale of Goods (CISG)
- The purpose of CISG
 - CISG applies to which circumstances
 - Goods fall under CISG rule
 - Application to contracts
 - Rule relating to the sale of goods
- e. Misrepresentations made pre-contract awards
- Definition
 - Necessary conditions for misrepresentation
 - Types of misrepresentation: fraudulent, negligent, and innocent
 - Remedies for misrepresentation: rescission of contract and damages

1.3. Compare types of contractual agreements made between customers and suppliers

a. One-off purchases

- Definition
- When to use
- Simple one-off versus complex one-off purchases
- Areas that should be covered
- Benefits and risks of one-off contract

b. Framework arrangements and agreements

- Framework arrangements
 - Definition
 - Features
- Formal framework agreement
 - Definition
 - Legal nature
 - Typical contents
 - Call-off mechanisms under framework agreement:
 - (a) Direct call-off
 - (b) Mini competition
 - Contract created under formal framework agreement

c. Call offs

- Definition
- Types of goods and services that call off contract apply to
- Benefits and risks to buyer and supplier

d. Services contract

- Goods, services and works
- Areas to be considered in service contract

e. Contracts for hiring and leasing of assets

- Differences between hiring and leasing
- Areas to be considered in these contracts
- Hire purchase contract
 - Time of ownership transfer

2. Specifications and key performance indicators

2.1. Analyse the content of specifications for procurement

a. Drafting specifications and developing market dialogue with suppliers

- Scoping stage questions about the specification
- Writing the first draft of a specification
 - Pre-written specification
 - Advantages and disadvantages of pre-written specification

- Shortcuts to the specification: standards, brand, samples
 - Developing market dialogue with suppliers
 - (a) Networking
 - (b) One-to-one meeting
 - (c) Group visit
 - (d) Meet-the-buyer event
 - (e) Formal negotiation
 - Manage market dialogue
 - Market dialogue in regulated procurement
- b. The use of standards in specifications
- Types of standard
 - How to use standards
 - Benefits and risks of using standards in a specification
- c. Typical sections of a specification
- d. Standardisation of requirements versus increasing the range of products
- Advantages of standardisation
 - Advantages of increasing range of products
- e. Including social and environmental criteria in specifications
- Driving forces of using social and environmental criteria in specifications
 - When to define social and environmental criteria
 - Impact on price
 - Monitoring the social and environmental criteria in practice
 - Incorporating criteria into specification
 - Social and environmental in public sector contracts
- f. The role of information assurance in developing specifications
- Definition of information assurance (IA)
 - Pillars of IA
 - Differences between IA and IG

2.2. Appraise examples of key performance indicators (KPIs) in contractual agreements

- a. Defining contractual performance measures or key performance indicators (KPIs)
- Purpose of KPIs
 - Number of KPIs needed
 - Types of KPIs: binary, numerical, subjective assessments
 - Sources of KPI data
 - Converting a measure into a score and setting targets
 - Tolerance against specification

- Setting targets: SMART
- Steps to defining KPIs
- b. The use of service level agreements (SLAs)
 - Definitions
 - Designing an SLA
 - Ensuring the SLA is contractually binding
 - Reviewing KPIs and service levels
- c. Typical KPI measures

3. Key clauses that are included in formal contracts

3.1. Analyse contractual terms for contracts that are created with external organisations

- a. The use of express terms
 - Distinguish express and implied terms
 - What express terms do
 - How to find out the express terms in case of no written contracts
- b. The use of standard terms of business by both purchasers and suppliers
 - Definition
 - When to use/when to avoid
 - Ineffective standard terms: unfair contract terms
 - What should be included in standard terms
 - Advantages and disadvantages of standard terms
- c. The use of model form contracts such as NEC, FIDIC, IMechE
 - Reasons for using model forms of contracts
 - Examples of model forms of contracts: NEC, JCT, AS, FIDIC, ITC, CIPS, IMechE
 - How model forms of contract are developed
 - How to use a model form of contract
 - Advantages and disadvantages of model forms of contracts

3.2. Recognise examples of contractual terms typically incorporated into contracts that are created with external organisations

- a. Key terms in contracts
 - Liability and indemnities
 - Definitions
 - Limit of liability
 - Exclusion of liability
 - Transfer of risks
 - Insurance
 - Why use insurance
 - Types of insurance

- Areas to be considered with insurance
 - Subcontracting
 - Why use subcontracting clause
 - Areas to be considered with subcontracting clause
 - Guarantees
 - Definitions
 - Areas to be considered
 - Liquidated damages
 - Definition
 - Nature of liquidated damages
 - Areas to be considered
 - Labour standards and ethical sourcing
- b. Terms that apply to labour standards and ethical sourcing
- Typical labour standards
 - Criteria for ethical sourcing

3.3. Recognise types of pricing arrangements in commercial agreements

- a. Cost and price
- What is cost/price
- b. The use of pricing schedules
- Price schedules/schedule of rates
 - Unit price: linear/non-linear pricing
 - Hourly rates/day rates
 - Combination rates
 - The use of standard schedules
 - Incorporating the prices into the contract terms
- c. The use of fixed pricing arrangements
- Definition
 - When to use
 - Advantages and disadvantages
- d. Cost-plus and cost-reimbursable pricing arrangement
- Why use cost-plus/cost-reimbursable
 - When to use
 - Advantages and disadvantages
- e. The use of indexation and price adjustment formulae
- Why use variable pricing
 - Indices in practice
 - Different types of variable pricing
 - Advantages and disadvantages
- f. The use of incentivised contracts
- Incentivising cost control

- Gain-share/pain-share
- Bonus payment
- Incentivising speed of delivery
- Incentivising other aspects of performance
- Other incentives
 - Contract extensions
 - Accelerated payments

g. Payment terms

- Documentation
- VAT and taxes
- Payment period
- Disputed invoices
- Pay-less notices
- Treatment of retentions
- Remedies for late payment

If you need to check your skills, use my practice tests as your reference:

1. **L4M1:** <https://en.evocurement.edu.vn/product-category/evocurement/l4m1-practice-tests/>
2. **L4M2:** <https://www.udemy.com/course/cips-diploma-l4m2-practice-test/?referralCode=D6857E569E583169D7E6>
3. **L4M3:** <https://www.udemy.com/course/cips-diploma-practice-test-commercial-contracting/?referralCode=A5F71CD5C684538996EB>
4. **L4M4:** <https://www.udemy.com/course/cips-diploma-practice-test-ethical-responsible-sourcing/?referralCode=00CB8A48071CD88E9BE8>
5. **L4M5:** <https://www.udemy.com/course/cips-practice-test-commercial-negotiation/?referralCode=919D1BDB285AFA4CB55A>
6. **L4M6:** <https://www.udemy.com/course/cips-diploma-practice-test-supplier-relationships/?referralCode=76AF6ECB83302BBF245F>
7. **L4M7:** <https://www.udemy.com/course/level-4-diploma-whole-life-asset-management-l4m7/?referralCode=C95CAF196D8460C1A86F>
8. **L4M8:** <https://en.evocurement.edu.vn/product-category/evocurement/l4m8-practice-tests/>