

# CONTRACTS ADMINISTRATION: BASICS OF INDEMNITY AND LIABILITY PROVISIONS

**PIN011**

## COURSE DESCRIPTION

Increasingly complex contracts and procurement structures often make it difficult to fully appreciate risk allocation and its implications. Prevention is better than cure. Late delivery, defects and cost overruns, damage to reputations, client relationships and the bottom line, can all be reduced or avoided through risk management. Unforeseen changes often occur to the design and scope which can cause further calls to increase investment. Risk management and Indemnification and liabilities provisions are a critical piece of almost every contract, but they often receive too little attention during the negotiation process, they are not often given the priority it deserves, which can lead to costly consequences.

This course is intended to provide a good grounding in the essentials of contracts risk management and addresses the basics of indemnity and liability provisions in the contracts.

## COURSE GOAL

To enhance the participants' knowledge, skills and abilities necessary to understand different contract structures and detail contract clauses specially those of indemnity and liability.

## COURSE OBJECTIVES

By the end of this course, participant will be able to:

- Be familiar with contracts topology and International contracts forms.
- Be familiar with contract structures.
- Identify the difference between indemnity clauses and exclusion clauses and limitation of liability clauses.
- Identify the difference between indemnity and guarantee.
- Understand contractual liabilities.
- Understand exclusion clauses.
- Identify when to terminate the contract.
- Determine the consequences of termination.
- Deal with disputes in oil and gas contracts.

## WHO SHOULD ATTEND

- In-house lawyers.
- Procurement managers.
- Contract managers.
- Contract analysts.
- Contract engineers.
- Contractors and sub-contractors.

## **COURSE DURATION**

5 Working Days

## **COURSE OUTLINES**

1. **Contracts Topology**
2. **International Contracts Forms**
3. **FIDIC**
4. **Contract Structures**
5. **General Contract Terms and Risk Allocation**
6. **General Obligations of the Contractor and the Company**
  - Performance standards.
  - Data collection and reporting.
  - Audit rights and financial reporting.
  - HSSE requirements.
  - Sub-contractors.
7. **Drafting Contractual Guarantees and Warranties**
  - Advance payment bonds.
  - Retention bonds.
  - Performance guarantees.
  - Parent company guarantees.
  - Example clauses.
8. **Indemnity and Hold Harmless Clauses**
  - Indemnity- why the need.
  - Distinction between indemnity clauses and exclusion clauses and limitation of liability clauses.
  - Distinction between indemnity and guarantee.
  - Simple indemnity and mutual indemnity.
  - Importance of drafting- judicial suspicion.
  - UKCS Mutual Hold Harmless Regime.

## 9. Understanding Contractual Liabilities

- Liabilities for personal injury or death.
- Liability for late delivery, performance or similar.
- How to limit the maximum aggregate damages.
- Fundamental breach v breach of fundamental obligations.
- Sample clauses.

## 10. Exclusion Clauses

- Drafting clauses to withstand judicial scrutiny.
- Example clauses.
- The default legal position.
- Indemnity clauses.
- Tortious liability.
- Incorporation.
- Construction of the contract.
- UCTA – Core provisions.
- Recent case law.

## 11. Termination of Oil and Gas Contracts

- Right to terminate under the contract.
- Right to terminate under applicable law.
- Consequences of termination.
- Getting it "right".
- Getting it "wrong".

## 12. Dealing with Disputes in Oil and Gas Contracts

- Choice of method.
- Litigation.
- Arbitration.
- Mediation.
- Expert determinations.

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