



Presented by
Falconbury

The Commercial Manager's Summer School

8-12 July 2024

Commercial management is a crucial function that, if undertaken well, enables overall success and growth of a business. This highly-interactive summer school has been specially designed to help commercial and contracts managers excel in their demanding role.



Format:
Classroom



CPD:
30 hours for your records



Certificate of completion

Course overview

Successful commercial managers enable a business to maximise profitability by making informed decisions in a proactive and decisive manner, to satisfy customers, utilise resources to their maximum and effectively manage supplier relationships. This enhances a business' competitiveness while simultaneously minimising exposure to unacceptable levels of risk and liability. It is a crucial function that, if undertaken well, enables overall success and growth of a business.

This practical and interactive summer school has been specially designed to give commercial and contracts managers the knowledge and skills they need to understand this multifaceted role and become a highly-valued member of their business.

There are many elements of contracts and associated documentation that a commercial manager needs to understand to manage them effectively, while keeping stakeholders on-board and mitigating against the numerous risks.

The expert trainer will take you through the elements of a legally binding contract and provide you with best practice methodology to enable you to easily identify possible areas of risk, both in the drafting of a contract and selecting suppliers.

You will learn the importance of your role as a facilitator, knowing what questions need to be asked of stakeholders and suppliers, and what information needs to be collated, to understand fully the impact and probability of potential risks and what options are available to mitigate or reduce the criticality of those risks.

You will learn how to undertake effective negotiations aiming for a win-win outcome and also practical proactive risk management of project documents. This in turn creates a strong, positive contractual relationship, appreciating the interdependency nature of that relationship, with practical remedies to ensure your projects are always moving forward and progressing, rather than being hindered with delays and disputes. Demonstrating that an effective commercial manager can add value by ensuring goods relationships are maintained, cooperation enhanced and avoiding any potential litigation as the contract is created to resolve any dispute.

You will learn how to apply a logical, systematic and comprehensive approach to reading, negotiating, managing and implementing a contract so that you are confident in your role and contribution, and fully appreciate what is required of you, your team, all stakeholders and the other contracting party(ies) to satisfy the legal obligations laid out in the legal, but also practical, contract.

Drawing on real-life experiences and using many workshop-style exercises, case studies and examples, the expert trainer will focus on giving you the necessary knowledge, tools and processes to be able to draft, review, negotiate and manage contracts and make them work for you and your organisation, not against you.

Benefits of attending

By attending this summer school you will:

- **Understand** how a contract adds value to the management of a project
- **Get to grips** with how best to manage contracts and stakeholders
- **Learn** how to develop a successful procurement strategy and negotiation approach
- **Understand** the risks around tendering and the associated documentation
- **Boost** your knowledge of risk management and contingency planning
- **Enhance** your relationship management skills
- **Recognise** the role of proactive project planning and management
- **Build** on your negotiation skills and tactics to secure the outcomes you need

Who should attend?

- Commercial managers
- Contracts managers and engineers
- Procurement managers
- Project / bid managers and technical staff
- Finance managers
- Business development managers
- Contract administrators, officers and specialists

This highly experiential summer school is a must-attend event if you are:

- Managing the execution of commercial contracts
- Accountable and/or responsible for the successful completion of contracts
- Drafting and negotiating contract documents
- Unclear of the obligations that contracts place legally on you and your organisation
- In need of a refresher on the risks associated with a project

This practical programme is presented without the use of legal jargon.

There will be plenty of time for interaction with the expert trainer and opportunities to network with other delegates, so you can share experiences and get answers to your questions.

Programme

Day 1

Welcome and introduction

Module 1: Understanding and Managing Contracts

Purpose and structure of a commercial contract

- Legal protection
- Clarity, avoiding misunderstandings, misinterpretation, and disputes due to ambiguity
- Assign liability
- Governance / Supply Chain Management (SCM) and Supply Relationship Management (SRM)
- Proactive risk management
- Realising potential opportunities

Protection: Ensuring contract is legally binding

- **Exercise** – *Co-op v ILC (International Computers Limited now part of Fujitsu)*
- Creating a legally binding contract:
 - Legality
 - Intent
 - Legal capacity
 - Consideration
 - Agreement (battle of the formal)
 - Invitation to treat v Offer
- Letter of Intent v Authority to proceed

Structure of an express term contract

- Understanding the relationship between Civil (Contract and TORT) and Criminal law
- Understanding difference between Contract law ('promises' law) & TORT ('duty of care' law)
- Components of the 'whole' Agreement
 - Implied terms (statute)
 - Express terms (negotiated terms agreed verbally, in writing or by conduct)
- Understanding the starting position in statute (Implied terms) and how, and why, Express terms are used to amend or deviate from the Implied terms
- Focus of the 'why' being:
 - Clarity - removing 'one size fits all' subjective, ambiguous elements of implied terms
 - Proactive risk management
- Effective governance

Structure of an express term contract: 3 simple areas

- Promise clauses – contractual obligations
- Procedural clauses – governance / control & managing relationship
- Liability / consequence clauses – proactive risk management
- **Exercise** - *Multiple choice questions on implied terms in statute, focus on Sale of Goods Act, to understand how express terms may deviate from statute / amend default position in statute and why, which of the contracting parties benefits from such deviations / amendments from statute*

Day 2

Module 1: Understanding and Managing Contracts continued

Express Term Promise clauses

- Deviating from Sale of Goods Act / Supply of Goods and Services Act
- Capturing ALL promises within the legal contract – those of Supplier AND Buyer
- Implications of the 'Reasonable' rule in English contract law
- Best endeavours v reasonable endeavours
- Importance of using the 'Definitions' section in the contract
- Defining 'Satisfactory quality', use of KPIs / SLA:
 - Changing qualitative into quantitative measures
 - Ownership of liability of 'fit for purpose'
 - Conformance specification v Performance specification
- Use of terminology: 'shall / will' v 'should / could'
- **Exercise** - Reviewing a real-life scope of supply to identify ownership of contractual obligations
- **Exercise** – Identifying ambiguity in a real-life scope of supply
- **Exercise** – Drafting KPIs for a Performance Specification

Express Term Procedural clauses

- Applicable law
- Privity of contract v Contracts (Rights of Third Parties) Act
- Right to assign, right to subcontracting
- Complete / Entire Agreement, Order of Precedence, Contract Amendments, Waivers, Right of visibility / transparency of progress
- Reporting, reviews, auditing, witnessing
- Frustrated Contracts Act v Force Majeure
- Late Payment of Commercial Debts (Interest) Act, Set off
- Limitation Act, dispute resolution, termination for breach, frustration and convenience

Express Term Consequence / liability clauses

- Different liability if breach a 'terms' compared to breaching a 'conditions'
- Liability in statute of monetary compensation and termination v practical remedies in express terms of Plan B's / contingency planning
- Use of express terms to pass liability / risk
 - Exclusion, Disclaimer, Indemnity clauses
- Use of express terms to limit liability / risk
 - Express term limit of / capping liability clauses
- Use of express terms to exclude liability in TORT (duty of care)
- **Application of the Unfair Contract Terms Act**

Extracting and compiling information from the contractual documents into a user-friendly format

- Importance of cross-checking ALL documents for inconsistencies / contradictions
- 'Toolkit' methodology to review express term contractual documents to easily identify:
 - Ambiguous promise clauses
 - Impractical procedural clauses
 - Unacceptable liability clauses
- Action Plan proforma – an effective approach for capturing all the information needed to proactively manage a contract
- **Exercise** – Applying the 'toolkit' methodology delegates will review and cross-check a real scope of supply document and a real set of contract terms and conditions to identify where there is ambiguity and ownership of legal liability of contractual obligations. This review will then provide the information necessary to populate an Action Plan proforma summarising where clarity needs to be established and liabilities need to be appreciated to enable all parties to proactively management a project

Programme

Day 3

Module 2: Successful Procurement Strategy

Effective procurement

- Difference between a buyer and a procurement professional: strategic approach
- Ensuring right product / service, right supplier, right relationship for optimum outcome
- Selection process:
 - Preparing a Request for Quotation (RFQ) / Invitation to Tender (ITT)
 - Responding to a RFQ / ITT
 - Vendor selection process / understanding the supplier
- Appreciating interdependency of buyer/supplier relationship
- Identifying requirement / need
- Involvement of 'stakeholders' / cross-functional teams
- **Exercise** - Listing the 5 Whys of a procurement
- Classifying type of purchase
- **Exercise** - Kraljic exercise

Developing a strategy / plan

- Understanding procurement options
- Determining appropriate contractual relationship
- **Exercise** – Determining most appropriate contracting relationships
- Determining optimum approach to tendering

Creating RFQ / ITT documentation

- Time / cost spent drafting Request for Quotation (RFQ) / Invitation to Tender (ITT) v benefits
- Establishing the selection criteria / evaluation process:
 - Cost analysis
 - Alignment of procurement with organisation's strategic objectives
 - Value adding proposals from Suppliers
 - Allocation of liability / risk between the parties
- Information to include in a RFQ / IT:
 - Instruction to bidders to enable easy evaluation / comparison, like for like
 - Benefits of an Executive Summary
- Need for fairness, transparency and accountability. Compliance with regulations
- Asking the 'right questions' / requesting evidence as part of due diligence process:
 - Sources of information
 - Pre-qualification process
 - Supplier selection criteria: 10Cs
- Getting visibility of a Supplier's risk register
- Evaluating a supplier's present approach to risk
- Challenging any fully compliant supplier
- **Exercise** - listing 10 C's and selection criteria

Responding to RFQ / ITT from a Suppliers perspective

- Answering the exam question
- Understanding each party's Strengths, Weakness, Opportunities and Threats (SWOT)
- Understanding your market position and the competition:
 - What are your Unique Selling Points (USP), what differentiates you from the competition?
 - Kraljic – target market, price v differentiation
- Understanding how bid fits with own objective / business strategy - Boston Matrix
- Demonstrating alignment between the buyer's needs and your USP
- Writing a selling document but also a legal document, reflecting your organisations attitude to risk (risk taker or risk adverse) and achieving the right balance between profit and risk
- **Exercise** - Alignment between buyer's needs and supplier's USP / what differentiates them from competition?

Day 4

Module 3: Effective Risk Management

Pro-active Risk Management (RM) / Supplier Relationship Management (SRM)

- High level objectives:
 - Placing risk with party best able to manage that potential risk
 - Understanding why no one wants monetary compensation or litigation, neither the Supplier nor the Buyer – both are looking for solutions, remedies, moving forward to achieve the optimum outcome when Plan A is no longer possible
- How to achieve this:
 - Project planning and management being a combination of the 'Waterfall process' (upfront planning) and 'Agile' (responsive to changes / contingency plans / plan B's)

5 Stages of Pro-active Risk Management

- Pre-signing:
 - Stage 1 – Identification
 - Stage 2 – Evaluation
 - Stage 3 – Contingency planning
- Post-signing:
 - Stage 4 – Monitoring and updating
 - Stage 5 – Lessons learnt

Stage 1 – Identification

- Storyboarding / visualisation / brainstorming / information gathering / vulnerability assessment of supplier
- Types of risk:
 - Micro / Macro / Market / Supply / Relationship / Compliance / Legal / Reputational / Ethical / Economic / Financial / Environmental / Technological
- Use of checklists: STEEPLE(D)

Stage 2 – Evaluation

- Probability (likelihood) and Impact (cost / schedule)
- Risk appetite: 'adverse' or 'taker'
- Risk – Reward calculation - 'acceptable level of exposure'
- **Exercise** - *Traffic light analysis*

Stage 3 – Mitigation/Contingency planning

- 4 T's: Transfer, Tolerate, Treat, Terminate
- Treat / 'What if' planning: solutions not problems approach - 'Optimum' outcome if 'Best' outcome is not possible
- Business Contingency Planning (BCP) v Disaster Recovery Planning (DRP)
- Appreciating best time for buyers to negotiate / agree 'Plan B'
- Maintain good relationships and saving time, if a risk does materialise

During this course delegates are introduced to the 'toolkit' methodology and the Action Plan proforma. This is now extended to consider how risks are managed, through the legally binding contract but in a more practical manner, moving a project forward, providing solutions not merely monetary compensation when plans go wrong. Proactive risk management with the Buyer having full visibility of potential risks and agreeing win-win, acceptable mitigation / contingency plans.

Stage 4 – Monitoring / updating: stages 1 – 3

- Ensuring you have the legal right to transparency / visibility of the Suppliers progress
- Creating a relationship which facilitates the optimum outcome is achieved

Stage 5 – Capturing lessons learnt / best practise

- The experiential learning cycle

Supplier Relationship Management (SRM)

- Management (SCM)
- Drucker – 'if it cannot be measured, it cannot be managed'
- Embedding Supply Chain Risk Management into corporate culture
 - Risk management policies and procedures
 - Quality Management System (QMS): Total Quality Management (TQM) v Quality Assurance (QA)
 - Six Sigma (define, measure, analysis, improve, control)
 - Deming's PDCA (plan, do, check, act)
- Action Plan approach to capture any misunderstanding between stakeholders, internal and external
 - SERVQUAL 'service gaps' – gap, explanation, remedy
- Gathering meaningful performance information to enable early warning of risk / challenges materialising but also opportunities arising:
 - Ensure easy means to collect information / KPIs etc
 - Using technology to collect and analyse
- Different approaches to managing performance - 'carrot versus stick'
- **Exercise** – 'carrot v stick'
- **Exercise** - PDCA

Day 5

Module 4: Commercial Negotiating Skills

Commercial Negotiations: Content

- Greenhalgh Negotiation model
 - Preparation
 - Relationship
 - Information gathering
 - Information using
 - Closing
 - Implementing the agreement

Understanding your strategy - objectives / goals

- Establishing the drivers influencing you:
 - Company policy / mission
 - Relationship (with other party) or Task (achieving the best outcome for you)
 - Win-win v win-lose: Carter's pie theory
 - Time v Quality v Price (Black, Chambers & Johnson's Iron Triangle)
 - Attitude to risk: risk minimisation or sharing risk
- Methodology for determining priorities: MIT - Must have; intent to have; Like to have
- Methodology for cost v benefit analysis: amount of time and effort given to negotiation reflecting the criticality of the outcome
- Kraljic matrix - leverage, strategic, non-critical, bottleneck

Exercise - Price v Scope or Risk

Exercise - Preparing your MIT

Determining your bargaining position

- Determining the bargaining power of each of the negotiating parties:
 - Different sources of power: Reward, Coercive, Expert, Informational, Referent, Legitimate
 - SWOT: Best Realistic Alternative / BATNA; Best Alternative To a Negotiated Agreement
 - Porter's 5 Forces: Bargaining power of suppliers; threat of new entrants; threat of substitutes; industry rivalry
 - Porter's Generic Strategies for Competitive Advantage model: cost leadership; cost focus; differentiation; differentiation focus
 - Sheel & Court's Supplier Preference model - Development, Core Business, Nuisance, Exploitable, Attractiveness of buyer's organisation and value of buyer's business to the supplier
 - SWOT analysis: Strengths, Weaknesses, Opportunities, Threats
 - Coal's Power and Dependency matrix
- Exercise - Porter's Generic Strategies

Commercial Negotiations: Process - undertaking the negotiation

- Greenhalgh Negotiation model
- Aligning your negotiation style and tactics to your bargaining position and strategy

Negotiation style

- Exercise - Negotiation questionnaire identifying delegates default style**
- Different theories, same message:
 - 6 styles theory: acceptance, compromise, threat, emotion, bargain, logic
 - Cooperative (bargaining & logic) v Competitive (threats)
 - 3 C's: Compromise, Compete, Collaborate
 - 3 types: Assertive (aggressive), Accommodator (relationship oriented), Analyst (conflict avoidant)
 - Thomas-Kilmann dual concern model: Competing, Accommodating, Avoiding, Compromising or Collaborate
 - Constructive v Destructive
 - Push (exerting power) / Pull (persuasion) influences during a negotiation
 - Rational compromise
- Consciously selecting an appropriate style to achieve objectives
- Exercise - 'Push' / 'Pull'; 'Constructive' / 'Destructive' approaches**

Negotiation tactics

- Confidence v arrogance
- Honesty and trust, more than just rapport. Relationship values and drivers. Avoiding getting trapped in the 'vicious circle of blame'
- Acknowledgement of past interactions - good or bad
- 'Framing' the negotiations
- Opening the negotiation / effective listening & asking questions, gaining insight
- Exchange of information / being aware of your own disclosures
- Getting a reply: 'rephrasing / reframing' the same question
- Use of empathy for 'win-win' and/or to encourage disclosure of information
- Ury & Fisher's 'Getting to Yes': separating people from the problem; focusing on interest rather than position (not what but why, reasons behind stance); generating options; focus on objectives
- Body language
- Silence tactic - using it / diffusing it
- Breaking deadlock and moving negotiations forward
- Exercise - Effective questioning**

Approach and environment to reflect objectives and maximise desired outcome

- Timing
- Mode / venue
- Environment
- Atmosphere
- Attendees

Structuring negotiations and good 'housekeeping'

- Establishing power of attorney of attendees
- Ensuring confidentiality
- Keeping negotiation open until formal written agreement signed
- Focus - use of agenda: pros and cons
- Summarising and capturing the agreement accurately

Final questions

Presenter



Catherine Hurst

Catherine Hurst BSc(Hons), CIMDip, PgDL, is an independent consultant in the contract and commercial fields. She was formerly a Commercial Manager at BAe Systems, following previous contract/commercial roles with GEC and Siemens. She has extensive practical experience of bid management, contract drafting and negotiation, contract and subcontract management as well as commercial risk management, both with UK and overseas customers and suppliers, in the private and public sectors.

She is a highly experienced trainer, having a style which brings a subject to life, creating interest and stimulating the enthusiasm of delegates. She combines academic best practice with real world experience.

She lectures Chartered Institute of Procurement and Supply (CIPS) diploma, levels 4, 5 & 6 at Chichester college. As well as being a member of CIPS, Catherine has a degree in Management Studies, a Chartered Institute of Marketing diploma and more recently achieved a distinction in her Common Professional Examination (CPE)/Post-grad diploma in law, winning the prize for the highest achieving student in the contract law module.

Catherine has successfully provided training to organisations across a wide variety of industries, including:

Transport / utilities / energy / construction / engineering / IT / telecons: Network Rail, ScotRail, Balfour Beatty, London Underground, Westinghouse Springfields Fuels, General Dynamics, Siemens, Metronet, Thales, ABB, Hitachi, Jungheinrich, Honeywell, PALL Europe, Senior Aerospace BWT, RES (Renewable Energy Systems), AGI, Silvertown, QinetiQ, Clyde Pumps / Weir Pumps, Scottish Power, NCOC (North Caspian Operating Company), Computacentre, CISCO, BT, United Utilities

Health / pharmaceutical / education: Nuffield Health, Surrey PCT, Bristol Myers-Squibb, Newcastle University, Exeter University

Public: Forensic Science Services, Office for National Statistics, DARA (Defence Aviation Repair Agency), Metropolitan Police

Charity: Phoenix Futures, Homegroup

Retail: Co-op

Course date

8-12 July 2024

Classroom

London

Course code 14230

GBP **2,499** ~~2,999~~

EUR **3,599** ~~4,299~~

USD **4,119** ~~4,899~~

Until 03 Jun

How to book



Online:

ipi.academy/2698

Alternatively contact us to book, or if you have any queries:



Email:

info@ipi.academy



Phone:

[+44 \(0\)20 7749 4749](tel:+442077494749)

Discounts

- Booking more than one delegate on any one date qualifies for a **15% discount** on the second and subsequent places.
- Most events qualify for an **early booking discount** prior to 6 weeks before the course date. Be sure to check on our website, where the latest discounts will be shown.

Further information

Fee

The fee includes all meals and refreshments for the duration of the course (for venue-based courses) and a complete set of course materials (provided electronically). If you have any particular requirements, please advise customer services when booking.

Please note

IPI Academy (and our training partners) reserve the right to change the content and timing of the programme, the speakers, the date and venue due to reasons beyond their control. In the unlikely event that the course is cancelled, we will refund the registration fee and disclaim any further liability.

Terms and conditions

The rest of our terms, the event cancellation policy and the terms and conditions are on our website, please visit ipi.academy/content/terms-and-conditions

Run this programme in-house for your whole team

Coming to IPI Academy for your in-house training provides an all-inclusive service which gives you access to a wide variety of content, learning platforms and delivery mechanisms as well as your own personal training adviser who will work with you from the initial enquiry through to feedback and follow-up after the programme.

With over 600 trainers, all practitioners and experts across a huge range of fields, we can provide the training you need, where you need it, when you need it, and at a price which suits your budget. Our approach to tailored learning and development consists of designing and delivering the appropriate solution for each client.

For your FREE consultation and to find out more about how we can work with you to solve your training needs, please contact our training advisers:



ALEKSANDRA BEER

Tel: +44 (0)20 7749 4749

Email: inhouse@ipi.academy



YESIM NURKO

Tel: +44 (0)20 7749 4749

Email: inhouse@ipi.academy



IPI
Academy

IPI Academy is a training initiative of Falconbury and Management Forum; leading providers of industry training for over 30 years, based in the UK.

10-12 Rivington Street
London EC2A 3DU

ipi.academy

Tel: +44 (0)20 7749 4749

Email: info@ipi.academy