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Q3. A procurement manager has negotiated a firm fixed price throughout a contract with a duration of two years. Was this the right thing to do?

- a. No, because even with these contracts the pricing can change
- b. No, because this is an unfair term and therefore it is not legally binding



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CIPS Commercial Contracting Sample Questions (Q104-Q109):

NEW QUESTION # 104

A construction company wishes to place the contract for the building of a new hotel to a principal contractor using a model form contract. Which of these is an advantage of using a 'model form contract'?

- A. Incentive payment terms can be included to reward the supplier for attainment of cost savings
- B. Formulae or indices can be included to assess any additional supplier's claims for contract price adjustment
- **C. It avoids the requirement to create complex contracts each time but can be adapted to suit particular circumstances**
- D. Legal advice is still required if significant amendments or variations are to be made to the contract

Answer: C

Explanation:

The main advantage of a model form contract is:

- * The parties do not need to draft a complex contract from scratch each time,
- * While still allowing some adaptation to suit the particular project.

This is exactly what option C states.

Options A and B can be features of many contracts (not unique advantages of model forms). Option D is true in practice (you still need legal advice for major changes), but it is not an advantage.

Reference: CIPS L4M3 Commercial Contracting - Model form contracts in construction and engineering.

NEW QUESTION # 105

Under English law's general legal principles of contract formation, which of the following are likely to be offers? Select TWO that apply.

- A. Purchase order
- **B. Quotation**
- C. Catalogue
- D. Advertisement
- E. Invitation to tender

Answer: B

Explanation:

An offer is a full statement of what the offeror is willing to provide and the terms by which they are willing to provide it.

There are some statements that are not offers:

- Invitation to treat: this states that a person or organisation is willing to enter into discussions about the possibility of a deal, but does not confirm a willingness to be bound by any terms mentioned. Catalogues, goods on display and ITTs are invitation to treat.

Civil law countries may have different perspective on this matter. Article 2:201 (3) of The Principles of European Contract Law states: 'A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted.' Learners are advised to look at their countries' legislation for more information on offer and acceptance.

- Declaration of intention: this is defined as an aim or a plan.
- A 'mere puff' (or boast): this is anything which is not intended to be taken literally or seriously, such as many advertisement.
- Provision of information: merely provides information, but provider does not confirm willingness to be bound.

Reference: CIPS study guide page 29-30

LO 1, AC 1.2

NEW QUESTION # 106

Sally places a purchase order to the supplier for some components that her company requires. The supplier delivers the goods as she asks, but the quality assurance team finds that these components are defective and unfit for the company's operations. Which document is the ground to decide whether the goods received are fit for purpose?

- A. CSR policies
- **B. Specification**

- C. Pre-qualification questionnaire
- D. Code of conduct

Answer: B

Explanation:

According to USLegal Inc, fitness for purpose refers to the standard that must be met by a seller in the course of a business. Generally, when a buyer makes known to a seller the particular purpose for which the goods are bought, there is an implied condition that the goods are reasonably fit for that purpose (customer's requirements, needs, or desires). Specification is the ground for deciding whether goods received are fit for purpose.

We already know that there are two types of specifications: conformance and performance specifications. With conformance specification, the buyer lists out technical requirements to which the goods must conform. Lacking of any requirement may be enough for the goods to be unfit. On the other hand, if performance specification is in use, the goods must be fit for specific outputs that buyer has listed in the specification.

Providing the 'fit for purpose' goods is one of the fundamental obligations of seller in sale contract. Unfulfilling this obligation would lead to legal consequences. If the goods are unfit for purpose, seller may have to:

- replace the non-conforming goods
- pay the damages to the buyer

Reference:

- Why you should keep attention to the specification when contracting with suppliers
- CIPS study guide page 137

LO 3, AC 3.1

NEW QUESTION # 107

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. 3 and 4 only
- B. 1 and 3 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:

LO 2, AC 2.2

NEW QUESTION # 108

Nestle gave away records of "Rockin' Shoes" or a voucher to people who sent in three wrappers from Nestle's 6d. milk chocolate bars as well as 1s 6d. Which of the following were the consideration of Nestle's customer? Select TWO that apply

- **A. 1s 6d**
- B. Milk chocolate bar
- C. The voucher
- **D. Three wrappers**
- E. "Rockin' Shoes" record

Answer: A,D

Explanation:

Consideration is one thing given in exchange for another.

In this case, considerations of customers are three wrappers and 1s6d. Consideration of Nestle is Rockin' Shoes record or a voucher.

Reference: CIPS study guide page 36-40

LO 1, AC 1.2

NEW QUESTION # 109

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