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## CIPS Commercial Contracting Sample Questions (Q70-Q75):

### NEW QUESTION # 70

Southwark is negotiating a contract with Orchard to provide software and IT services. Orchard will manufacture and install the products which are contractually supplied by IBM. Southwark's procurement manager is worried that during the contract there

would be some problems that they would not be able to claim for damages from Orchard. Which of the following should be included in the head contract so that Southward can sue IBM, should the need arise?

- A. Insurance
- B. Indemnity
- C. Negligence
- **D. Collateral warranty deed**

**Answer: D**

Explanation:

A Collateral Warranty is a contract under which a consultant, a building contractor or a sub-contractor warrants to a third party that it has fulfilled its obligations under its professional appointment, building contract or sub-contract. The purpose of a Collateral Warranty is to give a third party, who is not a party to the original contract, rights to enforce that original contract.

In this case, IBM is the subcontractor, then purchaser can use collateral warranty deed to bind them.

Reference:

- Collateral Warranties - an Overview
  - CIPS study guide page 39-40
- LO 1, AC 1.2

### NEW QUESTION # 71

Which of the following are NOT covered by CISG? Select TWO that apply:

- A. Transfer of risks
- B. Liability to pay damages
- **C. Liability of the seller for death or personal injury**
- D. Remedies for breach of contracts
- **E. Contract validity**

**Answer: C,E**

Explanation:

United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention or CISG) Vienna Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980. The Convention was welcomed by several countries from different geographic areas, with different legal and political systems. As of 20 August

2020, the Convention has 93 Contracting States. The Convention has proved the effectiveness of an uniform text on international trade law.

What CISG covers, and what it does not

In the 6 first articles of the Convention, the authors set up the boundaries of its application.

First is about where it applies. According to UNCITRAL, the Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorisation in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the practical significance of such a declaration will diminish. Finally, the Convention may also apply as the law applicable to the contract if so chosen by the parties. In that case, the operation of the Convention will be subject to any limits on contractual stipulations set by the otherwise applicable law.

Second, the Convention has a list of goods that are not subject to its application in Article 2. Article 3 clarifies the differences between manufacturing contracts and sale contract.

Third, Article 4 and 5 clearly states what CISG does not cover, including grounds for contract invalidity and liabilities to death or injury of person caused by the goods. Finally, the Convention respects the contractual freedom of the trading parties. Trading parties may select this convention as governing law or select other instrument, such as UPICC or domestic laws.

Reference:

- Governing law in International Contracts - Would you choose CISG or UPICC (Part 1)
  - CIPS study guide page 49-52
- LO 1, AC 1.2

### NEW QUESTION # 72

Carillion Ltd is a major construction contractor in the UK. The company commits to continuous improvement and sets out a

performance management program that is integrated across the organisational, individual, and supplier levels. To ensure that the suppliers acknowledge the program, every time negotiating the contract terms with suppliers, the procurement team of Carillion appends a performance management framework to the draft document as a schedule. Is the action of procurement team appropriate?

- A. No, because the performance management should be solely developed by suppliers
- B. Yes, because Carillion wants to implement early supplier involvement
- **C. Yes, because the framework should have legal standing as a part of contract**
- D. No, because the framework will increase the complexity of the contract

**Answer: C**

Explanation:

Performance management framework often consists of KPIs, targets and consequences that arise from achieved scores. To ensure that the framework has binding effect on contracting parties, it should be developed, appended to the main contract document and agreed by both parties. So the answer should be "Yes, because the framework should have legal standing as a part of contract".

Reference:

LO 1, AC 1.1

### NEW QUESTION # 73

Which of the following are typically included in an SLA? Select TWO that apply:

- A. Product's lifespan
- B. Requirements for packaging
- **C. KPI details**  
Correct)
- **D. Service definition**
- E. Code of conduct

**Answer: C,D**

Explanation:

The core elements of an SLA are set out below:

- Service definition
- Quality definition
- KPI details
- KPI management response
- Operational performance and management response
- Constraints or mitigating factors

Reference:

LO 2, AC 2.2

### NEW QUESTION # 74

Foodstuffs may arrive from an overseas supplier in a deteriorated state. Is this covered under the implied term of 'satisfactory quality'?

- A. No, it is sale by sample
- **B. Yes, the food is not of a reasonable standard**
- C. No, it is sale by description
- D. Yes, as the title has not passed yet

**Answer: B**

Explanation:

Under the Sale of Goods Act and other applicable legislation, goods must be of satisfactory quality, fit for purpose, and as described. Perishable goods arriving in a spoiled state would not meet the standard of satisfactory quality, even if sold by sample or description. This is an implied term that protects the buyer.

Reference: CIPS L4M3 Commercial Contracting Study Guide, Chapter 3, Section 3.1.1 - Implied terms and quality standards.

## NEW QUESTION # 75

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