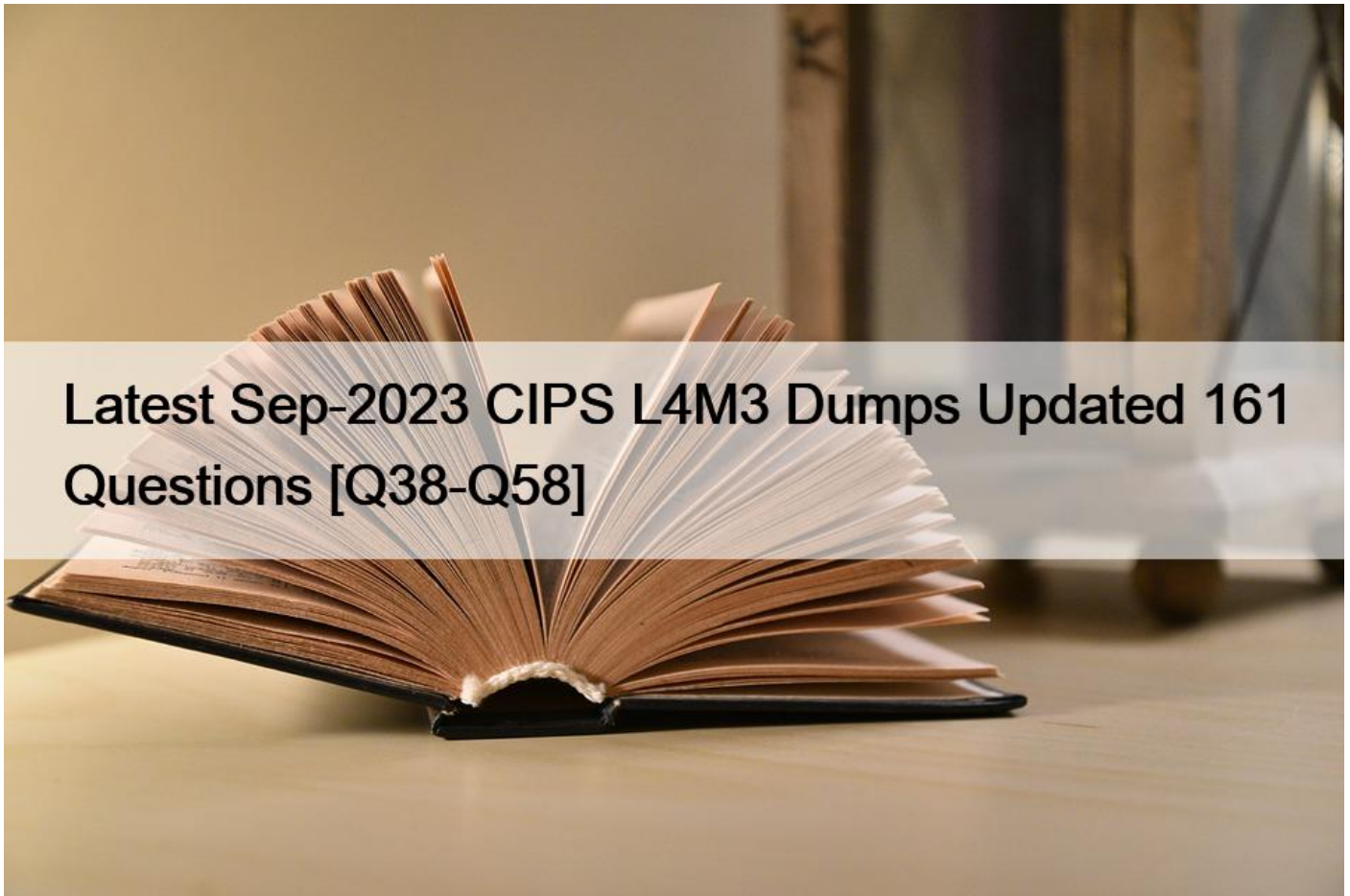


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QUESTION 38

Which of the following are the 'fundamental' labour standards laid down by the International Labour Organisation?

1. Elimination of child labour
 2. Payment of a minimum wage
 3. The right to collective bargaining
 4. Abolition of forced labor
- * 1, 2 and 4 only
 - * 2, 3 and 4 only
 - * 1, 3 and 4 only
 - * 1, 2 and 3 only

ILO Declaration on Fundamental Principles and Rights at Work was adopted in 1948. The Declaration commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.

These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

Reference:

– ILO Declaration on Fundamental Principles and Rights at Work

– CIPS study guide page 161-163

LO 3, AC 3.2

QUESTION 39

Transformers & Rectifiers Ltd wanted to buy some specialist gaskets. They sent a request for quotation with specification to Needs Ltd. The supplier replied with a quotation in which had its own terms and conditions. The buyer edited delivery terms on the quotation and sent the document back to Needs Ltd. Gaskets were delivered to Transformers’ premise with an invoice from Needs Ltd. Which of the following is most likely to be the governing terms if the two companies must settle the dispute at court?

- * Edited terms and conditions
- * Terms and conditions in the request for quotation
- * Terms and conditions in the invoice
- * Terms & conditions in the original quotation

In the ‘battle of the forms’, generally who shot the last will win. This is not applied to this case. Initial RFQ is an invitation to treat, then the quotation forms an offer. Transformers & Rectifiers Ltd edits terms and conditions then sends back to supplier, this act terminates Needs’s offer and makes a new offer. Delivery of goods can be deemed as acceptance from Needs Ltd. The contract is formed with its details in the edited terms and conditions.

Reference:

LO 1, AC 1.2

QUESTION 40

Which of the following are commonly used as model forms of contracts in construction in the UK?

- * Select TWO that apply
- * JCT
- * AS
- * NEC
- * CIPS
- * IET

– NEC: New Engineering Contract – a family of standard contracts primarily used in construction in the UK; includes works, consultants, services

– JCT: Joint Contracts Tribunal – a family of standard contracts used in construction in the UK; includes works, consultants. subcontracts, services

– AS: Australian Standards contracts – different contracts for a range of purchase types including constructions,

consultancy, periodic supply of goods

– IET: Institution of Engineering and Technology which issue jointly agreed model forms covering the design, supply and installation of electrical, electronic and mechanical plant ‘including special conditions for the ancillary development of software’

– CIPS: Chartered Institute of Procurement and Supply – CIPS has developed its own suites of standard forms of contract for IT functions including: supply and installation of computer equipment, support and maintenance of bespoke software, servicing of computer equipment.

Reference:

LO3, AC 3.1

QUESTION 41

Michelle contacts Hannah and asks her if she would be interested in purchasing her car for £2000. Hannah immediately takes £2000 to Michelle and says she wants to buy the car. Michelle subsequently refuses to proceed. Has the contract between Michelle and Hannah been made?

- * No, because Michelle has rejected Hannah’s offer on buying the car
- * Yes, because both parties have full legal capability to enter into a contract
- * Yes, by her performance Hannah has accepted Michelle’s offer on selling the car
- * No, because by refusing to proceed, Michelle rejects Hannah’s counter-offer

To solve the question, you must distinguish the following notion:

– Offer: The case of *Storer v Manchester City Council* [1974] 1 WLR 1403 outlines that an offer is: An expression of willingness to contract on specified terms, with the intention that it is to be binding once accepted

– Acceptance: in order for a contract to be formed, the offer must be accepted. Acceptance represents the meeting of the minds of the parties to the contract – both agree to exchange something for the other (payment, services, goods, etc.).

– Counter offer: is an offer made in response to a prior offer.

– Invitation to treat: An important distinction to make in contract law is that between an offer and an invitation to treat. An invitation to treat is usually an invitation for another party to make an offer. It may also be defined as an indication that a party is open to negotiation.

Here are some key distinctions of offers and invitation to treats.

Offer:

- * Certain promise to be bound
- * Clear and specified terms
- * The conduct or words of the party show certainty
- * There is no room for negotiation

Invitation to treat:

- * There is room for negotiation
- * There is an invitation for offers
- * There is a request for information
- * Lack of certainty

In the scenario above, initially Michelle just gives an invitation to treat because she is asking whether Hannah is interested to buy her car (request for information from Hannah). Hannah may reject or go into a negotiation with Michelle. Then, Hannah makes an offer by taking the money and shows her intention to be legally bound. At this point, when Hannah's offer is present, Michelle can accept or reject. When she rejects, the contract is not formed. The answer must be No, because Michelle has rejected Hannah's offer on buying the car.

Reference:

Definition of Counter Offer

Formation of the contract

CIPS study guide page 28-35

LO 1, AC 1.2

QUESTION 42

Under a price adjustment agreement, which of the following would be supplier's justification for increasing unit price?

- * Rise in fuel price
- * Rise in economies of scale
- * Rise in shares price
- * Rise in customer's satisfaction

Normally in a price adjustment agreement, the supplier is allowed to change price based on an indexation, which is published by a third party (for example, government or exchange market). The selected indices often associate with input materials of supplier. For instance, the plastics manufacturer may adjust their price based on crude oil price as oil is major input of producing plastics. Other suppliers may select different set of indices, such as Producer Perception Index.

In this question, only Rise in fuel price could be a justification for supplier to increase price because:

It may affect the input material price

The index is checked and published by an independent third party.

Reference:

LO 3, AC 3.3

QUESTION 43

Which of the following should be done by procurement professionals right after obtaining a pre-written specification for a critical

item so that the added value will be the greatest?

- * Evaluate tender or quotation
- * Select the best supplier
- * Challenge the used specification
- * Issue invitation to tender or request for quotation

A previously used specification must always be robustly challenged to see how well it fits the proposed circumstances. Aspects which appear not to fit should be analysed to understand why they were included in the sample specification and whether this changes the view on whether or not they should be omitted or changed.

Reference:

LO 2, AC 2.1

QUESTION 44

Which of the following best defines an 'express' term in general contract arrangements?

- * It is a standard set of terms and conditions published by CIPS
- * It is not necessarily discussed by the parties, but nonetheless forms part of the contract
- * It is the term that is added to the contract by the law or based upon the facts of the case.
- * It is clearly agreed between the parties, and is virtually always written down in the contract

Express terms are the terms of the agreement which are expressly agreed between the parties. Ideally, they will be written down in a contract between the parties but where the contract is agreed verbally, they will be the terms discussed and agreed between the parties.

Implied terms are terms implied into the contract by the courts. They are not expressly set out in the contract but are taken to be as effective as if they were and as if they had been included from day one of the contract. The express terms and any implied terms together create the legally binding obligations on the parties.

Reference:

'Contracts: Express and Implied Terms

CIPS study guide 126-132

LO 3, AC 3.1

QUESTION 45

Which of the following are driving forces for increasing use of social and environmental criteria in specifications? Select TWO that apply.,

- * Process efficiencies
- * Stakeholder pressure
- * Insufficient financial resources
- * Scarcity of environmentally sustainable suppliers
- * Carbon footprint measure

Reasons for including social and environmental criteria may include the following:

Expected Cost Savings and Financial Motives

Management Support and Commitment

– Employees

– Altruistic Values

– Power Imbalances along the supply chain

– Image and Reputation

– Government Regulations

– Customers

– Competitors

Management, employees, government, customers and competitors are among the stakeholders that make pressures to the organisation on social and environmental criteria.

Reference:

– Drivers and Barriers to the Adoption of Sustainable Procurement in SMEs

– CIPS study guide page 95-96

LO 2, AC 2.1

QUESTION 46

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

- * Transfer of risks
- * Contract validity
- * Remedies for breach of contracts
- * Liability of the seller for death or personal injury
- * Liability to pay damages

United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention or CISG) Vienna Convention was prepared by 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 covers, including grounds for contract invalidity and liabilities to death or injury of person caused by the 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

QUESTION 47

Blakenall District Hospital (BDH) is a large hospital that is a major part of the government’s health service. Purchasing staff are in the habit of placing many long-term contracts with suppliers and sub-contractors. Whilst these contracts are usually carried out successfully, prices are often paid that are well over budget. The purchasing manager is concerned to find that, in some cases, members of staff are forcing suppliers to accept fixed price contracts. The policy has caused several problems such as some suppliers refusing to deal with BDH and a few going out of business mid-way through performing a contract with BDH. This is due to fluctuating market prices of materials. The procurement manager suggests supplier to adopt variable pricing arrangement with price index. Is this a right course of action?

- * No, variable pricing would only benefit the suppliers
- * Yes, this type of arrangement would provide absolute certainty when budgeting
- * Yes, this pricing arrangement would reimburse the fluctuation of material prices
- * No, price adjustment should be applied to short-term supply contract only (3-month duration or less)

Procurement staff in the Hospital is forcing suppliers into fixed price contract. If the costs generally rise, supplier may operate at a loss. This situation can disrupt the relationship, that is the reason why some suppliers refusing to deal with BDH and a few going out of business mid-way.

Alternative methods could be variable pricing arrangement. This method would reimburse the fluctuation of market price. It will also benefit buyer if the market price drops. This type of arrangement should be applied to long-term contracts (i.e. 18 months or more).

Reference:

LO 3, AC 3.3

QUESTION 48

Which of the following regulates barriers to the trade of goods between Member States of WTO?

- * NAFTA
- * GATT
- * CISG
- * TRIPS

– The General Agreement on Tariffs and Trade (GATT) is a legal agreement between many countries, whose overall purpose

was to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas. According to its preamble, its purpose was the "substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis."

CISG is the Vienna Convention on Contracts for the International Sale of Goods. This is a voluntary treaty under United Nations Commission on International Trade Law (UNCITRAL). The purpose of the Vienna Convention is to set out a framework for international transactions based on a uniform approach. It establishes substantive rules that regulate the duties and obligations of both parties, including the delivery of goods, contract formation, and remedies for breach of contract.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It sets down minimum standards for the regulation by national governments of many forms of intellectual property (IP) as applied to nationals of other WTO member nations.

The North American Free Trade Agreement (NAFTA; Spanish: Tratado de Libre Comercio de America del Norte, TLCAN; French: Accord de libre-echange nord-americain, ALeNA) is an agreement signed by Canada, Mexico, and the United States, creating a trilateral trade bloc in North America.

Reference:

LO 1, AC 1.3

QUESTION 49

Royal Naval Hospital at Rockstown, Anyport manages a fleet of nine ambulance vehicles. During busy periods, it becomes very difficult to keep track of the location of each ambulance (and the nature of their journey). Continual problems lead to the proposal for a new control system (ERNS).

For this ERNS project, the procurement department has drafted a specification in which only a bullet point list of basic requirements was written down. The procurement manager understands that the specification should be developed more specifically but a cross functional team from the Hospital could not do that. A senior buyer suggests that some of Hospital's pre-qualified suppliers could support them in developing the specification.

Which of the following should be a priority approach of procurement department in developing dialogue with those suppliers about specification development?

- * Internal discussion
- * General networking
- * One-to-one meeting with the suppliers
- * Request for quotation from the suppliers

The procurement team has drafted basic requirements in the specification. They will need to develop it further and more specific. Developing market dialogue with supplier is a good solution. There are number of approaches which can be taken to engage with suppliers:

General meetings: buyer meets supplier at a networking event (such as trade show) or social media. These discussions are unlikely to deliver very specific information.

One-to-one meetings: This will be most likely to deliver direct input into specification development and supplier-specific product development information.

Group visits

• Meet-the-buyer events

• Formal negotiations or competitive

The answer for this QUESTION should be One-to-one meeting.

Reference:

LO 2, AC 2.1

QUESTION 50

A purchase order can become a contract between supplier and purchaser if it is:

- * Received by the supplier
- * Accepted by the supplier
- * Issued by the buyer
- * Edited by the supplier

A purchase order is a document sent from a buyer to a seller, with a request to order a product. The purchase order often has its number, description and quantity of the goods, unit prices and total price, name of issuer, time of delivery, standard terms and conditions, etc. It is effectively an offer to supplier. The purchase order will become a formal contract if supplier accepted it by written notice or by performance (such as deliver the goods to the buyer's premise).

Reference:

LO 1, AC 1.2

QUESTION 51

Which of the following is the procedure that makes no further competition under a framework agreement?

- * Closed system
- * Direct call-off
- * Standing offer
- * Blanket order

Direct call off is the act of placing an order under a framework agreement without having further competition.

Standing offer is an available offer.

Blanket order is another name of framework agreement

Closed system is a requirement of framework agreement. It is a system or process that, once started, does not allow new entrants.

Reference:

LO 1, AC 1.3

QUESTION 52

Which of the following are likely to be express terms in a contract?

1. Legislation

2. Custom and practice

3. Contract particulars

4. Terms and conditions

* 2 and 3 only

* 1 and 4 only

* 3 and 4 only

* 1 and 2 only

Express terms are the terms of the agreement which are expressly agreed between the parties. Ideally, they will be written down in a contract between the parties but where the contract is agreed verbally, they will be the terms discussed and agreed between the parties.

The types of express terms to be found in a contract are many and varied and will depend on the type of contract. Any term written into the contract is an express term and may refer to price, time scales, warranties and indemnities, limitations on liability, conditions precedent and so on.

Reference:

– Contracts: Express and Implied Terms

– CIPS study guide page 32

LO 1, AC 1.2

QUESTION 53

Which of the following are always considered as minimum preconditions for a contract? Select TWO that apply:

* Specification

* Promise

* Omission

* Consideration

* Intention to be bound

In order to form a contract to come into being, there are five conditions:

– Offer

– Acceptance

– Consideration

– Intention to be legally bound

– Capacity to contract

Reference:

LO 1, AC 1.2

QUESTION 54

In which of the following conditions, request for quotation produces the best results?

- * With an ambiguous specification
- * Under framework agreements
- * Under a complex process
- * With strategic items

Request for quotation has valuable function when its use is properly controlled. It works the best under framework agreements where the contract terms are already fixed.

Reference:

LO 1, AC 1.1

QUESTION 55

Which of the following is likely to reduce risks of different rules regarding when offers and acceptance become effective between legal systems?

- * Withdrawal protocol
- * Letter of intent
- * Time lapse
- * Deemed receipt protocol

Regarding rule of offer and acceptance, there are some differences among legal system around the world. For example, mailbox rule is generally applied in common law countries such as UK, US, Australia,.. while it is ignored in civil law countries. To clarify on rule of offer and acceptance in international trade, offerors may use expressed terms in their offers. These terms known as deemed receipt protocol.

Reference:

LO 1, AC 1.2

QUESTION 56

When a supplier signs an insurance policy with an insurance company, which of the following is transferred to insurance company?

- * Right
- * Risk
- * Legal responsibility
- * Contractual obligation

An insurance policy transfers a specific set of risks such as the fire and flood risk for a particular asset.

The legal liability does not transfer to the insurance company (known as insurer).

Reference:

LO 3, AC 3.2

QUESTION 57

A procurement manager is preparing a long-term contract with a major supplier. She decides to use the variable pricing arrangement using price indices. The payment terms describe the circumstances and mechanism where the price is allowed to change. In order to

successfully manage this type of contract, the buying organisation should have…?

- * Good market knowledge
- * Selection of base year
- * Value for money
- * Economy of scale

There are several approaches to price adjustment for long-term contract. Describing circumstances and mechanism is one of them. Although this approach has some limitations, it is the best option. It relies on good market knowledge but provides the most equitable approach to satisfying the needs of the purchaser and the supplier.

Reference:

LO 3, AC 3.3

QUESTION 58

Bethy sees a coat on shop window with a \$100 price tag. She comes and asks the shop owner to buy it. The owner states that the price has not been updated and the current price for the coat is \$120. Bethy says the owner should honour the quoted price on window shop. Is Bethy correct?

- * Yes, the owner has made an offer by showing his product on the shop window and he must honour that offer
- * Yes, \$120 for a coat is extremely unreasonable and the owner's later offer therefore void
- * No, the display on shop window is just an invitation to treat and the owner may change the price at his will
- * No, the owner is revoking his initial offer to sell at \$100 and he is proposing new offer to Bethy

Based on two famous precedents, Fisher v. Bell (1961) and Pharmaceutical Society of Great Britain v. Boots Cash Chemists (1953), the display on shop window is considered as an invitation to treat. The shop owner can change the price when his customer asks to buy.

Reference:

LO 1, AC 1.2

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