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Managing Contractual Risk

CIPS L5M3

Version Demo

Total Demo Questions: 13

Total Premium Questions: 137

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Topic Break Down

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QUESTION NO: 1

Which of these statements about Guarantees are TRUE? Select 2

A. A Guarantee is a secondary obligation of a contract

B. A guarantor's responsibility is higher than the Principle

C. A guarantee is a promise to repair or replace an item within a defined period of time

D. A guarantor's responsibility cannot be higher than the Principle

ANSWER: A D

Explanation:

A Guarantee is a secondary obligation of a contract because it is a collateral undertaking: the guarantor agrees to answer for the debt, default or other contractual obligation of the principal debtor if that debtor fails to perform. The guarantee therefore depends on an underlying obligation being owed by the principal debtor, rather than creating a wholly independent payment commitment. This distinction is central when a buyer assesses contractual security, since a guarantee's enforceability and scope must be read alongside the underlying contract and the guarantee's precise wording.

A guarantor's responsibility cannot be higher than the Principle is correct in the sense that a guarantor's liability is generally accessory to, and bounded by, the principal debtor's liability. A guarantee may set a lower cap, narrower time period, or more limited obligations than the underlying contract, but it should not make the guarantor liable for more than the principal debtor validly owes. Procurement professionals should ensure that the guarantee identifies the guaranteed obligations, monetary cap, duration, claim process and governing law clearly. UK law specifically recognises a promise to answer for another person's debt or default as a guarantee and requires evidential formality for such promises: Statute of Frauds 1677, section 4. Further practical guidance on guarantees and their accessory nature is available from LexisNexis: Guarantees—an overview.

QUESTION NO: 2

A buyer wishes to include audit rights in a contract for outsourced payroll services. Which of the following should be included in an effective audit clause? Select TWO

A. the records and systems that may be audited

B. reasonable notice and arrangements for access

C. an unrestricted right to access any supplier premises at any time

D. a right for the buyer to alter service prices following every audit

E. a requirement for the supplier to disclose unrelated customer information

ANSWER: A B

Explanation:

the records and systems that may be audited is correct because the clause should define the scope of the buyer's rights. This may include records relating to service performance, charges, security controls, compliance, and subcontractor management. A defined scope prevents uncertainty and helps ensure that the audit addresses the relevant contractual risks.

reasonable notice and arrangements for access is also correct. The clause should explain how an audit is requested, the notice period, permitted audit hours, confidentiality protections, and any limitations needed to avoid unreasonable disruption to the supplier's operations. The buyer should also specify how audit findings will be reported and remedied. The UK Government's Outsourcing Playbook identifies audit and assurance as important tools for managing outsourced-service risk.

QUESTION NO: 3

Logan Gin Distillery is creating a contract for one of its new suppliers. It is a complicated item that they are ordering and if things go wrong, it would have an extremely negative impact on production, and therefore on revenue. However it is impossible to say what the cost of this would be if things were to go wrong. What type of clause should be included in the contract?

A. liquidated damages

B. unliquidated damages

C. penalty clause

D. service credit

ANSWER: A

Explanation:

liquidated damages is appropriate because the likely loss from supplier failure would be commercially serious but difficult to quantify accurately after the event. A liquidated-damages clause enables Logan Gin Distillery and the supplier to agree a specified sum, or a clear calculation mechanism, in advance for a defined breach such as late delivery, failure to meet a performance requirement, or defective supply. This gives both parties certainty and allows the distillery to allocate the risk of production interruption without having to prove the precise revenue impact when a breach occurs.

The agreed amount should be based on a reasonable, evidence-based estimate of the loss or on the distillery's legitimate commercial interest in timely and reliable performance. Procurement should retain its assumptions and calculations, for example expected lost contribution, additional sourcing costs, and reasonable mitigation costs. The clause should state the triggering event, calculation method, payment timing, any cap, and whether the remedy is exclusive. Under English law, an agreed contractual remedy must not impose a detriment out of all proportion to the innocent party's legitimate interest in performance; this principle is explained in Cavendish Square Holding BV v Makdessi (UK Supreme Court). See also the Unfair Contract Terms Act 1977 for statutory controls relevant to contractual liability terms.

QUESTION NO: 4

Which of the following is usually the default method for resolving disputes?

A. litigation

B. mediation

C. negotiation

D. conciliation

ANSWER: C

Explanation:

Negotiation is usually the default method for resolving a contractual dispute because it enables the parties themselves to discuss the issue directly and seek a mutually acceptable solution before involving a third party or formal legal process. In contract management, a well-drafted dispute-resolution clause commonly establishes an escalation path: operational representatives first attempt to resolve the matter, then more senior managers may become involved if necessary. This preserves commercial relationships, gives the parties control over the outcome, and can address issues quickly while limiting cost, delay, and disruption to contract performance.

Effective negotiation is supported by clear contract records, evidence of the relevant events, an understanding of each party's contractual obligations, and appropriately authorised representatives. It can result in practical outcomes such as an agreed recovery plan, a revised delivery date, corrective action, or a settlement documented through the contract's change-control process. The UK Government's guidance on resolving disputes recognises direct discussion and negotiation as an initial route before more structured forms of alternative dispute resolution or court action. CIPS also identifies negotiation as a core procurement and commercial capability, relevant to managing supplier relationships and contractual issues. See UK Government guidance on alternative dispute resolution and CIPS Level 5 qualifications.

QUESTION NO: 5

Which of the following would constitute an offer? Select TWO:

A. a display in a shop window

B. an advert on a website

C. an auction

D. a bid on an auction

E. a price proposal that is valid for 14 days

ANSWER: D E

Explanation:

A bid on an auction constitutes an offer because the bidder communicates a definite willingness to contract at the stated bid price. In a conventional auction, each bid is capable of acceptance by the auctioneer, with acceptance normally occurring when the hammer falls or the sale is otherwise announced. This reflects the statutory position that an auction sale is complete on the auctioneer's announcement of completion: see section 57 of the Sale of Goods Act 1979 at legislation.gov.uk.

A price proposal that is valid for 14 days can also constitute an offer where it states sufficiently certain contractual terms, such as the goods or services, price, quantity, and relevant delivery or performance requirements, and objectively shows an intention to be bound if accepted. The stated validity period makes clear the period in which the recipient may accept the proposal, although it does not necessarily make the offer irrevocable without further consideration or a separate binding commitment. A valid acceptance within that period creates a contract if the remaining requirements for formation are present. The underlying principle is that an offer is a clear promise capable of acceptance, as illustrated in the contract-formation guidance and case materials available through BAILII.

QUESTION NO: 6

Kelly and Chloe have a contract in which Kelly provides MRO supplies to Chloe's manufac-turing business. Kelly has committed a fundamental breach but Chloe has not suffered any loss. Chloe has chosen to terminate the contract. Can she claim damages?

A. yes- Chloe can claim liquidated damages if these are stated in the contract

B. yes- Chloe can claim unliquidated damages as the contract is terminating

C. no- Chloe cannot claim damages as she has not incurred a loss

D. no - Chloe cannot claim damages as she decided to terminate the contract

E. yes - Chloe can claim nominal damages for Kelly's breach, even though she has not suffered a financial loss

ANSWER: E

Explanation:

"Yes – Chloe can claim nominal damages for Kelly's breach, even though she has not suffered a financial loss" is correct. A fundamental breach that gives the innocent party the right to terminate is still a breach of contract, and termination does not erase rights that have already accrued as a result of that breach. Contract damages normally aim to place the innocent party in the financial position they would have occupied had the contract been performed. Therefore, where no provable financial loss has resulted, Chloe cannot recover a substantial compensatory sum. However, breach of contract is generally actionable without proof of actual loss. The court may therefore award nominal damages: a small sum which formally recognises that Chloe's contractual right was infringed. This principle distinguishes the existence of a legal wrong from the separate issue of quantifying financial compensation. In a contract-management context, this means Chloe may validly terminate following the fundamental breach and retain a claim for nominal damages, despite being unable to demonstrate operational, financial, or other measurable loss. The UK Supreme Court's discussion of contractual remedies and the enforceability of agreed sums is available in [Cavendish Square Holding BV v Makdessi judgment]. See also the UK government's general contract-law guidance at [GOV.UK consumer contracts guidance].

QUESTION NO: 7

Which of the following would not be considered acceptance of a contract term?

A. silence

B. accepting a delivery of a product into the factory

C. an invoice

D. a handshake

ANSWER: A

Explanation:

silence is the correct answer because acceptance must normally be communicated to the party making the offer, or be objectively demonstrated through conduct that clearly indicates assent. A party cannot generally impose a contractual obligation by stating that failure to reply will be treated as agreement. This principle protects contracting parties from being bound merely because they did not respond, perhaps because they had not seen a communication, were still considering it, or did not agree with the proposed term.

In procurement and contract management, buyers should therefore obtain clear evidence that a supplier has accepted the relevant terms: for example, an express confirmation, signature, acceptance through an agreed electronic process, or conduct that objectively demonstrates agreement in the circumstances. Silence alone does not provide the required objective indication of consensus. The longstanding authority for this principle is *Felthouse v Bindley*, where the court held that an offeror could not treat the offeree's silence as acceptance; the judgment is available through [BAILII]. The requirement for objectively ascertainable agreement is also consistent with the UK Supreme Court's discussion of contract formation through communications and conduct in [RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH].

QUESTION NO: 8

Which of the following statements about a force majeure clause are TRUE? Select TWO

A. it can suspend obligations following a defined event outside a party's reasonable control

B. it automatically applies to every commercial contract

C. the affected party should take reasonable steps to mitigate the effects of the event

D. it always gives the affected party an immediate right to damages

E. it is identical to a contractual warranty

ANSWER: A C

Explanation:

A force majeure clause can suspend contractual obligations following a defined event outside a party's reasonable control. Its scope depends on the wording agreed by the parties, so the clause should identify the relevant events, such as natural disasters, war, or government action, and state the contractual consequences.

A party relying on force majeure will normally be required to take reasonable steps to mitigate the effect of the event. This may include seeking alternative sources, using available contingency arrangements, or recommencing performance promptly when the event ends. Force majeure does not automatically excuse every failure to perform, nor does it automatically terminate the contract. Clear notice, evidence and mitigation requirements are important contractual controls. The UK Government's [Model Services Contract] includes force majeure provisions and illustrates the importance of defining events, notice and mitigation obligations.

QUESTION NO: 9

Which of the following will you put into box 8?

A. adjudication

B. arbitration

C. mediation

D. litigation

ANSWER: B

Explanation:

Arbitration is the appropriate entry for box 8. In contractual risk management, arbitration is a formal private dispute-resolution mechanism in which the parties submit their dispute to an independent arbitrator or tribunal. The tribunal considers the evidence and arguments and issues an arbitral award. This makes arbitration particularly suitable where the contractual dispute-resolution process requires a determinative outcome without using the public court system. Parties commonly provide for arbitration through a dispute-resolution clause in the contract, specifying such matters as the arbitral rules, seat, language, number of arbitrators and appointment process. For cross-border procurement contracts, arbitration can provide a neutral forum and an award that is capable of recognition and enforcement internationally under the New York Convention. In England, Wales and Northern Ireland, the Arbitration Act 1996 provides the statutory framework for arbitration and confirms the legal effect of arbitral proceedings and awards. The official legislation is available at legislation.gov.uk. Further international guidance on commercial arbitration is available from UNCITRAL. Accordingly, arbitration fits a box representing the binding, tribunal-based alternative dispute-resolution route.

QUESTION NO: 10

A large financial organisation ensures that they have contracts with all of their suppliers. In which instance would indemnity not necessarily form part of the contract?

A. A Deed of Appointment of a Consultant

B. In assignment of intellectual property rights

C. A software licence agreement

D. A confidentiality agreement

ANSWER: D

Explanation:

A confidentiality agreement is the appropriate answer because its principal purpose is to define confidential information, restrict its use and disclosure, specify permitted recipients, and require return or destruction of information. Those core protections can operate effectively through an ordinary contractual promise, supported by remedies for breach. An indemnity is therefore not an essential or automatic element of this type of agreement; whether to include one depends on the information involved, the bargaining position of the parties, potential regulatory exposure, and the allocation of risk they negotiate.

For a financial organisation, a well-drafted confidentiality agreement should clearly identify the protected information and permitted purpose, impose appropriate security controls, and address how a breach is handled. Where disclosure would create an urgent or irreparable risk, the agreement may also provide for injunctive relief, allowing the disclosing party to seek to stop or prevent further misuse rather than relying solely on a monetary recovery. UK government guidance explains the role of confidentiality agreements in protecting commercially sensitive information: GOV.UK confidentiality agreements guidance. The equitable basis for seeking an injunction to restrain an actual or threatened breach of confidence is also reflected in the discussion of breach-of-confidence remedies in Attorney General v Guardian Newspapers Ltd. Thus, indemnity may be negotiated, but it need not form part of a confidentiality agreement.

QUESTION NO: 11

A buyer is appointing a supplier to process employee data as part of a managed HR service. Which of the following contractual requirements are appropriate? Select THREE

A. processing personal data only on the buyer's documented instructions

B. appropriate technical and organisational security measures

C. prompt notification of personal-data breaches

D. an unrestricted right for the supplier to sell anonymised or identifiable employee data

E. permission for the supplier to appoint subcontractors without any contractual controls

ANSWER: A B C

Explanation:

processing personal data only on the buyer's documented instructions is correct because the buyer, as controller, should determine the purposes and means of processing. The supplier acting as processor should not use the data for its own unrelated purposes.

appropriate technical and organisational security measures and **prompt notification of personal-data breaches** are also appropriate requirements. The contract should require controls proportionate to the risk, such as access management, encryption where appropriate, staff confidentiality and secure disposal. The supplier must assist the buyer by notifying it without undue delay after becoming aware of a personal-data breach, allowing the buyer to assess its reporting and response duties. These processor-contract requirements are reflected in Article 28 of the UK GDPR.

QUESTION NO: 12

Parky Parks Ltd has a contract with Slides R Us for the provision of children's playground equipment. The contract contains a clause for liquidated damages and puts the figure at £500k. Which of the following statements is correct? Select TWO

A. Liquidated damages needs to be a 100% accurate figure

B. If damages exceed £500k Parky Parks can apply to the courts to get Slides R Us to pay above this amount

C. Damages under the amount of £500k are not required to be paid to Parky Parks

D. liquidated damages is a genuine estimate of loss

E. costs incurred above £500k will be covered by Parky Parks Ltd

ANSWER: D E

Explanation:

"liquidated damages is a genuine estimate of loss" is correct because liquidated damages are an amount agreed in advance to provide a contractual remedy for a specified breach, commonly delay or non-performance. The amount should be commercially justifiable by reference to the loss or legitimate interest that the innocent party could expect to protect when the contract was made. It need not predict loss with mathematical precision: the purpose is to avoid the difficulty and cost of proving actual loss after the event. The modern English-law test is whether the provision imposes a detriment out of all proportion to the innocent party's legitimate interest in performance, as confirmed by the UK Supreme Court in ParkingEye Ltd v Beavis.

"costs incurred above £500k will be covered by Parky Parks Ltd" is correct on the stated facts because the agreed liquidated-damages figure operates as the parties' agreed allocation of the financial consequence of the relevant breach. Where the clause is drafted as the agreed and exclusive remedy or cap for that loss, Parky Parks receives the stipulated £500k rather than recovering additional actual losses from Slides R Us. Procurement professionals should ensure that the clause clearly identifies the breach, specifies whether the figure is a cap and/or exclusive remedy, and reflects a defensible pre-contract assessment of likely loss. The UK government's contract-management guidance also stresses clear allocation and management of contractual risk: Contract Management Professional Standard.

QUESTION NO: 13

Dianne has a loan agreement which contains a clause for default. What does a clause for default imply?

A. this allows the lender to demand overdue payments are made straight away

B. this allows a lender to demand payment from a guarantor if the borrower is unable to pay

C. this allows the lender to declare insolvency

D. this allows the lender to demand full payment of the outstanding balance

ANSWER: D

Explanation:

A default clause in a loan agreement specifies the consequences if the borrower fails to meet contractual obligations, such as missing repayments or breaching another agreed term. A central remedy commonly provided by such a clause is acceleration: the lender may demand full payment of the outstanding balance, rather than continuing with the original instalment schedule. This enables the lender to bring the loan to an end and seek immediate repayment once a defined event of default has occurred, subject to the precise wording of the agreement and any applicable legal or regulatory requirements. In a contractual-risk context, the clause allocates the risk of non-performance by making the lender's rights and remedies clear in advance. Well-drafted default provisions also identify the events that trigger the remedy, any notice or cure period, and the process for enforcing repayment. The UK Financial Conduct Authority's consumer-credit rules address treatment of customers in default or arrears, while the UK government's guidance on business debt explains that creditors can take action to recover sums due. See the FCA Consumer Credit sourcebook: Arrears, default and recovery and GOV.UK guidance on dealing with debt.