



# **Commercial Negotiations**

**Instructor: Wayne C. Ackerman**

## **Course Overview**

This course will provide the student with a solid foundation to navigate highly complex commercial negotiations. After an introduction to commercial negotiations, the course will delve into basic preparation required to conduct and engage opposite parties. Students will learn how to draft negotiating and stakeholder management plans, complete essential background work on the counterparty, set up the negotiating team and develop negotiating tactics. Specific examples and actual case histories will be presented to enhance the learning in addition to class exercises such as developing a negotiating plan and conducting negotiations. Upon completion of this course the student can actively participate in commercial negotiations as a team player.

Course content is applicable to any industry where companies engage in commercial negotiations on projects.

## **Who should attend?**

The class is designed for high potential professionals who have had at least 5 years of experience in projects where commercial negotiations have been a component. Attendees should understand project economics and commercial project drivers.

- Mid-career to senior professionals involved in any form of commercial negotiations
- Technical and non-technical professionals such as attorneys, economists and managers who seek to understand the impact of commercial negotiations on their business or projects
- Professionals who aspire to lead commercial negotiating teams

## **Learning Objectives**

- Introduce students to commercial negotiations and provide them with a full understanding of the wide-ranging impact of commercial negotiations.
- Provide students with common tools, analysis and thought processes to participate in commercial negotiations.
- Expose students to global implications around commercial negotiations including cultural impact and guiding legislation governing transactions.

## **Upon completion of the course the student will**

- Understand the differences in commercial negotiations from simple to more complex



- Understand the significance of commercial negotiations in shaping economic success in major capital projects
- Identify and understand the key value drivers in commercial negotiations and their impact on project economics and project maturation
- Be proficient in the development of negotiation and engagement strategies, mapping key stakeholders, building successful negotiating teams and managing those teams
- Understand the implications of international corruption legislation and associated penalties
- Understand global cultures as they impact commercial negotiations.
- Be able to participate as an active and contributing commercial negotiations team member
- Become active participants, peers and leaders in the company's commercial negotiations community

### Course structure and syllabus

This course will be presented in a single intense 5-day week where students experience in-person learning. The class will begin Monday at 12:00 noon, allowing participants to complete any morning work or arrive in Denver. The class concludes Friday at 12:00 noon, allowing participants to depart Friday afternoon.

Participants will be expected to lead discussions, complete pre-work and homework during the class.

Course materials will be available online. Participants will be able to download all materials. No paper materials will be distributed in the class.

A pre and post class assessment will be conducted and a final assessment will be completed by the instructor with feedback specific to each participant.

	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
Morning 08:00-12:00	Open	• Class 2	• Class 4	• Class 6	• Class 8 • Closing and Review
Afternoon 12:00-17:00	<ul style="list-style-type: none"> <li>• Welcome and Introduction</li> <li>• Class 1</li> <li>• Introductory cocktail hour (networking)</li> </ul>	• Class 3	• Class 5	<ul style="list-style-type: none"> <li>• Class 7</li> <li>• Class celebration dinner (networking)</li> </ul>	Open

### Course preparation



Each participant will complete pre-course registration addressing questions such as:

- Why are you attending this course?
- What specifically do you want to address in this course?
- How will you apply the learnings in your job?
- What is a commercial negotiations problem you wish to address in your job?

## **Detailed Course Schedule**

### Class 1

- What is commercial negotiations? Transactional versus strategic; complex versus simple
- Why do we need commercial negotiations?
- Types of commercial negotiations
  - Vendors/equipment suppliers
  - EPC contractors
  - Project Finance
  - Partnering and Joint Venture set up
  - M&A
  - Product sales (e.g., LNG SPAs; Gas Sales Agreements—GSAs)
- Negotiations---setting the stage
  - Stakeholder identification and mapping
  - Identifying commercial drivers for both parties; prioritization
  - Background and pre-negotiation work (who is at the table, who is behind the scenes, profile the negotiating team, company objectives and cultures, mandates, cultural issues)
  - Setting up your team; roles and responsibilities; who does what?

### Class 2

- Drafting the negotiating plan
  - Timeline
  - Planning engagements (Locations, calendar/holidays, cultural issues)
  - Defining Roles
  - Identifying tools
  - Tactics at the table
  - Tactics away from the table

### Class 3

- Commercial Drivers
  - Ts & Cs
  - Dispute Resolution
  - Liquidated Damages and penalty clauses
  - Risk allocation
  - Indemnities



- IP
- Insurance
- Delivery schedule/timing of products
- Currency and taxes
- Costs/Prices – calculations; indexing
- Audit rights
- Performance metrics/corrective procedures

#### Class 4

- Global Legislation
  - Anti-Bribery and Corruption (ABC) and global business principles
  - Foreign Corrupt Practices Act (FCPA)
  - Generally Embargoed Countries (GEC)
  - Japan, EU and UK Policies
- Impact on supply chain, joint venture partners and negotiations
- Understanding Global Cultures in negotiations
  - Interpreting cultural messages
  - Managing and influencing cultures

#### Class 5

- Less complex negotiations
  - Supply chain negotiations
  - Equipment suppliers and vendors
  - Develop negotiating strategy specific to suppliers; background specifics (e.g., safety record, delivery record, backlogs/order books, financials)

#### Class 6

- Complex Negotiations
  - EPC negotiations
    - Key Drivers and implications of each driver (e.g., action/reaction)
    - Develop negotiating strategy specific to EPCs; background specifics (e.g., safety record, delivery record, backlogs/order books, financials)
    - Managing the contract/performance

#### Class 7

- Complex Negotiations
  - Joint Venture partners
    - Key Drivers and implications of each driver (e.g., action/reaction; why are we forming a JV?)
    - Develop negotiating strategy specific to partner; background specifics (e.g., safety record, expertise/value proposition, financials, corp culture)
    - Governance models/rights



- M&A Negotiations
  - Key Drivers and implications of each driver (e.g., action/reaction, why is the asset or entity for sale?)
  - Develop negotiating strategy specific to asset seller/buyer; background specifics (e.g., safety record, operating record, delivery record, financials), partial sale, entity sale/company exit; competition

## Class 8

- Complex Negotiations
  - Sales agreements (e.g., LNG Sales agreements)
    - Buyers and Sellers views (e.g., market conditions, competition, ABC issues)
    - Key Drivers and implications of each driver (e.g., action/reaction)

Develop negotiating strategy specific to sellers/buyers; background specifics (e.g., safety record/reliability, delivery record, backlogs/order books, financials, insurance)

