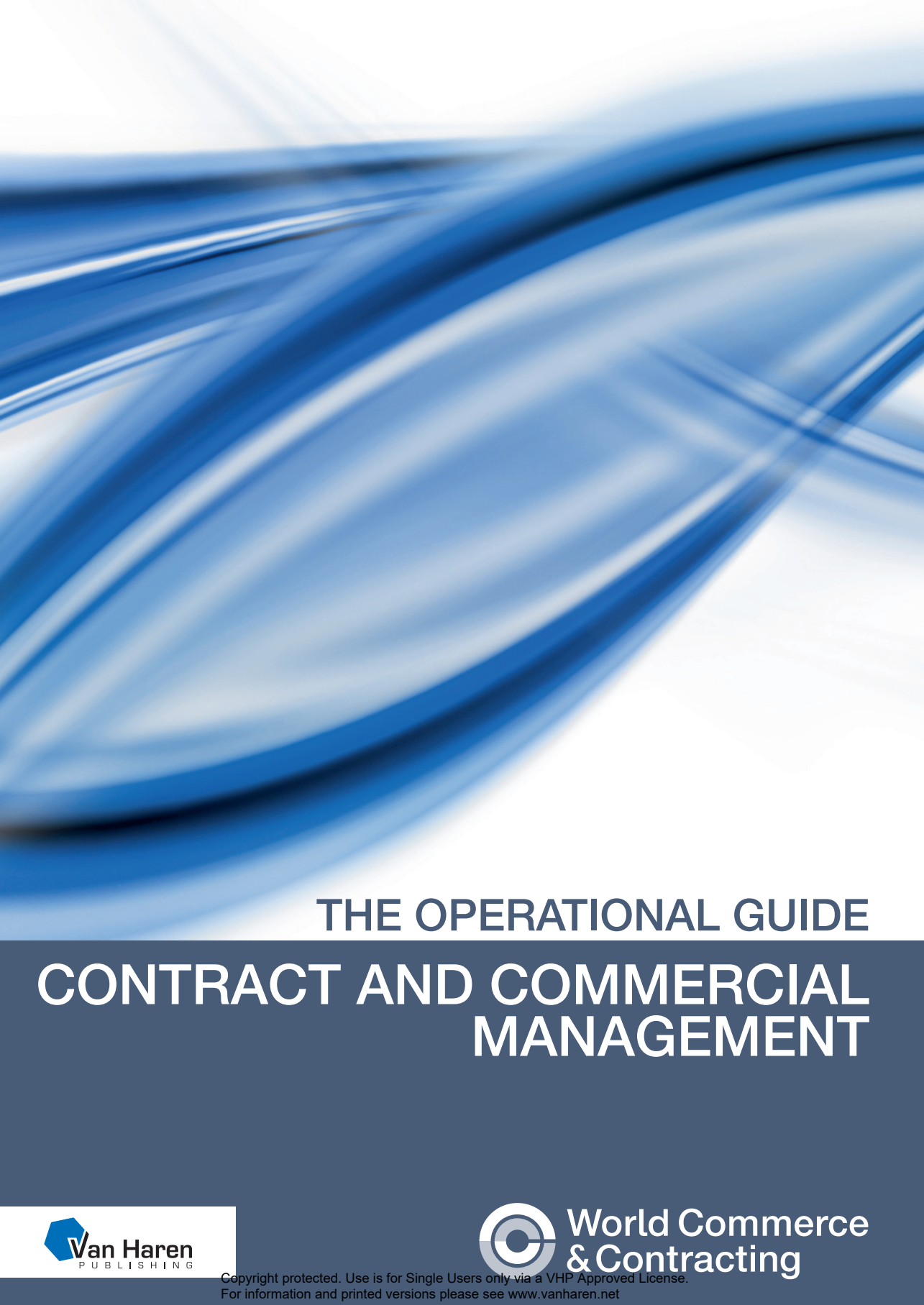




THE OPERATIONAL GUIDE CONTRACT AND COMMERCIAL MANAGEMENT

Contract and Commercial Management

The Operational Guide

*This book is dedicated to the memory
of Margaret Carey who inspires us all
by planting small seeds of partnerships
and friendships worldwide.*

CONTRACT AND COMMERCIAL MANAGEMENT

THE OPERATIONAL GUIDE



Colophon

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Foreword: By the Board Members of WorldCC

As executives and senior managers in some of the world's major corporations, each of us has had direct oversight for aspects of contract and commercial management within our business. Individually, we have observed the growing role and complexity associated with contracting and this has been reinforced through our experience as elected members of the WorldCC Board of Directors.

It is clear that contract management is an increasingly diverse and important organizational competence and this demands greater consistency and efficiency in its management. It also requires more creativity and the tools and techniques that are necessary to improve the quality of judgment and decision-making. Each of us is aware of the difficult balance between control and compliance on the one hand, and agility and flexibility on the other.

While such tools and techniques are fundamental building blocks, the skills, competence and professionalism of the people who work in and around the contract management space are also key. This book represents an important contribution to that heightened competence, offering as it does the first comprehensive view of contract and commercial operations from a cross-industry, bi-partisan, worldwide perspective. It is an ambitious work that seeks to rise to the challenge of managing business relationships in today's complex global markets and equipping the practitioner with a robust 'body of knowledge' that reflects leading practices.

The Board of WorldCC

Preface

About this book

All around us is rapid change and growing complexity. The demands on contract negotiation and management have never been greater. There is an urgent need for sustainable practices that support flexibility and dynamic change.

Those who are responsible for contract management must heed the calls for greater collaboration, more innovation, greater readiness to simplify the rules and procedures that will allow management to address turbulent market conditions. At the same time, we must achieve increased rigor, greater compliance and improved controls in our contracts and relationships.

Making sense of these conflicting issues demands a more consistent view of contracts – their purpose, their structure and the terms we use within them. It demands the use of common methods and techniques, common terminology and attitudes to risk and opportunity.

To add to these pressures, we are witnessing a steady increase in the influence of emerging markets and newly powerful economies that cause us to question some of the well-established traditions of contract management and the law. This means we must engage in dialog between different business, legal and social cultures to establish clear and mutually acceptable first principles.

It is in this environment that we offer this Operational Guide, to equip those who must manage the complex contracting requirements demanded by today's global markets.

About the authors

World Commerce & Contracting (WorldCC), formerly IACCM is a non-profit organization that owes its origins to the growing complexity of world trade and the consequent need for increased and more consistent skills, knowledge and procedures in the field of contract and commercial management.

The Association was founded in 1999 to fill the gap in international understanding and competence in contracting. Its purpose is to explore and disseminate 'best practice' in the formation and management of trading relationships, as well as equipping business managers and negotiators with the knowledge required to navigate within today's environment.

Through ongoing research, WorldCC provides many of today's top corporations and government agencies with the knowledge they require to develop the process and skills that ensure the integrity and success of their contracts and commercial practices. WorldCC is unique in representing both buyers and sellers, ensuring a consistent body of knowledge and reducing the risk of unsuccessful outcomes through the promotion of mutual understanding and more collaborative working.

This book is an operational guide to those practices and methods. It has been compiled and reviewed by a wide variety of professionals and academics, representing multiple industries, countries and commercial disciplines. The book is therefore a practical resource for anyone involved in contracts, their negotiation or management.

Tim Cummins,

President, World Commerce & Contracting, www.worldcc.com

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We also wish to thank the international team of experts who contributed to and reviewed the manuscript. Respected experts world-wide have been kind enough to spend hours supporting other team members, reviewing text and also sharing invaluable experience. Always positive and professional, these experts demonstrate the true strengths that can be found in this area.

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CHAPTER 1

Introduction: contract management – a global context

The concept of trade is a characteristic unique to the human species. With each advance in human communications, the complexity of trade has increased¹.

It is this growth in complexity that drove the need for contracts, as a written record to ‘memorialize’ the negotiation that had taken place and which committed the parties to some future exchange of value.

Over time, the knowledge gained from past transactions led to a body of experience which became enshrined in laws or customs, influencing the process by which trading relationships were formed, the parties involved in their formation and the means by which they were recorded.

Today, we are at the beginnings of a new era for communications – a world connected via electronic networks that allow unparalleled speed, enabling relationships to be formed and managed in ways that were never previously envisaged. It is the unknown nature of this networked world that represents a new level of complexity for society as a whole, but especially for the politicians who are charged with its regulation and the business leaders who must navigate through the risks and opportunities that it represents.

A survey by IBM Corporation² revealed that 79 percent of Chief Executive Officers (CEOs) see ‘increased global complexity’ as a major challenge over the coming years. Of course, mastering complexity has been a key trait of humanity over the centuries, but at this time it has taken on a new intensity. At its heart, according to these CEOs, is the difficulty created by ‘the growth of interconnections and interdependencies’. What do they mean by this – and how does it relate to the world of contract management?

1 ‘Before the Dawn’: Nicholas Wade

2 IBM Corporation ‘2010 IBM Global CEO Study’ May 2010