



# CLLS Construction Law Committee

Foundation Level Training – Day 1



The City of London Law Society



# Programme

| <b>Session One: Construction Procurement</b> |   |               |  |
|--|---|---------------|--|
| <b>Topic</b>                                 | <b>Speakers</b>   | <b>Time</b>   | <b>Programme</b>   |
| Registration/ Introduction                   |   | 9.00 – 9.10   |  |
| Procurement Route Options                    | Marc Hanson (BCLP) and Victoria Peckett (CMS)                 | 9.10 – 10.10  | <ul style="list-style-type: none"> <li>• Explanation of various procurement routes including traditional, design and build, management forms and two stage contracting</li> <li>• Availability of standard forms</li> <li>• Letters of Intent – uses and abuses – the CLLS form</li> </ul> |
| Consultancy Appointments                     | Alistair McGrigor (CMS)<br><br>Gillian Thomas (Hogan Lovells) | 10.10 – 11.10 | <ul style="list-style-type: none"> <li>• Key provisions of consultancy appointments</li> <li>• Standard forms</li> </ul>   |
| COFFEE BREAK                                 |   | 11.10 – 11.30 |  |
| Warranties and Third Party Rights            | Angus Dawson (Macfarlanes)                                    | 11.30 – 12.30 | <ul style="list-style-type: none"> <li>• Key provisions and standard forms</li> </ul>  |



# Marc Hanson (BCLP) & Victoria Peckett (CMS)

City of London Law Society – Foundation Level Training

1 November 2019





## Procuring Global House

# Procuring Global House

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Developer            Marc  
                              CEO  
                              Global House Developments Limited

Quantity  
Surveyor:            Vince  
                              Counter & Partners

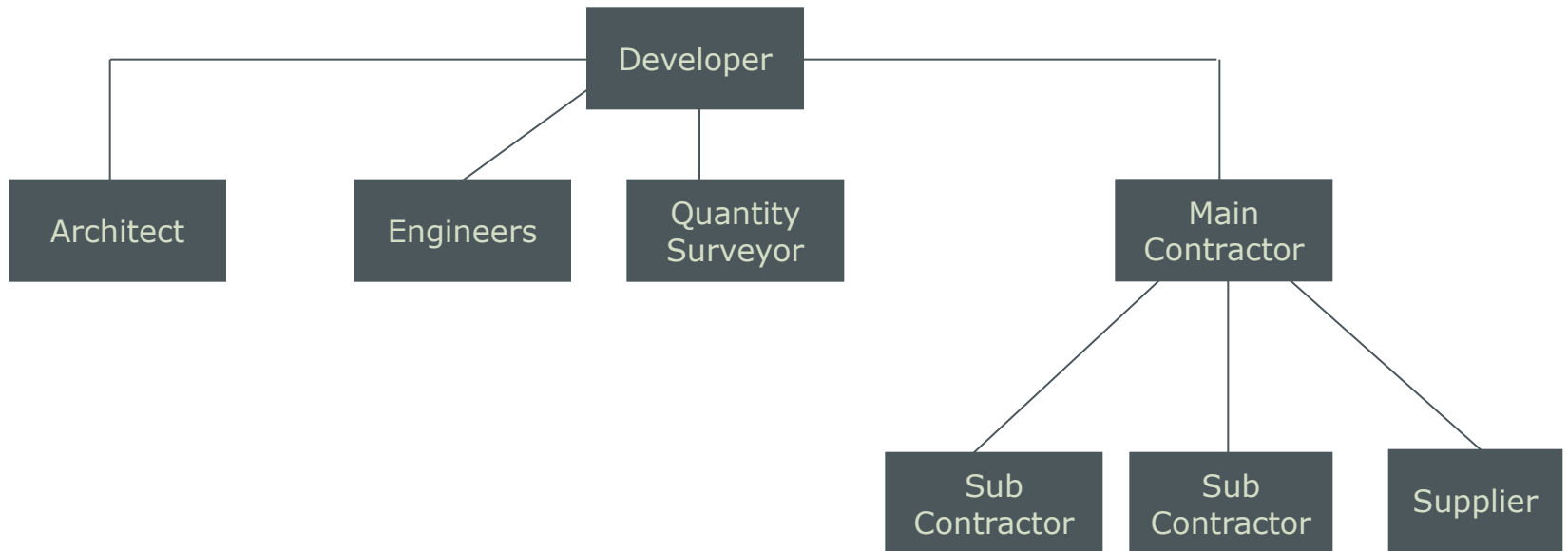
Funder:                Gulf Development Bank

Tenant:                Flood and Fire Assurance Limited (FFA)

Construction  
lawyer:                Victoria

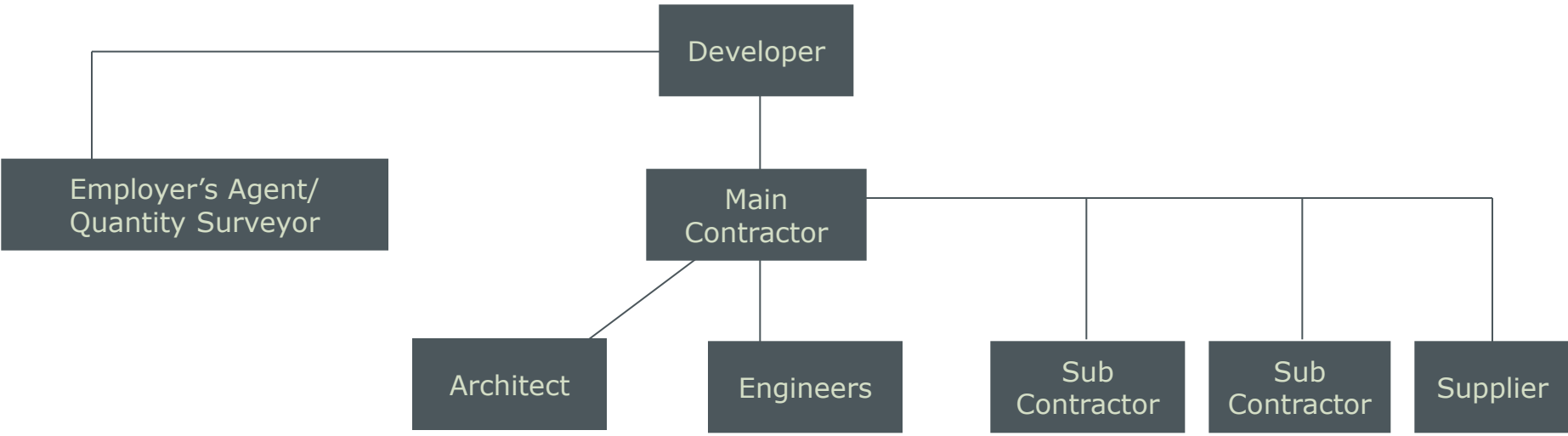
# Traditional Procurement

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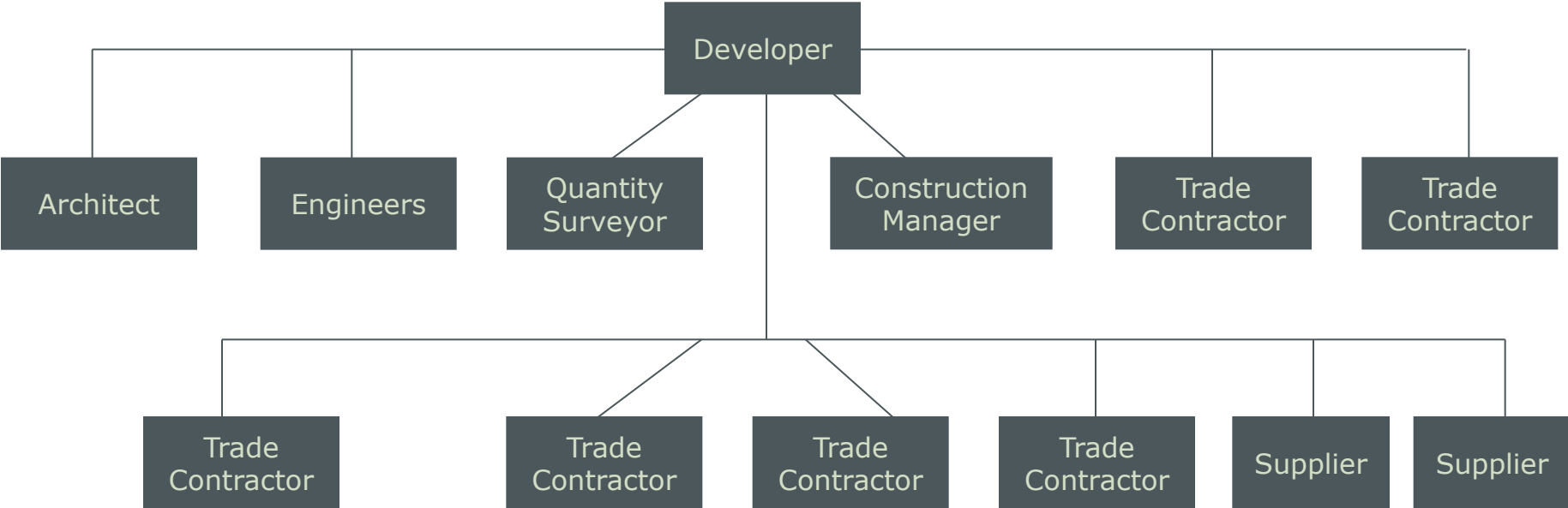
# Design and Build

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# Construction Management

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# Standard Form Contracts

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- JCT 2016
  - Standard Form (Traditional)
  - Design and Build
  - Intermediate
  - Minor Works
  - Management Contract
  - Construction Management
  - Prime Cost
  - Measured Term

# Standard Form Contracts

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- NEC 04
  - Option A – Priced Contract with Activity Schedule
  - Option B – Priced Contract with Bill of Quantities
  - Option C – Target Contract with Activity Schedule
  - Option D – Target Contract with Bill of Quantities
  - Option E – Cost Reimbursable
  - Option F – Management Contract

# Standard Form Contracts

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- ICC
  - Measurement
  - Design and Construct
  - Minor Works
  - Ground Investigation
  - Target Cost
  
- “Partnering Forms”
  - PPC 2000
  - JCT Constructing Excellence





# City of London Law Society Construction foundation level training

Consultancy Appointments



# Introductions

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- Alistair McGrigor – CMS
- Gillian Thomas – Hogan Lovells International LLP

# Format of Talk

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- Key provisions of Consultancy Appointments
- Standard Form Consultancy Appointments
- Common points of negotiation

# Key provisions – Duty of Care

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- Common Law duty
  - *Reasonable skill and care*
- Standard at Common Law
  - *Ordinary skilled and competent practitioner*
- Standard normally sought
  - *Skill, care and diligence to be expected of a properly qualified [insert discipline] experienced in carrying out work of a similar size, scope and complexity to the Project*
- Fitness for Purpose



# Key provisions – Fees and payment

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- Fees and payment
- Lump Sum Fees
- Ad Valorem Fees
- Time based Fees
- Expenses
- Housing Grants, Construction and Regeneration Act provisions
- Interest on Late payment

# Key provisions – Professional Indemnity Insurance

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- Obligation to maintain
- Period to maintain
- Level of Insurance
- Aggregate/each and every claim cover
- Exclusions and restrictions

# Key provisions – Assignment, Novation and Sub-contracting

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- Assignment
- Novation
- Sub-contracting

# Key provisions – Duties to Third Parties

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- Collateral Warranties
- Third party rights – Contracts (Rights of Third Parties) Act 1999
- Which Third Parties?

# Key provisions – Copyright licence

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- Ownership of Copyright in Materials
- Licence in copyright materials
- Rights to use document
- Reproduction of design
- Liability for use of document

# Key provisions – Suspension and Termination

- Suspension by the Client
- Termination at will by the Client
- Termination for default by the Client
- Termination for default by the Consultant
- Consequences of Termination

# Key provisions – Dispute Resolution

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- Adjudication
- Arbitration
- Courts

# Standard Forms

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- Bespoke -v- Standard?
- Royal Institution of British Architects
- Association of Consulting Engineers
- Construction Industry Council
- NEC Professional Services Contract
- GC/Works 5
- International Federation of Consulting Engineers (FIDIC)(White Book)
- Partnering forms – ACA PPC 2000



# Points for negotiation

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- Absolute obligations -v- reasonable skill and care
- Obligations regarding breach of third party agreements
- Copyright
- Net Contribution
- Limitation and exclusion of liability

# CLLS Construction Committee foundation course

## Warranties and third party rights

Angus Dawson

1 November 2019

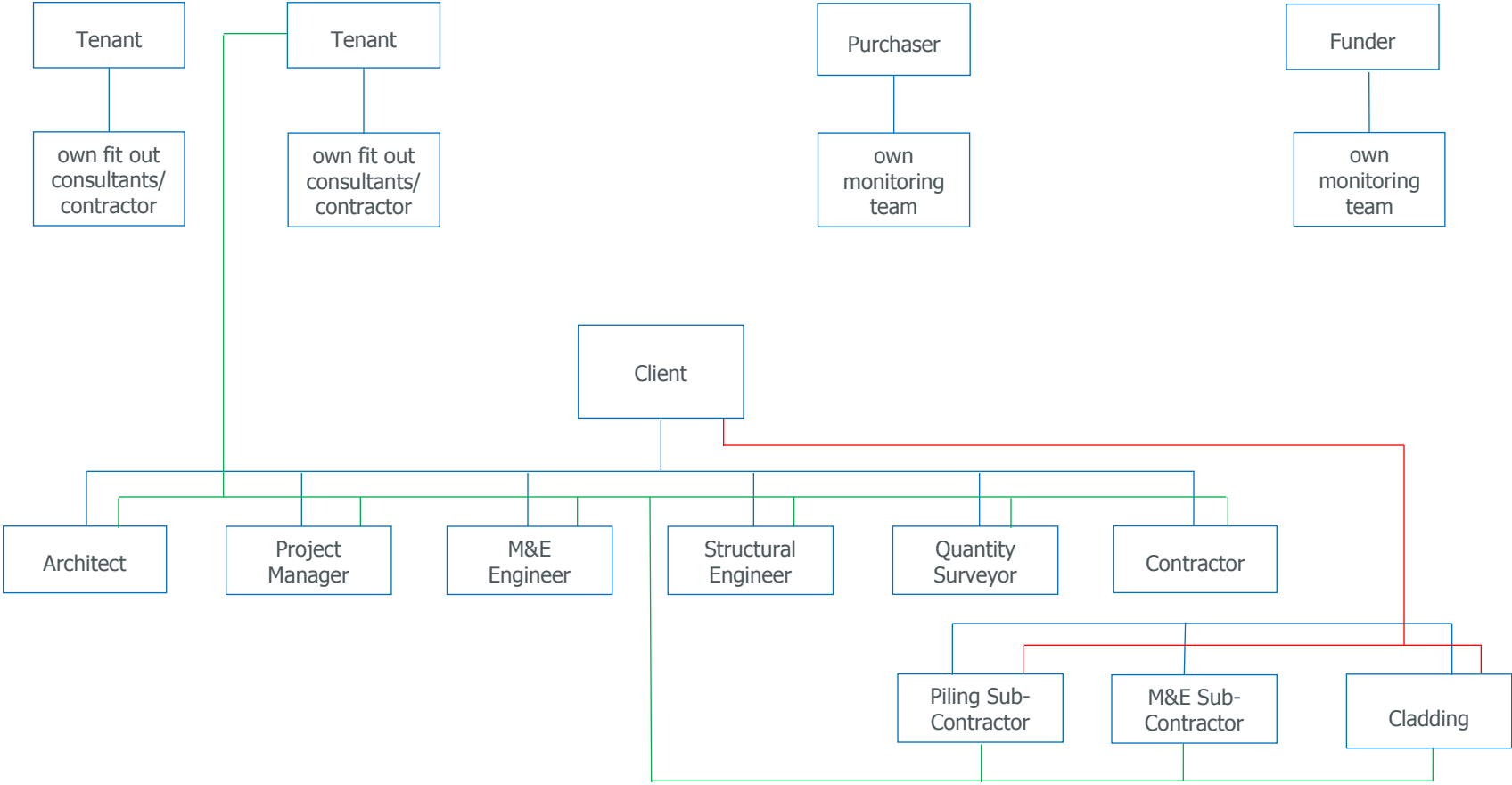
# Warranties and third party rights

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- Background
  - Why are they needed?
  - What is a warranty?
  - What are third party rights?

# Warranties and third party rights

Who should give / receive them?



# Warranties and third party rights

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- Form and enabling provisions
  - Standard form or bespoke?
  - Enabling provisions
  - Sanctions for non-compliance
  - Are warranties and third party rights an either/or option?

# Warranties and third party rights

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- Differences
  - Boilerplate drafting
  - Consideration
  - Defences
  - Benefit not burden and step in rights
  - 'Excluding' the Contracts (Rights of Third Parties) Act 1999

# Warranties and third party rights

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- Substantive provisions
  - Primary covenant/duty of care clause
  - Prohibited materials
  - Insurance provisions
  - Assignment
  - No 'no loss' clause
  - Copyright

# Warranties and third party rights

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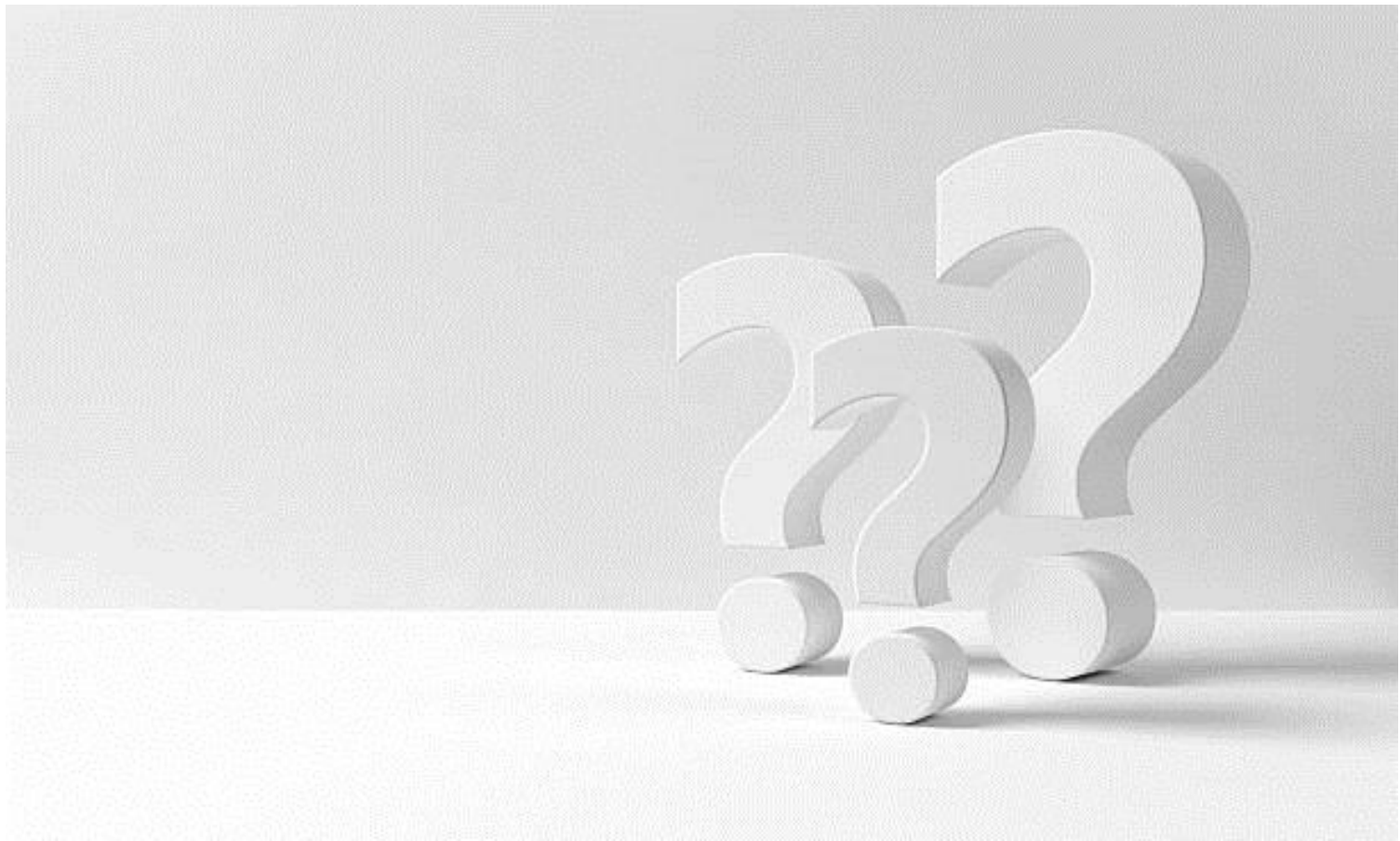
- Substantive provisions (part II)
  - Step in rights
  - Right to call for further warranties/third party rights
  - Inspection/approval not to negate duties of warrantor
  - Notices
  - Limitation period
  - Adjudication?



# Warranties and third party rights

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- Caps and limitations on liability
  - Various forms/types
  - No greater liability provisions
  - Net contribution clauses





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