

ECC NEC 4

ACCEPTED PROGRAMME

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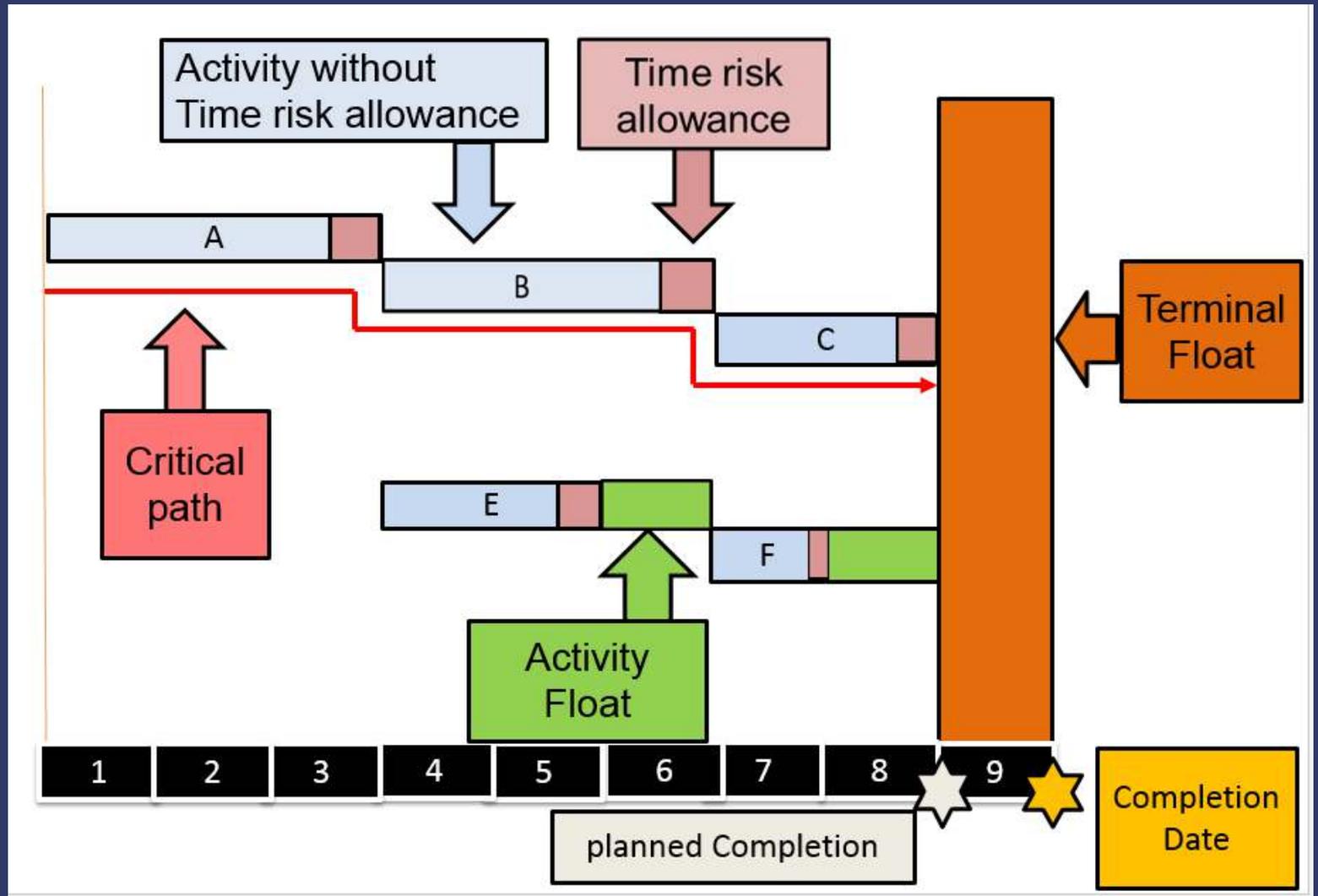
The Course

- Background to NEC4
- Key Terms
- Importance of Accepted Programme
- Programme Acceptance and Revision
- Clause 31
- Clause 32
- Compensation Events
- Practical Considerations
- Questions

Background to NEC 4

- NEC Programme supported by Sir Michael Latham's report "Constructing the Team".
- Latham was concerned by the adversarial nature of the industry at the time and considered the NEC to be the way forward because it:
 - ◆ acted as a stimulus to good management; and
 - ◆ encouraged a spirit of mutual trust and cooperation.
- NEC 1 published in 1993, NEC 3 published in 2005 and more recently NEC 4 was published in June 2017.
- A key difference between NEC and traditional contracts is the Accepted Programme

Key Terms

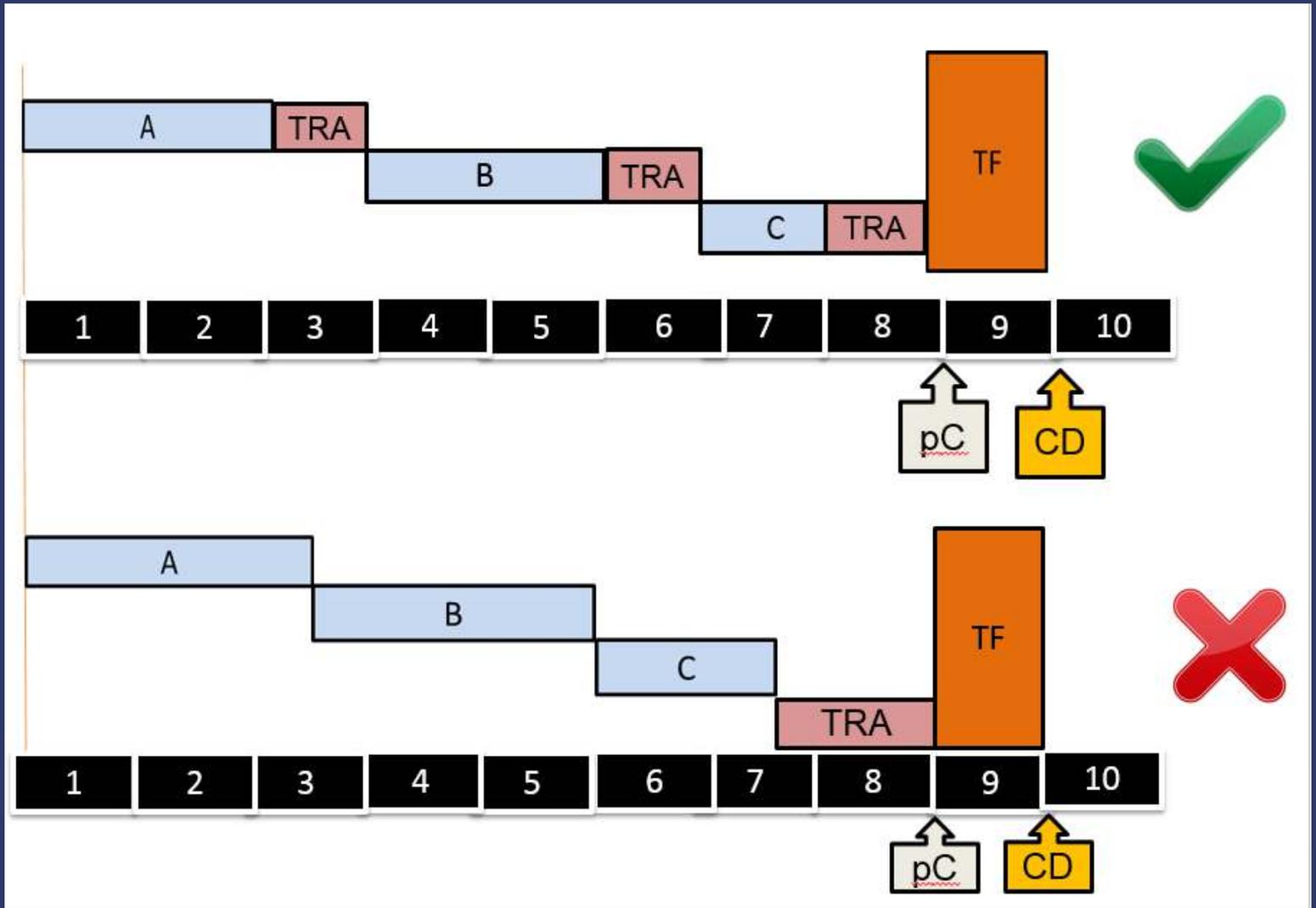


Time Risk Allowance Shown on Accepted Programme

- 1600 m² of PC Units installed at 200m² /day = 8 days duration.
- TRA of 2 days for **wind** conditions, crane breakdowns, etc.

Activity	Net Duration	TRA	Total Duration
Install 2 nd Floor PC Units	8 days	2 days	10 Days

Time Risk Allowance



Importance of Accepted Programme



Definition of “Accepted Programme”

- **Clause 11.2 (1):**

“The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.”

- The Accepted Programme is a **living document, the beating heart of the Contract:**

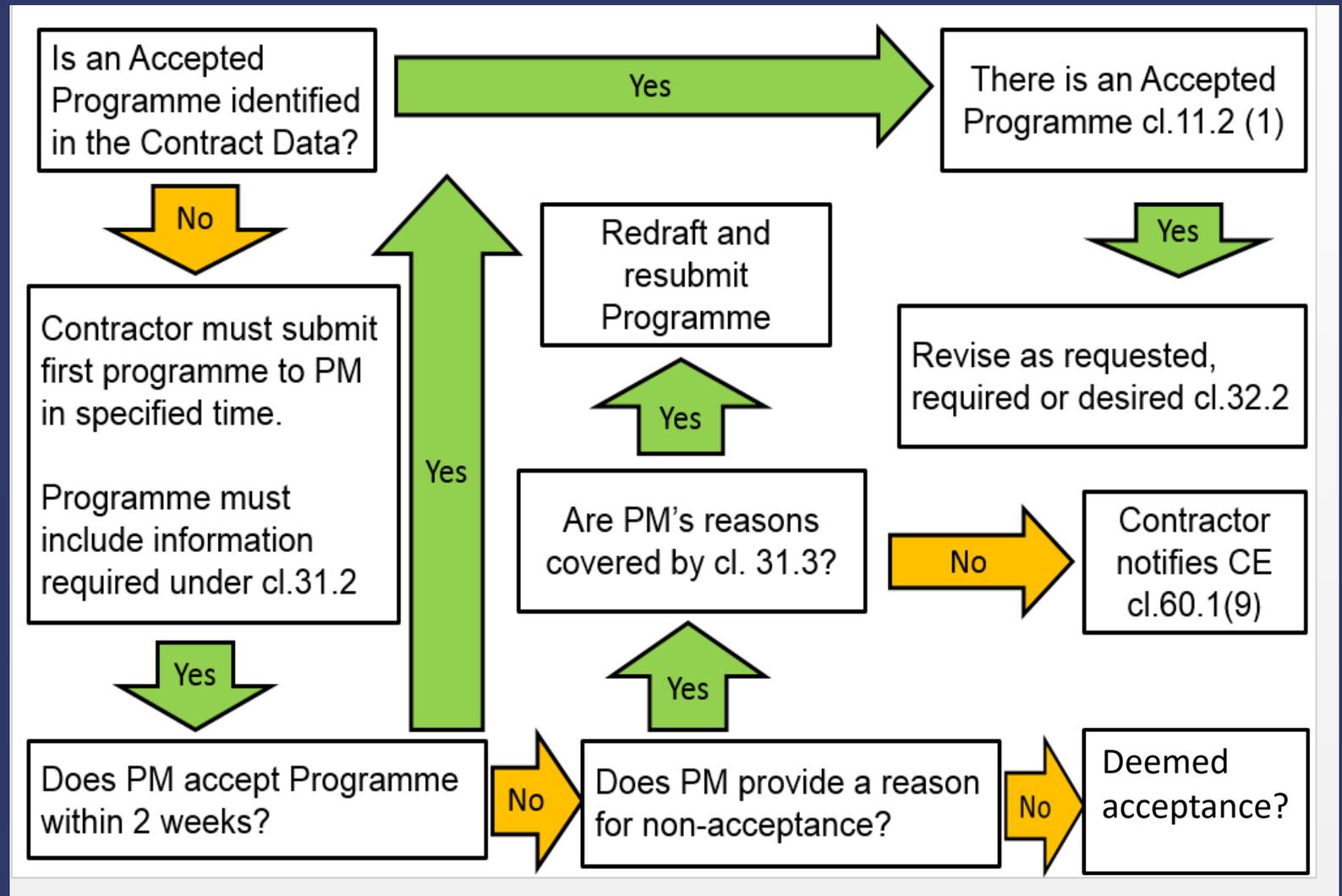
- ◆ Constantly being **updated** to reflect **actual progress**.

- ◆ Records the **effects** of all matters **affecting progress**.

- ◆ Requires **ongoing input** from the whole of the construction team.

- Extensions to Completion Date can **only** be achieved through revisions to the Accepted Programme.

Programme Acceptance and Revision



Clause 31

- Clause 31.1 identifies the initial obligations of **submitting** the programme for acceptance.

“If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.”

- Clause 31.2 provides the minimum requirements of **what should be included** within each programme before it is issued to PM for acceptance.
- Clause 31.3 lists the only reasons for the PM to **reject** a programme.

Programme Requirements

- **Clause 31.2:**
 - ◆ “the *starting date, access dates, Key Dates and Completion Date*”;
 - ◆ “planned Completion”;
 - ◆ “the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works”;

Programme Requirements

- **Clause 31.2:**
 - ◆ “the order and timing of the work of the *Client* and Others **as last agreed with them by the Contractor** or, if not so agreed, **as stated in the Scope**”;
 - ◆ “The dates when the *Contractor* **plans to meet each Condition** stated for the **Key Dates** and to complete the work needed to allow the *Client* and Others to do their work”;

Programme Requirements

- **Clause 31.2:**

“Provisions for:

- ◆ float,
- ◆ time risk allowances,
- ◆ health and safety requirements and
- ◆ the procedures set out in this contract”;

Programme Requirements

- Clause 31.2:

“The dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need

- ◆ access to a part of the site if later than its access date,
- ◆ acceptances,
- ◆ Plant and Materials and other things to be provided by the *Client* and
- ◆ information from Others”;

Programme Requirements

- **Clause 31.2:**
 - ◆ “for each operation, a statement of how the *Contractor* plans to do the work identifying the **principal Equipment** and **other resources** which he plans to use”; and
 - ◆ “**other information** which the **Scope** requires the *Contractor* to show on a programme submitted for acceptance.”

Clause 31.3

- Within **2 weeks** of being sent the programme the PM must **either accept it, or give one of the following reasons for not doing so:**
 - ◆ The **Contractor's plans** which it shows are not practicable.
 - ◆ It does not show the **information** which the contract requires.
 - ◆ It does not **represent** the Contractor's plans realistically.
 - ◆ It does not **comply** with the Scope.
- If the PM rejects a programme for **any other reason**, this is grounds for a **compensation event** under Clause 60.1(9)
- What if the PM fails to respond?

Default Acceptance?

- NEC3 - If the PM fails to respond within 2 weeks this is grounds for a compensation event under Clause 60.1(6).
- NEC4 - Addition to clause 31.3:

“If the *Project Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the failure continues for a further one week after the *Contractor*’s notification, it is treated as acceptance by the *Project Manager* of the programme.”
- But why the underlined text??

Revision to Accepted Programme Content

- **Clause 32.1:**

“The *Contractor* shows on each revised programme:

- ◆ The **actual progress achieved** on each operation and its **effect upon the timing of the remaining work**;
- ◆ How the *Contractor* **plans to deal with any delays** and to **correct notified defects**; and
- ◆ **Any other changes** which the *Contractor* proposes to make to the Accepted Programme.”

Revisions - Timing

- **Clause 32.2**
- When should a programme be **revised**?
 - ◆ Contractor may submit a revised programme to the PM at **any time**.
 - ◆ PM may **instruct** the Contractor to submit a revised programme at any time.
 - ◆ Revised programmes must be submitted at **intervals** defined in the Contract.
- What if the programme is **not revised in time**?
 - ◆ Will be a **breach** of contract, but will not give grounds for termination; and
 - ◆ May mean that a **compensation event** is assessed against an out of date programme.

Assessing Delay Due to CE

Delay Damages

Missing the **Completion Date** will usually entail **liquidated** damages.

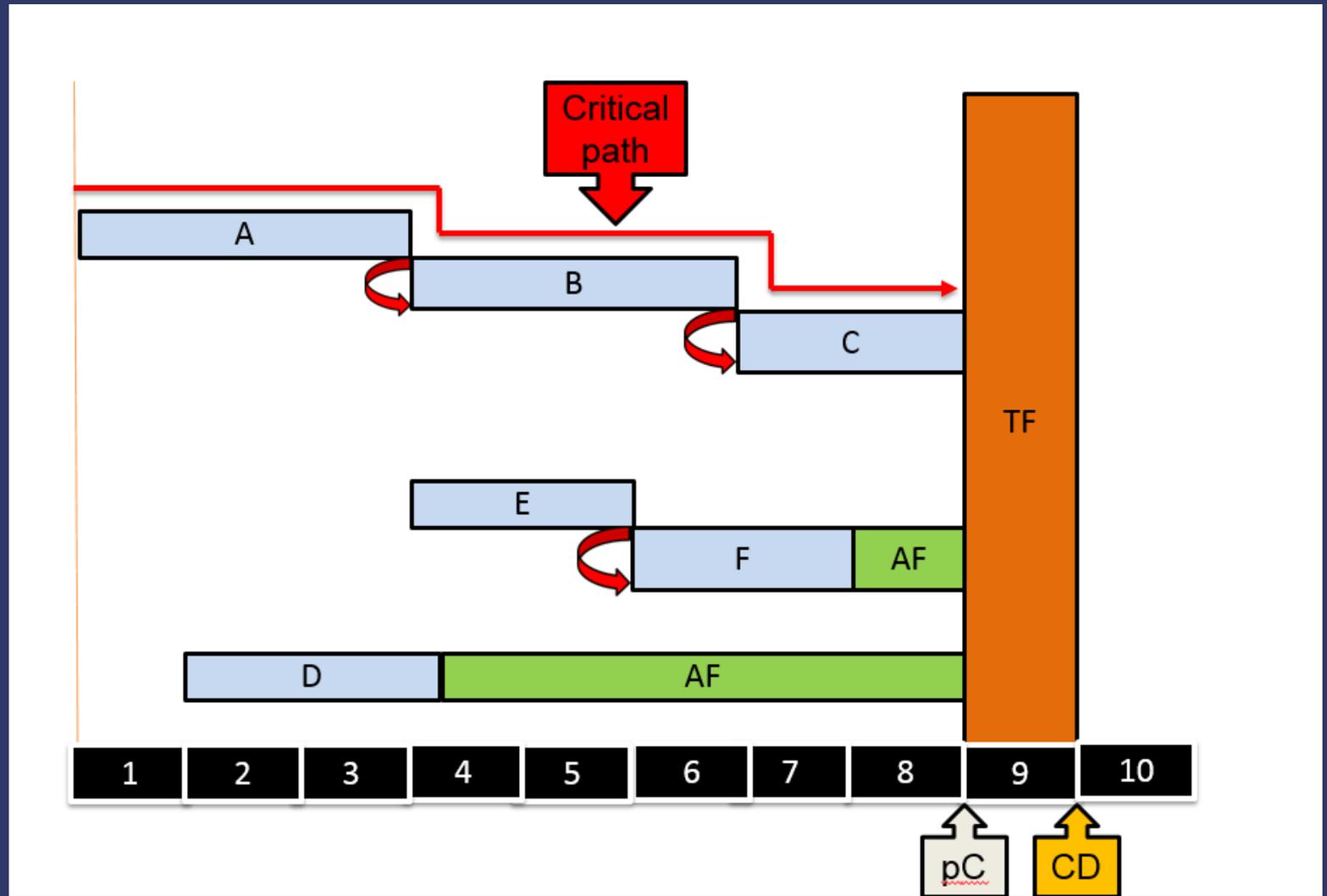
Missing a **Key Date** may also lead to **unliquidated** damages.

Avoiding Delay Damages

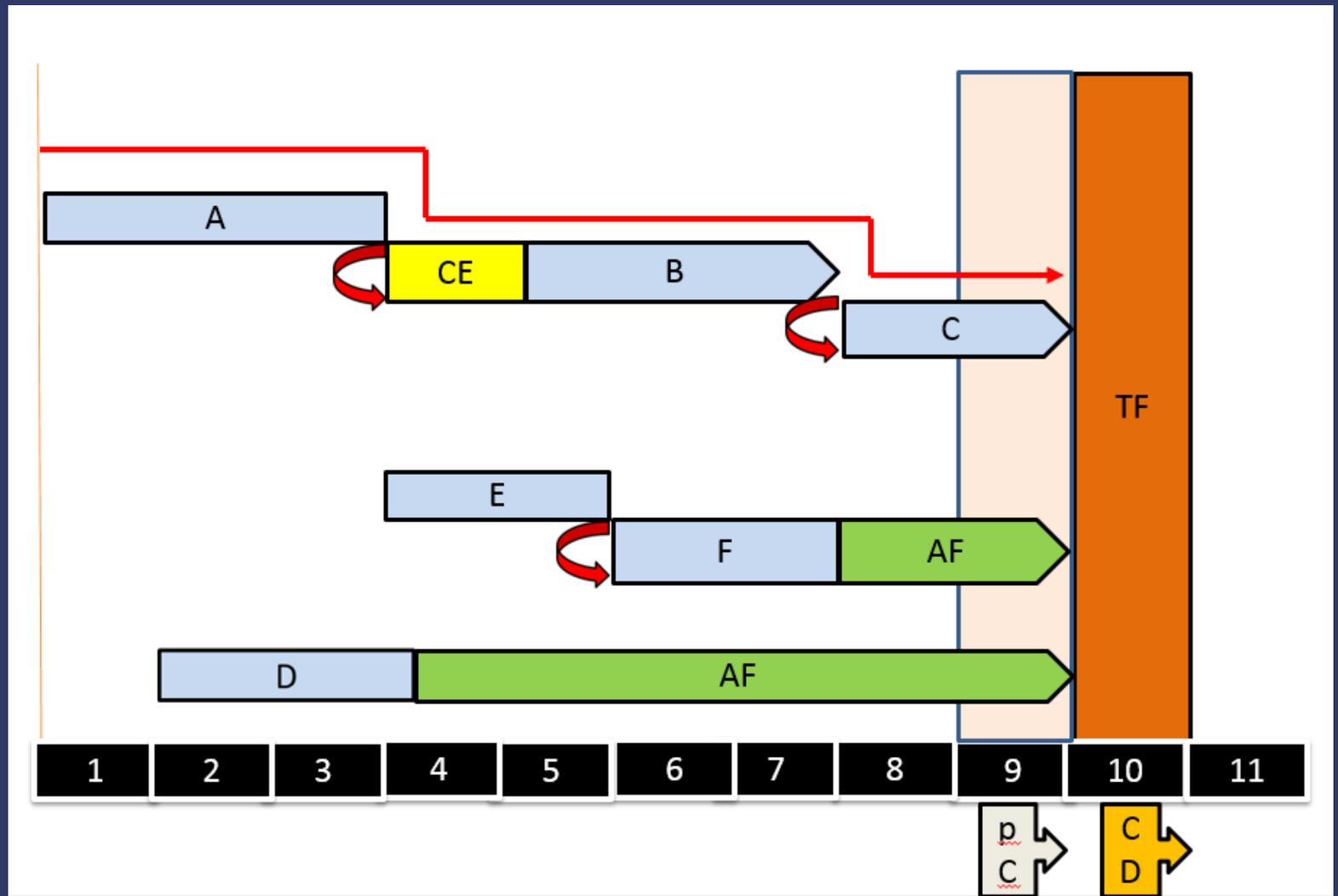
Use the programme to foresee and avoid delays.

Update compensation events on the Accepted Programme and ensure that the revised Accepted Programme is approved.

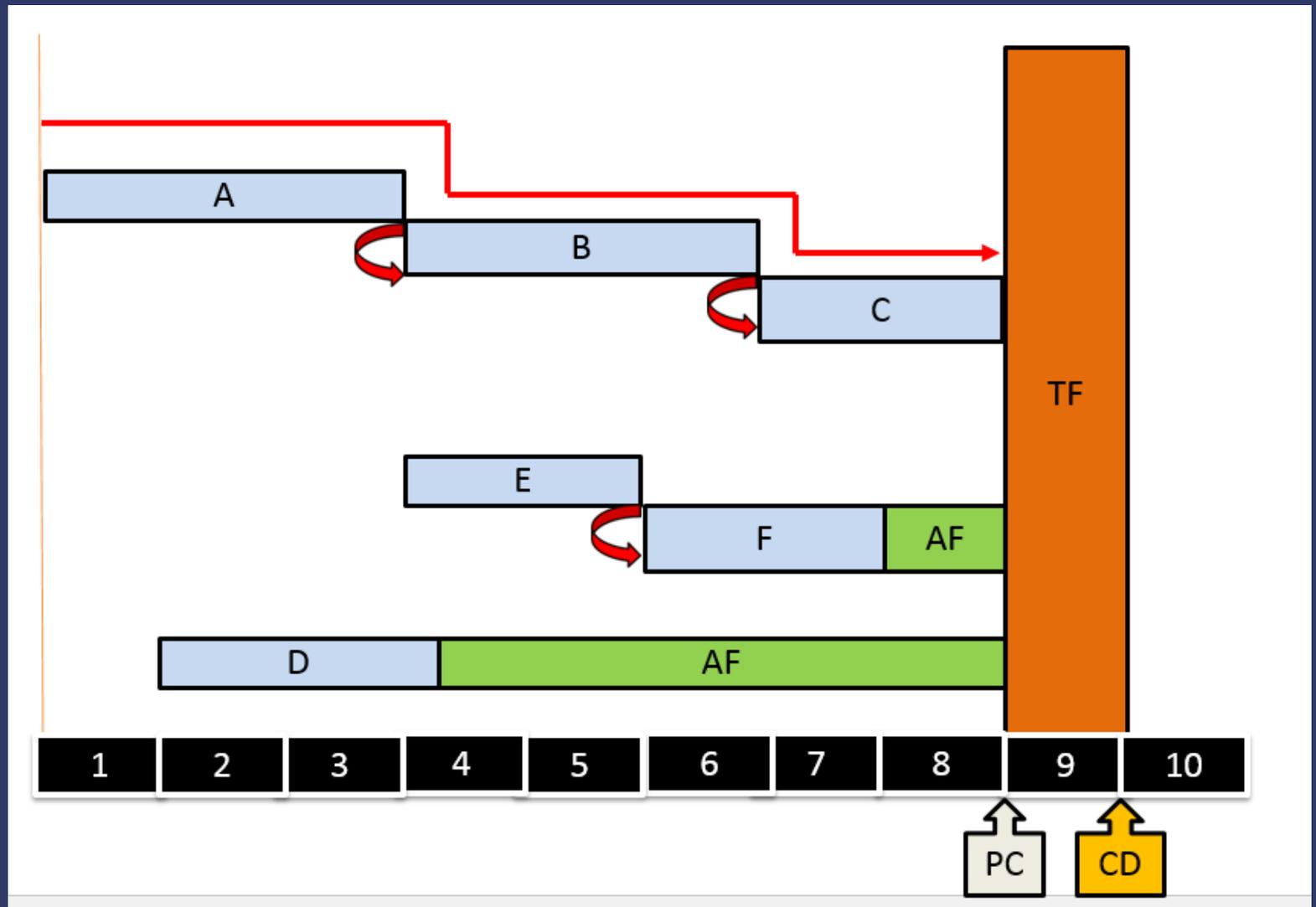
Impact of CE on Terminal Float



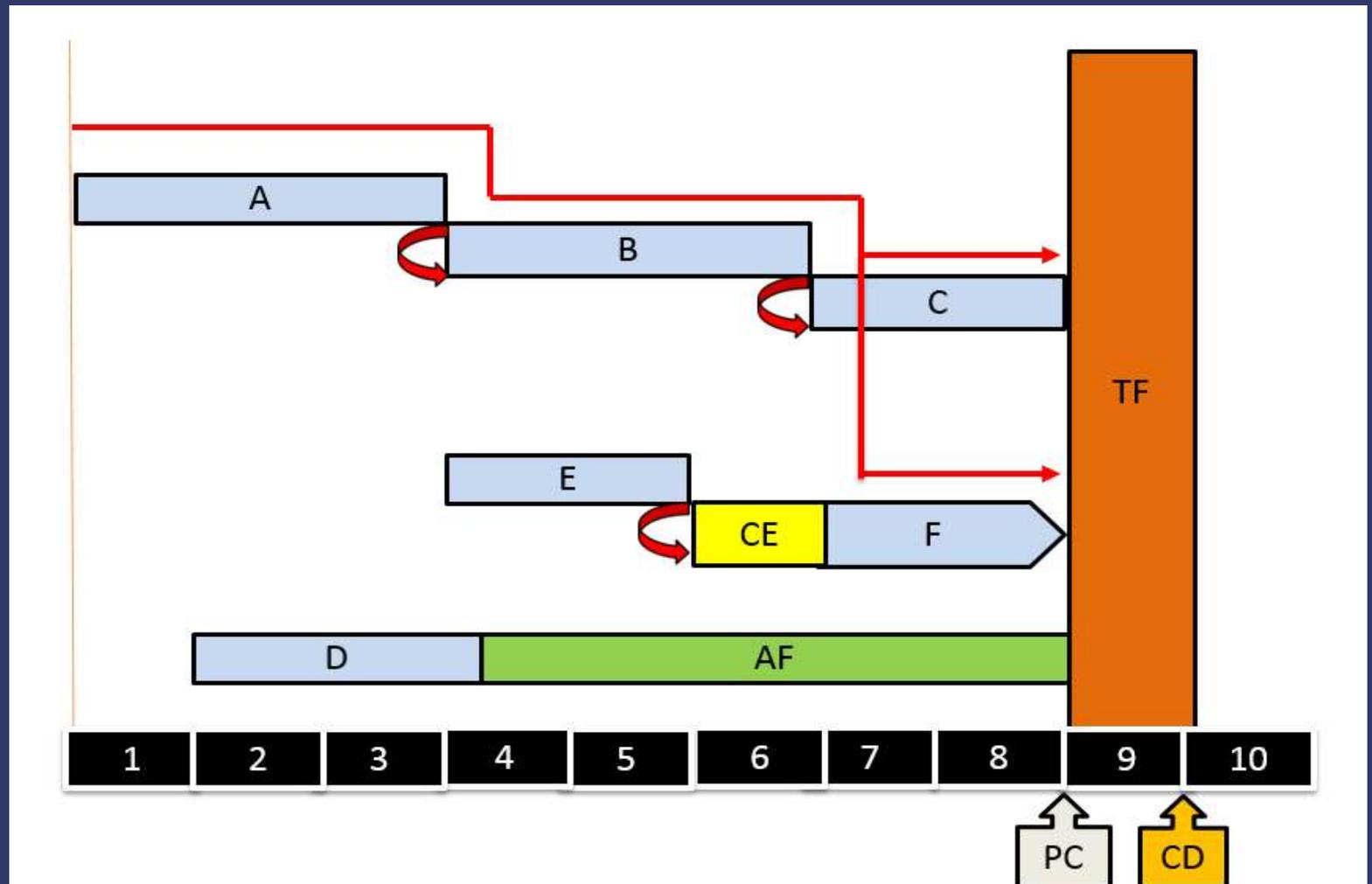
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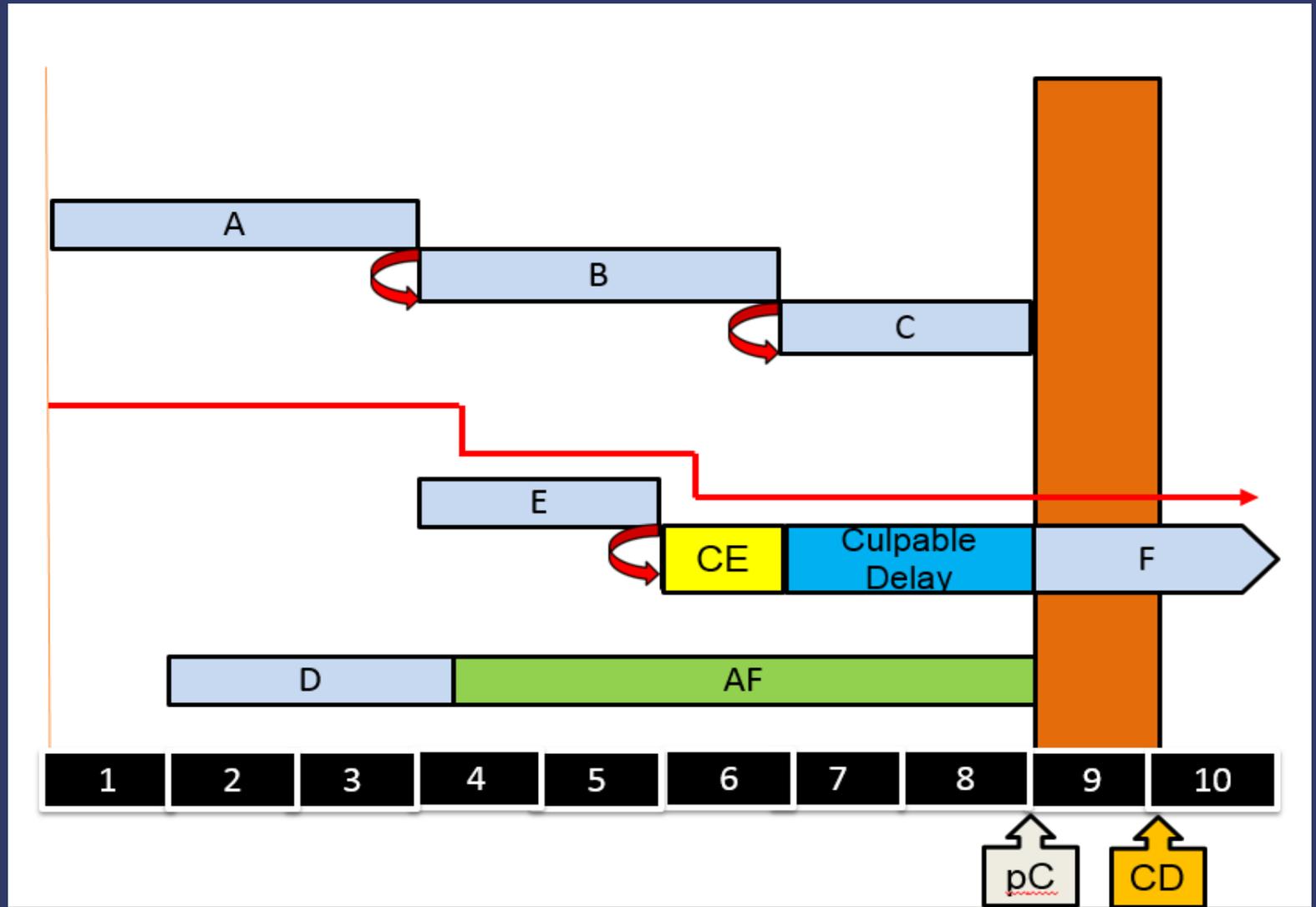
Impact of CE on Activity Float



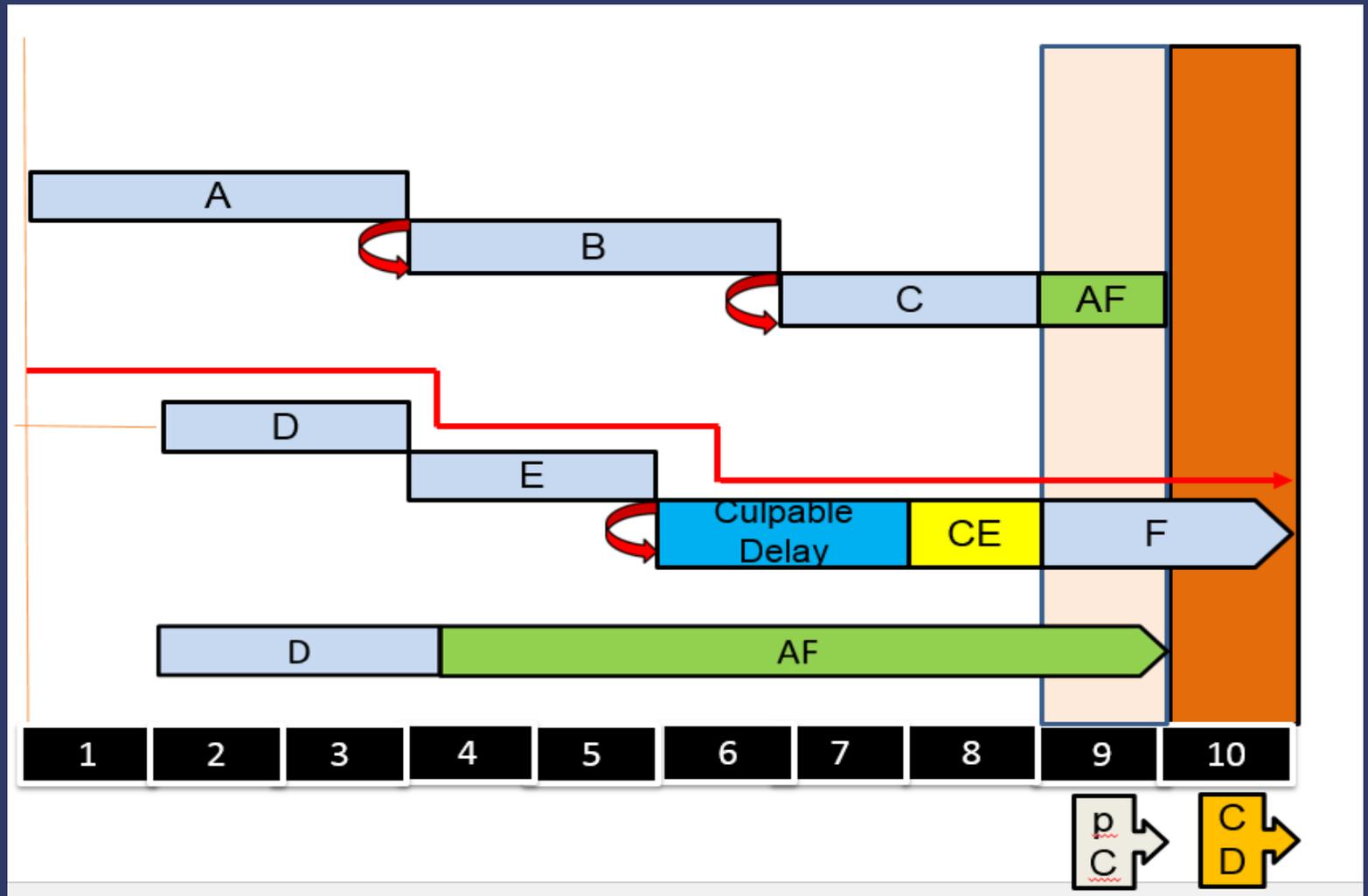
Impact of CE on Activity Float



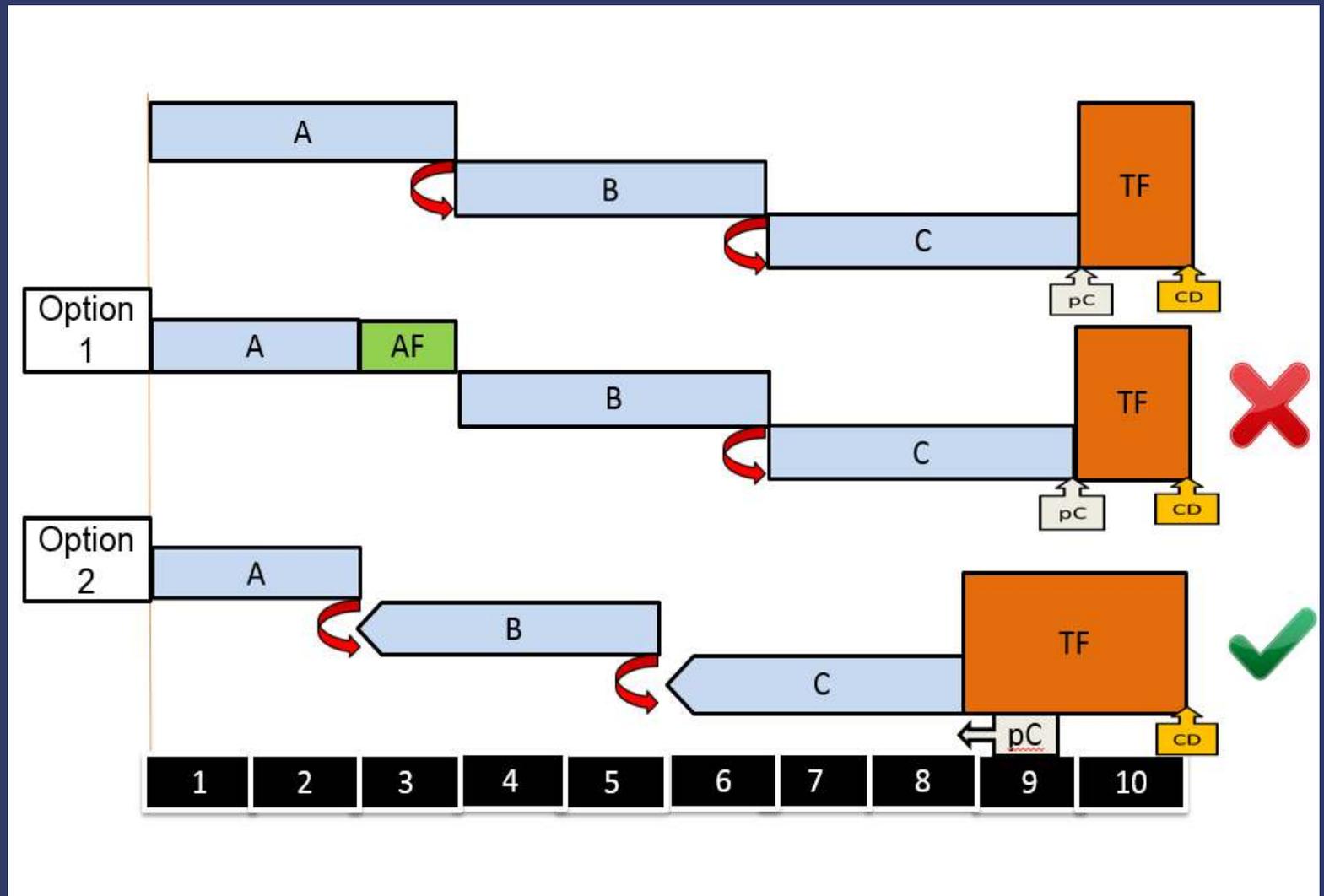
Impact of CE on Activity Float



Impact of CE on Activity Float



Early Completion of Activities



Procedure for Including Compensation Events in Accepted Programme

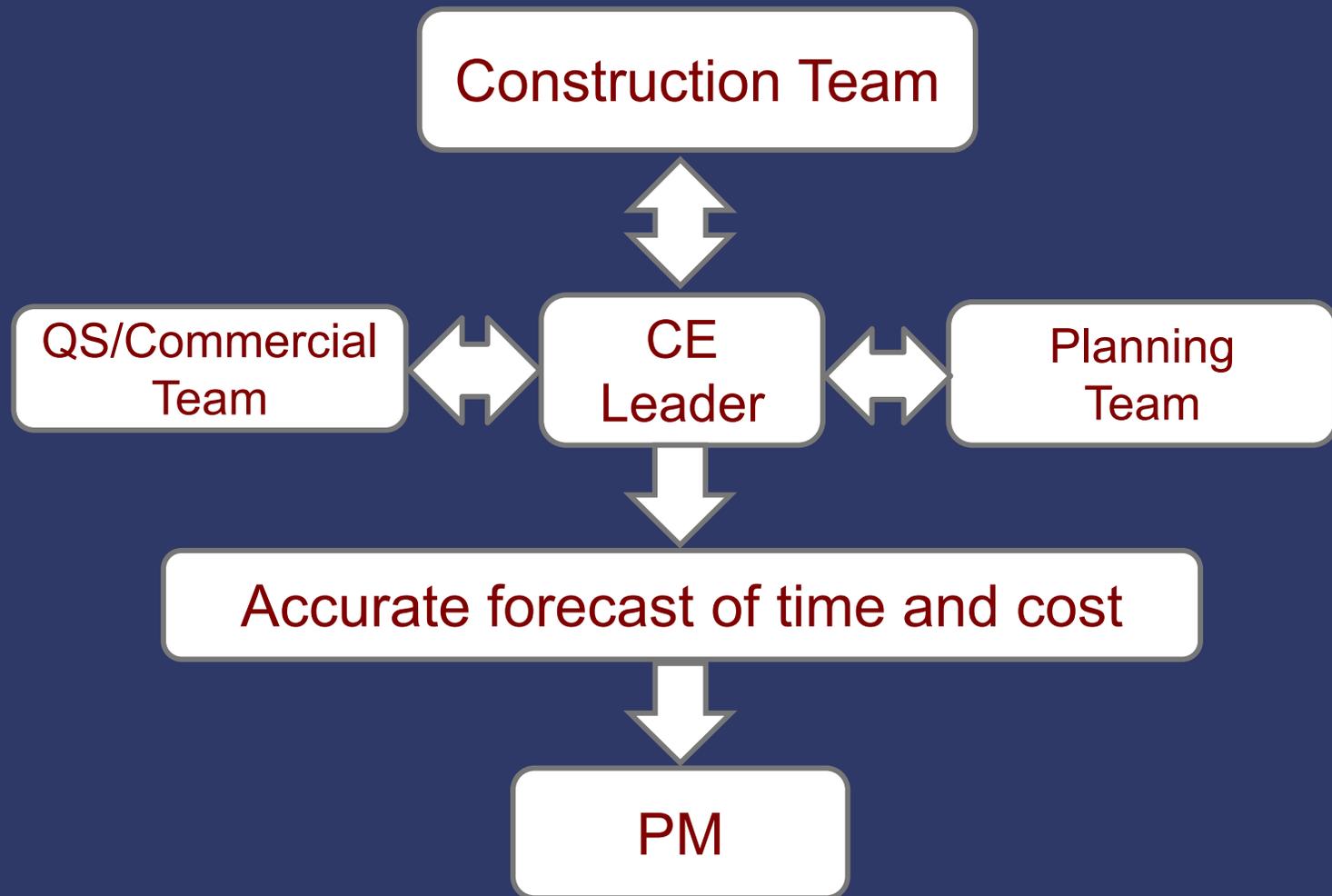
- Clause 63.5:

“A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.”

(see cl.63.1 for explanation of “dividing date”)

- Take the **Accepted Programme current at the dividing date** and **bring it up to date** to reflect ‘reality’ in terms of **progress** at the time the event arose and **get that programme accepted**. (This meets with the requirements of clause 32.1)
- **Impact the effect** of the event on the Accepted Programme as **updated**. If the effect is a **delay to planned Completion** as shown on the updated Accepted Programme, **submit the revised, impacted programme for acceptance** by the PM as **part of the quotation** for the compensation event.

Procedure for Including Compensation Events in Accepted Programme



Procedure for Including Compensation Events in Accepted Programme

- There should be **no need for retrospective analysis**. Compensation events and Contractor's delays should be recorded **as they occur**.

- If the **Accepted Programme is not maintained** and retrospective analysis is required, it **usually results in a dispute** because of:
 - ◆ **Conflicting methodologies** of parties making analysis.
 - ◆ **Patchy records**.
 - ◆ **Ongoing progress**.
 - ◆ Difficulty in identifying which **floats** have been created and/or used.
 - ◆ **Time and resource pressures** on parties making analysis
 - ◆ If a Contractor leaves it to the **PM to decide** the time and cost implications of a CE, he might not like the result.

Practical Considerations

- Key to success is **communication** between Contractor and PM.
- Advisable to issue a **draft of each programme** to the PM and then **meet to discuss** it in detail.
- In particular, consider:
 - ◆ **What information is required, and what is superfluous?**
 - ◆ **What level of detail is required, especially with regards to methods and resources?**
 - ◆ **At what point does this information need to be included?**
 - ◆ **How will the parties identify opportunities for further development?**
 - ◆ **Can the programme be streamlined** by contractual changes or mutual agreement?

Practical Considerations

- **During initial discussions, there may be scope for simplifying the programme.**
- **Payment for Work Done to Date**
 - ◆ **Amend definition of Price for Work Done to Date in Clause 11.2(27).**
 - ◆ **Allow a proportion of the value of part completed activities to be included in the calculation of the Price for Work Done to Date.**
 - ◆ **If this isn't done, the only way to keep cash flowing for Work Done to Date is to break the work down into lots of small activities, each of which will need procedural and resource statements under 31.2 and 31.4 and the programme will be difficult to manage.**

Practical Considerations

- Where a number of activities will be carried out by the same team of people using the same equipment as they move through the project, have a statement for the team instead of for each operation.
- Where a project will be completed by several distinct teams, plot the path of each team through its relative activities and provide one statement for each team.
- Where the size of a team may vary throughout the project, describe it by using the minimum, maximum and average number of people. This removes the necessity of changing the programme unnecessarily.

Questions?

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