

# **ECC NEC 3 ACCEPTED PROGRAMME**

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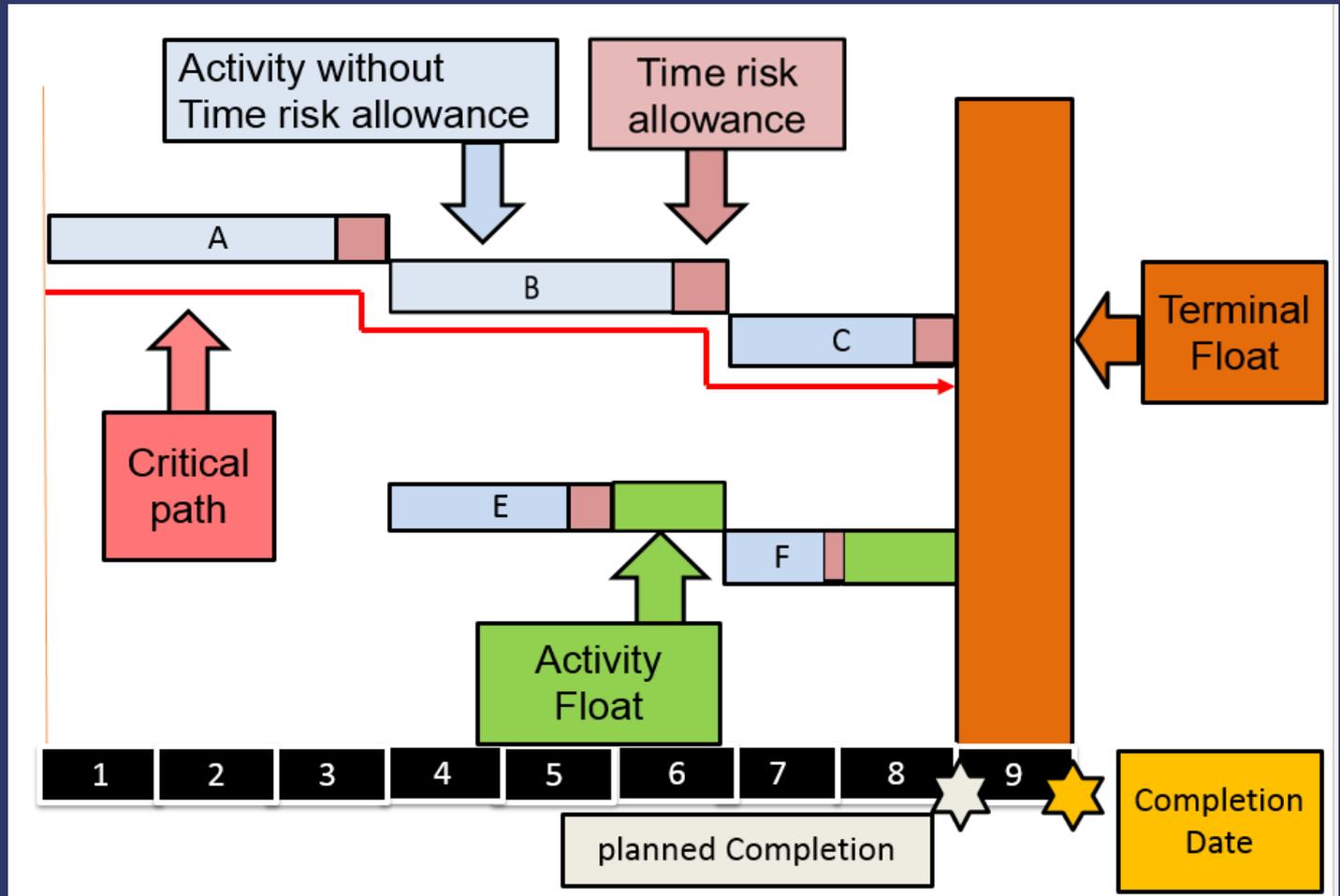
# The Course

- Background to NEC3
- Key Terms
- Importance of Accepted Programme
- Definition of Accepted Programme
- Programme Acceptance and Revision Flowchart
- Clause 31: Overview
- Clause 31.2: Programme Requirements
- Clause 31.3: Programme Acceptance
- Clause 31.4: Relationship with Activity Schedule
- Clause 32.1: Revisions
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- Compensation Events

# Background to NEC 3

- NEC 1 published in 1993, NEC 3 published in 2005 and more recently NEC 4 was published in June 2017.
- NEC Programme supported by Sir Michael Latham's report "Constructing the Team".
- Latham was against 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.

# Key Terms

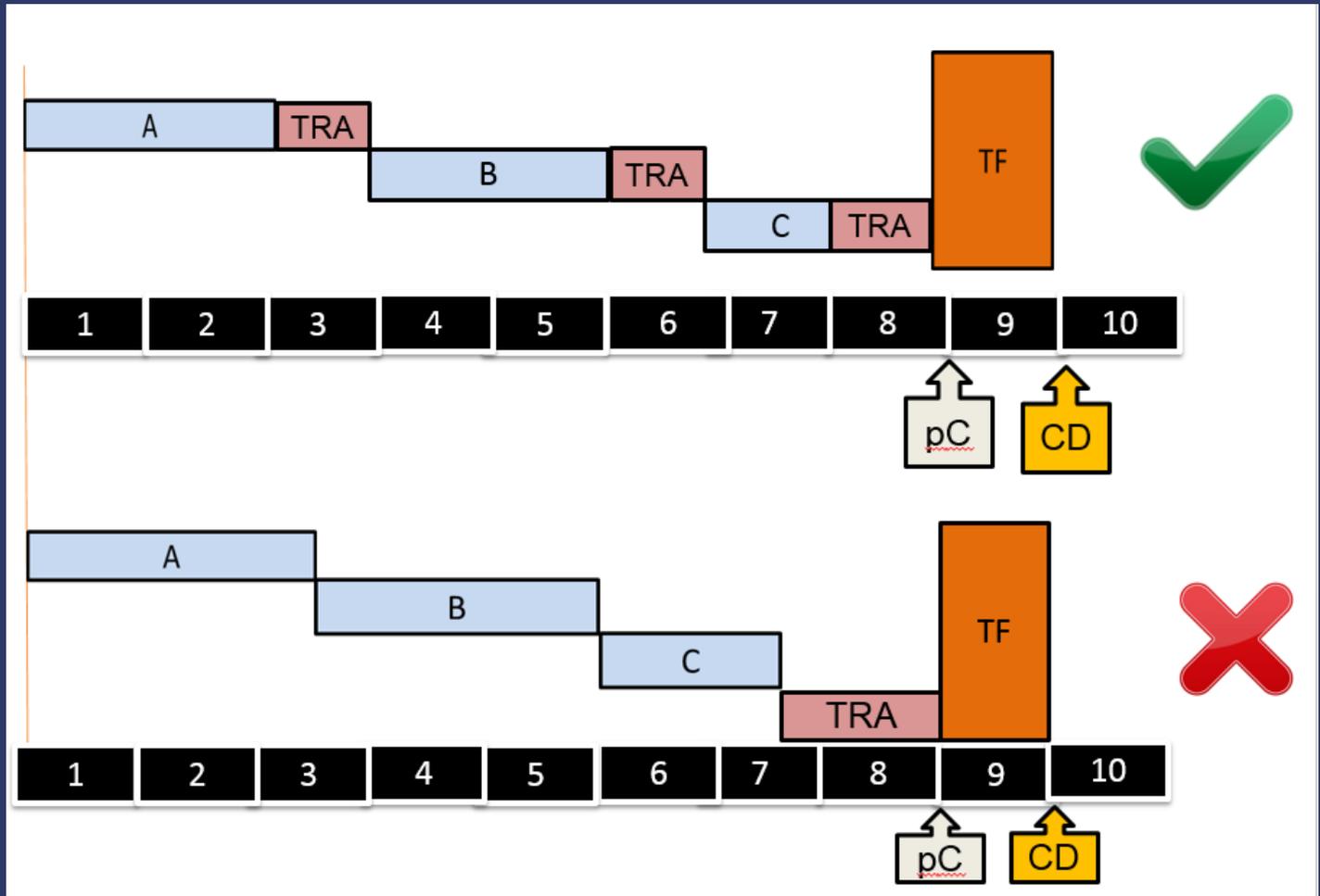


# Time Risk Allowance Shown on Accepted Programme

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

Activity	Net Duration	TRA	Total Duration
Install 2 <sup>nd</sup> Floor PC Units	8 days	2 days	10 Days

# Time Risk Allowance



# Importance of Accepted Programme



# Definition of “Accepted Programme”

- **Clause 11.2 (1):**

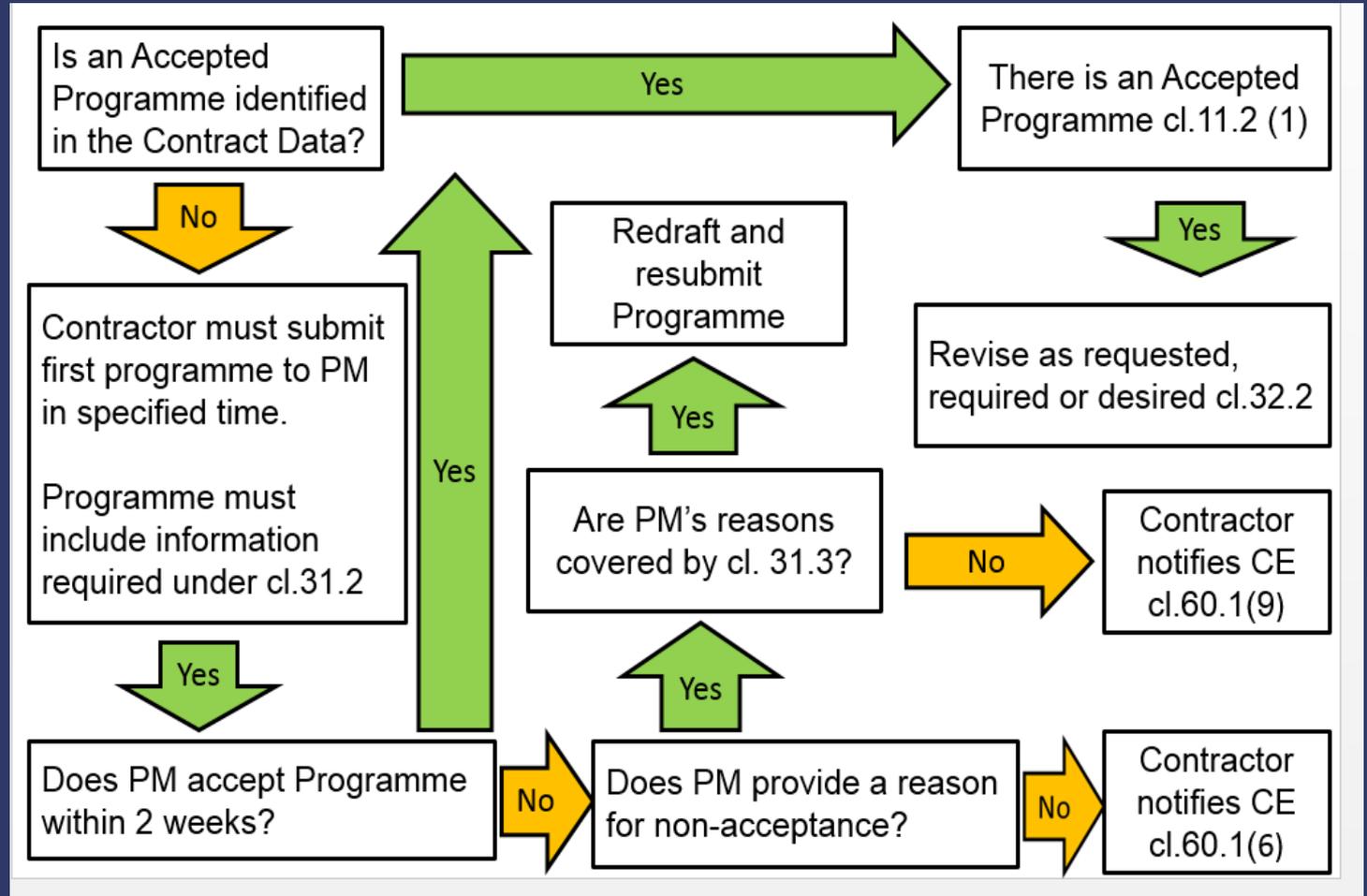
“The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.”

- 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 focuses on:
  - ◆ **contents** of the Accepted Programme; and
  - ◆ **process for managing** the Accepted Programme.
- Clause 31.1 identifies the initial obligations of **submitting** the programme for acceptance.
- 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 *Employer* and Others as last agreed with them by the **Contractor** or, if not so agreed, as stated in the **Works Information**”;
  - ◆ “The dates when the *Contractor* plans to meet each **Condition** stated for the **Key Dates** and to complete the work needed to allow the *Employer* 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 *Employer* 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 **Works Information** 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 Works Information.
- If the PM rejects a programme for **any other reason**, this becomes a **compensation event** under Clause 60.1(9)
- If the PM **fails to respond** within 2 weeks this is a **compensation event** under Clause 60.1(6)

# 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**;
- ◆ The **effects** of implemented **compensation events**;
- ◆ 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.”

- Revised programmes **must be submitted to, and approved by, the Project Manager.**

# 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.

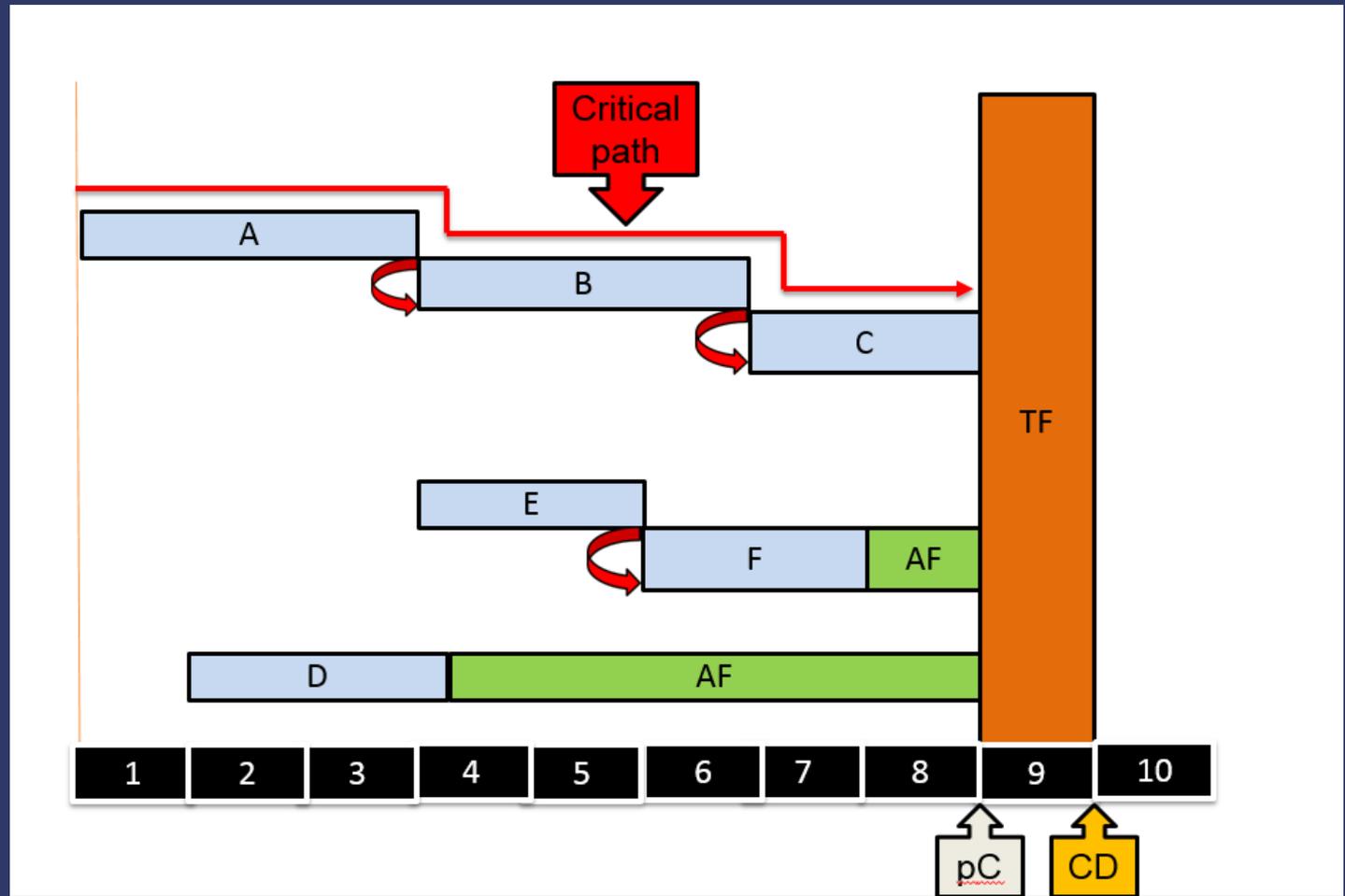
Missing a **Key Date** may also lead to **unliquidated** damages.

## Avoiding Delay Damages

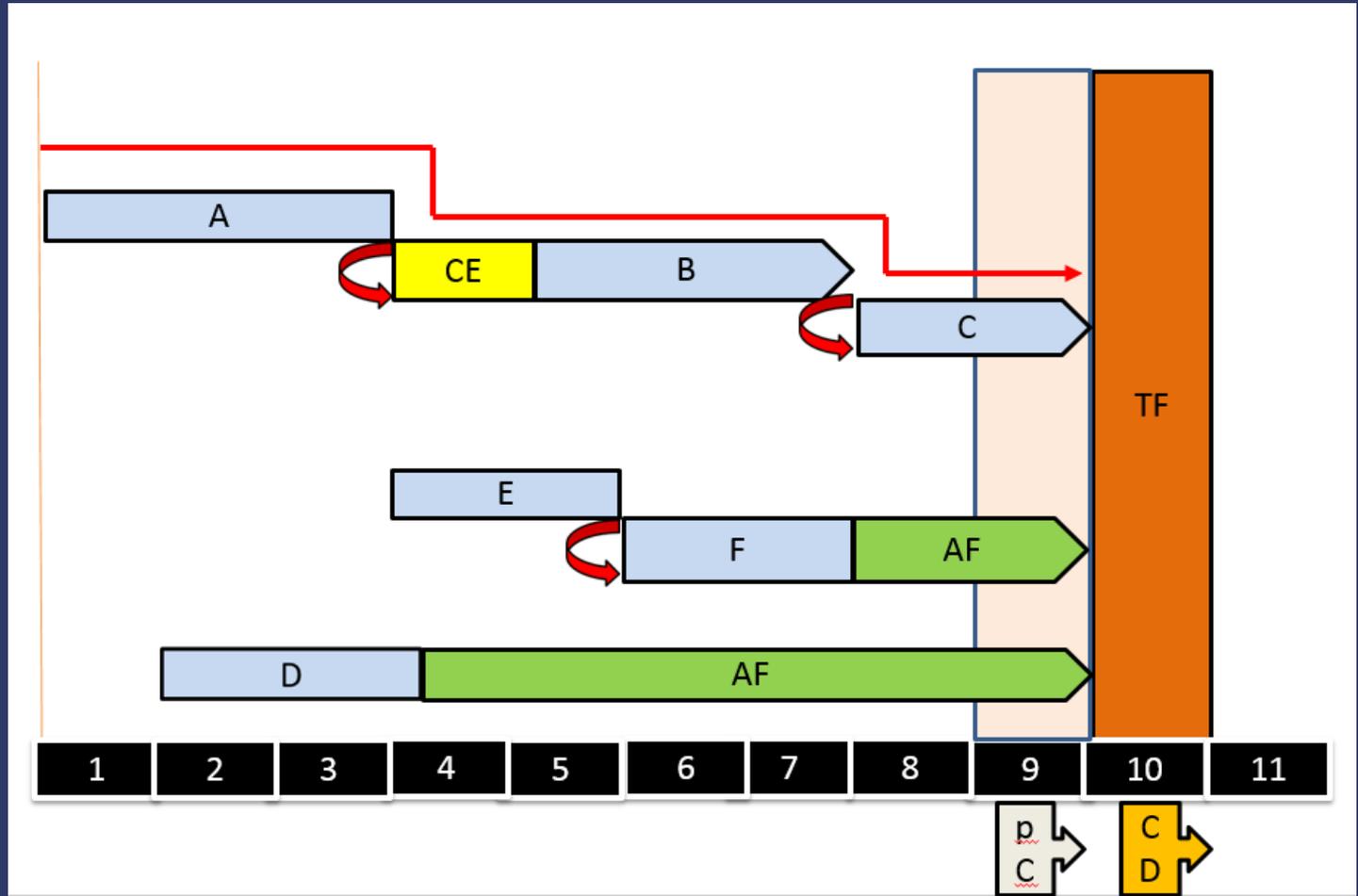
**Use the programme to foresee and avoid** delays.

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

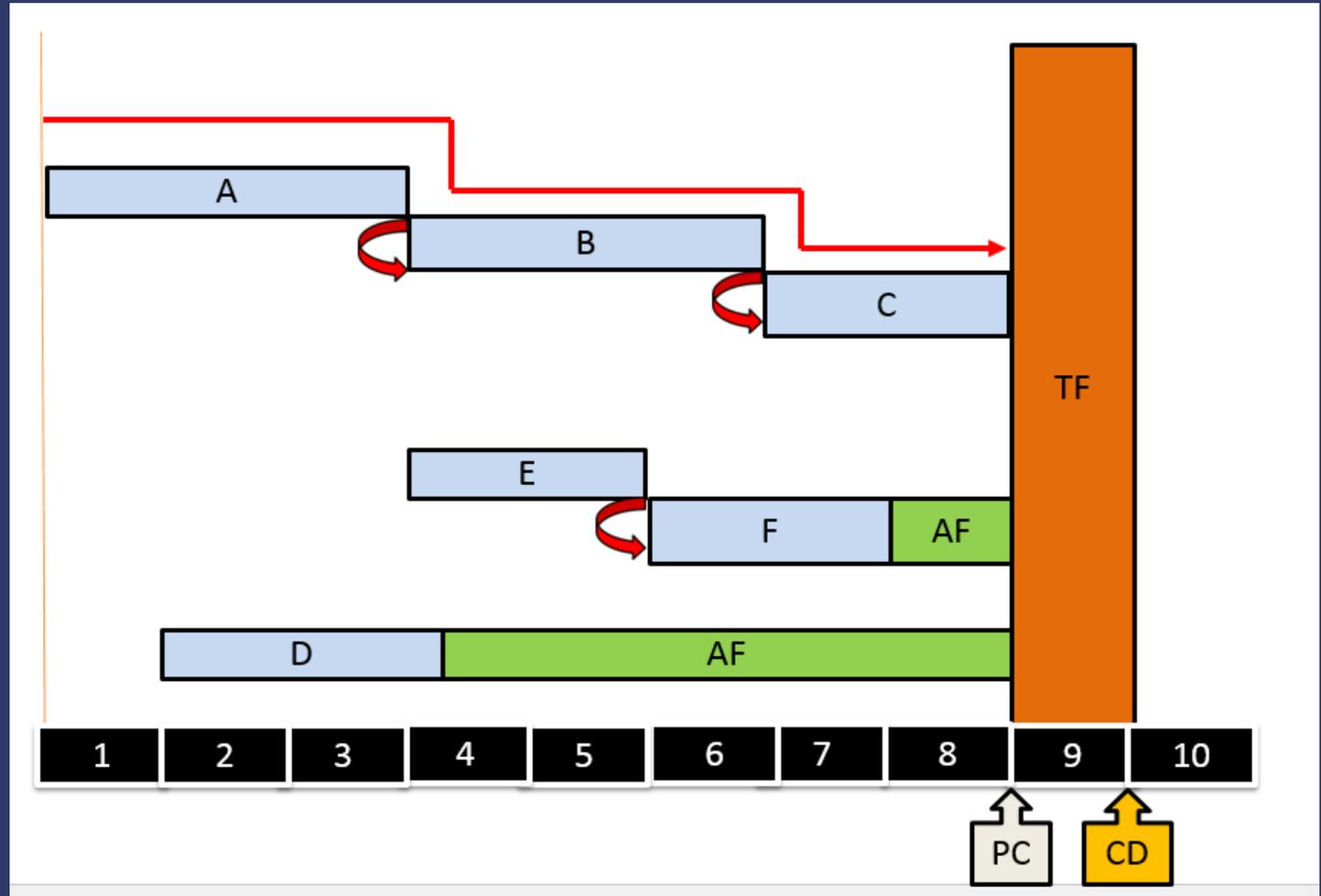
# Impact of CE on Terminal Float



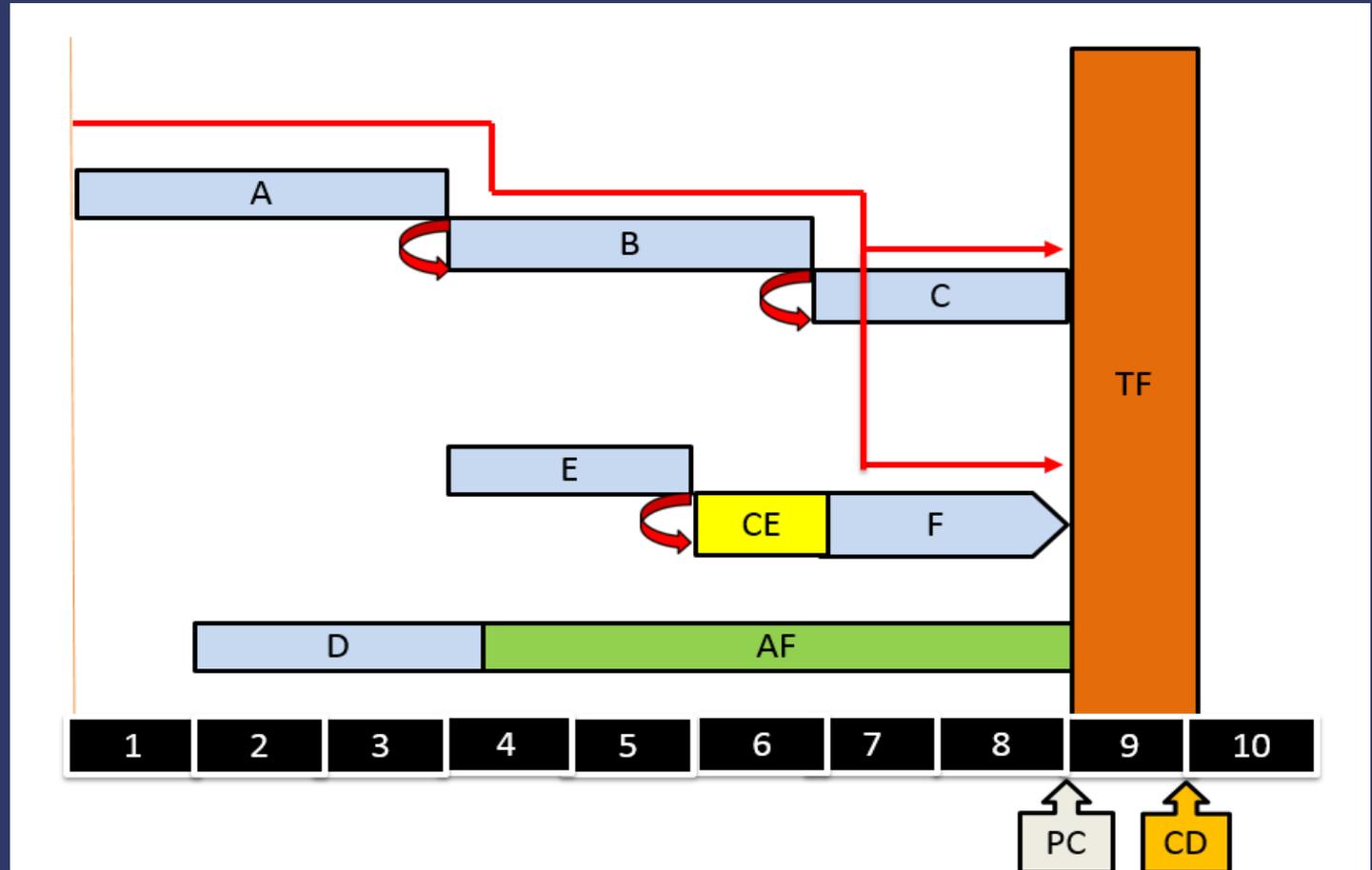
# Impact of CE on Terminal Float



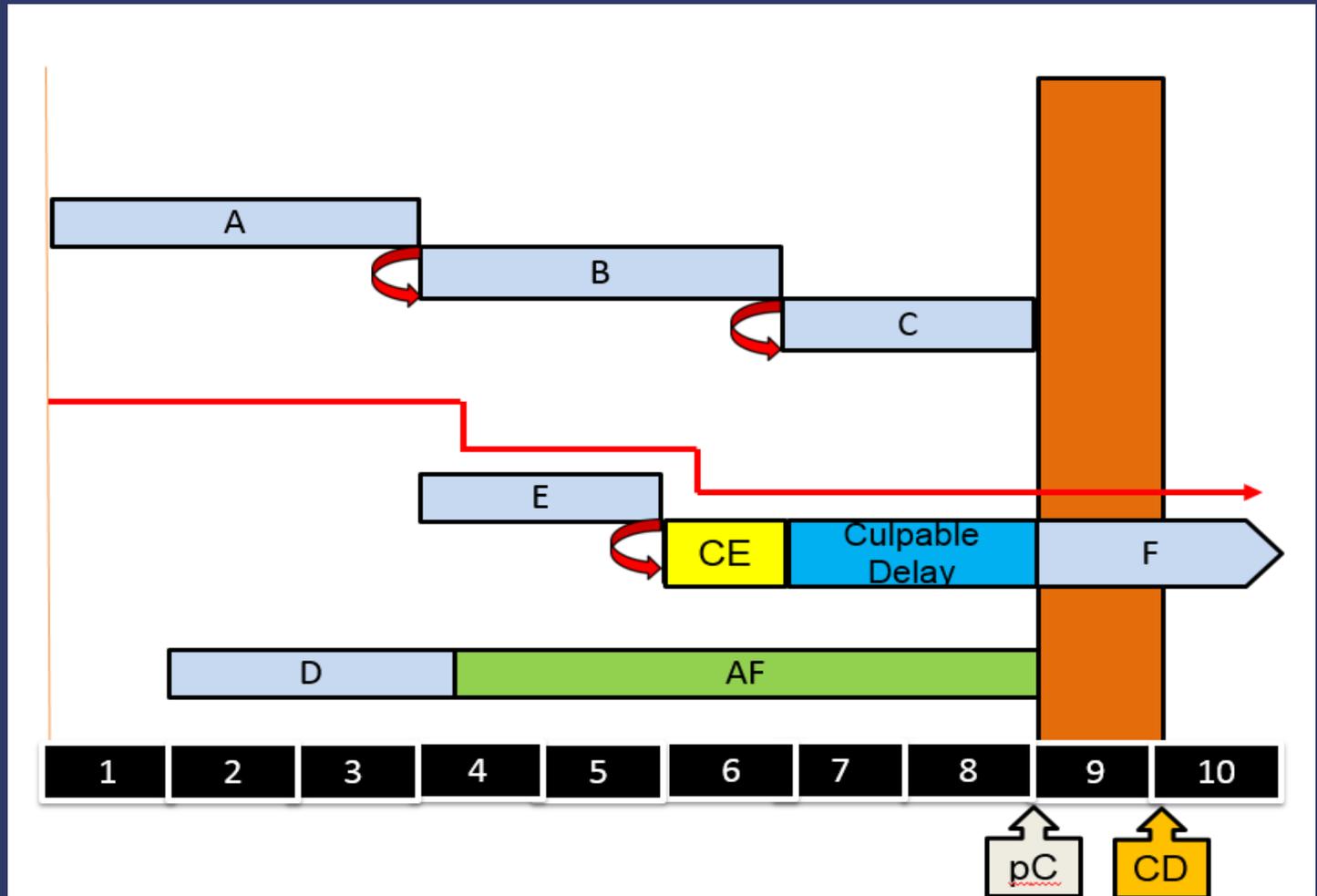
# Impact of CE on Activity Float



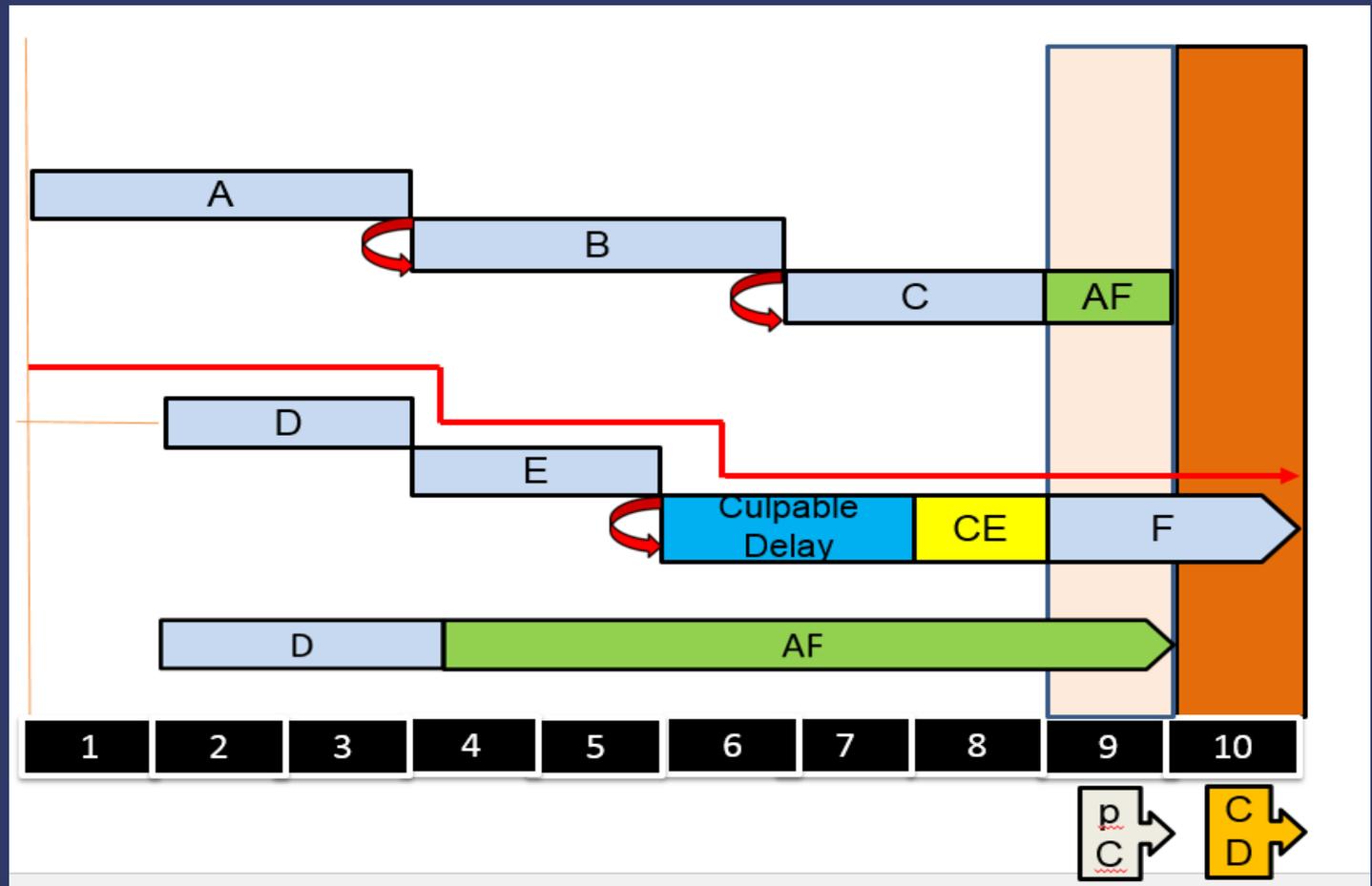
# Impact of CE on Activity Float



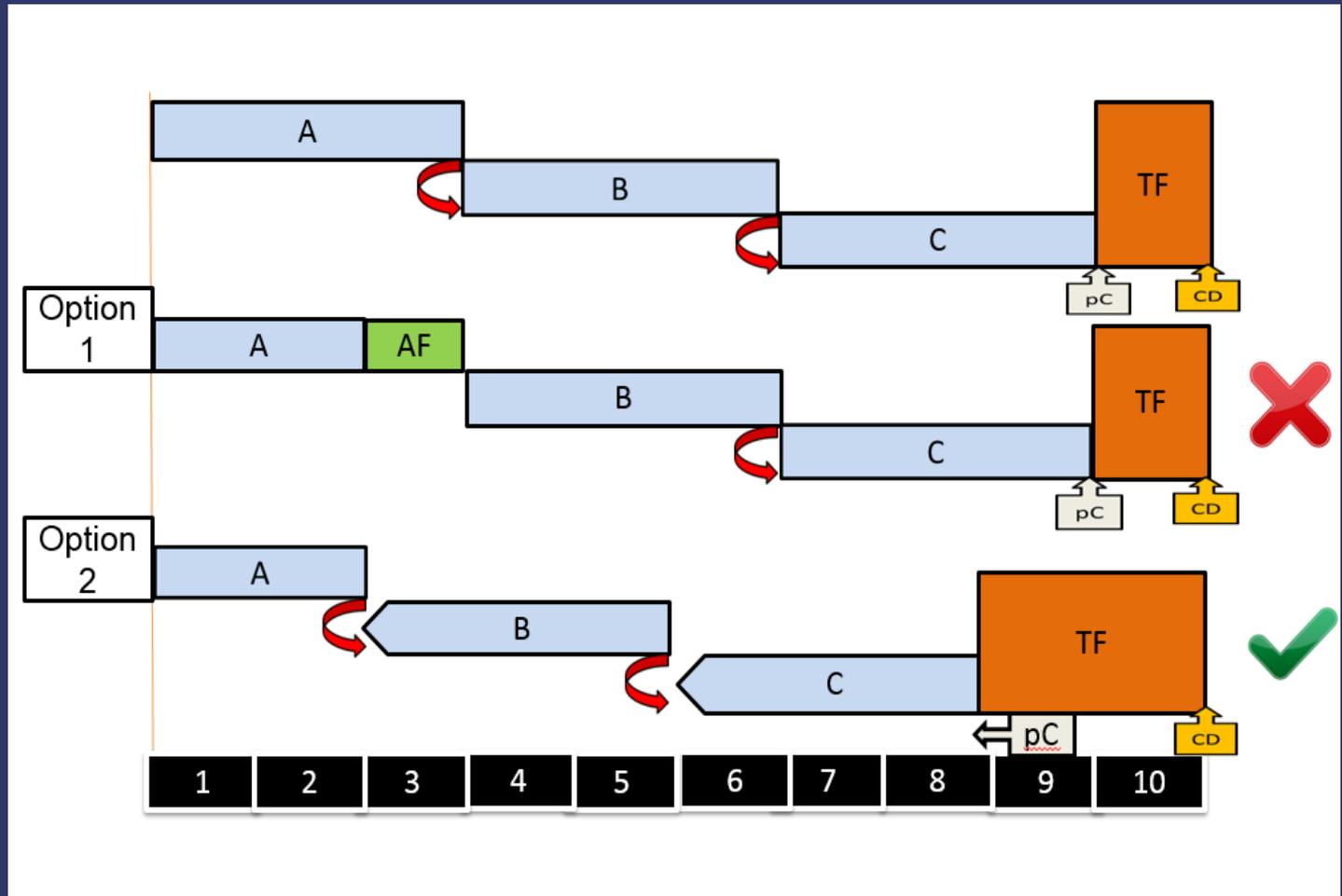
# Impact of CE on Activity Float



# Impact of CE on Activity Float



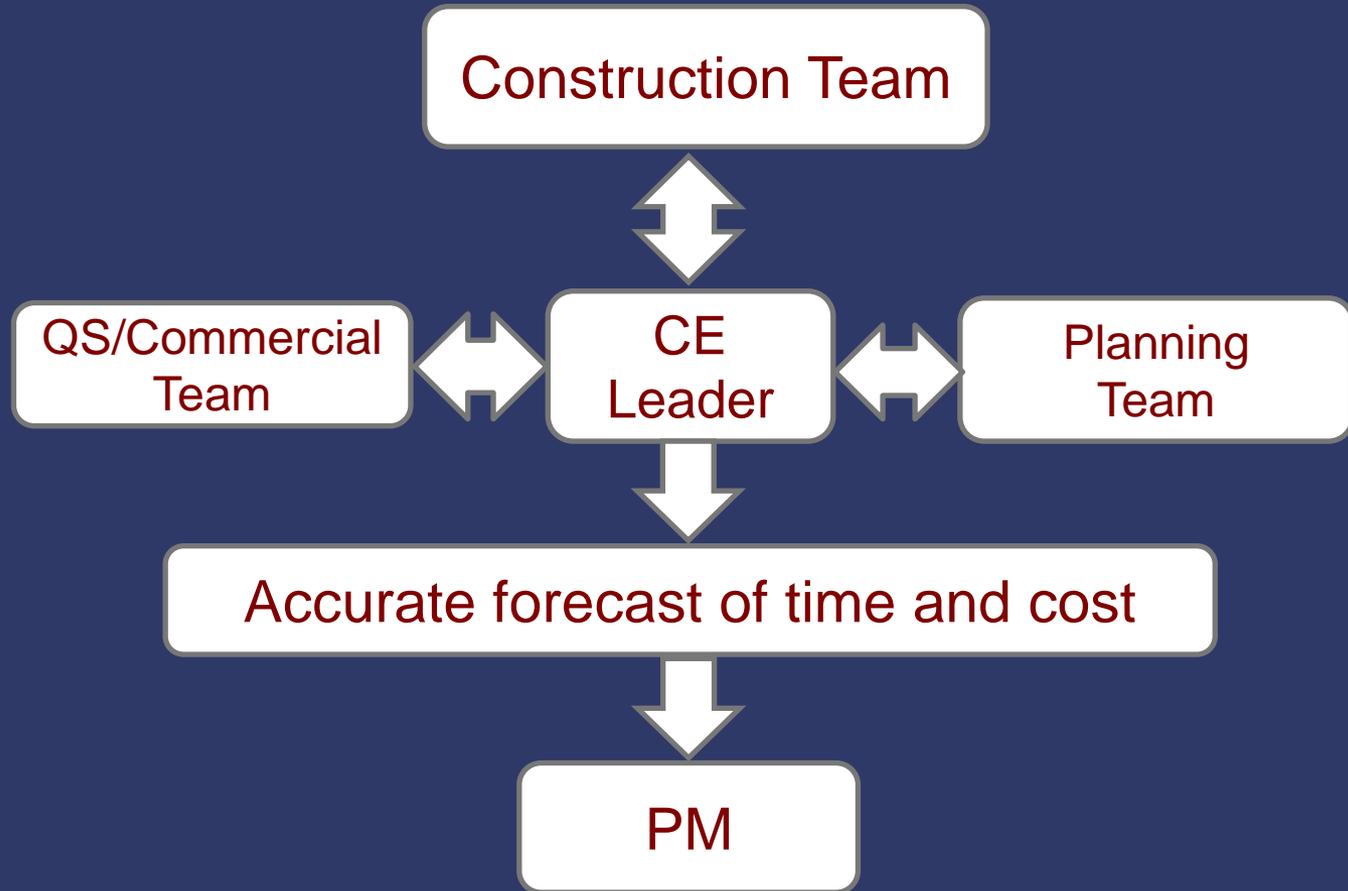
# Early Completion of Activities



# Procedure for Including Compensation Events in Accepted Programme

- Take the **Accepted Programme current at the time the compensation event arises 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.
- The Contractor must report any compensation events to the PM **within 8 weeks of becoming aware** of them. If he doesn't, he will **lose any entitlement** to change Prices, Completion Date or Key date.

# 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? [See below for examples].

# 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.

# NEC 4: Key Changes

- The NEC4 suite of contracts, published in June 2017, have been described by NEC as “*evolution not revolution*”. The changes that have an impact on programming include the following:
  - **Clause 31.3 – Programme**
  - Clause 31.3 now includes the following words:

“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.”
  - Clause 31.3 provides for deemed acceptance of the programme by the *Project Manager* if he/she fails to respond within the time allowed to a programme offered by the *Contractor* for acceptance.

# NEC 4: Key Changes

## Clause 32.1: Programme

- Reference to compensation events in clause 32.1 is now deleted. This avoids any potential misunderstanding that non-implemented compensation events are excluded (which is not the case).
- Clause 31.2 requires each programme to show “the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works”.
- Therefore, both “implemented” and “unimplemented” compensation events must be shown.

# Questions?

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