

# Contracting for Agile & Bird & Bird

Contractual Issues for Agile Software  
Development

Ian Williamson – 17 March 2012

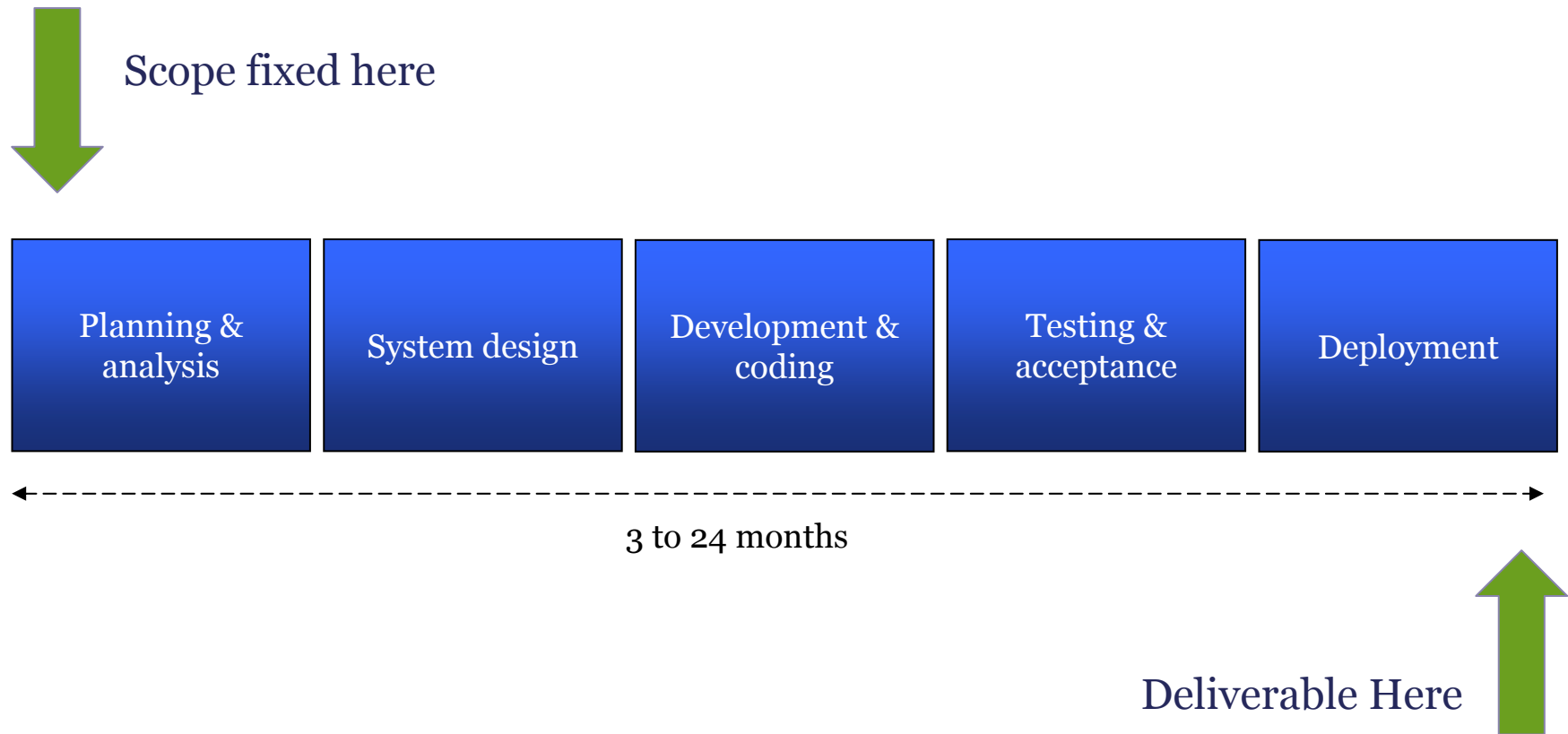
# Overview

1. What do we mean by "Waterfall" and "Agile"?
2. Perceived problems with the Waterfall method
3. The Agile manifesto/Agile in practice?
4. Contracting for Agile. Issues with in using 'traditional' contracting methods
5. Bird & Bird UK 'White Paper' on Agile

# What do we mean by "Waterfall" and "Agile"?

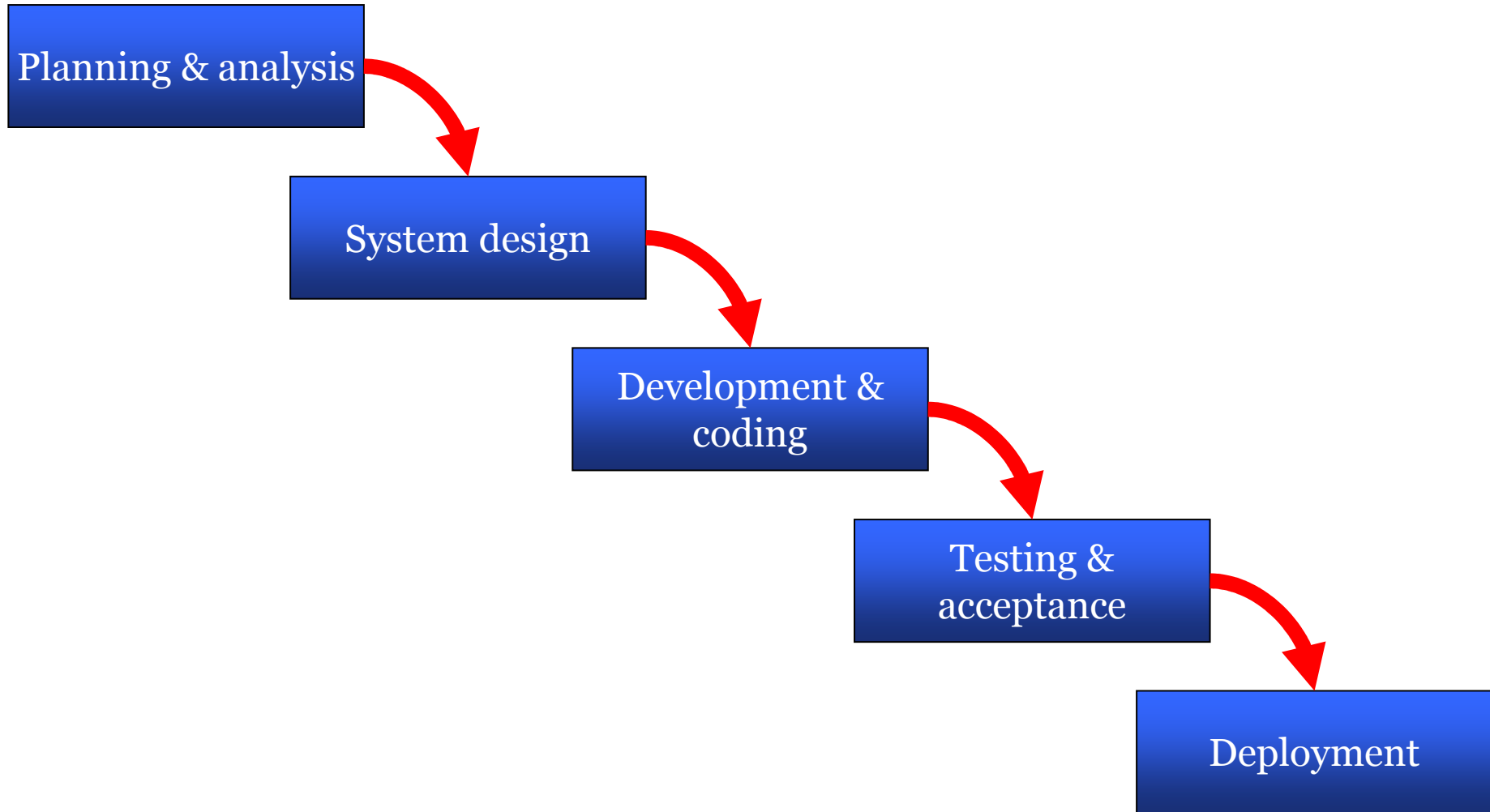
Understanding the differences

# The Waterfall methodology



Source: The Art of Agile Development

# The Waterfall model



# The Waterfall Contract – Advantages?

- Perceived certainty as to scope
- Deliverables clear
- Rigid timeframe
- Payment linked to “success” (and easy to penalise failure)

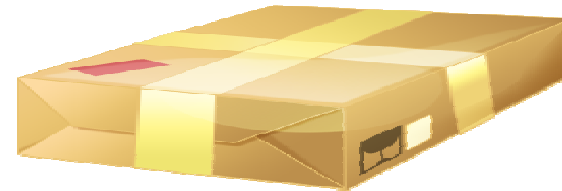
# Perceived Problems with Waterfall

Why do things go wrong?

# Perceived Problems with Waterfall



Difficult for Customers to identify entire requirements in detail at the outset



Does not deliver a product until late in the process ...



Ignores reality – it's impossible to rigidly "freeze" the results of each phase before moving on



... by which time, the Customer's requirements have changed anyway!



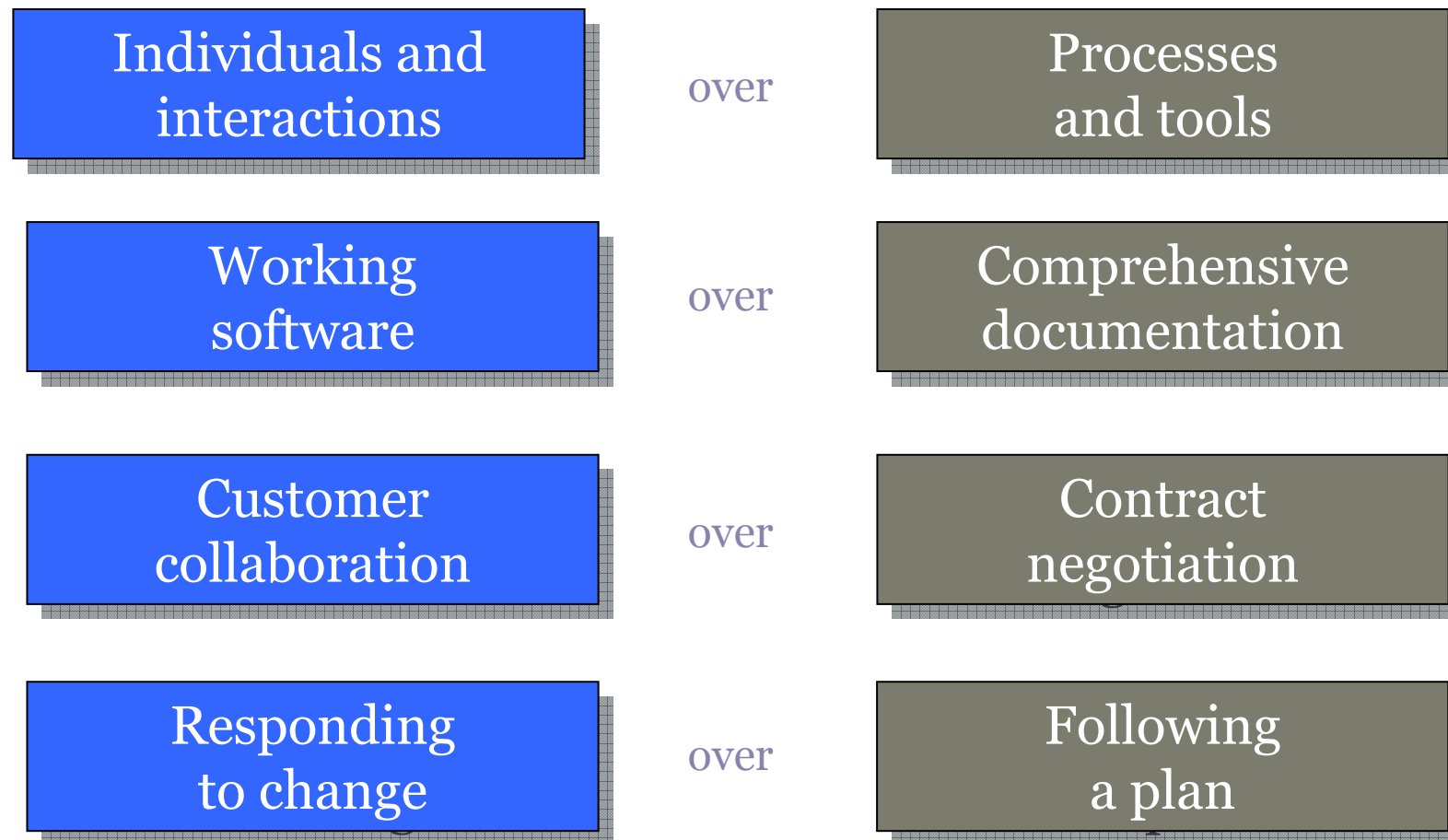
# Examples of why Waterfall projects 'fail'

- If scope not fixed properly - price goes up ('Change Controlled to death').
- If issues do not surface until end of the project, then pressure on time.
- Liquidated damages for a late delivery are not a proper substitute for working software.
- In an effort to deliver something within the constraints of price and scope, suppliers will often degrade the quality of their work— reduced code quality, less testing, and so forth.
- Customers often do not get what they really need, and developers can easily lose money.

# The Agile Alternative

Considering Agile Software Development

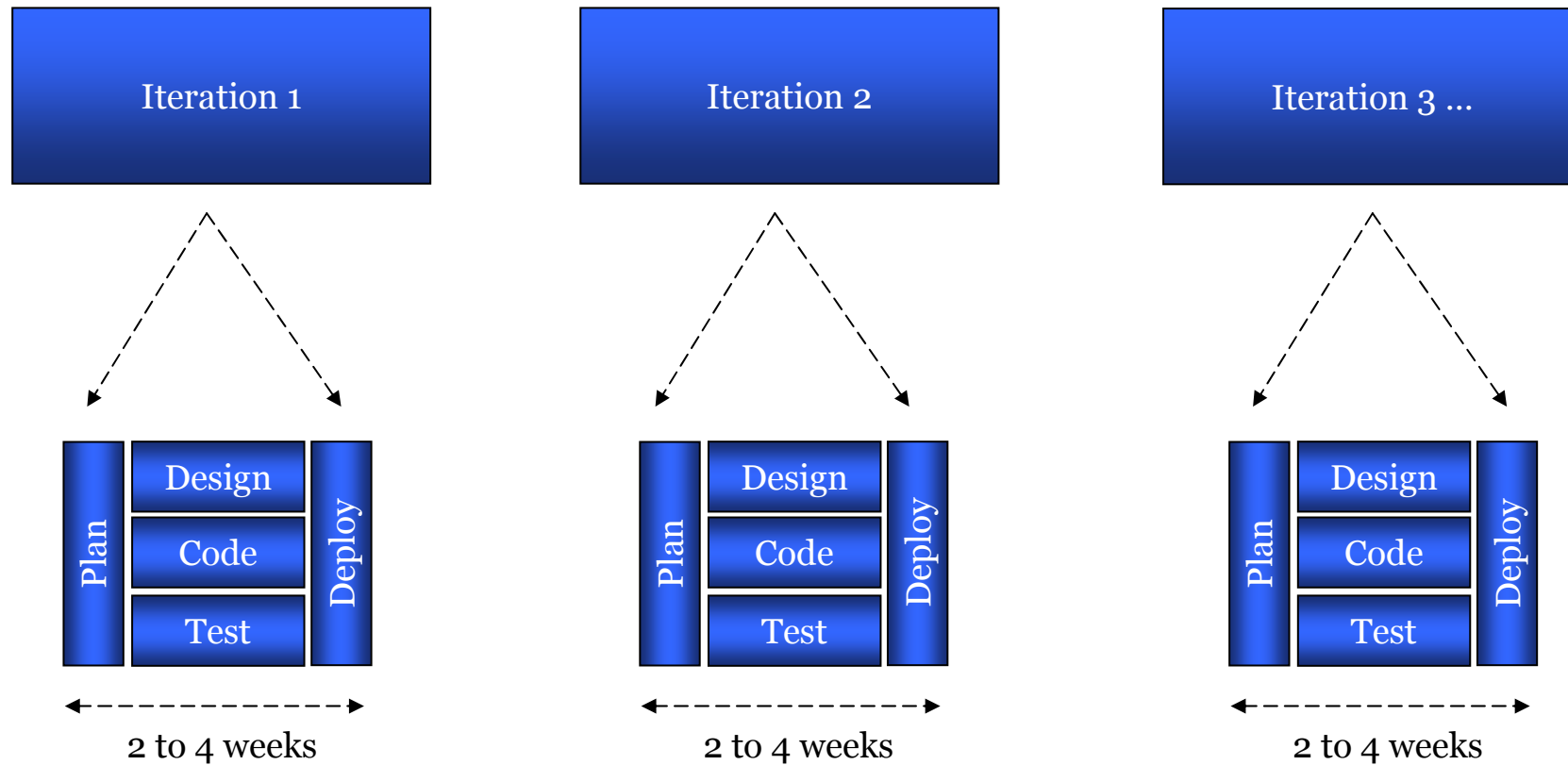
# The Agile manifesto – a statement of values



# Some of the principles behind the Agile manifesto

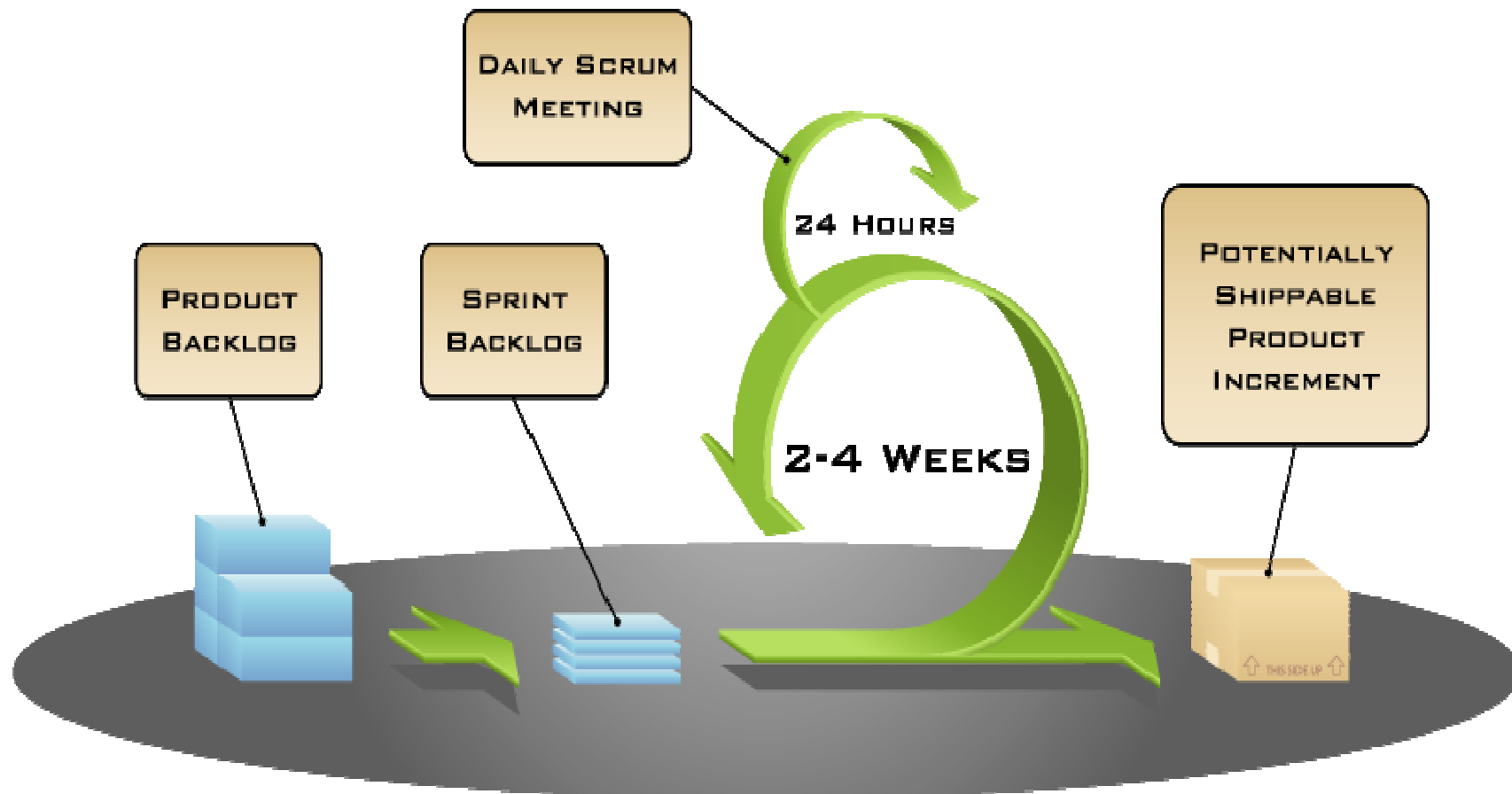
- Customer satisfaction through rapid delivery of useful software.
- Working software delivered frequently (weeks not months).
- Working software is the principal measure of progress.
- Welcome changing requirements, even late in development.
- Close interaction between developers and business team.

# The Agile methodology



Source: The Art of Agile Development

# An example of the Scrum method



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# Potential Criticisms of the Agile Methodology

- Less certainty for the customer
  - Scope - what are you going to get?
  - Timing – no contractual guarantee that final product will be delivered on time.
  - Price – if more iterations required, who pays?
  - Warranties – easy for developer blame the customer for faults?
  - Extra effort from customer side for regular governance.
- For the developer
  - Termination – if customer walks away, potential sunk costs.
  - Cannot rely on receipt of future revenues.

# Contracting for Agile

A different approach



# Agile Contracting Principles

"A lawyer writing a contract for an Agile project.....needs to grasp the key ideas before she can articulate an Agile contract."

Practices for Scaling Lean & Agile Development: Large, Multisite & Offshore Product Development with Large-Scale Scrum by Tom Arbogast, Craig Larman, and Bas Vodde

# Agile Contracts in Practice

- No real 'standard' contracts in the market for Agile.
- Themes are the same as Waterfall contracts.
- However, the drafting is not necessarily the same.

# Contractual Differences for Waterfall and Agile

<b>THEME</b>	<b>WATERFALL</b>	<b>AGILE</b>
Scope and planning	Fixed 'Specification' against which deliverables are measured	A broad 'Product Vision' which can evolve with each iteration
Delivery cycle	Long term (i.e. from planning and analysis to product deployment)	Short iterations (i.e. 2-4 weeks)
Acceptance	At the end of the process for final deliverable	Each iteration accepted (with issues rolled into the next iteration)

# Contractual Differences for Waterfall and Agile

<b>THEME</b>	<b>WATERFALL</b>	<b>AGILE</b>
Pricing /Payment	Price generally fixed (BUT - increased if scope changes).	Various models (e.g. T&M) - generally with payment per iteration
Contract governance	Supplier generally left to progress customer's requirements. Focus on reporting developer's progress and reactive resolution of issues	Close interaction and collaborative approach - customer often part of development 'team'. Regular meetings (can even be daily).
Termination	Commonly limited to 'big' events – material breach, insolvency ...	Common to see termination on an iteration by iteration basis (although need to consider sunk costs....)

# Bird & Bird "White Paper"

UK Agile Working Group

# What is Bird & Bird doing?

- Many people have spoken about the ‘problems’ – we want to see if we can fix them.
- We have an Agile 'focus group' in the UK.
- Our intention is to produce a useful standard form Agile contract.
- White paper to be issued April 2012 – responses will help shape the process.
- Keen to hear from all interested parties - developers, customers, in-house counsel ...and you!

Vielen Dank & Bird & Bird

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