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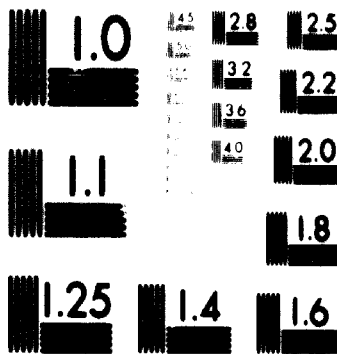
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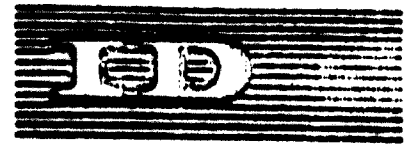
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United Nations Industrial Development Organization

**Technical Seminar on Contracting Methods and
Insurance Schemes for Fertilizer and Chemical
Process Industries**

Lahore, Pakistan, 25 - 29 November 1977

LEGAL ASPECTS OF CONTRACTING METHODS AND ARBITRATION¹

BY

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I. REVIEW OF CONTRACT PROCEDURES BETWEEN CONTRACTOR AND PURCHASER/CUSTOMER IN DEVELOPING COUNTRIES

1. SUMMARY OF PROBLEMS

Each contract between a purchaser and a contractor possesses several factors of general nature besides specific items resulting from the technical proposal submitted by the contractor. The following items of general nature are selected from a specific contract:

1.1 GENERAL NATURE:

1.1.1 Definitions

For working out a clear contract usually some technical terms are defined as e.g.:

"The Plant" means the main and side-plants and offsites facilities as specified in the Proposal to be constructed on the Site by the Contractor.

"Equipment" means all machinery, equipment, materials and other items to be incorporated into the Plant in order for the Plant to be built in accordance with the Contract.

"Contractor's Equipment" means machinery, tools, tackle and stores brought on to the Site by the Contractor or by any sub-Contractor or Supplier for the construction of the Plant but not for permanent incorporation therein.

"The Process Licensors" means any third persons from whom the Contractor may obtain process technology information or any licence of any letter patent.

"The Work" means the duties, responsibilities and obligations to be performed by the Contractor pursuant to the Contract.

"Contract Price" means the remuneration to the Contractor.

1.1.2 Scope of the Contract

The Contractor shall for the remuneration provided in contract carry out the Work and provide services and equipment in strict compliance with the Contract.

The Purchaser shall perform the Purchaser's obligations under the Contract in strict compliance with the Contract and provide the supplies and services which together with the work are necessary for the completion of the Plant in accordance with the Contract.

Effective Date of the Contract

The Contract shall enter into force on the date on which all of the following conditions are fulfilled:

- Signature of the Contract by the Contractor and the Purchaser.
- Receipt by the Contractor of the Down Payment.
- Opening of the first letter of credit in favour of the Contractor.

1.1.3 Contractor's obligation

General Responsibility

The Contractor shall supply the services of managers, engineers, designers, draughtsmen, accountants, buyers, inspectors, expeditors and other persons required for the performance of the work.

Management Services

The Contractor will provide the management services for the general and administrative functions and project engineering specified in the Proposal.

Engineering Design

The Contractor shall provide the engineering and process design for the Plant as specified in the Proposal.

Equipment

The Contractor shall be responsible for the supply of the Equipment ex-works, first fill of catalysts, resins, and oils in accordance with the Technical Specifications given in the Proposal.

Construction

The Contractor shall be responsible for the construction of the Plant on the Site.

Civil Engineering and Foundations

The Contractor shall be responsible for the design and construction of the foundations for the Plant and the buildings defined in the technical specifications of the Proposal.

Drawings and Documents

The Contractor shall be responsible for the preparation and supply of the drawings, plans and other documents except for as built drawings showing modifications incorporated at site in accordance with the Contractors standard procedure as required by the Contract, and will include:

- Adequate specifications of equipment required for the Plant indicating specifications of materials of construction.
- Technical charts for pumps, and large-size motors as far as the same are made available by the suppliers of the Equipment.
- Instrumentation and electrical drawings.
- Process Diagrams.
- General arrangement drawings.
- Copies of certified drawings of any Equipment supplied by the Contractor, purchased as standard items from sub-contractors and appropriate bulletins relating thereto.

- Ten copies of the sets of operating manuals for the Plant. These manuals shall be supplied at least six months before the date for commissioning activities of the Plant.
- Copies of the list of recommended operational spare parts for the Equipment for two years.
- During the progress of the work the Contractor shall supply to the Purchaser such copies of his drawings, specifications and manuals as stated in the Proposal which forms part of the contract.

Sub-Contracts in the Contractor's Name

The Contractor may sub-contract the execution of any part of the work.

1.1.4 Purchaser's Obligations

Site

Free access to the Site shall be afforded to the Contractor by the Purchaser in reasonable time for performance of the work.

Access to and free availability of the Site shall be exclusive to the Contractor, Sub-Contractors and suppliers.

In the execution of the work, no person other than the employees of the Contractor and of Suppliers or Sub-Contractors shall be allowed access to the Site, except with the prior written permission of the Purchaser, and the Contractor shall afford facilities to inspect the Work and carry out necessary surveys, measurements or investigations at all times to the Purchaser and to its representatives and other authorized officials.

Plant Operation

The Purchaser shall provide raw materials and an adequate number of trained operating and maintenance personnel for the commissioning activities and start up of the Plant.

Payment

The Purchaser shall make payment in accordance with the provisions of the Contract and shall promptly counter-sign through its Authorised Signatory all certificates prepared by the Contractor in accordance with the provisions of the Contract.

Import Licences and Priorities

The Purchaser shall obtain all licences and permits necessary to import the Equipment and Contractor's Equipment to construct the Plant on the Site and to re-export Contractor's Equipment.

The Purchaser shall ensure that vessels bringing the Equipment or Contractor's Equipment to a Port will receive priority in that Port.

Assistance with Work Permits

The Purchaser shall obtain for the Contractor work permits and visas from the appropriate authorities for all contractors, Sub-Contractors and Suppliers personnel needed by the Contractor for the Work.

Customs Duties and Import Taxes

The Purchaser shall be responsible for all customs duties or import taxes which may be payable in respect of the importations of the Equipment.

1.1.3 Terms of Payment

The Contract-Price shall be paid as follows (as an example):

- By a payment of 7 1/2% of the Contract Price at the signature of the Contract (Down Payment).
- By payments paid in accordance with an agreed schedule e.g. each of several months.

- 98% of the Contract price to be paid within 30 days of the date of Mechanical Completion of the Plant.
- 100% to be paid within 30 days of the date of the Plant Acceptance Certificate.

1.1.6. Change in Contract Work

The Purchaser shall have the right to request in writing changes or additions to the design, drawings, materials and equipment within the general scope of the Contract.

The Contractor shall comply with such requests by the Purchaser if in its judgment, such changes or additions would not jeopardise fulfilment of the Contractor's obligations under the Contract. If in the Contractor's judgment fulfilment of any of these obligations under the Contract would be jeopardised as a result of these modifications the Contractor shall not be required to make such changes or additions, unless its own obligations are modified in consequence.

For all such changes or additions, the Contractor shall submit promptly in writing to the Purchaser the estimate of the costs and changes to the programme on the basis of which the Contract Price and Contract Period shall be adjusted, together with details of all variations required to be made to any of the Contractor's obligations under the Contract. Thereafter, the Purchaser and the Contractor shall agree in writing on the changes or additions, in each instance, and on the relative terms of payment and on any variation arising therefrom to any of the Contractor's obligations.

The Purchaser shall be responsible for the cost of preparation of the estimates for the changes or additions, if such changes or additions are not subsequently incorporated into the Contract.

It is agreed that no changes or additions shall be put into effect and that no work shall be performed, nor equipment or materials supplied as a result of such changes or additions, until agreement in writing has been reached between the Contractor and the Purchaser on any modification to the Contractor's obligations under the Contract.

1.1.7 Granting of Licences and Use of Technical Information

Granting of Licences

By virtue of the Contract and so long as the Purchaser shall not be in default under the terms of the Contract, the Contractor grants to the Purchaser fully paid up, non-exclusive rights and licences to use in the Plant all processes and Know-How owned by the Contractor and incorporated in the Plant under the Contract, as well as fully paid up, non-exclusive rights and licences under all patents applied for, provisional patents, patents issued and patents controlled by the Contractor and incorporated in the Plant supplied under the Contract, provided that such rights and licences are used only in respect of the Plant.

Use of Technical Information

The Purchaser agrees not to use the technical information, drawings, or any other data contained therein, supplied by the Contractor under the Contract, for the design or construction of any other Plant without the prior written consent of the Contractor. The Purchaser shall not disclose, without the Contractor's prior written consent, any technical data of the Plant or of processes employed therein to persons other than his own regular employees. The Purchaser shall use its best endeavours to prevent its employees from making such disclosures to third parties.

It is agreed that this Article of the Contract shall not be interpreted to; prevent such reasonable inspection of operations of the Plant by persons engaged in the sale or repair of equipment as are generally considered necessary in connection with the repair and maintenance of the Plant.

1.1.8 Mechanical Completion and Acceptance

As soon as any Unit or any part thereof is, in the opinion of the Contractor, complete, except in minor respects which do not affect the operation or safety of the Unit, the Contractor shall after giving not less than ten days written notice to the Purchasers conduct the mechanical tests. Upon the successful completion of mechanical tests for a Unit the Contractor shall submit and the Purchaser shall sign a Mechanical Completion Certificate for that Unit.

If any part of a Unit fails to pass a mechanical test the Contractor shall submit and the Purchaser shall sign a Mechanical Completion Certificate for the remainder of the Unit, and the Contractor shall make such adjustments as he deems necessary to enable that part to pass the mechanical tests. Upon completion of the said adjustments the mechanical tests shall be repeated.

Upon successful completion of the repeated tests the Contractor shall submit, and the Purchaser shall sign a Mechanical Completion Certificate for that part of the Unit not previously certified.

The date of Mechanical Completion of the Plant shall occur on the date of the issue of the last Mechanical Completion Certificate for the last part of the last Unit.

1.1.9 Assignment and Sub-Contracting

Neither of the parties shall assign the Contract or any part of the Contract or any share or interest therein without the prior written consent of the other. This consent shall not be denied without good reason. The Contractor may sub-contract the execution of one or more parts of the Work.

1.1.10 Applicable Law

Of similar importance as clear definitions of the technical terms is the applicable law.

Each Contract needs the indication of the law according to which it shall be governed and construed.

1.1.11 Interpretation

The Contract contains all the terms and conditions agreed to by the parties and no representation, promise or undertaking made or given by either of the parties prior to the date of execution of the Contract shall be of any force or effect unless the same is contained in the Contract. No amendment of the terms or conditions of the Contract shall be of any force or effect unless made in writing and signed by both parties or by their duly authorized representatives.

1.2 **MAGNITUDE OF RISKS, FINANCIAL LOSSES INCURRED**

A good contract has to consider the magnitude of risks during all phases of design and erection of a chemical plant.

Out of a specific contract the following items are serving the purchaser to control the risks and to be protected against financial losses.

1.2.1 Guarantees for Performance

The Contractor guaranteed that when operated in accordance with the Contractor's instructions and within the specifications listed in the proposal, the Units will achieve the output and performance specified in the Proposal.

In the event that any of the Units fail to achieve the performance guarantees as specified by 10% or less, the Contractor may at its option:

- pay to the Purchaser liquidated damages calculated at a certain rate for each 1% by which the capacity of the Plant fails to meet the guaranteed performance

or

- undertake at his own expense such redesign or re-engineering as may be necessary to enable that Plant Units to meet the performance guarantees.

1.2.2 Care of the Works

In the event of any loss or damage to the Equipment, to any part of the works, such loss or damage occurs before the date of the Acceptance Certificate, the Contractor shall remedy or cause to be remedied such loss or damage.

1.2.3 Insurance

The Purchaser shall take out in the joint names of the Contractor and the Owner:

- A Contractors All-Risk policy insuring the Works and the Contractors Equipment against all risks other than such of the excepted risks as cannot customarily be insured against.
- A policy of marine insurance containing Institute Cargo Clauses (all risks) including War, Strike, Riots and Civil Commotion Clauses on all equipment to be shipped under the Contract, and

- A policy of transit and on-site insurance covering all risks normally insured against until acceptance of the Plant by the Purchaser in accordance with the provisions of the Contract.
- A policy in respect of the liability of the Purchaser and the Contractors as employers, in respect to or in consequence of any accident to or any injury to any workmen in the employment of the Purchaser, the Contractor or any supplier or Sub-Contractor.

Such policies shall be for full replacement value, and effects with an Insurer or Insurers and carrying on business.

The Contractor shall indemnify and keep indemnified the Purchaser against all losses and claims arising from injury to any person or damage to property, including any property of the Purchaser not being part of the Plant, which may be caused by the negligence of the Contractor during the performance of this Contract.

1.2.4 Contractors Default

If the Contractor shall fail to execute the work with due diligence and expedition or shall commit any breach of any condition of the Contract entitling the Purchaser to rescind the Contract the Purchaser may give the Contractor thirty days notice in writing to make good that failure, neglect or breach. Should the Contractor fail to comply with the notice for any breach capable of being made good within that time or otherwise within such time as may reasonably be necessary for making it good then the Purchaser shall have the liberty to terminate the Contract forthwith, by giving notice to the Contractor.

With the above mentioned specific items of a contract the Purchaser is protected against several risk , - Further the Purchaser can measure possible financial losses by evaluating the costs of the whole plant as well as by a cost analysis covering specifically all steps of the erection.

2. CASE STUDY OF DISPUTES

In October 1962 a "Licence Agreement" for KNOW-HOW and ENGINEERING for a new LD-Polyethylene-plant has been concluded between two companies producing LD-Polyethylene since many years under the assumption that a common ownership plant will be constructed in the future.

Both companies were in possession of patents in the field of high-pressure LD.Polyethylene: One in USA, the other in France. Both were interested to use the patents of the other by concluding a respective "cross-licence-agreement".

Besides the patents unpatented Know-How and Engineering under the title "Technical Information", concerning the production of LD-Polyethylene in the possession of both companies was included in this licence-agreement.

Contract Clauses of importance of this contract of October 1962 were the following:

Secrecy

It was agreed that the technical informations are kept secret and confidential for the duration of the contract and within a period of five years after its termination.

The provisions of this secrecy clause shall not apply to any of the following:

- Technical information, which is before or after the time of its disclosure to the Licensee, its employees, representatives, or agents, a part of the public domain or otherwise by a third party.

- Technical information, which the Licensee can show, was in its possession at the time of its disclosure to the Licensee by the Licensor and was not acquired either directly or indirectly from the Licensor.
- Technical information, which the Licensee can show, was received by it after the time of its disclosure by the Licensor, but from a third party who did not require the recipient to hold it in secrecy or confidence and who did not acquire it, directly or indirectly from the Licensor, its employees, agents or representatives.

Guarantee

The licences are based on patents or technical information. Each partner accepts the validity of the patents of the partner as well as its rights on the possession of the communication technical informations.

In the following the project for the common plant between the US and French company has been cancelled because of market conditions in Europe. - The exchange of technology however was going on between the two companies until July 1st, 1964 when a "termination-agreement" was concluded. With this termination it was agreed to hold the technical information and KNOW-HOW secret and confidential until July 1st, 1969.

In 1965 the US Company was informed that the other partner entered into a licence - agreement with a third party relating to the manufacture, use and sale of high-pressure L.D. polyethylene.

The correspondence between the two companies indicates in November 1967 that the US - company accused the other of the violation of the secrecy agreement.

As the other party opposed and did not confirm the violation, the arbitration under the rules of the "International Chamber of Commerce" was requested.

3. CASE STUDY OF ARBITRATION

The above mentioned request at the Arbitration Court of ICC as of December 1967 included "the statement of the case" with all technical details and the "request for relief".

With the "statement of the case" of the Claimant the circumstances of the request were outlined:

"The Claimant indicated to license and disclose to the Defendant all technical information which he was free to disclose including such technical information as the Claimant might develop at any time during the term of the agreement. The defendant was free to use such technical information and patents for the manufacture, use and sale of high pressure polyethylene in France.

The Defendant licensed the Claimant to use in the USA Technical information and US-patents and patents applications relating to high pressure L.D. polyethylene production which the Defendant owned and was free to disclose.

Strict obligations of secrecy and confidentiality were imposed on the parties during the term of the agreement and for five years following its termination with respect to the technical information disclosed thereunder.

After the indication of certain specific technical information it was stated that his information is not in the public domain, was not in possession of the Defendant at the time it was received from the Claimant and the Claimant believes, was not received by the Defendant from a third party subsequent to the disclosure by the Claimant to the Defendant.

The Claimant has been informed that the Defendant contracted in 1965 with a third company to supply them with technical information to construct and operate a plant for the production of high-pressure-LD-Polyethylene.

The Claimant believes that the performance of the contract of the Defendant with the third Company has and will continue to result in unlawful disclosure of substantial technical information relating to high-pressure-polyethylene production. This violates the Secrecy Clause of the Agreement between the Claimant and the Defendant.

The Claimant has performed all of the terms and conditions of the agreement on its part to be performed".

With this the arbitrators were requested to make the following determinations and grant the following relief.

- Determine the extent of the violation of secrecy.
- Investigate the disclosure of technical information until July 1st, 1969.
- To account for and to pay all profits and earnings arising from the disclosure of technical information.
- The Claimant be awarded the damages it sustained as a result of the in proper disclosure of its technical information.
- That the arbitrators award such other and further relief as they may deem just and proper.

As Arbitration Provisions served

- The Secrecy-clause of the licence-agreement of October 1962: "Requirement of secrecy for the extended technical information and Know-How for 5 years after the termination".
- Article 4 of the termination-agreement of December, 1964: "All disputes arising in connection with contract shall be finally settled by the rules of arbitration of ICC in Paris and the application of French Law".

In February, 1968 the Defendant answered to the Claimant with a Counter-claim.

The proceedings at the Arbitration Court went on with several written statements as well as documents annexed thereto of the parties. A hearing with witnesses took place in Paris at the Arbitration Court of ICC in December, 1969. As no settlement of the dispute by amicable arrangement was possible at this time the claimant proposed 1970 the nomination of a technical expert.

This proposal was accepted and specific instructions have been worked out for the expert by the Arbitration Court.
- Due to the rules of the proceedings and the enormous volume of technical informations four expert statements were necessary until at the end of 1975 the dispute was settled by the definitive award of the Arbitration court.

II. MODEL FORMULATION OF CONTRACT CLAUSES FROM A LEGAL POINT OF VIEW

For recommendation some examples of Contract Clauses of importance from practical contracts are given:

1. Secrecy Agreements

The purchaser will consider the "Contract Know-How" and the "Contract Technical Assistance" as secret and confidential and to be used only in his territory. He will not communicate them to a third party without previous written authorization from the Contractor.

In case of transfer of the rights and obligations resulting from this contract from the purchaser to a subsidiary over which he has directly or indirectly more than 50% control, the purchaser must keep the "Contract Know-How" secret from other stockholders of the subsidiary.

Before communicating any informations, drawings or specifications to any suppliers of material or equipment, the "purchaser" will obtain from these suppliers and turnover to the contractor - an enforceable contract in favor of the contractor - according to which this information will be kept secret and confidential by the suppliers and their employees and will not be used in any way except for the contract and equipment supplied to the Purchaser.

The purchaser will take all measures in his power to ensure that all its employees to whom "Contract Know-How" has been communicated will respect the purchaser's obligations to the contractor.

2. Patent and licence protection and/or indemnities

The purchaser may not file any patent relating to the "contract-know-how" in his country or in foreign countries without the previous written consent of the contractor.

The purchaser will refrain from contesting directly or through intermediaries, the contractor's rights pertaining to the "contract-Know-How".

3. Scope of work changes

The rights and obligations resulting from the contract may not be disposed of by one of the parties without the previous written agreement of the other party except if one of the parties transfers or assigns the totality of its business interest.

4. Force Majeure

Neither party may be used for damages or other indemnities in case of failure to fulfill the obligations for which it is responsible according to his contract if this failure is caused by an act of God or comparable circumstances, such as civil war, strike, labor dispute, decision or ruling by Government Organizations, fire, explosion, flood, earthquake or other similar circumstances beyond the parties control.

However all the sums owed to the contractor according to the present contract will have to be paid without delay and all the obligations remaining in effect will have to be fulfilled as soon as it is legally possible to do so after the end of the above state of affairs.

5. Settling of disputes

All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said rules.

III. ARBITRATION PROCEDURES

In the following a synopsis of general rules of Institutional Arbitration in International Trade is given.

1. Request for Arbitration

If a party wishes to apply the Arbitration proceedings the request has to be presented at the secretariat of the Arbitration Court.

The date, when the request is received at the secretariat of the Arbitration Court shall be deemed to be the date of commencement of the Arbitration proceedings.

The Request for arbitration shall contain:

- Name, description, addresses of the parties.
- Title of the claim
- Agreements between the parties, specifically the arbitration-agreement and all documentation or information as will serve clearly to establish the circumstances of the case.
- Indications in regard to the arbitrators and their choice.

The secretariat of the Arbitration Court shall send to the Defendant a copy of the Request and the documents annexed for his answer.

2. Answer to the Request

The Defendant shall answer within 30 days after the reception of the request on the proposal made concerning the number of the arbitrators and their choice. At the same time he should submit his answer to the request with the relevant documents. Exceptionally the Defendant can ask for an extension of time for answering the request.

The application must, however, include the Defendants comments on the proposals made with regard to the number of arbitrators and their choice and also, where appropriate, the nomination of an arbitrator.

A copy of the answer, possible with documents annexed thereto is submitted to the Claimant.

3. Counter-Claim

In case the Defendant wishes to prepare a Counter-Claim it has to be submitted with the above mentioned answer.

The Claimant can answer to the Counter-Claim within thirty days after its delivery.

4. Pleadings and written statements, notifications or communications

All pleadings and written statements of the parties as well as of all documents annexed thereto copies have to be submitted, one for each party, one for each arbitrator and one for the secretariat.

All information from the secretariat and the arbitrator have to be handed over by receipt or sent by registered mail.

Notifications or communications are considered having taken place on the day they have been received or should have been received after properly despatching by the party or its representant.

5. Effect of the Arbitration Agreement

If the parties have agreed to submit to arbitration they shall be deemed thereby to have submitted to the arbitration rules.

If one of the parties refuses to take part in the arbitration proceedings they take place despite such refusal or failure.

If one of the parties raises one or more pleas concerning the existence or the validity of the agreement to arbitrate, the Arbitration Court may decide that the arbitration shall proceed. In this case the Arbitrator has to decide on his own competence.

With the reservation of another agreement the plea of nullity or not existence of the contract is not followed by the incompetence of the arbitrator, if he states the validity of the arbitration-agreement. Even in case of not existence or nullity of the agreement he is competent to decide on the legal relations of the parties and to judge on their claims and pleas.

Before the file is transmitted to the arbitrator and exceptionally after this the parties are free to request any interim or conservatory measures at an ordinary court without to offend against their binding arbitration agreement and without prejudice to the power of the arbitrator.

6. Terms of reference of the arbitrator at ICC

Before proceeding with the preparation of the case the arbitrator shall draw-up a document defining his Terms of Reference, based on the documentation or in the presence of the parties and in the light of their most recent submissions.

It shall contain the following:

- Names and description of the parties.
- Valuable addresses of the parties during the proceedings.
- A summary of the respective claims.
- Definition of the issues to be determined.
- Name, profession and address of the arbitrator.
- The place of arbitration.
- Details in regard to the applicable procedural rules and the power conferred to the arbitrator to act as an amiable compositeur.
- All other indications which are necessary to make the arbitral award enforceable in law or may be regarded as helpful by the arbitrator.

The above mentioned document shall be signed by the parties and the arbitrator. Within two months of the date, when the file has been transmitted to him, the arbitrator shall send the signed document to the Arbitration Court.

This time-limit can, by request of the arbitrator, exceptionally be extended by the Arbitration Court.

Should one of the parties refuse to take part in the drawing-up of this document or to sign it the Arbitration Court shall take such action as is necessary for its approval. In that case this party gets a time-limit to sign the document. On expiry of that time-limit the arbitration continues and the award shall be made.

The parties shall be free to determine the applicable law. If they give no indications in this regard the arbitrator decides on the law.

The arbitrator shall assume the power of an amiable compositeur if both parties authorize him. In all cases the arbitrator shall take account of the provisions of the contract and the relevant trade usages.

7. Scrutiny of Award by the Arbitration Court

Before signing a partial or the definitive award the arbitrator shall submit it in draft form to the Arbitration Court. No award shall be signed until it has been approved by the Arbitration Court as to its form.

IV. RECOMMENDATIONS:

1. Minimizing the Cost of Arbitration

The costs of arbitration consist of fees and expenses for:

- Arbitrators (Judges)
- Technical experts
- Legal counsellors
- Administration

Following one statement of the expert the treatment of it involves normally several months as respective answering statements of the counsellors of the two parties have to be prepared and discussed before a decision can be made. The respective costs are high.

Therefore it is suggested to shorten the statements and the minuted debates. Instead of three arbitrators the matter can be settled with 1 arbitrator.

2. Study of Local Laws

Considering the fact that the contract is made by a legal counsellor of the respective country it is suggested to study the applicable law and to discuss all clauses with a counsellor in order to evaluate all possible consequences of it.

Local laws are often entirely different in various countries based on the origin of their legislation (Roman law, Common law, Law of nature etc.).

3. Legal assistance for contract work recommended for developing countries

Before concluding a contract the purchaser should secure assistance of a legal councillor in order to have legal assistance ready in case of future disputes.

4. How to avoid Arbitration

At the ICC Court of Arbitration exist facilities for optional Conciliation of disputes:

"Any business dispute of an international character may be the subject of a request for settlement by amicable arrangement through the medium of the Administrative Commission for Conciliation established at the ICC.

The request for conciliation shall consist of a statement of the case and shall be accompanied by copies of relevant papers and documents as well as by the deposit for the expenses incurred.

Upon receipt of any such request, the Secretary General of the ICC shall inform the other party and shall invite him to accept an attempt at conciliation. In that event the other party submits to the Conciliation Committee a statement of the case in writing with copies of relevant papers and submitting a deposit for the expenses incurred.

After having examined the case and having heard the parties if possible, the Conciliation Committee shall submit terms of settlement to the parties.

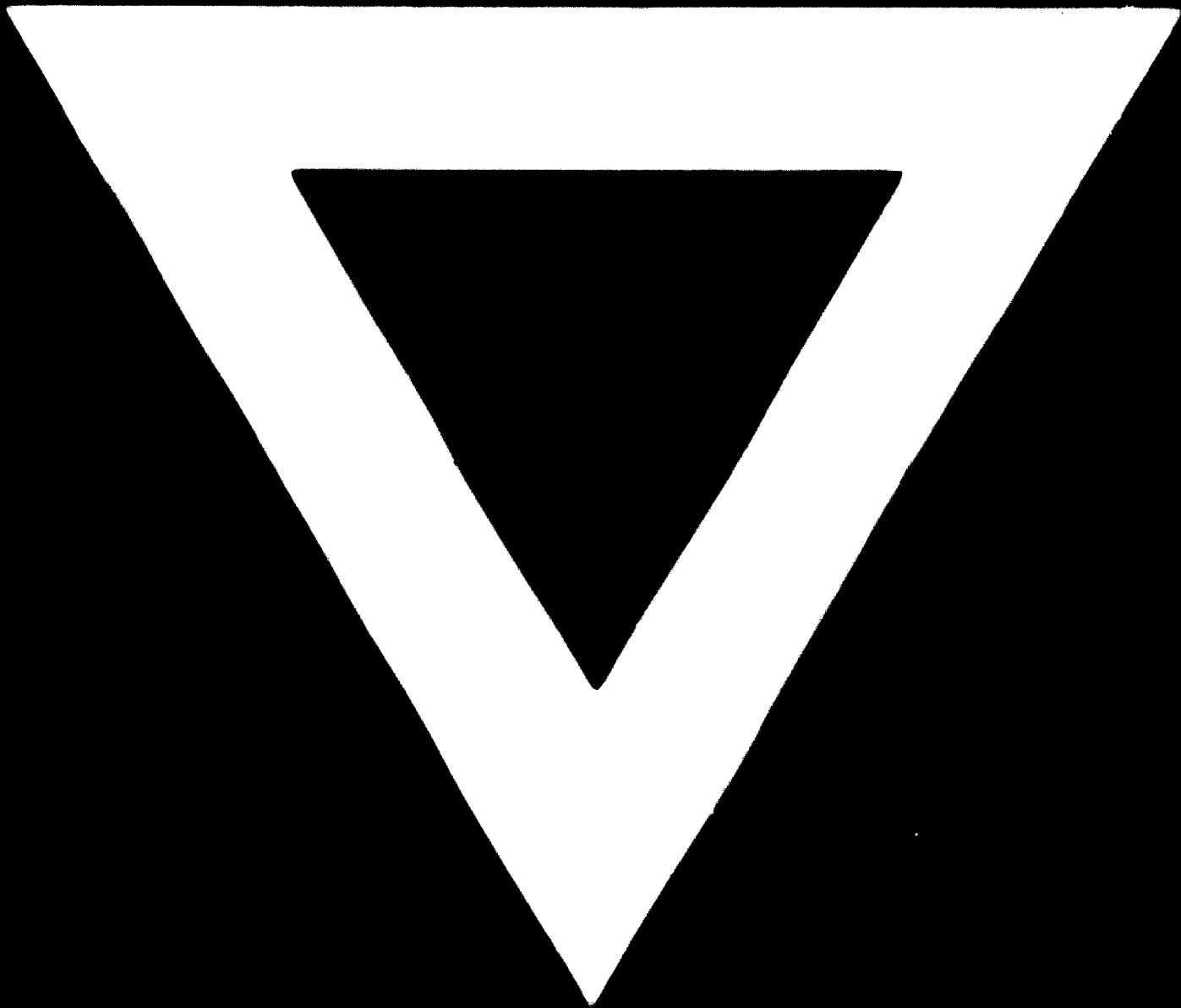
Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration or to bring an action at law should they so desire, unless they are bound by an arbitration clause".

A good contract and a good contractor is the best means to avoid arbitration.

REFERENCES

1. "Constitution of the International Chamber of Commerce" 1975. International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris.
2. "Rules for the ICC Court of Arbitration" 1975 International Chamber of Commerce, Paris.
3. Ernest J. Cohn, Martin Domke, Frederic Eisemann: "Handbook of Institutional Arbitration in International Trade" 1977. North Holland Publishing Company, Amsterdam 335 Jan-van-Galenstreet, Amsterdam.

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