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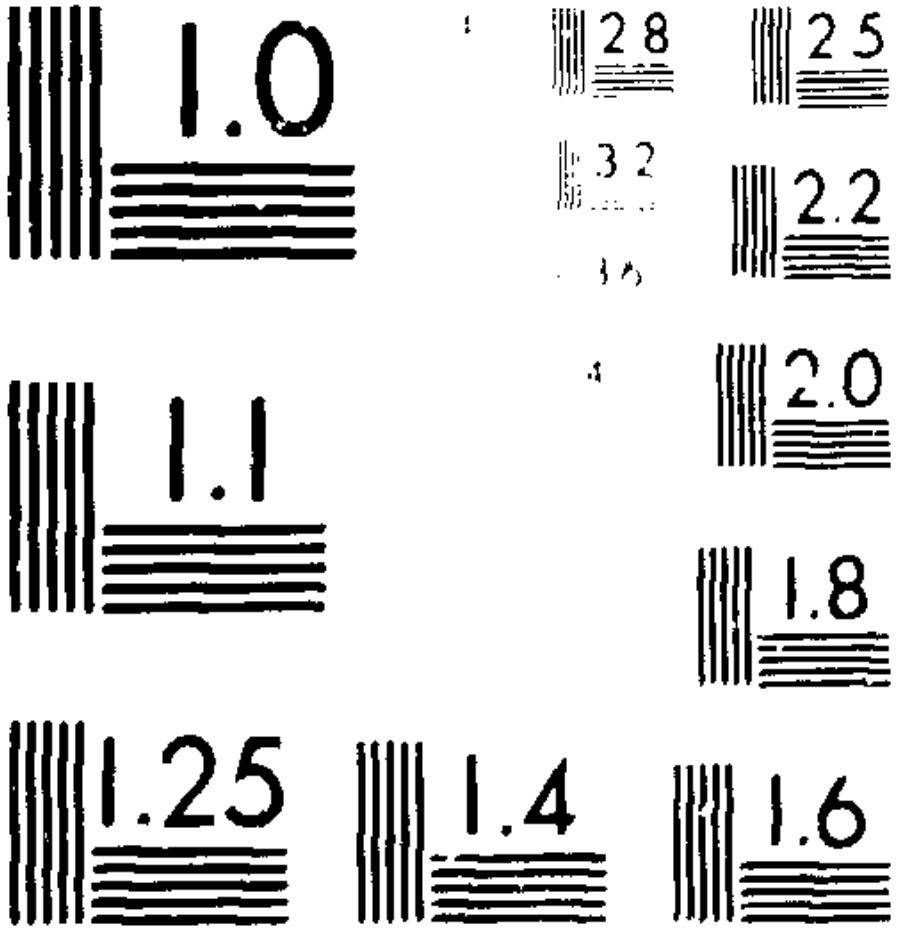

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ITEMS TO BE INCLUDED IN MODEL CONTRACTS FOR THE IMPORT, ASSEMBLY AND MANUFACTURE OF AGRICULTURAL EQUIPMENT INCLUDING TRAINING; MODEL LICENSING AGREEMENT*/

Prepared by the
UNIDO Secretariat

*/ This document has been translated from an unedited original.

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*/ Each part of the document is preceded by a detailed table of contents.

PREFACE

1. Background

One of the chief recommendations of the First Consultation on the Agricultural Machinery Industry,[1/] held in Stresa, Italy, in October 1979, was to "prepare for the next Consultation model contracts to deal with import policies, licensing for local manufacture and joint ventures, taking into account, wherever appropriate, the model contracts under preparation within the framework of the UNIDO System of Consultations".[2/]

It was considered that model contracts and detailed recommendations for drafting contracts represented valuable tools for strengthening the negotiating capacity of the developing countries, thus enabling them to achieve their agricultural mechanization objectives.

During the meeting of experts held at UNIDO Headquarters in Vienna in February 1981, it was recommended that the preparation of model contracts be included among the subjects to be discussed during the Second Consultation on the Agricultural Machinery Industry, which will be held at Buenos Aires from 17 to 22 October 1983. The present document, which has been prepared by the UNIDO Secretariat, was the subject of a general discussion at the Informal Meeting of Experts held at Vienna from 22 to 25 March 1983; the document was later revised, taking into account the principal comments made at that meeting or transmitted to the UNIDO Secretariat later.

2. Objectives

The work presented in this document is merely a first draft of a number of clauses considered to be essential in preparing contracts in the field of agricultural machinery, especially between customers in developing countries and suppliers in the industrialized countries. At the present stage of the work, it is not intended to propose a series of standard contracts or models - which could be used as such to codify relationships between a purchaser and a supplier.

1/ Report, ID/WG.307/9/Rev. 1.

2/ Ibid., page 10 (x).

The approach selected is based on a number of considerations regarding the use to which this document might perhaps be put by the contracting parties; in particular, it is necessary to take into account a complex of highly varied situations that predominate in a large number of developing countries. Moreover, the parties to these contracts cannot be considered as forming a homogeneous group, neither the purchasers in the developing countries nor the suppliers in the industrialized countries; finally, it has been considered necessary to provide for several legal frameworks corresponding to different transactions.

A country's economic situation, its degree of industrialization, the experience it has acquired in the conclusion of contracts with foreign partners and in particular the specific nature of the agricultural sector are without doubt major factors in determining the contribution that the country in question wishes to obtain from abroad, either for the importation, assembly or manufacture of agricultural machinery.

Thus the explanations, comments and remarks given are necessarily addressed to those whose experience in this field is more limited; the provisions concerning the manufacture of agricultural equipment can of necessity concern only the countries that have expressed an option in this respect.

As to the contracting parties, it is necessary in view of the variety of operators in this field that the provisions and clauses proposed may remain valid whether we are dealing with small- or medium-scale industry, transnational corporations, Governments or agricultural co-operatives.

Moreover, in such a wide field, the legal arrangements proposed can constitute only reference frameworks to be supplemented according to the will of the parties and national legislation. For it is clear that contracts do not exist in a legal vacuum but are necessarily linked to the laws of one or several countries.

The contractual texts and elements proposed in this document have therefore been chosen with the aim of enabling countries and other economic agents to enter this field of contractual relationships in the light of their own choices and needs.

Therefore, this document consists mainly of a check-list of essential clauses which are regularly found in contracts of this kind and which, provided they are carefully worded, can contribute towards the success of this type of undertaking by clarifying the respective rights and obligations of each party.

Admittedly, no agreement will operate properly unless it faithfully reflects the genuine basic agreement that has come about between the parties. However, an essential condition for the commercial transfer or acquisition of technology is the existence of an adequate legal framework by means of which the parties can determine their respective rights and obligations.3/

Most of the sample clauses are preceded by explanations or recommendations that show their relevance to the context of a developing country. However, an exception was made to this procedure in the case of licensing agreements (the assignment of industrial property rights and know-how), since such agreements constitute a complex of conventional legal formulas that in all circumstances represent a framework of clauses applicable to a variety of conditions.

It should be noted, moreover, that the ideas developed in this document do not flow from purely legal considerations. Nor is this paper merely a compilation of the vast amount of literature written on this subject (model contracts for the transfer of technology, codes of conduct, etc.). The basic guiding principle behind this work is to enable economic agents in the developing countries to strike a better balance in negotiations with their partners, which is generally impossible under traditional international trade rules alone.

Moreover, this documentation on contractual relationships in the field of agricultural machinery is part of a whole set of legal documents prepared in the context of the System of Consultations, the aim of which is to provide the developing countries with legal frameworks and mechanisms that can be of help in drafting mutually beneficial contracts, as adapted to suit specific situations.

3/ WIPO: Licensing Guide for Developing Countries, Geneva, 1977.

3. Content and presentation

The document consists of five independent parts,[4/] which, in view of the points made above, do not constitute a homogeneous whole and must therefore be read separately.

Nevertheless, the five parts are linked to one another in that they constitute so to speak "building blocks" that the contracting parties could combine in preparing their contracts. In drafting their contracts, whatever the subject, the parties could therefore also apply relevant provisions appearing in other chapters of the document.

This applies in particular to Part IV of the document: Training. The training component can indeed be added to or even inserted in any of the contractual frameworks chosen.

Part I is devoted to an examination of contracts for the purchase of agricultural equipment and spare parts; it contains general remarks and some model contract elements.

Part II deals with contracts for the assembly of agricultural equipment and confines itself to providing explanations and recommendations of a general nature.

Part III is devoted to the manufacture of agricultural equipment and contains general remarks and some standard contract elements.

Part IV addresses the question of the training of plant personnel and provides some general explanations on the subject; it also includes some standard contract elements.

Part V consists of an abridged form of a licensing agreement - a number of standard clauses related to general conditions, applicable law, the settlement of disputes, etc., being omitted.

4/ This document has no annexes. Any references to annexes in the contract clauses presented in the various chapters refer exclusively to the text of the chapter in question.

PART I

PART I

A. THE IMPORTATION OF AGRICULTURAL EQUIPMENT

1. General remarks

To a developing country, the importation of agricultural equipment is a vital activity that is distinguished from the simple acquisition of capital goods by:

- The fact that the agricultural machinery needed varies with the socio-economic and geographical conditions of the buyer country;
- Structural weaknesses and environmental problems in the recipient country in which this equipment is to be used;
- The complete "work chain" concept, requiring the optimum adaptation of the various links of the chain to one another, as well as their availability.

Thus, special efforts will have to be made with respect to:

- The selection of sets of agricultural equipment which can constitute "work units" tailored to local conditions;
- The establishment of effective structures for the reception and operation of this equipment;
- The development of local skills in adapting and dealing with these work units;
- The search for and practical implementation of all possible ways of reducing the foreign exchange outlay required for achieving the level of mechanization considered necessary for agriculture.

If these various considerations are to be taken into account, the contractual relations that govern import operations will have to be clearly identified.

The suppliers of agricultural equipment can take some responsibility for agricultural mechanization, from the success of which they, incidentally, benefit through increased sales of products and spare parts. They should therefore be able to offer the developing countries products suitable for local conditions and compatible with the equipment already in use there, modifying and adapting their products, if necessary.

Importing agricultural equipment can also be regarded by the country concerned as an intermediate phase in the process of mastering and developing agricultural mechanization as a whole.

Attention should be drawn to:

- Assistance in the formulation of a mechanization policy;
- The establishment of product support networks;
- Local manufacture;
- Design research and development, notably in the field of product adaptation and standardization.

Against this background, certain countries may wish to define an agricultural equipment import policy, or to co-ordinate such operations within a single body, responsible for ensuring a consistent policy for the introduction of agricultural machinery into the country.

Accordingly, purchase contracts could be used, for example, to:

- Give priority to "programme" rather than "spot" contracts wherever possible;
- Make purchases of products absolutely conditional upon the supply of spare parts;
- Guarantee the user effective product support by actively involving the supplier in technical assistance, training and after-sales service operations, etc.;
- Obtain the supplier's agreement to the manufacture of his product in the customer's country as soon as the latter wishes.

The existence of mutual trust founded on such an approach could lead to medium- and long-term contractual relationships, which would in fact amount to contracts for the development of complete production routes.

This concept of relationships extending over a number of years could, in an intermediate stage between importing the product and producing it locally, take the concrete form of a multi-year agreement setting out essential provisions, while purchases as such would be made through individual orders, and that prices and other specific conditions could be negotiated each year under general rules laid down in the agreement.

If imports are to be a really advantageous solution, albeit a temporary one, for the development of agricultural machinery, the contractual provisions governing imports should reflect a community of interest between the parties.

The fact of establishing a lasting rather than an ad hoc relationship with the supplier gives the latter a stable market and very often qualifies him for receiving special incentive benefits. The efforts required of the supplier to develop an after-sales service contribute directly towards standardization of the stock of equipment around the product which has the best supporting services. The supplier's aim will thus be to make his product as popular as possible, so as to give it a brand image.

It should also be noted that the countries with the least developed agricultural mechanization systems are those in which the supplier will find it in his interest to make the greatest efforts, particularly in after-sales services. In fact, the misuse of equipment or its poor performance may damage the supplier's future prospects permanently. A successful start, by contrast, will gain him considerable advantages by giving him greater credibility than his competitors.

Inviting the supplier to take an interest in the purchaser's projects for local manufacture will give him an opportunity to establish a long-term industrial relationship, with all the corresponding advantages.

2. Recommendations for the negotiation and drafting of contracts

The essential clauses include those relative to:

(a) The quality and reliability of the products

The purchaser must be assured by the contract of obtaining quality products. This is all the more necessary as the developing countries generally have inadequate capability for appraising the true quality of products offered to them by suppliers before signing the contract. In this context, it is recommended that the assistance of consultancy firms independent of the suppliers be enlisted.

(b) The suitability of equipment for local operating conditions

The introduction of equipment (particularly new types of equipment) into a country is a delicate exercise that is not always within the capacity of operators in the developing countries. Therefore, the supplier, who knows not only his product but also its (foreseeable or actually tested) performance in the conditions of the buyer's country as well as the ways of ensuring its rational operation, must undertake in the

contract to offer equipment appropriate for the use for which it is intended. However, with the assistance of consultants, if necessary, the purchaser should clearly define in the tender documents the use to which it is intended to put the equipment.

(c) Defects and non-conformity in the manufacture of the products

Often, the purchaser does not have the necessary capability to cope with a situation in which he is technically unable to prove a weakness in the performance of a given item of equipment, although he is aware of such a weakness when using the equipment. Contractual clauses regarding this question are intended to give the purchaser better protection against the occurrence of similar situations.

(d) Delays in delivery

The purchaser is often rather unimportant as compared with the supplier's major customers; the supplier is not necessarily supposed to be familiar with the constraints of the purchaser. Delays in delivery are of special importance among these constraints, because, in this area more than in any other, it can be said that "time is of the essence of the contract". Therefore, particular care should be taken to ensure that delays which, in other cases, may be the subject of a simple delay penalty (standard penalty clause) are in this case penalized in such a manner that the damage caused is really made good.

(e) Shortages of spare parts[1/]

In many cases, it has been difficult to ensure the availability of the spare parts necessary for the maintenance of the products purchased, because in particular of delay in concluding a contract for the purchase of spare parts or sometimes owing to the lack of zeal displayed by the supplier in dispatching spare parts, knowing that the contract for the product had already been signed and that the purchaser would in any case buy the spare parts.

This situation can be avoided if the purchaser concludes the product contract and the contract for the purchase of spare parts at the same time. If, for any reason, an analytical breakdown and detailed specifications of the spare parts cannot be drawn up at that time, it would be necessary to conclude a basic agreement with clear stipulations so that the supplier

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1/ See B, p. 19, "The importation of spare parts for agricultural machinery".

should know exactly by what date he must submit the analytical breakdown and detailed specifications of the spare parts for the purchaser's approval.

(f) Actual performance of after-sales service operations

As it is the almost universal case that developing countries have very limited capability with regard to after-sales servicing in the agricultural machinery sector, it is particuarly important to involve the supplier of the product in this activity in the purchaser's country.

This involvement can take various forms, one of which is described below in the annex on after-sales service, and must constitute a contractual obligation so that the supplier undertakes a commitment not only with regard to the delivery of appropriate products but also and above all with regard to their use in the field.

(g) The link between the importation of the products covered by the contract and their possible manufacture

As the purchaser is often acquiring a considerable volume of products on a regular basis, he is in a position to obtain from the supplier, in return for the volume of business that he gives him, agreement in principle to extend collaboration to the industrial field (local assembly and manufacture).

The purchaser has a by no means negligible advantage in that respect; a supplier who is offered a large and regular volume of sales of a product may find it worth while to consolidate this volume of business by proposing the extension of his collaboration to the local industrial manufacture of this product (assembly and manufacture, integrated progressively). Therefore, on the conclusion of a sales contract, a commitment may be obtained from the supplier for future industrial collaboration between him and the purchaser.

Examples of important clauses to be included in a contract

1. Definitions

For the purposes of the Contract, the following terms will have the meanings defined below:

1.1 Product

This term refers to the vehicles, machines, plant, materials, equipment, accessories, tools of all kinds and their components and parts,

in respect of which the contract defines the models, quantities, characteristics and specifications, types and accessories, fuller details being given in annex ... to the Contract.

The said equipment, whether usually manufactured and/or incorporated in the products defined in annex ... to the Contract or not, may be intended to adapt the products to a particular use.

The equipment is the subject of a list constituting annex ... to the Contract.

1.2 Specifications

This term refers to the standards, performance indicators, and output figures contained in annex ... and in general descriptions of the products and their characteristics, quality and reliability, provided by the SUPPLIER.

This term also refers to the accessories and equipment incorporated in the products, which, failing express stipulation in the Contract or in annex ... must be those with which the products sold on the market in the SUPPLIER's country are equipped.

2. Contractual documents

The documents setting out the agreement between the parties are the following:

The Contract;

The main annexes to the contract,[2/] such as:

Annex ... : Detailed specification of the goods delivered by the supplier (characteristics, types, etc.);
Annex ... : Delivery dates;
Annex ... : Prices and method of payment;
Annex ... : After-sales service;
Annex ... : Guarantee procedure;
Annex ... : List of standard tools.

The above-mentioned annexes are an integral part of the Contract.

3. Subject of the Contract

By the Contract, the SUPPLIER undertakes to sell and deliver to the PURCHASER, who accepts such sale and delivery, a total number of products

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2/ This is a standard clause. Model annexes have not been provided in this document.

more fully described in annex ... to the Contract, the characteristics of which must be in conformity with the specifications and in general with the conditions laid down in the Contract.

The said products must be new, of recent manufacture, in perfect working order, in conformity with all the conditions of the Contract, provided with all the equipment covered by annex ... and appropriate for the soil and climatic conditions in the PURCHASER's country.

The SUPPLIER undertakes to provide the PURCHASER with all the necessary technical assistance to enable him to maintain and repair the products delivered according to the terms and conditions mentioned in annex ... to the Contract.

If adaptation of the product should be necessary, the SUPPLIER shall examine the soil and other local conditions in the PURCHASER's country before the conclusion of the Contract, so that he will assume responsibility for the product, as far as its efficient use in the PURCHASER's country is concerned.

4. Laws and regulations, manufacturing standards

4.1 The products delivered must be in conformity with the standards and rules following from the laws and regulations of the PURCHASER's country that are in force at the time when each consignment of products leaves the factory. The PURCHASER shall notify the SUPPLIER of any changes in the said standards and rules as soon as they occur in such a manner as to enable the SUPPLIER to take them into consideration in the performance of his Contract.

4.2 All such modifications must be carried out by the SUPPLIER in order to make the products conform to the new standards and rules.

4.3 Within ... days of the notification referred to in paragraph 4.1 above, the SUPPLIER shall prepare an estimate for such modifications and shall specify any resultant extension of delivery dates. No modification may be made by the SUPPLIER until the said estimate has been expressly approved by the PURCHASER. In the event of disagreement regarding the amount of the estimate or the extension of delivery dates, the PURCHASER shall have the option of cancelling the part of the order corresponding to the products that must undergo such modification.

4.4 The manufacturing standards of the products and the quality standards for materials used in their manufacture must be comparable with and offer the same guarantees of reliability as those used by most of the leading world manufacturers of equipment similar to or comparable with the said products.

5. Modifications, conversions

5.1 If the SUPPLIER decides to make improvements to the products similar to those made in the manufacture of the products that he markets in his own country, he must advise the PURCHASER thereof in the shortest possible time.

5.2 The PURCHASER may request the SUPPLIER to make conversions and modifications of the products after the date on which this Contract comes into effect.

5.3 In the cases covered by paragraphs 5.1 and 5.2 above, the SUPPLIER shall prepare, within ... days following the request by the PURCHASER or following the decision of the SUPPLIER to improve the product, an estimate stating in particular the cost by product of such improvements, conversions or modifications and any extension of the delivery dates that might result therefrom. In that case, and subject to the provisions of paragraph 5.1 above, any improvements to the products made by the SUPPLIER shall be subject to the express prior agreement of the PURCHASER.

6. Inspection before delivery

6.1 Before delivery of the products, the SUPPLIER must carry out full inspections and shall have the products fully tested as to their mechanical properties, performance, strength of materials, quality control, finish, etc. in order to assure himself that the products fulfil all the conditions required under the present Contract.

6.2 At the PURCHASER's request, the SUPPLIER must permit the PURCHASER's employees or agents to be present at such operations for checking, inspection and acceptance of the products by the PURCHASER, in the SUPPLIER's factories, workshops and testing establishments.

6.3 Furthermore, the PURCHASER may request the SUPPLIER to have carried out, at the SUPPLIER's expense, performance tests at specialized testing centres of world-wide reputation. This commitment must be stipulated in the Contract.

7. Packing - marks to be placed on packages

7.1 The products must be supplied to the PURCHASER in perfect condition and in perfect working order. The SUPPLIER undertakes to dispatch the said products with the appropriate and necessary packing and protection suitable in view of the nature of the products, the method of transport chosen and conditions arising when the said products remain for a considerable period in the port of unloading. The Contract shall specify that such packing be provided at the SUPPLIER's expense. The latter shall be solely responsible in the event of any damage to the products caused by a defect in the material or a design fault in the packing and protective materials supplied.

7.2 If certain precautions have to be observed in handling the products, precise instructions must appear on the packages. These instructions must be given in the form of diagrams showing the steps to be followed, accompanied by a notice in the ... language.

8. Assembly, preparation and commissioning of the products

8.1 The product is sold in the condition agreed between the parties. The SUPPLIER may dispatch the product in completely knocked down form. In that case, the SUPPLIER shall be under an obligation to assemble the products on his own responsibility and at his own expense at the time and the place indicated by the PURCHASER.

8.2 In the event that the PURCHASER, in the course of the assembly, preparation and commissioning of the products, should make available to the SUPPLIER unskilled personnel, working under the direction, control and supervision of the latter, as well as equipment necessary for carrying out the operations, the manpower and material costs shall be borne by the SUPPLIER and invoiced to the latter, respectively, at the hourly rate in force and at purchase price. The SUPPLIER shall credit the PURCHASER's account in the currency of the Contract for the payment of such expenses.

9. Technical documentation and tool-kits

Every product must be accompanied by one copy, in the language of the PURCHASER, of the descriptive and instruction manuals necessary for its operation, by an inspection report and, where appropriate, by a copy of the technical data sheet and/or the performance sheet, as well as the standard tool-kit necessary for its maintenance and repair, usually provided by the SUPPLIER. The standard tool-kit accompanying each product is defined in annex ... .

10. Dispatch, transport and delivery

10.1 The SUPPLIER undertakes to supply the products FOB (or CIF, as may be agreed upon between the parties) STOWED at port (x) (to be specified), at the PURCHASER's choice and according to the stipulations sent by the latter to the SUPPLIER, in conformity with the delivery schedule constituting annex ... to the Contract.

It is expressly agreed that a delivery request or order shall be sent by the PURCHASER to the SUPPLIER at least ... days before the date for the delivery of any consignment of products; it is further understood that such delivery request or order shall in no case constitute a new order.

10.2 Confirmation shall be made by the SUPPLIER of the quantities to be delivered and the method of transport.

10.3 The SUPPLIER shall transmit to the PURCHASER the invoices and bills of lading corresponding to every consignment of products to be delivered and according to the conditions and procedures laid down in the Contract (to be defined in the Contract).

10.4 If the SUPPLIER should dispatch to the PURCHASER all or part of the products to the agreed port of loading after the dates fixed in his own telex, he must, without prejudice to the provisions of article 11 below, bear the consequences of any injury to the PURCHASER arising out of such late delivery and must in particular reimburse the PURCHASER within the shortest possible time for any demurrage that the PURCHASER has paid, against presentation by the latter of the relevant supporting documents. (These provisions apply only if the purchase is carried out on FOB terms.)

11. Delivery, penalties

11.1 If the delivery periods specified in annex ... to the contract are exceeded, the SUPPLIER shall pay to the PURCHASER a penalty for the delay equal to ... per cent of the FOB value (or CIF value if the sale is made on CIF terms) of the products not yet delivered, for each week or fraction of a week during which the delay continues. Sums due from the SUPPLIER under this heading shall be paid to the PURCHASER in the currency of the Contract, within ... days after notification, to the account designated by the PURCHASER, or shall be withheld by the PURCHASER out of any sums payable by the latter to the SUPPLIER.

11.2 However, the SUPPLIER shall enjoy a period of grace of ... days from the delivery date originally set, to perform all his obligations. During such period of grace, penalties for delay shall not apply to him.

11.3 If at the end of the period of grace the SUPPLIER has still not delivered all the products comprising the consignment, the penalties for delay shall apply to him retroactively, reckoned from the delivery date originally set in the schedule constituting annex ... to the Contract, provided that these penalty payments may not exceed ... per cent of the FOB value of the products in question (or of the CIF value if the sale is made on CIF terms).

12. Verification of apparent conformity, provisional acceptance

12.1 The SUPPLIER shall give the PURCHASER a guarantee that the products supplied are in conformity with all conditions of the Contract.

12.2 Provisional acceptance of the products shall be made at the PURCHASER's depot, but the latter shall be at liberty to make provisional acceptance of all or part of the products delivered on the wharves in the port of unloading. At the time of provisional acceptance, and without prejudging the actual conformity of the products delivered, verification of apparent conformity shall be made by a representative of the PURCHASER and a representative of the SUPPLIER. Their findings shall be entered in a statement of provisional acceptance, prepared and signed by the representatives of the PURCHASER and the SUPPLIER, mentioning any lack of conformity noticed on provisional acceptance of the products delivered. If the SUPPLIER's representative does not appear, the fact shall be mentioned in the statement of provisional acceptance and the findings of the PURCHASER's representative shall stand by default, and vice versa.

12.3 The sole purpose of verification of conformity at the time of provisional acceptance is to make certain of the apparent conformity of the products. Therefore, if, following provisional acceptance and before final acceptance, during use or under any other circumstances, one or more products should prove not to be in conformity with all the conditions of the Contract, the SUPPLIER must remedy the defect or replace the products with products fulfilling the terms of the Contract, on the conditions laid down above.

12.4 In the event of the non-conformity of all or a significant part of the products delivered with all of the conditions laid down in this Contract,

provisional acceptance of defective products shall not be made and the consequence will be, inter alia, that the delivery of the said products shall be deemed not to have occurred, that no transfer of ownership and risks to the PURCHASER in relation to the said products shall be made and that the penalties for delay laid down in article 11 above shall take effect until delivery by the SUPPLIER of products in conformity with the Contract to replace the defective products, or until the deficiencies of the said products have been remedied by the SUPPLIER.

In cases in which it is necessary, the SUPPLIER shall make arrangements for the return transport and the transport insurance of defective products, and the SUPPLIER shall also pay the costs of transport and insurance of the replacements sent.

12.5 If, within a period of ... days from the date of notification of non-conformity to the SUPPLIER, the latter has not remedied the defects of the products or has not replaced them by other products, he shall pay to the PURCHASER immobilization costs equal to ... per cent of the price of the products thus immobilized for every week or fraction of a week of immobilization of defective products and such immobilization indemnity shall take effect from the date on which the SUPPLIER was notified of the lack of conformity by the PURCHASER.

12.6 If lack of conformity is not established either on provisional acceptance or during the period between provisional and final acceptance (unless there is agreement to the contrary), the final acceptance of each of the said products shall take place automatically on the expiry of the guarantee period, without its being necessary to draw up a statement of final acceptance.

12.7 For products whose lack of conformity has been established, final acceptance shall occur after it has been established that there are no longer any defects that have not been remedied by the SUPPLIER; however, such final acceptance cannot occur before expiry of the designated guarantee period, and will not necessarily occur then. A statement of final acceptance of such products must be drawn up and signed by representatives of both the PURCHASER and the SUPPLIER.

12.8 The SUPPLIER shall pay directly all expenses, duties, taxes and charges resulting directly or indirectly from the lack of conformity of products, such as costs of demurrage in ports, of loading or unloading, parking fees, storage fees, travel and subsistence expenses for technicians,

transport costs, return of the products and transport for dispatching products in conformity with the contract, expenses, duties and taxes resulting from the repair or replacement of the products, this list not being limitative.

12.9 If the products in which lack of conformity has been established should at any time represent more than ... per cent of the products delivered to the PURCHASER by the SUPPLIER, the PURCHASER shall have the option of immediately cancelling the present Contract without notice, and, at the PURCHASER's request, the SUPPLIER must immediately take back all products not in conformity with the present Contract, and must repay the price paid, without prejudice to any damages that the PURCHASER may be entitled to claim in complete compensation for the direct and indirect injury incurred.

13. Prices and method of payment

13.1 The products shall be sold to the PURCHASER at the prices mentioned in annex ... to the Contract. These prices are firm, final and not subject to revision. They are understood to apply to the products sold FOB (or CIF, as agreed upon between the parties) STOWED at the port(s) to be agreed upon pursuant to paragraph 10.1 above.3/

13.2 The total contract price for the products to be delivered to the PURCHASER amounts to ... . The contract price also includes all expenses and charges paid by the SUPPLIER resulting from the application of the provisions of the Contract, unless it is expressly provided that such charges and expenses shall be borne by the PURCHASER.

14. Guarantee

14.1 The SUPPLIER shall give the PURCHASER, in respect of the products and all their parts and components, a guarantee against any malfunctioning and manufacturing or other defects due to a fault in design, materials, manufacture and/or assembly. The SUPPLIER shall give a guarantee that the products covered by the Contract are new, of recent manufacture, in perfect working order and in conformity with all the conditions of the Contract. Clearly, any damage resulting from failure of the PURCHASER to use the equipment properly remains the responsibility of the latter.

3/ See p. 12.

14.2 The sole purpose of verification of conformity referred to in article 12 above[4/] is to establish the apparent conformity of the products. Consequently, in the event that, after the signature of the statement of conformity and before the expiry of the technical guarantee period, one or more products should prove during use or in any other circumstances not to be wholly or partly in conformity with all the conditions of the Contract (poor design, unsuitability for special uses, non-conformity with "specifications", etc.), the SUPPLIER must remedy the defect or replace the products by suitable products under the conditions provided for in annex .. to the Contract.

14.3 Complaints made by the PURCHASER or his distributors (dealers) during the guarantee period shall be the subject of an amicable approach by the latter to the SUPPLIER. The SUPPLIER undertakes, within the framework of such amicable arrangements, to bear all expenses related to travel, replacement of parts, assemblies or other components, as well as labour costs.

Such complaints shall be made with the aid of the PURCHASER's forms.

14.4 If a latent defect should become apparent, the PURCHASER may at any time, even outside the guarantee period, demand that the SUPPLIER remedy the defect in the products at his own expense, either in situ or in his own factories. Furthermore, the PURCHASER may without penalty cancel all or part of the order. In that case, the SUPPLIER shall immediately take back at the price paid plus the expenses, duties and taxes paid the products covered by the order cancelled, without prejudice to any damages that the PURCHASER may be entitled to claim as the result of the injury incurred.

A latent defect shall be understood to mean any manufacturing defect or malfunction appearing several times in one machine or in several machines of the same type, even after expiry of the guarantee period.

14.5 The SUPPLIER shall guarantee the PURCHASER against any proceedings instituted against him by a user, a third party or an assign of either of the latter, arising from any physical or material damage caused by a latent or recurrent defect in the product. The user, the third party, or their assigns may also institute proceedings directly against the SUPPLIER for compensation in respect of injury incurred.

4/ See pp. 13-15.

14.6 The SUPPLIER shall give the PURCHASER a guarantee against any proceedings instituted by third parties in respect of industrial property rights (patents, models, designs, trade-marks, licences) relating to the products.

He shall undertake to side fully with the purchaser in any legal proceedings.

In the event of a judgment against the latter, he shall undertake to assume responsibility for any compensation, damages, costs, expenses, registration fees, etc.

The duration of the guarantee period shall be 24 months, and the relevant procedure will be defined in conformity with the annexes to the Contract.

15. Import and export licences

15.1 The PURCHASER shall take responsibility for and make it his business to obtain import licences and to attend to all formalities required by the law and/or regulations of his country for the importation of the products and their clearance through customs.

15.2 The SUPPLIER shall take responsibility for and shall make it his business to attend to the formalities and obtain the authorizations required for the export of products to the PURCHASER's territory.

15.3 All dues and taxes payable under the laws and/or the regulations in force in the SUPPLIER's country and related to such exportation shall be paid by the SUPPLIER.

16. Spare parts

The SUPPLIER shall undertake to provide the PURCHASER with all necessary spare parts for a period of 10 years from the delivery of the product.[5/]

17. Special provisions

The provisions indicated below refer only to the situation mentioned in the framework of the general remarks (cf. p. 4) in which the PURCHASER wishes to go a stage further than the importation of equipment and wishes to obtain an agreement from the supplier for the industrial manufacture of his product. Thus, the provisions have the purpose of initiating long-term co-operation.

5/ In this context, see "The importation of spare parts for agricultural machinery", p. 19.

17.1 The SUPPLIER undertakes, under the terms of the Contract, to assist the PURCHASER in the local manufacture of the products, assemblies, sub-assemblies and parts covered by the Contract.

17.2 In particular, the SUPPLIER undertakes to carry out at the request of and for the account of the PURCHASER, according to arrangements to be agreed upon jointly, any studies, analyses or research capable of assisting the PURCHASER:

- In ascertaining the present and future needs of the local market;
- In ascertaining the structure of the existing stock of equipment covered by the Contract that is in use in the PURCHASER's country;
- In evaluating any industrial project for the local manufacture of the equipment covered by the Contract.

17.3 The SUPPLIER undertakes, moreover, to assign to the PURCHASER at the latter's request, according to arrangements to be agreed upon jointly,

- The licensing rights for the manufacture of equipment covered by the Contract;
- Know-how;
- Technical documentation.

Furthermore, the SUPPLIER undertakes to collaborate closely with the PURCHASER in any projects for the local manufacture of the equipment covered by the Contract, giving assistance in particular in the construction and start-up of the corresponding industrial installations, as well as in the training of staff.

17.4 The SUPPLIER undertakes to permit the PURCHASER to produce (for the PURCHASER's own use only) spare parts of the SUPPLIER's design by granting the PURCHASER a non-exclusive licence to manufacture them.

B. THE IMPORTATION OF SPARE PARTS FOR AGRICULTURAL EQUIPMENT

1. Recommendations for the negotiation and drafting of contracts

(i) Introductory remarks

It is important to make clear in the contract the intentions of each contracting party; thus, in the case of the contract for the supply of spare parts for agricultural machinery, it must be shown:

- That the purchaser is seeking to obtain the co-operation of the supplier in stocking up his stores and depots with assemblies, sub-assemblies and spare parts produced by the supplier himself, and components authorized by the supplier;

- That the goods supplied will be used by the purchaser to replace assemblies, sub-assemblies and spare parts and to maintain the products comprising the existing stock in the purchaser's country, and may be freely sold to any client for use or re-sale;

- That the supplier, who produces assemblies, sub-assemblies and spare parts, and who has been able to assess the requirements of the purchaser, agrees to provide the latter with the said assemblies, sub-assemblies and spare parts, and to set up a high-quality after-sales and technical assistance service for the maintenance and repair of the assemblies, sub-assemblies and spare parts which have been delivered.

Experience has shown that, in general, the purchaser of agricultural machinery is unaware of the variety and quality of the spare parts required for the maintenance of products recently introduced. For this reason, it is essential that the supplier, who is well versed in the maintenance of the products which he manufactures, should undertake to provide the purchaser with recommendations concerning the purchase, maintenance of stocks and management of the spare parts required for these products. It is, however, understood that this is a field in which close co-operation between the supplier and the purchaser is required.

(ii) Examples of important clauses to be included in contracts

1. Definitions

To avoid conflicting interpretations of the main terms used in the Contract, it is important to include clear definitions of these terms; for example:

1.1 Assemblies and sub-assemblies

A group of components classified under a single heading and on which the functioning of the product is partially or entirely dependent.

1.2 Spare parts

This term refers to those spare parts, whether originals or authorized components, included in the SUPPLIER's catalogues, which are currently manufactured and/or sold by the SUPPLIER, together with any other new spare parts relating to the assemblies or sub-assemblies of the SUPPLIER's make.

1.3 Authorized components

This term refers to original components which are manufactured in the plants of the SUPPLIER's sub-contractors.

1.4 Product

This term refers to the equipment comprising the existing stock in the PURCHASER's country which incorporates the spare parts defined in paragraph 1.2 above.

1.5 Specifications

This term refers to the standards, performance indicators, output figures and item reference numbers given in the SUPPLIER's catalogues in connection with the designs of the assemblies, sub-assemblies and spare parts, and in general descriptions of the nature or quality of the assemblies, sub-assemblies and spare parts, which the said SUPPLIER has brought to the attention of the PURCHASER or of other persons by advertising or other means.

2. Contractual documents

The documents setting out the agreement between the parties are the contract and its annexes.

In the present instance, these annexes - models of which are given below[6/] - will deal with the following points:

Examples:

- Prices
- Guarantees
- After-sales service and technical assistance
- Packing, marking, protection and packaging
- Technical documentation

6/ See pages 30, 31 and 32 below.

- Analytical breakdown of the documents
- List of sub-contractors of the SUPPLIER
- Data sheets for spare parts management

These annexes form an integral part of the Contract.

3. Subject of the Contract

This section is concerned with the essential obligations which must be accepted by the SUPPLIER.

3.1 The SUPPLIER must undertake to sell and deliver to the PURCHASER assemblies, sub-assemblies and spare parts, which must, as a matter of obligation, be new, of recent manufacture, in perfect working order and in conformity with the specifications.

3.2 The SUPPLIER must undertake to provide the PURCHASER with all necessary technical assistance in order to enable him to perform his after-sales service function properly. The terms and details of the said assistance may be specified in an annex to the Contract.

3.3 The SUPPLIER must be able to deliver to the PURCHASER, as and when the latter so requests, the assemblies, sub-assemblies and spare parts for a period of ten (10) years dating from the last delivery. This obligation must continue even in the event of non-renewal or cancellation of the Contract. Deliveries may, in this case, be made according to mutually agreed arrangements.

The SUPPLIER must undertake not to discontinue the delivery of any of these assemblies, sub-assemblies or spare parts during that period unless, in the context of their discontinuance, the PURCHASER has been notified of alternative models which have been approved in advance by the PURCHASER. Notification of the alternative model must be made not less than one (1) year prior to the date of the last delivery.

3.4 In the event that improvements are made to the assemblies, sub-assemblies and spare parts, the SUPPLIER must undertake to notify the PURCHASER of the new specifications.

3.5 In the event of the introduction of new assemblies, sub-assemblies or spare parts, the SUPPLIER must inform the PURCHASER thereof as soon as the latter are marketed.

3.6 The SUPPLIER must undertake to grant the PURCHASER the same preferential prices on the new assemblies, sub-assemblies and spare parts as those already granted to him.

4. Measures preparatory to placing orders

4.1 Within ... calendar days from the date of signature of the Contract, the SUPPLIER must study the stock of equipment in the PURCHASER's country and determine on his own responsibility the needs for his brand of assemblies, sub-assemblies and spare parts incorporated in products constituting the stock of equipment in the PURCHASER's country, expressed as the necessary stock level, taking into account the periods required for the placing and execution of orders.

Within ... calendar days from the date of signature of the Contract, and as provided in the Contract, the SUPPLIER must send the PURCHASER a proposal for a first order (covering the composition or adjustment of the stock) and shall send the PURCHASER the stock management directives thus determined by the SUPPLIER.

4.2 After a period of ... months from receipt of the stock, if the PURCHASER has taken action in accordance with this proposal for a first order and if this proposal has proved to be excessive in terms of quantity, the PURCHASER will have the option of returning to the SUPPLIER, who shall so accept, all or part of the assemblies, sub-assemblies or spare parts that the PURCHASER has not sold or used by that date. This stock will be returned at the price invoiced by the SUPPLIER plus the expenses, duties and taxes paid by the PURCHASER. Payment in respect of this returned stock shall be made to the PURCHASER within ... calendar days from the date of receipt by the SUPPLIER of the PURCHASER's request, into the bank account designated and in the currency of the Contract.

4.3 The SUPPLIER must send the PURCHASER free of charge detailed lists of the assemblies, sub-assemblies and spare parts specific to each model of products to be supplied.

4.4 The SUPPLIER undertakes to assist the PURCHASER in setting up a new stock to cover needs of assemblies, sub-assemblies and spare parts arising out of every new importation of products equipped with his brand of assemblies, sub-assemblies and spare parts, in order to avoid any stock shortages between the various deliveries.

5. Placing orders

5.1 Standard orders

The PURCHASER may place standard orders, according to his requirements, by registered letter. Standard orders include both those for the renewal of supplies and those for specific items.

5.2 Emergency orders

In addition to standard orders, the PURCHASER must be able to place emergency orders. It must be possible to place such orders by all available means (registered letter, telegram, telex, etc.). In this case, any order placed by the PURCHASER according to this procedure must be handled and delivered as a matter of urgency by the SUPPLIER, according to procedures to be determined.

6. Packing, protective measures, marks to be placed on packages

The following recommendations are designed to ensure that goods ordered are dispatched in the normal way and are protected against any damage or loss arising from prolonged periods in port areas. Experience has shown that, especially in developing countries, congestion in port areas and the numerous administrative formalities for unloading, customs clearance, etc. make it essential to take precautions in respect of the packing and marking of the goods.

6.1 The SUPPLIER must undertake not to dispatch his assemblies, sub-assemblies and spare parts without the appropriate packaging and protection for their use in after-sales service. The SUPPLIER must be held solely responsible in the event of accident or any other damage which occurs while goods are held in stock in the PURCHASER's country and which is caused to the assemblies, sub-assemblies and spare parts as a result of a defect in the material or a design fault in the packaging and protective materials supplied. Moreover, the PURCHASER shall be released from his responsibility whenever it is established that he has observed the SUPPLIER's instructions regarding storage.

Packages for dispatch must be suitable for the method of transport chosen. Packaging, protective materials and wrappings must be in conformity with the provisions of an annex to be added to the Contract.

6.2 Every consignment of assemblies, sub-assemblies and spare parts sent to the PURCHASER must be marked in the manner described in an annex to be

attached to the Contract. The marks must be affixed to three surfaces of the package and must be legible, visible and indelible.

6.3 If certain precautions must be observed in handling the assemblies, sub-assemblies and spare parts and/or if they must be positioned in a certain way, the SUPPLIER must undertake to ensure that the necessary instructions appear on the packages. These instructions must appear in the form of diagrams showing the steps to be followed, accompanied by a notice in the languages chosen by the PURCHASER.

7. Delivery, penalties, transport, time limits

These are standard procedures available to the PURCHASER for dealing with these matters.

7.1 Delivery of the assemblies, sub-assemblies and spare parts must be effected within the periods set out in the Contract and to the addresses indicated by the PURCHASER in his order.

7.2 Every standard order placed by the PURCHASER must be delivered in full CIF (or FOB) by the SUPPLIER within a period of ... .

7.3 Every emergency order placed by the PURCHASER must be delivered in full CIF (or FOB) by the SUPPLIER within a period of ... .

7.4 In the event that the delivery periods specified in the Contract are exceeded, the SUPPLIER must pay the PURCHASER a penalty for the delay, equal to (x) of the CIF (or FOB) value of the assemblies, sub-assemblies and spare parts not yet delivered, for each week or fraction of a week of delay. In no circumstances may these total penalty payments exceed (y) of the value of the assemblies, sub-assemblies and spare parts not yet delivered. Sums due under this heading must be paid to the PURCHASER within ... calendar days, reckoned from the date of notification by the PURCHASER, to the bank account designated by the PURCHASER and in the currency of the Contract.

7.5 The SUPPLIER shall enjoy a period of grace of ... calendar days to effect the delivery of the quantities ordered, in the case of a standard order. During this period of grace, the penalty for delay specified above shall not apply to the SUPPLIER. If, at the end of this period of grace, the SUPPLIER has not effected the deliveries as specified above, the penalties for delay shall apply to him retroactively, reckoned from the delivery dates originally set.

7.6 The SUPPLIER must inform the PURCHASER by telex, confirmed by registered letter, of the loading date of the assemblies, sub-assemblies and spare parts, the number and weight of the packages sent, their CIF (or FOB) value and their expected date of arrival, together with the name of the vessel or the flight number of the aircraft transporting the goods; this must be done as soon as the assemblies, sub-assemblies and spare parts are loaded on board.

7.7 The SUPPLIER must send directly to the PURCHASER by airmail, within a period of ... , all the documents relating to the assemblies, sub-assemblies and spare parts and to their dispatch to their destination, in accordance with an analytical breakdown contained in an annex to the Contract. These documents must be defined in the same annex.

7.8 The delivery and transfer of ownership and risks involved shall be effected CIF (or FOB) to the port or airport in the PURCHASER's country indicated by the PURCHASER in his order.

7.9 The PURCHASER may reserve the right to request the SUPPLIER at any time to follow procedures for transporting the assemblies, sub-assemblies and spare parts which differ from those specified in the Contract. In that case, the PURCHASER and the SUPPLIER will make the necessary revisions.

8. Verification of conformity

8.1 The SUPPLIER must give the PURCHASER a guarantee that the assemblies, sub-assemblies and spare parts are new, of recent manufacture and in conformity with the specifications, the terms of the Contract and the PURCHASER's orders.

8.2 The PURCHASER shall verify that each consignment corresponds to the quantities ordered. This check shall be carried out by the PURCHASER, where appropriate in the presence of an agent of the SUPPLIER, when the containers and packages are opened in the storerooms of the PURCHASER or his customers. The assemblies, sub-assemblies and spare parts shall be examined for conformity with the specifications as and when they are put into use.

8.3 In the event that the PURCHASER notes any lack of conformity, he shall advise the SUPPLIER to that effect; the latter shall have the option of carrying out an examination within a period of ... reckoned from the date on which the information was received from the PURCHASER. If the SUPPLIER does not carry out the examination within this period, the PURCHASER's statement shall stand by default.

8.4 Reimbursement in respect of all assemblies, sub-assemblies and spare parts found not to be in conformity shall be made to the PURCHASER within ... calendar days, to the bank account designated by the PURCHASER and in the currency of the Contract, on the basis of the invoice price of the assembly, sub-assembly or spare part, plus any expenses, duties and taxes paid by the PURCHASER; such these expenses, duties and taxes shall be subject to review if the rates at which they are set are altered.

9. Guarantees

9.1 The SUPPLIER must give the PURCHASER, in respect of the assemblies, sub-assemblies and spare parts dispatched, a guarantee against any malfunctioning and any manufacturing or other defect due to a fault in design, in materials or in the manufacture of the assemblies, sub-assemblies and spare parts, in all cases within the designated guarantee periods provided for in an annex to the Contract, or for such other designated guarantee periods as have already been granted by the SUPPLIER or offered to third parties, and which may be more favourable than those contained in that annex.

9.2 The SUPPLIER must guarantee the PURCHASER against any proceedings instituted against him by a user, a third party or an assign of either of the latter, arising from any physical or material damage caused by a latent or recurrent defect in the product. The user, the third party or their assigns may also institute proceedings directly against the SUPPLIER for compensation in respect of any injury incurred.

10. Prices and method of payment

This section deals with the various methods which the PURCHASER may adopt in order to:

- Remain informed at all times of the prices he is being charged;
- Check on any price changes;
- Take advantage of price reductions for quantity purchase.

The provisions set out below may be used for this purpose.

10.1 The assemblies, sub-assemblies and spare parts to be delivered under the Contract by the SUPPLIER shall be sold to the PURCHASER at the prices indicated in the price list contained in the annex to the Contract.

10.2 These prices may be revised on 1 January each year, provided that, after such revision, the new prices will be firm and will remain unaltered for a period of twelve (12) months. They may be further revised only on 1 January of the following year or after some other mutually agreed interval.

10.3 The prices may be revised by joint agreement between the parties, in accordance with the following provisions:

(a) Not later than ... months before 31 December each year, the SUPPLIER must send the PURCHASER a proposed list of the new prices, expressed as gross ex-works prices.

(b) The percentage of price revision for the products listed in the register of the PURCHASER's country may not exceed the average percentage of total increase, for the year in question, of the full range of general export prices for the SUPPLIER's assemblies, sub-assemblies and spare parts. Any increase which the PURCHASER deems excessive shall be reconsidered by the two parties, and the SUPPLIER must justify it.

(c) The PURCHASER must have indicated final acceptance or refusal of the SUPPLIER's proposed prices not later than one month before 31 December of each year.

10.4 Any order placed by the PURCHASER in accordance with a specific price list must be delivered at the price given in that list, irrespective of any price revisions which may have taken effect prior to the delivery of the assemblies, sub-assemblies and spare parts ordered.

10.5 The currency of the Contract must be defined in the Contract.

10.6 The method of payment for the assemblies, sub-assemblies and spare parts shall be stipulated in the Contract (letter of credit, bills of exchange accepted by the PURCHASER, etc.).

10.7 The bills accepted by the PURCHASER are domiciled at a bank designated by the PURCHASER and acceptable to the SUPPLIER.

10.8 The PURCHASER may request the SUPPLIER for a rebate on the value of the orders placed with him by the PURCHASER during the year elapsed, if economic circumstances are favourable for such rebate.

11. Technical documentation

The SUPPLIER must, at his own expense, send the PURCHASER the documents, handbooks, diagrams, instructions for maintenance, use and assembly, etc., which are described in the annex, within a period of ... from signature of the Contract. He shall also undertake to provide the same type of documentation, free of charge, whenever the PURCHASER requests

it. The dispatch of the above-mentioned documents is essential for providing the PURCHASER's staff with the requisite information, and for the planning and organization of his after-sales service network.

12. Most-favoured customer clause

The SUPPLIER must undertake to give the PURCHASER the benefit of the status of most-favoured present or future customer. This undertaking of the SUPPLIER, as defined above, shall continue even in the event of non-renewal or cancellation of the main Contract.

13. General provisions

13.1 Assignment: No assignment relating to the Contract may be made without the agreement of the parties.

13.2 The documents, handbooks and other written material made available by the SUPPLIER must be in the language chosen by the PURCHASER and specified in the Contract.

13.3 Units of measurement: The units of measurement used in relation with the assemblies, sub-assemblies and spare parts and in the technical documentation must conform to the standards applying in the PURCHASER's country.

13.4 Ownership of documents, drawings, accessories and other material: All the documents, drawings, accessories and other material made available to the PURCHASER by the SUPPLIER within the context of the Contract, shall become the property of the PURCHASER and shall remain confidential.

13.5 Notification: Except where the Contract specifies other means of communication, any notifications that must be made, as well as announcements and notices that must be given, shall be sent by registered letter.

14. Claims by third parties

14.1 The SUPPLIER must guarantee the PURCHASER against any proceedings instituted by third parties in respect of industrial property rights (patents, models, designs, trade-marks, licences) relating to the assemblies, sub-assemblies and spare parts.

14.2 He must undertake to side fully with the PURCHASER in any legal proceedings. In the event of a judgment against the latter, he undertakes to assume responsibility for any compensation, damages, interest charges, costs, expenses, registration fees, etc.

15. Confidentiality of the Contract

The SUPPLIER may not communicate to third parties, directly or indirectly, all or part of the text of the Contract without the express prior consent of the PURCHASER. This obligation is reciprocal. The PURCHASER may refuse to give such consent and need not give reasons for his refusal.

16. Applicable law and judicial proceedings

The Contract is subject to the laws and regulations in force in .... (the country should be specified, in so far as the inclusion of this clause depends on the will of the parties; in fact, some countries demand that the applicable law be that of the host country).

17. Duration of the Contract

The Contract should be concluded for a period of ten (10) years.

This period shall be reckoned from the date on which the Contract comes into force. It must be expressly agreed that, if the parties do not wish to renew this Contract, the party which is not considering renewal must notify the other party by registered letter in advance, not later than ... before the expiry date set in the Contract.

In the absence of express denunciation under the conditions defined above, the Contract shall be renewed by tacit agreement from year to year, subject to the same notice period of ... .

18. Date of entry into force of the Contract

The Contract shall take effect only when the following formalities have been completed:

- Signature by the PURCHASER and the SUPPLIER of the purchase contract relating to the products referred to above;
- Approval of the Contract, where necessary, by the competent authorities in the PURCHASER's country, this formality being the sole responsibility of the PURCHASER;
- Approval of this Contract, where necessary, by the competent authorities in the SUPPLIER's country, this formality being the sole responsibility of the SUPPLIER.

Examples of principal annexes[7/]

SUPPLIER's PRICE LIST

Spare parts contract

1. SUPPLIER's price list

The price list transmitted to the PURCHASER under the Contract is that for January of the year (n).

It must be agreed between the two parties whether this price list is to be understood in FOB or CIF terms, and whether or not packing is included.

It must also be understood that the prices of the assemblies and sub-assemblies must be competitive in relation to those of similar models.

2. Rebate

The SUPPLIER grants the PURCHASER a rebate of ... per cent on the current price, as from ... 19... . It must be understood between the parties that the prices for January of the year (n) in force until 31 December of the year (n + 1) will not be revised.

Revision of the prices for the assemblies, sub-assemblies and spare parts for the year (n + 2) must be caculated the basis of the price list applying in January of the year (n + 1), which the SUPPLIER will have provided by way of information to the PURCHASER.

3. Price alteration

The SUPPLIER must advise the PURCHASER of each alteration of the price list. He must provide him with all the data necessary to assess the justification for such alteration.

Annex

PACKING, MARKING, PROTECTIVE WRAPPING

1. Packing

The packing used for the spare parts dispatched by the SUPPLIER to the PURCHASER must be appropriate to the method of transport used.

2. Protective wrappings: (an example)

- "The interior must be lined with a layer of waxed cardboard."
- "A special wrapping must be made of a combination of cloth, polyethylene and aluminium to fit the internal dimensions of the container."

7/ See "Contractual documents", pp. 20-21 above.

When several items are packed in the same container, each item should be placed in a separate cardboard box and each box covered with the special combination wrapping.

- "The wedging material used must be of a neutral type (polyethylene fibre)";
- "Dehydrating capsules must be placed inside the container";
- "Each wrapping must be vacuum-sealed";
- "Before the container is nailed down, it must be lined on the inside with Isorel sheeting and aluminium foil."

The packing provided by the SUPPLIER must in all events be completely leak-tight, and must ensure protection for the goods during storage in the open air for at least ... months.

3. Special protection (an example)

3.1 "Pinions and gears must be protected individually by tempering or by the use of cardboard spacers to protect them from impact or rubbing."

3.2 "Adequate protection must be used for any fragile item."

3.3 "Adequate wrapping must be provided to permit long-term storage and frequent handling in the case of all items."

Annex

TECHNICAL DOCUMENTATION

The SUPPLIER undertakes to participate in the regular distribution system for the supply, free of charge, of all documents on spare parts to the entire network of the PURCHASER.

The issue of documents is not restricted to the initial set, and the SUPPLIER undertakes to supply a complete set of documents, free of charge, whenever time a new after-sales point is set up to service his goods.

These documents will include, for example:

A catalogue of spare parts
Microfiches
An information bulletin
A summary inventory list
Technical memoranda
A handbook for preparing recommendations
A list of recommended items for different categories of repairs
Component drawings for each type of engine
An organization and standards handbook for spare parts stores
A management handbook based on a data processing and Cardex file system.

Annex

LIST OF SUB-CONTRACTORS

Introductory remarks

It may be of importance for the PURCHASER to be aware of the identity of the SUPPLIER's sub-contractors, as the prices charged by sub-contractors are generally lower than those charged by the SUPPLIER of the product. It is therefore advisable to obtain supplies, whenever possible, directly from sub-contractors. However, it should be noted that purchases effected through the SUPPLIER of the product usually offer better quality guarantees.

The purpose of this annex is to indicate the sub-contracting companies which produce components used in the products delivered by the SUPPLIER to the PURCHASER.

The list of sub-contracting companies is as follows:

.....

.....

.....

Any alteration to this list must be brought to the attention of the PURCHASER.

PART II

PART II

THE ASSEMBLY OF AGRICULTURAL EQUIPMENT

General remarks

A contract to set up assembly lines for agricultural machinery amounts to a contract with a supplier for the provision of CKD (completely knocked down) kits. Hence, the remarks and recommendations concerning the supply of finished products and spare parts remain valid in the case of an assembly contract.

Furthermore, a project to set up assembly lines does not call for extensive work as regards the infrastructure, the provision of complex equipment, staff training, and the organization of assembly lines, but it does call for trained local personnel.

A number of recommendations can be formulated on how an agricultural machinery assembly operation should be undertaken in a developing country.

1. Assembly as a first step towards the industrial-scale manufacture of agricultural machinery

Local industrial-scale manufacture requires the mobilization of substantial human and financial resources and the use of foreign technology. For developing countries, this mobilization involves a financial and social cost which can be a heavy burden on the meagre resources available. In these circumstances, it is sometimes advisable to contemplate spreading the mobilization of the resources needed for starting local industrialization over a number of years. Industrial production could thus be carried out in successive stages, assembly being the first of these.

One advantage of assembly is that it does not require large financial resources or a highly skilled local work force. It enables part of the product's value added to be replaced by the wages of the assembly workers and the few raw materials or semi-finished products locally available.

Assembly also ensures better product availability and may foster the establishment of repair, servicing and maintenance activities, all of which are factors likely to make for a more rational use of costly equipment. Furthermore, the existence of an agricultural machinery assembly line in a developing country implies more or less regular supply of the local market,

which in turn means standardization of the equipment stock, an essential condition for attenuating the effects of inadequate capacity in maintenance, management of stocks of spare parts, etc.

However, assembly should not necessarily be seen as an end in itself. In fact, it is often considered as one stage in the national industrialization process.

2. The limitations of assembly operations

Assembly is subject to the following limitations:

- It does not make for a transfer of technology (though it may be a first step);
- It does not permit the development of local technical and technological capacities (though it may set such development in train);
- It generates only little value added;
- In comparison with the purchase of fully assembled products, importing CKD kits for local assembly does not always secure any substantial foreign exchange savings; often the prices charged for CKD kits result in a cost price for locally assembled products which is higher than the cost of importing the same products fully assembled;
- It is important to ensure that the price of CKD kits should be such as to allow the purchaser to generate a reasonable level of value added.

3. Assembly should be part of a long-term step-by-step integration plan

A long-term step-by-step integration plan should include a set of objectives and specific deadlines for the local manufacture of components and parts.

The first stage could consist of the integration of those components and parts that are suitable for integration in existing industry, that are not specific to a given make, are less complicated to manufacture and promote the use of locally available semi-finished products or raw materials and manpower. As a second phase, more complex components and parts whose manufacture requires sizeable investments and a skilled labour force can be integrated during the final stages of the industrialization process.

Investments will thus be spread over a sufficiently long period and the techniques and technologies used will be mastered gradually.

4. The commitment on the part of the supplier to his partner's (the client's) long-term step-by-step integration plan

When agreeing to collaborate in launching an assembly activity, the supplier must undertake to extend his collaboration throughout all the phases of the gradual integration of his product. This commitment might take the form of the conclusion of a basic agreement stipulating the terms and conditions for long-term industrial co-operation between the two partners. Such an agreement would be accompanied by a set of guarantees, which might, if appropriate, be provided by the Governments of the two partners' countries.

The long-term industrial co-operation agreement would be based on the benefits to both parties of carrying through the integration process to its final conclusion. The reason is that, when a supplier of agricultural machinery agrees to collaborate in launching assembly activity, he expects in return to receive a regular volume of orders for several years afterwards and to obtain fiscal benefits. This volume of orders would be for the parts and components required to assemble the products for which he has granted manufacturing rights.

At first sight, it might seem to be against his interests that the volume of orders he can expect to receive would fall to the extent that he agrees to promote the local manufacture of an increasing proportion of these components and parts. In reality, however, the reduction in the number of parts and components to be delivered by the supplier following their local integration may be more than offset by the growth in the market. This growth in the market will result in a regular increase in the number of parts and components not yet locally manufactured which will have to be delivered to the assembly line.

5. The need to monitor import prices for assembly parts and components

If he calls in a supplier to launch an assembly operation, the client exposes himself to the risk of having to pay inflated prices for the CKD kits he will need to operate his assembly line. There are several ways of controlling the cost of such kits, as for instance:

(i) The conclusion of multi-year supply contracts at prices fixed in advance (an approach which the supplier may have difficulty in accepting or will accept only at prohibitive prices).

(ii) The adoption of an annual price review mechanism (this approach raises the problem of the choice of indices for price review).

(iii) The adoption of a basket of export prices for similar products (price list). The price of CKD kits would be reviewed on the basis of the average increase in the prices in the basket (this approach raises the problem of the relationship between the price of the finished product and that of the CKD kit).

(iv) Making use of competition between several makes (this approach presupposes that the client has an assembly line or several separate assembly lines which can be used for a number of makes). The use of several makes in an assembly line does not pose any major problems at this level. Nevertheless, caution should be exercised in following this approach because the existence of a large number of makes can raise insuperable problems in the supply and management of stocks of spare parts and in equipment maintenance and repair, particularly where agricultural machinery is concerned.

(v) Opening the market to "built-up" units whenever the CKD kit supplier charges prices that are considered to be too high (this approach is tantamount to the introduction of new makes and thus involves the same dangers as described above). It also implies a type of action which does not depend upon the assembly enterprise but on the trade policy of the client's country (quotas).

In conclusion, it must be said that the problem of pricing CKD kits represents the major difficulty in an assembly activity. It constitutes the chief constraint in assembly operations and because of it the duration of this phase in a step-by-step integration process must be cut down as far as possible.

6. Achieving a positive foreign exchange balance

Experience shows that the difference between the CKD kit price of a given agricultural machinery and the price of the same product when imported fully assembled is rarely greater than 10 per cent. Hence, a positive foreign exchange balance should not be expected simply because of the existence of an assembly activity. A positive foreign exchange balance in respect of an industrialization activity will be achieved only if the foreign currency value of the parts and components of a locally manufactured product is greater than the value of the imported parts and components, paid for in foreign exchange, that is to say, when the locally manufactured parts replace imported parts. The difference obtained in this way would have to be sufficient to finance the repayment of the investments that entailed foreign exchange expenditure for the purchase of parts and components not manufactured. Therefore, the following factors should be considered.

(i) The need to exceed a minimum integration threshold

Such a situation is possible only if local integration exceeds a minimum threshold and a portion of the locally manufactured parts,

components or products is exported and is able to earn the country foreign exchange resources to meet the external expenditure for the purchase of the capital goods, services and supplies needed to operate the production unit;

(ii) The need to export

Very special attention must be paid to the foreign exchange balance of each industrial project. In the case of an assembly line, as indeed at every stage of the step-by-step integration plan, the suppliers, as industrial partners, should, through buying back a portion of the local output, help to balance the foreign exchange position and even, as far as possible, tip it in favour of the country which has agreed to open up its market to them.

Buying back a portion of the local output presupposes that prices are competitive on the international market, that quality is comparable and that delivery capacity is adequate.

PART III

PART III

THE MANUFACTURE OF AGRICULTURAL EQUIPMENT

1. General remarks

The choice of the product to be manufactured should be seen as a logical consequence of importation, since products that have been tried out are familiar and suitable for local conditions. Also, the needs for standardization of the equipment stock are better satisfied, the personnel is trained in the operation and repair of the equipment, and stocks of spare parts will be smaller and therefore less costly. It will clearly be much easier to make a choice if the country has equipment testing centres or can make use of the services of recognized international centres specializing in this field.

The objective to be attained is to ensure some degree of autonomy for the country or the homogeneous geopolitical grouping in question. The course to be followed depends on the particular conditions of each country, that is to say, its degree of industrialization, the existence or absence of an industrial fabric, market size, the availability of finance, human resources and the need for the further processing of local raw materials. This set of factors also determines the time required to achieve the desired level of integration.

The manufacture of a complex product, such as a tractor, might be envisaged within the framework of an industrialization plan extending over a long period. Intermediate phases of varying length could then be identified, ranging from the simplest to the most complicated processes; assembly, pressing, machining, heat treatment, forging, and foundry operations. The mobilization of the necessary capital would be easier as it would cover a long period. Cash flow could be more speedily ensured by sales, which could begin soon after the construction of the factory. The following preliminary points should be noted:

The choice of components to be manufactured

In general, one should aim in the first instance at producing the items that have industry-wide application and those which are manufactured by the licensor in his own plants. The period elapsing between assembly and local manufacture should be shorter than the period before the product becomes obsolescent for the licensor. Care should be taken to arrange for

the manufacture of components which the licensor himself sub-contracts; such manufacture can be carried out by sub-contractors in the licensee's country.

Planning of the plant area and infrastructure

Experience has shown that it is best if the floor area of workshops exceeds the standard areas usually observed in developed countries. It will then be easier to allow for the consequences of errors in design (for example, inadequate production capacity) and unexpected operational needs (machine breakdown, large stocks). "Buffer" zones will thus be available to give wider scope for management action and to permit production increases without any expansion of the buildings.

Production equipment

The emphasis should be on reliable equipment which has proved itself in the field of production concerned. A choice will have to be made between universal machines and specialized machines which have better performance but are more sophisticated: it should be possible to base the choice on the level achieved in the mastery of maintenance tasks. A high-performance machine which is idle will affect the production process more than a universal machine, several of which are available in the plant.

For maintenance reasons also, it will be best, as far as possible, to avoid using sophisticated machines from the very earliest stage of manufacturing. The gradual introduction of sophisticated equipment can be envisaged, as competence in maintenance tasks increases.

Construction of buildings

Even at the planning stage, the need for the maximum utilization of local materials should be borne in mind.

Particular attention should be given to infrastructure construction, in view of the related costs (generally 20-30 per cent). There should be strict control over the various items: civil engineering, interior work and utilities.

2. Some remarks on co-ordination

Depending on the specific situation of each country, and in the light of the objectives which the authorities responsible for the agricultural

machinery industry assign themselves, the various draft clauses listed below will be of greater or lesser importance, and their final drafting will vary from case to case.

The clauses will assume increasing importance as the product to be manufactured becomes more sophisticated and the technologies used become more complex.

One should not, however, jump to the conclusion that the nature of the product to be manufactured is the sole factor determining the degree of elaboration of contractual clauses, since mass production of relatively simple products (e.g. ploughs) with a maximum degree of local integration constitutes an industrial project which is more demanding in terms of contractual guarantees than the establishment of an ordinary assembly line for machines (e.g. tractors). Indeed, the manufacturing technology used, and not the product, is the decisive factor with regard to the importance of the contractual relations between the customer and the constructor.

Furthermore, the variety of tasks to be performed in commissioning and starting up an industrial installation for the manufacture of agricultural machinery often causes the customer, as the principal for the project, to turn to a number of foreign and national partners. Depending on the extent to which the customer can co-ordinate the work of all the parties involved, he may undertake such co-ordination himself, or else delegate it to a single partner, as is the case under so-called "turnkey" arrangements. The nature and number of the contracts which the customer must conclude will therefore depend on the approach selected. In one case, there will be as many contracts as there are parties involved in the various individual tasks. In another case, a comprehensive agreement covering all the tasks can be concluded with a single partner.

The co-ordination function is doubtless the most difficult task in the establishment of large industrial complexes. In order to carry it out efficiently, the customer must have concrete experience in this respect. Otherwise, the customer should be able to obtain the effective assistance of a partner who will assume this function.

The overriding objective of an economic agent in a developing country is obviously to have at his disposal a factory operating properly according to specifications.

Achieving this objective will presuppose that each of the parties involved completely fulfils his obligations under each of the assignments mentioned above. It may happen that some of these obligations are not properly fulfilled and that the explanations advanced in extenuation do not enable the project principal to apportion the blame correctly. For instance, if the plant cannot manufacture a particular part in the quantities required, where does the blame lie? With the equipment supplier? With the licensor, who might not have provided adequate documentation? With the person in charge of staff training? With the person in charge of initial management of the plant?

In fact, this question is related to the problem of the guarantees which the project principal must define and secure in order to satisfy himself of the proper fulfilment of the various tasks which go into a particular assignment and also and above all of the guarantees that will permit the construction of a factory to meet all his production targets, in terms of quantity, quality, local integration, employment of local staff, etc.

The contractual clauses and recommendations have been presented as distinct homogeneous assignments. Each of these relates to a specific phase of the process of designing, constructing and commissioning a plant. Comments have been made on the importance of effective co-ordination of the assignments, which are all directed towards one and the same objective. This co-ordination and the problems of responsibility it entails have serious implications for the results of the various assignments and hence for the satisfactory conclusion of the project.

It should merely be pointed out here that successful completion of the various assignments taken separately does not necessarily guarantee the success of the overall project of which they are a part.

Hence the question arises: under what conditions and for what type of product to be manufactured a client, as project principal, would be better advised to split up the tasks among several partners and under what other conditions and for what other type of product he should rather group the tasks together and assign them to a single partner.

There are several remarks to be made on this question:

- It will be more difficult for the project principal to identify his partners' responsibilities when there are several parties carrying out a number of assignments than when there is only one such party for all the assignments.

- On the other hand, this disadvantage of "splitting up" responsibilities is offset by the benefits the client might gain from a judicious division of project implementation into several separate assignments.

- These advantages will flow from the experience which the client will most certainly gain if he himself assumes responsibility for co-ordination of the assignments and possibly for the performance of some or all of the tasks, rather than merely acting as a "sleeping partner", which is likely to happen if operations are grouped together.

To be sure, there is no perfect solution. The solution to be adopted will depend primarily upon the assessment by the project principal himself of the following variables: his own level of experience, the environment in which he is operating, the complexity of the product to be manufactured, the technology used, the number of trained staff available, the magnitude of the financial risk and the terms on which it can be assumed, and the quality of the partner(s) selected.

3. Recommendations and sample clauses

A. Design of the plant

The plant will be designed in accordance with the rules of the art to fulfil all the objectives aimed at and to meet the standards set out in this document, and, in particular, to manufacture locally the products or components in the quantities called for by the production programme. The drawings, designs, specifications and other industrial architecture documents which are to be used as the basis for the construction of the plant, must be prepared in accordance with accepted professional principles. The products or components manufactured in the plant must be of essentially the same quality as similar products manufactured in the licensor's plants and must incorporate the same general features, subject to the standardization or alterations specified in the annex to the Contract. The design of the plant must take account of conditions prevailing in the client's country, especially in the region in which the plant is to be built, including conditions on the site.

Some considerations regarding the technical study

(a) The partner shall prepare and submit to the client not later than ... months after the effective date of the Contract a complete file of all the drawings and studies used in preparing and supplementing the technical description of the plant, together with the preliminary drawings referred to in annex ... to the Contract.

(b) The partner shall submit to the client ... months after the effective date of the Contract:

(i) A complete technical and technological study on the production equipment. This documentation, which is intended for use by the plant, must be homogeneous and consistent and fully compatible with the technical documentation relating to the products as supplied by the licensor (under the terms of the agreement for the assignment of industrial property rights and know-how). It must include:

- The drawings, layout and detailed instruction manuals for using the production equipment in accordance with the manufacturing processes for the components and products, including information on the time intervals set in accordance with standards obtaining in the licensor's country;
- Ways of adapting, modifying and versatile use of the production equipment in the light of foreseeable developments in the production programme;
- Operating instructions and data, relating inter alia to the production times that will be prepared in accordance with the standards applied in the licensor's plants, and the method for measuring such production times (depending on the procedure selected, this may be part of the licensing agreement;
- The descriptive material, directions for use and maintenance manuals for the production equipment, and catalogues of spare parts;
- Standards and specifications for the production equipment, especially cutting tools, small tools and testing equipment;
- Charts showing the connected load of the machines, as well as their capacity and tolerance limits.

(ii) A study of the auxiliary production units and other installations and equipment;

(iii) An additional technological study for the auxiliary services and installations, especially the maintenance workshops and stores, the administrative sections and various utilities.

B. The industrial architect's assignment

Depending on the technologies used, the type of product, the degree of plant integration and the production runs involved, the work of building a plant may range from the construction of a simple shed for small-scale production to that of large-scale industrial infrastructures. In the latter case, the building work may well represent the largest cost component of an industrial project.

Moreover, the various operations involved in building a plant call for very close co-ordination among the participants. Faulty co-ordination leads to major delays in the entire schedule and increases costs substantially. The task of co-ordination may be entrusted to an industrial architect, whose functions are described in this document.

The client must ensure that the industrial architect assigns the largest possible role to enterprises in the client's country and makes use of local building materials and methods by endeavouring to adopt standards that make such action possible.

General principles

The INDUSTRIAL ARCHITECT, working on the basis of documents drawn up as part of the overall design for the plant, will prepare drawings and work out general and/or detailed specifications in order that the FIRM(S) selected can make its/their own working drawings for carrying out the INFRASTRUCTURE AND BUILDING WORK.

The INDUSTRIAL ARCHITECT will prepare the invitations for tender. He will approve the building plans, and will supervise and direct the execution of the INFRASTRUCTURE AND BUILDING WORK.

(a) OBLIGATIONS OF THE INDUSTRIAL ARCHITECT

1. Specifications and documentation relating to link-ups with utilities

The INDUSTRIAL ARCHITECT will supply the CLIENT with documentation on linking up with utilities, specifying the exact amounts of electricity, natural gas, fuel oil, industrial water and drinking water which will be required for operation of the PLANT; this material is intended to provide the basis for applying for connections to utilities. The INDUSTRIAL ARCHITECT will make available to the CLIENT the necessary information and file documents for obtaining the building permit.

2. Drawings and specifications for infrastructure and building work

On the basis of the general design for the PLANT (contained in annex ...), the INDUSTRIAL ARCHITECT will prepare the technical documents (drawings, diagrams, specifications) which are to constitute the file of invitations to tender. These documents must be sufficiently complete and explicit to enable the FIRMS to use them in preparing detailed working drawings in conformity therewith.

The said documents will contain details, in particular, of:

- General design and layout,
- Specifications for the buildings,
- Internal transport routes and arrangement of the main supply channels,
- Specifications for the necessary connecting pipes, quantities of water required, etc.,
- Requirements for road and rail connections,
- Requirements in respect of the internal distribution of electricity, water, gas and compressed air,
- Requirements in respect of lifting capacity and top limit of lifting machinery,
- Details on materials handling,
- Requirements in respect of lighting, fire protection, air-conditioning, ventilation, heating, waste removal, environmental factors, soil quality, etc.
- Information on the foundations required for the production machinery.

In addition, the INDUSTRIAL ARCHITECT will provide the FIRM(S) which are awarded the contract with further details as and when required, such as drawings for foundations, trenches, conduits, bed plates, sockets for posts, openings for the installation of equipment, etc.

3. Placing orders for INFRASTRUCTURE AND BUILDING WORK

3.1 Preparation of specifications and technical documentation for INFRASTRUCTURE and BUILDING WORK.

The INDUSTRIAL ARCHITECT, mainly on the basis of the results of the studies and documents referred to above, will draw up the specifications, which he will then submit to the CLIENT not later than ... months after the EFFECTIVE DATE. He will reach agreement with the CLIENT as to the firms to which the invitations to tender should be sent.

3.2 Examination and assessment of tenders - recommendations and choice of firms

The INDUSTRIAL ARCHITECT will compile a detailed report on the tenders received, summarizing his recommendations on all points, and including the main provisions of the contracts which could be signed with the tenderers (quality standards, delivery dates, guarantees, prices, credit terms, etc.). He will also specify the name(s) of the FIRM(S) which he will submit for selection by the CLIENT.

As soon as this report is received, the CLIENT shall be bound to inform the INDUSTRIAL ARCHITECT of the name(s) of the FIRM(S) which he has chosen on the basis of the recommendations made.

3.3 Conclusion of contracts and dealings with FIRMS

The INDUSTRIAL ARCHITECT will ensure that the contract(s) contain the necessary provisions in respect of his relations with the FIRM(S) at the construction SITE, especially as regards his obligation to monitor and direct the work and his functions in connection with assembly.

4. Direction of the work

The INDUSTRIAL ARCHITECT, acting in his professional capacity, will supervise and direct the INFRASTRUCTURE AND BUILDING WORK for the plant; in particular, he will organize work-site activities and co-ordinate the various tasks and assignments entrusted to the FIRM(S).

The INDUSTRIAL ARCHITECT will monitor compliance with the contract(s) and will verify that due regard is being taken of the Contractual Performance Schedule in the implementation thereof. He must also inspect the various batches of materials on delivery to the site, and enter any reservations which may be called for if they fail to conform with the specifications.

While the INFRASTRUCTURE AND BUILDING WORK is being carried on, the INDUSTRIAL ARCHITECT must regularly inspect the site in order to verify whether the work is proceeding in accordance with the specifications and drawings, so that he can enter any necessary reservations and carry out, or have the FIRM(S) carry out, any action which may be necessary to remedy as quickly as possible any lack of conformity. Where appropriate, he will call for the application of the penalties due in case of delay or of other safeguards.

4.1 Organization of the work site

The INDUSTRIAL ARCHITECT will prepare organizational data, regulations and administrative documents relating to the site (records of meetings held on the site, progress reports, etc.). He will ensure that there is a clear and unambiguous division of responsibilities between himself and the FIRM(S), in respect not only of the work itself but also of all the auxiliary functions such as providing for guarding the site as a whole, the buildings and the production equipment, as well as any other measures which are required to prevent possible damage or loss arising in relation to the buildings or equipment supplied.

4.2 Examination of working drawings of the FIRMS

The contract(s) concluded with the FIRM(S) must contain a requirement that the latter submit working drawings and files to the INDUSTRIAL ARCHITECT for prior approval.

The INDUSTRIAL ARCHITECT must consequently perform the additional function of:

- Updating the project documentation in the light of the drawings and building procedures of the FIRMS;
- Examining the various drawings submitted, to check for consistency, and the calculations of the FIRM(S) for conformity with the figures used in the specifications;
- Checking of all drawings and attestations regarding implementation.

4.3 Performance of work at the SITE

The INDUSTRIAL ARCHITECT will satisfy himself that the work is properly carried out. In particular, he will:

- Draft the final site regulations and maintain a permanent check on the observance of discipline and general safety requirements on the site;
- Verify the surveyor's determination of the reference axes of the installation,
- Check on the installation work of the FIRM(S) and on reference levels in the course of the work;
- Draft, compile and transmit to the FIRM(S) the service orders for the commencement of their work, together with any changes which may become necessary in the course of the work;
- Check on the materials used and on the composition of the aggregates and the concrete for the masonry work;
- Check on tests carried out by specialized laboratories;
- Check on the work to ensure that it is in conformity with the technical specifications of the project and with the rules of the art;

- Check on the state of progress of the work in the light of the schedule imposed by the contractual dates in each contract;

- Arrange and direct periodic meetings on the site, and produce and distribute records of those meetings.

4.4 Certificates of completion

On completion of the INFRASTRUCTURE AND BUILDING WORK for each building, the representatives of the INDUSTRIAL ARCHITECT, acting on behalf of the CLIENT, and the FIRM(S) in question, shall, on the initiative of the INDUSTRIAL ARCHITECT, jointly draw up and sign a certificate of completion or delivery in respect of the building work in question.

The sole purpose of this certificate is to:

- Testify that each stage of the work has been completed, or that each building has been delivered in a new condition;

- Establish that the work and buildings in question are in conformity with the corresponding terms of the work contract.

It is understood that the signature of these contracts will not have the effect of releasing the INDUSTRIAL ARCHITECT from his guarantees and obligations. The guarantee assumed by the INDUSTRIAL ARCHITECT shall not begin to take effect until the last certificate of completion referred to above has been signed.

In addition, as each of these certificates of completion is signed, the CLIENT will become the owner of the works completed or the buildings constructed.

The CLIENT will have an opportunity to point out to the INDUSTRIAL ARCHITECT and to the FIRM(S) any defects which he may note on this occasion in the INFRASTRUCTURE AND BUILDING WORK completed.

(b) OBLIGATIONS OF THE CLIENT

5. Administrative permits

The CLIENT will place the SITE at the disposal of the INDUSTRIAL ARCHITECT in its present condition (or developed, as the case may be).

On the basis of the files of applications for administrative permits, prepared by the INDUSTRIAL ARCHITECT and submitted to the CLIENT in the required form and within a period of (x) months after the signature of the Contract, the CLIENT undertakes to obtain within a period of (y) months after receiving the said files the administrative permits for carrying out the INFRASTRUCTURE AND BUILDING WORK.

6. Connections with utilities

The CLIENT undertakes to arrange with the competent public bodies that water and gas mains and electric power and telecommunications lines be laid as far as the SITE boundary, and that road connections be completed within the periods of time set out below, calculated from the date on which the files for application for connection to public utilities are transmitted to the CLIENT by the ARCHITECT, namely:

Road	... months
Water supply for building work	... months
Industrial water supply	... months
Waste water	... months
Electricity supply for building work	... months
Electricity supply for production	... months
Gas	... months
Telecommunications for the site	... months
Telecommunications for the plant	... months

7. Payments to firms performing INFRASTRUCTURE AND BUILDING WORK

Payments for INFRASTRUCTURE AND BUILDING WORK will be made directly to the FIRM(S) by the CLIENT in accordance with the contractual procedures agreed with the said FIRM(S), on the basis of progress reports approved by the INDUSTRIAL ARCHITECT.

C. Supply and installation of the PRODUCTION EQUIPMENT

The supply, installation and start-up of PRODUCTION EQUIPMENT is another critical phase in the implementation of an industrial project.

The following contract clauses refer mainly to the essential guarantees which the client should be able to obtain from the production equipment supplier. In addition to these guarantees, the client should also ensure that:

- He is closely associated in the selection of equipment supplied to him;

- He takes part in the discussions and negotiations on the prices at which this equipment is purchased;

- He participates in the supervision of its manufacture in the producer's factories at all the various stages and most particularly at the pre-assembly stage;

- He is present at the no-load trials of this equipment before it is dispatched;

- He obtains recommendations on the composition of the stock of spare parts needed for its maintenance and repair.

The client's staff will thus be able to develop skills by means of which he will be better prepared to carry out any future expansion of plant production capacity and in any case to purchase equipment to replace used machines.

1. List of PRODUCTION EQUIPMENT

A complete and final list of PRODUCTION EQUIPMENT with prices is given in annex ... to the Contract. All the equipment and installations necessary for the construction and smooth operation of the CLIENT's plant should be included in this final list.

It is understood that the list of PRODUCTION EQUIPMENT was drawn up on the basis of appropriate industrial technology and know-how and the capabilities of the manufacturers at the time when the preparatory technical studies provided for in the contract for the general design of the factory were carried out. The list may be amended to take account of technological developments, i.e. by replacing items of PRODUCTION EQUIPMENT with equivalent items, provided that they are not inferior to those provided for in the Contract.

2. Ordering of PRODUCTION EQUIPMENT

The entry into force of the Contract, on the EFFECTIVE DATE, will be equivalent to the placement by the CLIENT of an order for the PRODUCTION EQUIPMENT as specified in final form, and the price shall be that stated in article ... , to be paid in accordance with the methods of payment laid down in article ... .

However, as provided for in article ... below, some PRODUCTION EQUIPMENT items, particularly those items in the final list of PRODUCTION EQUIPMENT which are available in the CLIENT's country, shall be supplied directly by the CLIENT. For this purpose, the supplier shall transmit the necessary specifications to the CLIENT in order to enable him to make his purchases in good time.[8/]

8/ This provision is intended to promote the use of local supplies whenever possible.

3. Amendments to the list of PRODUCTION EQUIPMENT

Provided that the specifications laid down in the technical and technological documentation are respected, the supplier shall have the option of amending the list of PRODUCTION EQUIPMENT (attached as an annex), on condition, however, that the only changes allowed shall be those aimed at improving conformity with the standards and objectives laid down (in the Contract) or at enabling the CLIENT to take advantage of technological progress or more rational designs in the field in question, and that the quality and performance of the various PRODUCTION EQUIPMENT items shall in all cases be at least equal to those of the corresponding items included in the annex to the Contract.

In addition to the modifications which the supplier shall be entitled to make to the list (attached as annex ...) under the provisions stated above, he must also endeavour to introduce any changes which might result in a reduction in the cost stated in annex ... , either because the item(s) replacing that/those in the list, whilst identical as regards quality and performance, is/are less expensive, or because that/those item(s) although of inferior quality of performance, conforms/conform completely to the technical and technological specifications referred to in the Contract, or because some items which were originally to be imported prove to be available in the CLIENT's country.

Every change in a PRODUCTION EQUIPMENT item which results in a change in price of at least x per cent with respect to that quoted in annex ... shall be subject to an advance request for agreement addressed to the CLIENT by the supplier, to which all the relevant supporting documents shall be attached.

4. Quality of the PRODUCTION EQUIPMENT

The supplier guarantees that the PRODUCTION EQUIPMENT will be new, incorporating up-to-date industrial know-how, of the highest quality, free from any flaw or operational defect and in line with the overall specifications laid down in annex ... to the Contract. Furthermore, the PRODUCTION EQUIPMENT shall, generally speaking, conform to the standards and norms specified by the licensor, and its capacity and output shall be those stipulated in the technical and technological documentation prepared and supplied by the licensor under the licensing agreement.

If the supplier or the CLIENT should discover in a PRODUCTION EQUIPMENT item a flaw or defect due to a design or manufacturing error or to the use of faulty materials or parts, the supplier shall have the faulty part or component repaired or replaced with the greatest promptitude and at his own expense.

The same guarantee applies to the replacement or repair of parts or components, with effect from the date on which the replacement or repairs were made.

It is understood that this guarantee does not cover defects due to normal wear and tear or failure to comply with the SUPPLIER's instructions for use.

The CLIENT shall allow the SUPPLIER a reasonable amount of time to examine and replace or repair items which are faulty or do not conform to requirements, and he may not carry out or have a third party carry out replacements and repairs without the written permission of the SUPPLIER. Nevertheless, the CLIENT shall be entitled to correct faults or anomalies in the PRODUCTION EQUIPMENT, by himself or through a third party, on condition that the SUPPLIER has been called upon to take the necessary measures or that this action is necessary to avert a major hazard to the safety of the plant. In this case, the CLIENT shall immediately inform the SUPPLIER of the action taken and may ask him to reimburse him in respect of the necessary, duly substantiated costs.

(a) OBLIGATIONS OF THE SUPPLIER

5. Delivery and inspection of PRODUCTION EQUIPMENT

The SUPPLIER shall deliver or arrange for the delivery of the PRODUCTION EQUIPMENT as specified in the final list and shall respect the contractual delivery schedule appearing as an annex to the Contract.

For this purpose, the SUPPLIER shall provide, either himself or through a third party, for:

- Supervision of the progress of manufacture of the PRODUCTION EQUIPMENT and of orders placed with suppliers;

- Inspection of the PRODUCTION EQUIPMENT, and particularly technical supervision of its manufacture in the plant; (this involves the following operations: checking on the progress of manufacture in the plant, preparation of documentation on the equipment, trials and acceptance tests prior to dispatch, inspection of manufacturing work (welds, treatment, etc., ...); the CLIENT may be present at these operations upon request);

- Monitoring each consignment of PRODUCTION EQUIPMENT to verify quantity, conformity and condition on arrival at the SITE.

The SUPPLIER shall replace or repair missing or damaged articles and shall ensure that these repairs or replacements are carried out with the minimum possible effect on the assembly and start-up of the plant. Delays which may be required by insurance companies for the settlement of claims shall not exempt the SUPPLIER from any of the obligations, guarantees and penalties laid down in the Contract.

6. Marking and packing

The reference numbers quoted on the delivery order and the references to the final list of PRODUCTION EQUIPMENT mentioned in article 5 above shall be marked legibly, indelibly and conspicuously, either directly on the PRODUCTION EQUIPMENT itself, or on the packing unit containing each item.

The PRODUCTION EQUIPMENT items shall be packed and protected in the most appropriate manner, in such a way that the carrier cannot disclaim responsibility on grounds of inadequate packing or protection, and the SUPPLIER shall be responsible for any damage, deterioration or loss occurring up to the installation of these components that is attributable to faulty, inadequate or inappropriate packing or protection. The CLIENT undertakes to ensure appropriate handling of the equipment.

7. Installation of the PRODUCTION EQUIPMENT

The SUPPLIER shall provide for the assembly and installation of the PRODUCTION EQUIPMENT in the plant, including those components to be supplied directly by the CLIENT pursuant to article ... below.

For this purpose, he shall send to the CLIENT's country the project manager and the necessary experts who will have initial responsibility for work site management and subsequently for the installation of the machinery and equipment, piping connections for fluids and other similar operations.

These operations must be carried out in accordance with the installation schedule set out in annex ... to the Contract.

The SUPPLIER shall ensure the co-ordination of all the PRODUCTION EQUIPMENT trials in the plant, it being understood that he shall assume sole responsibility vis-à-vis the CLIENT.

The SUPPLIER shall prepare notes, directions and instructions for the operation and maintenance of the PRODUCTION EQUIPMENT as well as specific charts and lists of spare parts for these machines and in general all relevant documentation.

(b) OBLIGATIONS OF THE CLIENT

8. Supply of certain PRODUCTION EQUIPMENT items by the CLIENT

As laid down (in articles 1 and 2 above), certain PRODUCTION EQUIPMENT items available in the CLIENT's country shall be purchased directly by the CLIENT and delivered by him to the plant, according to the schedule in annex ... to the Contract.

(c) JOINT OBLIGATIONS

9. Certification of installation

When the machinery and units constituting the PRODUCTION EQUIPMENT have been placed in service in the plant, the representatives of the CLIENT and the SUPPLIER shall, on the initiative of the SUPPLIER, draw up and sign a joint certification of installation covering the PRODUCTION EQUIPMENT items in question.

The purpose of such certification will be:

- To confirm that the items of PRODUCTION EQUIPMENT in question have been delivered and installed and, in the case of machines, that operational trials have been carried out;
- To establish that the final list of PRODUCTION EQUIPMENT referred to in article 5 above has been conformed to;
- To release the SUPPLIER, as the various documents are signed, from the financial guarantee provided for under article ... ;
- To enable the SUPPLIER to be paid, in accordance with article ... .

The CLIENT shall be entitled, on the occasion of the signing of each certification of installation, to notify the SUPPLIER of any defects he may observe in the installed PRODUCTION EQUIPMENT.

D. Organization and initial management of the plant

The task of organization and initial management of the plant is a homogeneous one and represents a particular phase in the implementation of the project. Coming as it does after the preparation of studies and actual construction of the industrial unit, it calls for many and varied organizational and management skills. These skills relate to the establishment of complex and detailed procedures, concerning inter alia:

- The launching and scheduling of manufacturing operations;
- The machinery maintenance and repair system;
- The organization of procurement and supply;
- The management of stocks of raw materials, semi-finished and finished products.

The initial management phase consists precisely in designing such systems, setting them up and putting them into operation, until such time as they have been fully assimilated by the staff and their use ensures production on a durable and stable basis.

Experience has shown that this phase is a critical one and that it usually lasts for several months. Moreover, even highly trained production staff require several months to adapt to their new jobs and to acquire the reflexes necessary to perform them. It is also during this phase of bringing the machines into operation that unusual and unforeseeable difficulties may arise.

These problems can usually be traced back to:

- Design errors, or
- Unsuitability of tools for the machines, or
- Inadequate or insufficient technical documentation on production, or
- Handling errors on the part of inexperienced staff, which result in frequent breakage of tools, premature wear and tear of equipment and a high rejection rate for materials and parts, or
- Failure to comply with equipment maintenance standards, resulting in frequent machine stoppages and disruption of production flows.

In short, it is during the start-up phase that the majority of problems arise, mostly stemming from:

- The newness of production apparatus, which has first to be "run in",
- The inexperience of staff, who must be taught to acquire the appropriate reflexes,
- The establishment of systems and procedures which the staff must be made to understand and comply with.

Regular, continuous production of even a technologically very simple agricultural mechanization product requires simultaneous and lasting mastery of a large number of parameters.

One of the available courses of action along the lines indicated above is to enlist the technical assistance of a specialized partner, choosing this partner from among the specialists who are most familiar with this type of operation and in particular with the manufacture of the product

under consideration. Accordingly, the licensor is an ideal partner for this task (provided, of course, that, in addition to know-how in manufacture, he also has sufficient experience in starting up plants of this kind).

It should also be borne in mind that the task of initial management, being the final stage in the overall implementation of an industrial project, comes at a time when most of the investments have been made but cannot yet begin to generate income. Consequently, the success of the project depends on initial management, which involves relatively low costs in relation to overall investment. However, the client should not skimp on these costs, because a successful start-up is an important psychological factor for the staff of the plant as far as the subsequent phases are concerned.

The partner is responsible for planning the organization of the plant, and for setting up and co-ordinating all the aspects of this organization necessary for the smooth and efficient operation of the various departments and services of the plant.

In order that he may be able to fulfil his assignment, i.e. to start up product manufacture and increase the output rate, and to co-ordinate this with the establishment and operation of all of the plant's services, the partner will be responsible for initial management of the plant until such time as it is capable of fulfilling the production programme in accordance with the agreed standards, and can be operated satisfactorily by the client's staff.

In the course of this initial management, he shall assume responsibility for and manage the sectors referred to below, and shall provide the necessary technical assistance in the sectors placed under the responsibility and direction of the client, such as those referred to below.

During this initial management period, the partner shall enjoy all the authority required for him to take the necessary action to carry out his duties properly.

1. Planning

1.1 Commencement: This phase of planning will begin on the start-up date of the plant.

1.2 Scope: During the planning phase, the partner will manage the plant with the client's staff and with the members of his own staff needed to assist them.

1.3 End: The planning phase will end on the date stipulated in the Contract, this being the date on which the plant should attain the previously agreed production targets.

2. Preparation of the plant organization study

The partner must collaborate closely with the client in preparing a plant organization study. This will be a complete and detailed study satisfying modern industrial management standards applicable to the type of project concerned and adapted to the specific requirements of the plant. The purpose of participation by the client in preparing this study is to provide the partner with the information and data that the latter will need in order to understand local conditions.

2.1 Scope of the study

The study should contain a detailed description of all the organizational functions of the plant, define the relationships between the various departments and services and designate the documents to be used. It should give guidelines, which should be indicative and not restrictive, on the following functions:

(i) Administrative and financial functions:

- General management;
- Organization;
- Preparation and management of budgets;
- Accounting (general accounting plus cost accounting, management of expenditure and income, liquid assets);
- Financial services.

(ii) Technical functions:

- Study of products and production programmes;
- Industrial engineering;
- Adaptation and modification of products;
- Documentation, methods, production times and measurement of working time;
- Quality control (reception, manufacture, laboratories).

(iii) Personnel functions:

- Recruitment;
- Training;
- Security;
- General services.

(iv) Production functions:

- Scheduling, management of stocks, planning;
- Dispatch and transport;
- Procurement, supply, sub-contracting;
- Maintenance and repair, including management of stocks of tools and equipment and of spare and replacement parts.

(v) Functions relating to delivery, after-sales service, follow-up and adaptation of products to user requirements.

2.2 Submission to the client

The partner shall submit this study to the client not later than ... months after the effective date of the Contract. Advance information shall be transmitted to the client as it becomes available.

3. Initial management

To enable the partner to fulfil his assignment and meet the planned objectives, the client shall give him the necessary authority to take decisions concerning the daily routine operation of the plant, in accordance with the policy laid down by the purchaser, who shall be responsible for the overall management of the plant.

3.1 Functions remaining under the client's control

The client shall be responsible for procurement, financial and legal administration, accounting, personnel recruitment and administration, marketing and after-sales service. The client will appoint a plant director and management staff with the qualifications specified by the partner for carrying out these functions. The partner shall provide the purchaser with technical assistance in managing his activities.

(i) Financial management of the plant

(a) Preparation of the budget by the partner:

... months after the effective date, the partner shall submit to the purchaser a budget containing an estimate of initial working capital for the plant, the assumptions and figures on the basis of which this estimate was made and also all budgetary information concerning the management and service functions for which he is responsible.

(b) Contribution of working capital by the client:

The client shall provide the initial working capital contribution by a date to be agreed upon, according to the progress of the work.

The client shall subsequently supply the working capital for the plant as and when needed so that it can operate satisfactorily.

(ii) Procurement

(a) Lists of parts and supplies to be submitted to the client:

The partner shall submit to the client within ... months before the planned start-up date for the production of any plant components or products a list of parts and supplies, indicating the quantities and purchase specifications necessary for the manufacture of those products and components. Partial lists of supplies needed for the manufacture of components will be examined on a priority basis whenever necessary.

(b) Division of the lists into three categories:

- The first category will include supplies and parts which are not available in the client's country.
- The second category will cover those supplies and parts which are not available in the client's country and can be purchased only from the licensor or from certain suppliers with whom the licensor carries more weight than the client. In such cases, the purchase specifications will quote the names of those suppliers.
- The third category will cover those supplies or parts not available in the client's country, which, however, being standardized or substitutable, can be purchased on the open market. Here, specifications should include a list of several suppliers who could offer favourable financial terms.

(c) Updating of the lists:

The partner will have to update the lists in the light of market developments.

(d) Procurement policy:

In his recommendations to the procurement service as to the choice of tenders, the partner shall recommend the purchase of parts and supplies from the client's country whenever price, quality and delivery conditions are more or less the same as those offered by foreign suppliers. In the event that these items have to be purchased from foreign suppliers, the partner shall recommend that they be obtained from suppliers in countries with which the client's country has concluded trade agreements, provided of course that price, quality and delivery conditions are more or less the same as those offered by other suppliers. In all other cases, the partner shall take account in his recommendations only of criteria of competitiveness.

(e) Increased purchase of supplies from the client's country:

The client and the partner shall periodically examine the lists of parts and supplies purchased abroad to see whether, as a result of developments within the client's country, some of the parts and supplies may be bought there. A further objective of this examination will be, if appropriate, to change the source from which parts and supplies are obtained, and possibly to transfer responsibility for certain items purchased. The parties shall ensure, however, that any substitutions do not disrupt either the execution of orders in hand or the fulfilment of the assignment.

3.2 Delegation of authority to the partner

(i) Delegation

Apart from the duties referred to above, the client delegates to the partner the necessary authority for the day-to-day running of the plant.

(ii) Personnel seconded to the client's country by the partner

During the plant organization and initial management phase, the partner shall second to the client's country management and trained personnel with the qualifications and experience required for the smooth operation of the plant. The tasks and quality of such personnel are described in annex ... to the Contract.

3.3 Transfer of responsibilities and management

During the plant organization and initial management phase, the partner's personnel shall gradually transfer their duties to the client's personnel, according to procedures to be agreed upon. Operational responsibilities will be transferred as described below, on the understanding that the counterparts of the partner's personnel will be under the hierarchical authority of the partner and must comply with instructions received from him.

First stage:

Each member of the client's personnel shall familiarize himself with the various facets of the work carried out by his counterpart on the partner's staff.

Second stage:

Each member of the client's personnel shall gradually carry out by himself as many tasks as possible, under the direction and supervision of his counterpart on the partner's staff; the latter shall nevertheless remain responsible for the tasks carried out on his instructions and under his supervision.

Third and last stage:

Subsequently, and by the end of the assignment at the latest, the client's personnel shall assume full responsibility.

3.4 Increases or changes in the seconded personnel

If necessary, the partner shall, at his own expense, increase the number of seconded personnel in order to fulfil his obligations under the Contract. Provided that he notifies the client in advance, he shall also be entitled to change the composition of seconded personnel, in so far as the qualifications of the newly assigned personnel are equal or superior to those required for the corresponding duties as listed in annex ... to the Contract.

(i) Languages

The seconded staff must be capable of understanding the client's working language. Expatriate staff whose duties entail frequent and important contacts with the client must speak the client's working language (technical staff may use the services of an interpreter).

(ii) Experience

The managerial and trained staff responsible for applying the technology and know-how used in the plant (as assigned under an agreement granting rights to industrial property and know-how) must be particularly experienced in the field of this technology and know-how and must be recruited from the companies which invented or are applying such technology and know-how.

(iii) Reports on staff:

At least ... months before each member of the seconded staff is sent to the client's country, with the exception of those sent to carry out urgent or unforeseen duties, the partner shall submit a list of such staff to the purchaser for his approval.

PART IV

PART IV

TRAINING

A. General remarks

Training is an essential ingredient for the successful establishment and operation of industrial production units. This is particularly true for the developing countries, where there is a serious lack of trained personnel. Hence, special attention should be devoted to training, as regards both the technological routes directly related to production and the support activities (supply, maintenance, finance, accounting, personnel management, etc.). In addition, research and development through the training of specialists is a matter of fundamental importance.

It is therefore essential to integrate training as necessary for the operation of the plant with the whole process of negotiation and drafting of the contract; in fact, it is necessary to establish mutually acceptable and satisfactory contractual relationships in this field so as to avoid the common risk of obtaining only partial or fragmentary training. In order to improve these contractual relationships, the following points should be taken into consideration:9/

(a) Objective of the contract: definition of the know-how and skills to be transferred; tasks to be executed following training;

(b) Definition of the training to be provided at the agreed price;

(c) Determination of the ownership rights on the materials used for training and in particular the client's right to use them later;

(d) Preparation of the training programme, which should include several levels and should be applied inter alia to trainers; the relative importance of theoretical and practical training, etc.;

(e) Determination of the number of persons to be trained (taking account of possible losses after training);

(f) Recruitment of trainees and selection method; definition of qualifications and other criteria applied in selection;

(g) Provision for verification during training and thereafter that the transfer of skills and related technical know-how has in fact taken place.

Of course, it is also necessary to take account of two possibilities, depending on whether one is dealing with the expansion of an existing factory, which will, for example, call for the retraining of existing

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9/ See also ID/WG.381/1 of 1 September 1982, First Consultation on the Training of Industrial Manpower; and M. Salem "Les aspects juridiques de la formation indstrielle" (Legal aspects of industrial training), UNIDO, 1981.

personnel and the training of new personnel, or the establishment of a new production activity with related training needs.

These considerable and varied training requirements can be truly met only through complementary practical training in both the licensor's and the licensee's own factories. For these reasons it would seem advisable to entrust the task of training - particularly training specific to the product - to the licensor, who is the only partner in a position to be familiar with actual training needs, the necessary qualifications, students' abilities, etc. In the draft contract for training, the "partner" will in fact almost always be the licensor. Hence, the contract for training might usefully be negotiated in parallel with the licensing agreement.10/

B. Recommendations and sample clauses to be included in a training contract

1. Definitions

The PARTNER shall undertake to select, train and assign all the personnel necessary for the smooth operation of the plant.

The term "personnel" used in the Contract covers all categories of wage and salary earners: supervisory staff, engineers, technicians, draughtsmen, foremen, shift-foremen, craftsmen, machine adjusters, specialized workers and all administrative or other employees.

With the PARTNER's assistance, the PURCHASER shall recruit his personnel who will then have to receive training and/or further training, as the case may be.

The purpose of the training should be not only to ensure that personnel are capable of running the plant and to enable the production programme to be fulfilled in accordance with standards incorporated in a schedule to be drawn up, and with as high a level of productivity and profitability as possible, but also to give supervisory personnel mastery of the various techniques and the technology used in the plant so that they can develop the latter and the production programme and also adapt the output according to technological developments and user requirements.

In the training and assignment of personnel, due account should be taken of the technical and administrative set-up into which the personnel will be integrated, in order to give them an opportunity for development,

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10/ See Part V, below.

particularly in accordance with modern principles of job enrichment. Training should be carried out in the plant from the start-up date onwards, so that each member of the personnel is completely familiar with his own section of the plant and receives instructions on the spot relating to the post he will be assigned to fill in that section.

2. The PARTNER's obligation to prepare and submit a manpower plan to the CLIENT

This manpower plan shall include:

2.1 A definitive breakdown of personnel requirements for the plant, including a detailed description of each function carried out in the plant and the corresponding International Labour Office classification of occupations.

2.2 The qualifications which the plant personnel must possess in order to perform their duties, including:

- Maximum and minimum age;
- General and specialized education;
- Professional experience.

2.3 A recruitment schedule, a selection programme and appropriate selection tests for the plant personnel.

2.4 A training programme based on the annexed general data, including:

- A detailed programme for the training (abroad) of higher-level and supervisory personnel;
- A detailed programme of training in the CLIENT's country;
- A programme of special training in the CLIENT's country reserved for the above higher-level personnel in the following fields:
  - Study of all aspects of product manufacture, operation and maintenance;
  - Study of modern management techniques (optional);
  - Training, for each category of personnel, in fulfilling the responsibilities specific to each post;
  - Assessment of job efficiency.

3. Recruitment

The CLIENT shall supply personnel for the plant, in sufficient numbers and in conformity with the requirements outlined in the manpower plan.

The entire personnel of the plant will be recruited by the CLIENT with the assistance of the PARTNER, as follows:

3.1 Initial presentation of candidates

The CLIENT shall nominate candidates likely to meet the requirements outlined in the manpower plan supplied by the PARTNER. At the PARTNER's request, and with his assistance, the CLIENT shall have candidates undergo the appropriate psychological or vocational aptitude tests to verify their qualifications.

3.2 Selection and recruitment on the basis of the outline of requirements

If enough candidates can be found who meet the requirements, the PARTNER shall select from their number trainees who will then be recruited by the CLIENT. The CLIENT will sign the training and employment contracts of the selected candidates, who will be employees of the CLIENT and not of the PARTNER.

3.3 Unavailability of candidates meeting the requirements

Should the CLIENT not be able to supply candidates meeting the requirements outlined in the manpower plan within the time allowed under that plan, the provisions of article ... shall apply.

4. Training abroad

4.1 Number of employees, scope and duration of training abroad

The PARTNER shall provide for the training in his own plants of a total of ... persons for a total duration of ... months. The parties may determine by mutual agreement other places at which training may be completed or supplemented.

4.2 Reception and supervision of trainees

The PARTNER shall attend to the necessary formalities for the CLIENT's trainees' stay and studies abroad, and their reception, living conditions, discipline and welfare.

The PARTNER shall:

(a) Consider any changes which may have to be made in teaching programmes and supplement the latter with special courses and visits to enterprises whose activities correspond to the trainees' fields of specialization;

(b) Provide for the supervision of training and guidance during training and consider what changes might be made to improve vocational training.

4.3 Examinations to be taken by the CLIENT's trainees and pass certificates

(a) Examinations

On completion of their training programmes and before returning home, the trainees shall take theoretical and practical examinations prepared by the PARTNER, to ascertain whether, in accordance with the standards set by the PARTNER, they have acquired the professional skills and knowledge required for the supervisory posts to which they will be assigned.

(b) Notification of the CLIENT

The PARTNER shall notify the CLIENT of the planned date and place of examinations at least ... days in advance so that the CLIENT may, if he so wishes, appoint a representative to attend. This notification shall include a description of the planned examinations and the pass standards required.

(c) Pass certificates

Those trainees who, in the opinion of the PARTNER, have reached the standards he has set shall receive pass certificates signed by him for the training programme concerned.

(d) Additional training or reassignment of those who fail the examinations, and replacement trainees

The PARTNER may, at his own expense, extend the training for any additional period considered advisable for those who have failed the first examinations. At the end of that period, these trainees must take further examinations. If the results of the second examinations are once again below the minimum standards set and the PARTNER believes that the trainees in question are not capable of improving, these trainees will be reassigned to jobs requiring a lower level of skills or qualifications. Replacement trainees shall be provided by the CLIENT within ... months following the date of the PARTNER's notification to the CLIENT, and these trainees shall be trained by the PARTNER for the posts to be filled.

(e) Certification of completion of training abroad

When at least ... trainees have passed the examinations, the representatives of the parties shall sign a certification of completion of training abroad.

(f) Purpose of certification

The certification of completion is signed so that the final payments due to the PARTNER for training abroad may be made; it does not release the PARTNER from his obligations to continue or complete staff training in the plant in the CLIENT's country.

5. Training in the CLIENT's country

The PARTNER shall provide for the in-plant training of the CLIENT's employees referred to in the annex.

5.1 The Plant Training Centre

In order to train the CLIENT's employees, the partner is responsible for designing, equipping and bringing into operation in the plant a

Training Centre suitable for the training programme described below, for on-the-job training to be carried out by the PARTNER after the start-up date and for the training necessary for the routine operation of the plant.

5.2 Director of training and instructors

The PARTNER shall second to the CLIENT's country a director of training and at least ... instructors, whose qualifications, scheduled arrival dates and periods of secondment are listed in annex ... . The task of this group of personnel will be to carry out the training programmes in the CLIENT's country.

5.3 Training of instructors in the Plant Training Centre

The PARTNER shall provide for the training of the CLIENT's staff assigned to the Plant Training Centre so as to enable the CLIENT to take over the subsequent training of further personnel. For this purpose, each member of the PARTNER's team of instructors will have as an associate one of the CLIENT's instructors, who will gradually take over the training role entrusted to the PARTNER's personnel, under the supervision of the PARTNER.

5.4 Examinations to be taken by the CLIENT's employees and pass certificates

(a) Examinations

On completion of training in the CLIENT's country, each technical or administrative employee shall take theoretical and practical aptitude examinations prepared by the PARTNER in order to determine whether he has acquired the necessary technical skills to carry out the duties which will be assigned to him in the plant. These examinations will be based on the standards set by the PARTNER in the manpower plan.

(b) Notification of the CLIENT

The PARTNER shall notify the CLIENT of the planned dates of examinations at least ... days in advance so that the CLIENT can appoint a representative to attend. This notification shall include a description of the planned examinations and the pass standards required.

(c) Pass certificates

Employees whose examination marks meet the standards set by the PARTNER for the post in question shall receive pass certificates.

(d) Additional training or reassignment of those who fail the examinations, and replacement of personnel

(See 4 (d) above.)

(e) Certification of completion of all training activities in the CLIENT's country

(See 4 (e) above.)

(f) Purpose of certification of completion of all training activities in the CLIENT's country

The purpose of the certification of completion referred to above is to enable the final payments due to the PARTNER for training in the CLIENT's country to be made. It shall not release the PARTNER from his obligation to continue or complete on-the-job training during the plant organization and initial management phase.

(This article is recommended for cases in which the CLIENT makes a PARTNER responsible not only for designing and constructing the plant but also for studying and establishing its organization and taking charge of initial management up to the time of final acceptance, when the production objective is achieved. In that case, the PARTNER's obligations as regards personnel must remain in effect until actual final acceptance of the plant).

5.5 Supervision and periodic reports

The PARTNER shall periodically carry out suitable spot checks, including practical examinations if necessary, to establish the efficiency of training programmes and to verify that the employees receiving the training are capable of benefiting from it. Every ... months the PARTNER shall send the CLIENT a report summarizing the results of these checks and the conclusions to be drawn from them and shall point out, as soon as they become apparent, any shortcomings or problems which might arise, so that the CLIENT may take the necessary decisions with full knowledge of the facts. On request, the CLIENT shall be entitled to participate in these checks.

5.6 On-the-job training

The PARTNER shall carry out suitable on-the-job training programmes so that each employee can acquire a full grasp of his own role in the plant and receive instructions on the work he will be carrying out in his post.

6. Training adjustments

It is understood that, whenever:

- The candidates presented by the CLIENT are inadequate in number or quality with respect to the standards or levels referred to in the annex;

- The candidates presented by the CLIENT are not put forward within the time-limits stipulated in the manpower plan;

- The number of employees who drop out during training or leave on completion of training exceeds the estimates shown in the annex;

- The number of trainees failing the examinations at the end of training exceeds the estimate;

the two parties shall agree on the measures to be taken. If necessary, the PARTNER's assignment may, by mutual agreement, be extended and the PARTNER

shall be paid for all services thus rendered and for all the resulting direct costs incurred both in the CLIENT's country and abroad, provided that he has properly met his obligations as regards training. Moreover, it is understood that if, because of labour market conditions in the CLIENT's country or local training resources, it becomes clear that basic theoretical and professional knowledge is inadequate, the PARTNER and the CLIENT shall also decide what measures are to be taken and under what conditions.

7. Guarantee by the PARTNER

The PARTNER guarantees that:

- The manpower plan he has prepared will be in conformity with modern personnel management techniques;

- His obligations as regards training will be met in a professional manner which satisfies the needs of the personnel being trained;

- The training referred to in the Contract will be appropriate for the accomplishment of the mission.

PART V

PART V

MODEL AGREEMENT FOR ASSIGNING LICENCE AND KNOW-HOW RIGHTS FOR THE MANUFACTURE OF AGRICULTURAL EQUIPMENT

1. General remarks

The purpose of this model licensing agreement is to provide the applicant for the purchase of a licence to manufacture an item of agricultural machinery with exact and detailed recommendations as to what he will normally be entitled to expect from a licensor who agrees to assign to a licensee his own rights to industrial property and know-how for the manufacture of his products in the licensee's plants.

For a better understanding of the scope of the clauses contained in this document, it should be noted that:

(i) The contract covers not only the assignment of manufacturing and sales rights in the product, but also the compilation and transfer of the technical and technological documentation which is required for it to be produced in the licensee's plants. This documentation is the outcome of a major effort of process engineering, and it would be a mistake to separate this from the actual assignent of manufacturing and sales rights. In other words, the licensee would be wise to entrust the responsibility for this process-engineering work, wherever possible, to the holder of the manufacturing know-how. What is sought here is a transfer of technology, which could well be achieved by means of a licensing agreement involving wider responsibilities on the part of the licensor. It should also be noted that in most cases manufacturers of agricultural equipment who are capable of assigning licences can also assume such extra responsibilities (process engineering, technical assistance, the supply of production equipment, training, etc.), which is not usually the case in other industries.

(ii) It is assumed throughout that the licensee has available manufacturing facilities with which he intends to manufacture the product for which he has purchased the manufacturing and sales rights. In this case, when the manufacturing documentation is compiled, special care must be taken to adapt it to the type and specifications of the available production plant.

(iii) When the licensee has no manufacturing facilities available and intends to acquire them to match production rights which he has already obtained from another quarter, special care must be taken to ensure coordination between the licensor and the partner entrusted by the licensee with the responsibility of identifying, delivering, installing and, where appropriate, starting up the manufacturing facilities.11/

(iv) The provisions contained in the contract will remain valid irrespective of the type of agricultural equipment to be produced. However,

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11/ See above (Part III, The manufacture of agricultural equipment).

the clauses relating to refinements, improvements, alterations and new models are less relevant in the case of simple equipment, the technology for the production of which has little development potential.

(v) The provisions contained in the contract will also remain fully valid, irrespective of the possible extent of the local integration of products. However, the fees payable to the licensor should be calculated not on the total value of the product, but only on the value of the components of which the product consists and in respect of which an actual transfer of technology has taken place.

(vi) In the case of a straightforward assembly operation, most of the provisions relating to the transfer of know-how and the compilation of technical and technological documentation, as well as those concerning the trade mark of the product and references to the licence, will not apply. On the other hand, the provisions in respect of sales and maintenance rights will be fully effective. A section dealing with assembly operations lists the various recommendations designed to afford the customer a degree of protection with regard to this type of activity.

2. Model agreement

IT HAS BEEN STATED BEFOREHAND:

1. That the LICENSOR holds all the industrial property rights and know-how which are required to manufacture, in accordance with the terms of the Agreement:

(a) The ... (PRODUCTS to be named), which will be manufactured by the LICENSEE, and which are briefly described, together with their main features and related manufacturing processes, in the annex (and are hereinafter referred to as the "PRODUCTS");

(b) Certain parts of these PRODUCTS (hereinafter referred to as the "ORIGINAL PARTS") which are briefly described, together with their main features in the annex.12/

2. That the LICENSEE wishes to acquire all the rights, information and technical assistance required for the manufacture, development, use, sale and maintenance of the PRODUCTS and ORIGINAL PARTS, in accordance with the provisions of this LICENSING AGREEMENT.

ON THE BASIS OF THE FOREGOING, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1 - Definitions

For the purposes of this LICENSING AGREEMENT, the terms used herein shall have the meanings expressly and contractually assigned to them in the annex to the Agreement.

11/ There are no model annexes in this text.

Article 2 - Know-how and industrial property rights

2.1 The LICENSOR assigns to the LICENSEE, finally and irrevocably, without reservation except as provided under the present Agreement, all the know-how and industrial property rights which he has or may obtain and which are necessary or relevant to the design and manufacture, development, use, sale and maintenance of the PRODUCTS and ORIGINAL PARTS, as designed now or in the future, with all subsequent refinements, improvements and alterations, and in the form in which they must be manufactured according to the current procedures of the LICENSOR pursuant to the provisions of the Agreement, and the LICENSEE accepts such assignment.

[The LICENSOR shall refrain from granting or assigning the rights referred to above to any company in the LICENSEE's country, and undertakes not to manufacture or cause to be manufactured in the LICENSEE's country any product whose performance is within the same range as that of the products and whose basic design and essential parts are similar to those of the PRODUCTS and ORIGINAL PARTS.]

2.2 The LICENSOR also irrevocably authorizes the LICENSEE to obtain in his own country, to the extent permitted by the law of that country, any of the LICENSOR's patents as set out in annex ... to this Document, or which may be subsequently registered in the LICENSEE's country and are related to the range of PRODUCTS or ORIGINAL PARTS.

2.3 The LICENSOR grants the LICENSEE a non-exclusive licence in respect of all industrial property rights which he possesses or may obtain outside the LICENSEE's country, and of the associated know-how, which relate to the PRODUCTS and ORIGINAL PARTS, as well as to any subsequent refinements, alterations or improvements, in so far as the exercise of such rights is necessary for the sale, use and maintenance of the PRODUCTS and ORIGINAL PARTS outside the LICENSEE's country, in accordance with the provisions of Article 3.1 (b) below.

2.4 The know-how and industrial property rights which are granted or assigned by the LICENSOR under the present LICENSING AGREEMENT do not include know-how or rights relating to PARTS which are neither the property of, nor in the possession of, the LICENSOR. The LICENSOR declares and guarantees that the rights and know-how thus excluded relate solely to the manufacture

of PARTS originating in the LICENSEE's country and IMPORTED PARTS as set out in the annex. The LICENSOR shall ensure that this list is kept permanently up to date for the duration of this LICENSING AGREEMENT.

2.5 The LICENSOR declares that the know-how which is assigned pursuant to Articles 2.1, 2.2, and 2.3 above includes all the technical information which is available to the LICENSOR and is necessary for or relevant to the manufacture, use, sale and maintenance of the PRODUCTS and ORIGINAL PARTS. This know-how will be appropriate for the production equipment installed in the LICENSEE's plants, and will be communicated in the form of a full and detailed set of technical documentation, suitable for reproduction, so that no further elucidation or extra information of any kind, other than the inspection measures stipulated in the present document, is required for its use to permit the attainment of a quality standard in the PRODUCTS and PARTS similar to that obtained by the LICENSOR in his own plants.

2.6 Not later than ... months after the effective date of the LICENSING AGREEMENT, the LICENSOR shall transmit to the LICENSEE the complete and detailed list of the technical documentation referred to above, which shall be delivered to him in accordance with a time-table agreed upon between the parties. The LICENSOR and the LICENSEE shall jointly study this list, as well as the proposed method for the internal arrangement of the technical documentation, shall determine what, if any, additions or alterations are to be made, and shall draw up a time-table specifying the dates on which the various parts of the technical documentation must be delivered to the LICENSEE, subject to the delivery dates set out in an annexed schedule. This documentation shall be appropriate for the technical documentation relating to the production equipment at the disposal of, or shortly to be at the disposal of, the LICENSEE in his plants. It shall include, in particular:

(a) The range of uses and performance parameters of the PRODUCTS;

(b) The drawings of the assemblies and sub-assemblies and the detail drawings and nomenclature of the PRODUCTS and ORIGINAL PARTS to be manufactured by the LICENSEE, together with the necessary specifications, as well as the drawings and specifications of any special equipment and tools and of the special testing devices and instruments not routinely manufactured or sold from catalogue;

(c) A file showing, on the basis of detailed technological data sheets, the periods of time allocated for each machining operation on the individual items and for the assembly of the PRODUCTS, which must include, in particular:

- Working and inspection instructions for complex operations, with a subdivision of the various phases of the work;

- Designation of the work stations and machines involved in each operation;

- A list of the materials to be used, with an indication of the quality standards for each item;

- A list of the measuring instruments and devices which are required but not routinely manufactured or sold from catalogue;

- A list of standard measuring instruments and devices.

(d) The "process files" containing detailed descriptions of all the production processes and all the machining and assembly operations, both individually and in their chronological sequence. In this context, a file will be compiled for each PART and PRODUCT manufactured, taking account of the division of labour between the various work stations; this must include:

- The drawings for machining and assembly;

- The range of manufacturing operations and a list of the tools and equipment required;

- The reference numbers of the designs of any special tools or equipment not routinely manufactured or sold from catalogue;

- The range of heat-treatment operations;

- The range of inspection and trial operations, with a list of the testing equipment;

- The reference numbers of the specifications for the testing equipment and instruments, together with the reference numbers of drawings of special testing equipment or instruments not routinely manufactured or sold from catalogue;

(e) A system of records by which the preparation and delivery of the "process files" can be checked, and in which successive alterations to the PARTS and PRODUCTS can be recorded. A separate form for each PRODUCT must indicate the PARTS required and their bulk and technical and other properties;

(f) The specifications and any other information required to enable the LICENSEE to place orders for raw materials and parts not to be manufactured by the LICENSEE himself;

(g) The standards used in the LICENSOR's plants, together with any portions of these relevant to all the parts concerned, especially:

- Standardized parts;

- Purchased parts;

- Semi-finished products and raw materials used in the manufacture of the PRODUCTS, with an indication of the corresponding international standards;

(h) Instructions for inspecting and, where appropriate, acceptance and storage of the following items:

- Raw materials;
- PARTS originating in the LICENSEE's country;
- Imported PARTS;
- ORIGINAL PARTS;
- PRODUCTS;

(i) Instruction and maintenance handbooks for the use and maintenance of the PRODUCTS;

(j) A detailed list of available spare parts and documents to make possible compilation of a catalogue of spare parts;

(k) Drawings for making the foundry patterns required for the production of ORIGINAL PARTS.

The above-mentioned technical documentation shall be transmitted to the LICENSEE in accordance with the time-table agreed upon between the parties under this Article. This technical documentation shall be supplied to the LICENSEE in ... copies, in a form suitable for reproduction, in the ... language (to be specified). The system for the internal arrangement of this documentation, and the coding of drawings and other technical documents used must be consistent. All documentation supplied to the LICENSEE shall become and remain the property of the LICENSEE.

2.7 The LICENSOR shall carry out a systematic check of the documents at the time of dispatch. As each portion of the technical documentation reaches the LICENSEE, the LICENSOR and the LICENSEE shall check it for omissions or inaccuracies. The LICENSOR shall, at the earliest possible moment, provide all the additional documents or information required to remedy any omissions or inaccuracies which may be noted at any time.

2.8 The LICENSOR declares that the industrial property rights referred to in Articles 2.1, 2.2 and 2.3 above comprise all the industrial property rights existing at the time and on the date of commencement of manufacture of the PRODUCTS and which relate to the PRODUCTS and the ORIGINAL PARTS, as well as all industrial property rights relating to the foregoing which the LICENSOR and/or any companies under his direct or indirect control may subsequently acquire or exercise. In this connection, the LICENSOR undertakes to be personally responsible for obtaining any authorizations which may be necessary.

The LICENSOR declares that the said rights existing at the time are set out in annex ... to this LICENSING AGREEMENT.

The LICENSOR declares that the industrial property rights granted or assigned to the LICENSEE do not include those relating to any imported PARTS, particularly rights relating to the following parts:

.....

.....

..... LIST OF PARTS WITH MANUFACTURER's NAME

.....

.....

Article 3 - Sales rights

3.1 The LICENSOR assigns finally and irrevocably:

(a) The exclusive right to sell the PRODUCTS and the ORIGINAL PARTS within the LICENSEE's country; consequently, the LICENSOR undertakes not to sell or permit others to sell within the LICENSEE's country, without the prior agreement of the LICENSEE, any products whose performance is within the same range as that of the PRODUCTS and which are similar in their basic design and essential elements to the PRODUCTS and ORIGINAL PARTS;

(b) The non-exclusive right to sell the PRODUCTS and ORIGINAL PARTS outside the LICENSEE's country, subject, however, to the condition that the LICENSEE notifies the LICENSOR of his intention to offer for sale any such PRODUCTS or ORIGINAL PARTS in countries other than the LICENSEE's country. Notification to that effect must be made not less than (x) days before the PRODUCTS or ORIGINAL PARTS are offered for sale, except in emergencies, when a shorter period shall apply. Following such notification, the parties shall consult each other with a view to arriving at mutually beneficial relations in respect of sales and services in the said countries. It shall be understood that, should consultations be unnecessary or fail to result in agreement, the LICENSEE may nevertheless sell the PRODUCTS and PARTS in these countries.

3.2 For the duration of this LICENSING AGREEMENT, the LICENSEE shall be entitled to use the sales and after-sales service organizations at the disposal of the LICENSOR or of his affiliate companies in the countries to which the LICENSEE will export in accordance with the provisions of this Article, subject to terms and conditions to be mutually agreed upon pursuant to Article 3.1 (b) above.

3.3 In the event that the LICENSEE should intend to sell his PRODUCTS and PARTS in a country in which the LICENSOR has no sales or after-sales service organization, the parties undertake to negotiate an agreement for the establishment of such an organization, by either party acting alone, or by both parties acting jointly.

3.4 Notwithstanding the provisions of Article 10 of this LICENSING AGREEMENT, the LICENSEE shall be entitled to assign or transfer the rights assigned to him under Article 3.1 above to any company in the LICENSEE's country, without seeking the prior agreement of the LICENSOR.

Article 4 - Supply of PARTS

4.1 The LICENSOR undertakes to assist the LICENSEE in obtaining any PARTS which are not manufactured in the LICENSEE's plants. For this purpose, the LICENSOR:

(a) Shall guarantee to supply to the LICENSEE, subject to the most favourable prices and terms granted to third parties, any parts which are manufactured by the LICENSOR himself as long as they are not manufactured in the LICENSEE's plants;

(b) Shall guarantee the delivery of components manufactured exclusively for the LICENSOR by outside suppliers, either:

- By enabling the LICENSEE to obtain these parts from the said suppliers, or
- By himself selling the parts to the LICENSEE;

(c) Shall seek to ensure that the LICENSEE is supplied, at the most favourable prices and terms granted to third parties, with other parts which are not manufactured by the LICENSOR.

4.2 After a date to be agreed upon, and until the expiry of this LICENSING AGREEMENT, the LICENSOR shall as far as possible provide the LICENSEE at the latter's request with full information concerning the various suppliers from whom the LICENSOR and his affiliated companies obtain PARTS, and shall assist the LICENSEE in his efforts to obtain supply terms as advantageous as those obtained by the LICENSOR or his affiliated companies from the said suppliers.

4.3 If, during the validity of this LICENSING AGREEMENT, the LICENSOR and/or his sub-contractors, whether or not they are established in the LICENSEE's country, should cease to manufacture a non-standardized PART or cannot guarantee its supply to the LICENSEE regularly or in sufficient

quantity, the LICENSOR must provide the LICENSEE with a list of sub-contractors able to provide a substitute item which meets the required standards and specifications, or which can replace the former PART without involving major alterations or adversely affecting the quality standards of the PRODUCTS. Where appropriate, the LICENSOR shall carry out any design work required to effect this substitution, and shall provide the LICENSEE with the relevant technical information and documentation. In addition, the LICENSOR must, at the LICENSEE's request, assign or seek to have assigned to the latter, on terms to be fixed by agreement in due course, the industrial property rights and know-how relating to any such PART, as it is or will be designed, with all the refinements, improvements and alterations made to it and with all associated technical documentation required to enable the LICENSEE to manufacture the PART or have it manufactured, or to develop, use, sell and maintain it, whether in the LICENSEE's own country or abroad.

4.4 If, during the validity of this LICENSING AGREEMENT, the LICENSOR or any of his affiliated companies should engage in manufacturing such a PART in their workshops, the LICENSOR undertakes, at the request of the LICENSEE and according to his choice, either

- To supply, or have supplied, the said PART to the LICENSEE at the most favourable prices and terms granted to third parties, not including companies affiliated to the LICENSOR, or

- To assign or have assigned to the LICENSEE, subject to conditions to be fixed in due course, industrial property rights and know-how with a view to the manufacture, development, use, sale and maintenance of such a PART, to the extent that such assignment can be made.

4.5 If, during the validity of this LICENSING AGREEMENT, the LICENSEE himself develops a PART, the LICENSOR shall, at the LICENSEE's request and expense, and subject to conditions to be fixed in due course, carry out the tests required to ensure that this PART is suitable for incorporation in the relevant PRODUCT.

Article 5 - <u>Alterations, refinements and improvements</u>
<u>New models</u>

5.1 During the validity of this LICENSING AGREEMENT, the LICENSOR shall inform the LICENSEE of all refinements, alterations and improvements (hereinafter referred to as "Refinements") related to the design, manufacture, use and maintenance of the PRODUCTS and PARTS manufactured by the LICENSOR, whether or not these Refinements are likely to be the subject

of a patent, and shall with immediate effect confer on the LICENSEE a non-exclusive right to the use of the Refinements in the LICENSEE's country, and a non-exclusive right to sell the PRODUCTS and PARTS incorporating the Refinements.

The LICENSOR undertakes to communicate to the LICENSEE all the technical and technological details relating to the said Refinements, together with the results of trials carried out in his factories.

In so far as Refinements of the PRODUCTS and COMPONENTS may become the subject of industrial property rights eligible for a patent, the LICENSEE shall be entitled to apply at his own expense and on his own behalf for the protection of such Refinements within his own country.

5.2 Notwithstanding the provisions of Article 5.1 above, the LICENSOR shall not propose the use of the Refinements to the LICENSEE until they have been subjected, for a period of at least twelve (12) months, to conclusive tests in the factories of the LICENSOR or of his affiliated companies, and until the LICENSOR has satisfied himself of their utility.

The LICENSOR, in communicating this information, shall specify the reasons which justify these Refinements. The LICENSOR and the LICENSEE shall jointly verify whether these Refinements can be incorporated in the manufacture of the PRODUCTS and PARTS in the LICENSEE's country. The LICENSOR may not impose on the LICENSEE any alterations in the PRODUCTS or in the technology or equipment.

If these Refinements can be incorporated and if the LICENSEE decides to adopt them, the LICENSOR shall, in accordance with terms and conditions to be fixed, study in each case the appropriate method for incorporating them in production within the LICENSEE's plants, and the means to be used for this purpose, and supply the know-how required for their incorporation, it being understood that communication of this information is to be effected in the same way and as completely as stipulated in Article 2.

Should a Refinement require the introduction or replacement of a PART originating in the LICENSEE's country, or of an imported PART, the LICENSOR shall provide the relevart specifications and a list of potential suppliers to the LICENSEE.

5.3 During the validity of this LICENSING AGREEMENT, the LICENSOR shall inform the LICENSEE without delay of any decision he may take to manufacture a new model within the range of the PRODUCTS. A new model shall be held to

be any PRODUCT whose basic design and essential components have been substantially changed, or whose performance does not lie within the same range as that of the PRODUCTS.

The LICENSOR undertakes to negotiate with the LICENSEE, in the context of a separate contract for the grant or assignment of rights and know-how, the terms on which the industrial property rights and know-how relating to these new models will be granted or assigned to the LICENSEE.

5.4 During the validity of this LICENSING AGREEMENT, the LICENSEE shall inform the LICENSOR of any alterations he intends to introduce in the PRODUCTS or PARTS or in the methods for manufacturing them. Should the LICENSOR, for valid safety and technical reasons, consider an alteration planned by the LICENSEE to be unsuitable, the LICENSOR shall inform the LICENSEE of his objections as soon as possible, giving him all the relevant reasons. In such a case, if the LICENSEE fails to follow the recommendations of the LICENSOR, despite the latter's valid reservations, the LICENSOR reserves the right to prohibit the LICENSEE from making any reference on the PRODUCTS to the licence granted by the LICENSOR.

5.5 During the validity of this LICENSING AGREEMENT, the LICENSEE undertakes to grant the LICENSOR, on conditions to be agreed upon, nonexclusive licences for all countries other than the LICENSEE's own country, for the manufacture and sale of the PRODUCTS and PARTS incorporating any Refinements which the LICENSEE may introduce into the design, manufacture, use and maintenance of the PRODUCTS and PARTS. The LICENSEE must provide the LICENSOR with technical documentation relating to these Refinements, on the same terms and conditions as those set out in Article 5.2 above.

Article 6 - Observance of standards and quality control - Technical assistance

6.1 After a date to be agreed upon (after regular production has begun) and until the expiry of this LICENSING AGREEMENT, the LICENSEE undertakes, subject to their conformity with the standards applying in the LICENSEE's country, to observe and ensure observance of the technical standards in respect of manufacture and assembly, quality and inspection set by the LICENSOR, to permit the verification of the said standards by the LICENSOR at any time, and also to take all necessary additional steps to remedy any defects which may be found.

6.2 After regular production has begun and until the expiry of this LICENSING AGREEMENT, the LICENSOR shall undertake, at the LICENSEE's expense and to the extent that the LICENSEE deems necessary, systematic quality and performance checks, both in the LICENSEE's plants and in those of any sub-contractors of the LICENSEE, in order to ensure that the quality and performance of the PRODUCTS and PARTS duly meet the standards to which the LICENSOR normally subjects the same products and parts, and that the production operations conform with the directions contained in the technical documentation and with the advice given by the LICENSOR.

6.3 The LICENSEE shall be at liberty, on conditions to be fixed in due course, to send PRODUCTS and PARTS for quality-control tests to the factories of the LICENSOR or to those of his affiliated companies having a concern in the matter.

Article 7 - Guarantees

7.1 The LICENSOR guarantees fulfilment of the provisions of Articles 2.3, 2.4 and 2.8 above.

7.2 The LICENSOR gives his guarantee to the LICENSEE that the technical documentation and the inspection procedures which the LICENSOR shall provide or shall carry out in the LICENSEE's plants comprise all those required for the manufacture, use and maintenance of the PRODUCTS and PARTS appropriate for the conditions of production and use prevailing in the LICENSEE's country, so that the output of the LICENSEE's plants, the quality and performance of the PRODUCTS and the quality of the PARTS will meet the standards laid down.

It is understood that the LICENSOR guarantees the quality of the PRODUCTS, in the context of this Article, only as long as the PRODUCTS are manufactured in accordance with the know-how and specifications provided by the LICENSOR.

The LICENSOR guarantees the LICENSEE that the technical documentation is appropriate for the production equipment in the LICENSEE's plants, so that the PRODUCTS and ORIGINAL PARTS will be similar to those manufactured or machined in the LICENSOR's plants.

7.3 The LICENSOR shall compensate the LICENSEE for any direct expense or damage arising from any of the following, the list not being exhaustive:

- Any error or inadequacy in the technical documentation, until the expiry of this LICENSING AGREEMENT, as provided below;

- Any act of negligence in the course of the inspection carried out by the LICENSOR (or failure to carry out inspection) until such time as the plants have begun regular manufacture of the PRODUCTS.

The LICENSEE undertakes to inform the LICENSOR immediately if he discovers any inadequacy in the technical documentation, and the LICENSOR undertakes to correct the inadequacy in question immediately.

If the LICENSOR can show that a part of the technical documentation supplied to the LICENSEE was the same as that used for manufacture by the LICENSOR, the part of the technical documentation in question shall be deemed to be accurate.

7.4 The LICENSOR hereby declares and guarantees that he has no knowledge of any proceedings for infringement or nullity pleas instigated by third parties against any of the patents mentioned in the annex to this Agreement, and guarantees that no third party has the right to prohibit the manufacture, use, maintenance or sale of the PRODUCTS and ORIGINAL PARTS in the LICENSEE's country. The LICENSOR also declares that he has no knowledge of any third party who has the right to prohibit the use, sale and maintenance of the PRODUCTS and ORIGINAL PARTS outside the LICENSEE's country. The LICENSOR shall compensate the LICENSEE for any direct expense or damage caused to the LICENSEE by any action for infringement or nullity plea in connection with a patent.

Article 8 - Remuneration and fees

8.1 In payment for all services performed and outlay incurred in the context of this Agreement and of the rights granted or assigned by the LICENSOR under the terms of this LICENSING AGREEMENT, the LICENSOR shall be entitled to a total remuneration of:

.....

..... (To be filled in)

.....

Remuneration for the assignment of industrial property rights and know-how is customarily effected either in the form of a fixed fee payable on conditions to be settled between the parties (preferably as and when the related technical and technological documentation is supplied), or in the form of a fee proportional to the value of the products covered by the licence (royalties), but excluding the value of the parts comprising the products which are not the subject of an assignment of manufacturing and sales rights. The two forms of remuneration can also be combined. The royalties lapse on the expiry of the licensing agreement.

Article 9 - Trade mark and mention of licence

9.1 The LICENSEE shall have the right to give a name of his choice to the PRODUCTS.

9.2 It is understood that, during the validity of this LICENSING AGREEMENT, and subject to the provisions of Article 5.4 above, the LICENSEE shall be entitled to have the words "licence ...", followed by the serial number, marked on each PRODUCT, in a visible place and in clearly distinguishable lettering.

9.3 Practical procedures for marking and the application of trade marks to the PRODUCTS shall be settled by joint agreement.

9.4 The LICENSEE undertakes to preserve any documents or records which may be necessary or relevant for determining whether the LICENSEE has fully met his obligations in respect of the fee payable under this LICENSING AGREEMENT, and the LICENSOR shall be entitled, once annually during the validity of this LICENSING AGREEMENT, to inspect these documents and records in order to ascertain what payments have been made. (This provision applies only in the case of a fee proportional to the value of the products manufactured.)

Article 10 - Assignment

This LICENSING AGREEMENT shall be valid against third persons and shall extend to the parties and their successors and assigns. The rights and duties arising from this LICENSING AGREEMENT may not be assigned or transferred by either of the parties without the prior authorization of the other; however, the LICENSEE may, without having to seek the prior authorization of the LICENSOR, but after notification of the LICENSOR, assign the rights that have been granted or transferred under the preceding Articles to another company in the LICENSEE's country, and the LICENSOR may assign his right to receive payment under the present Agreement without being required to seek the prior authorization of the LICENSEE, it being understood that such a transfer may in no circumstances limit the LICENSEE's rights in any way, especially his right to compensation.

Article 11 - Applicable law; settlement of disputes