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United Nations Industrial Development Organization

Distr.  
LIMITED

ID/WG.466/4(SPEC.)

10 March 1987

ENGLISH

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Third Consultation on the  
Pharmaceutical Industry

Madrid, Spain, 5-9 October 1987

ITEMS WHICH COULD BE INCLUDED IN  
CONTRACTUAL ARRANGEMENTS FOR TECHNICAL ASSISTANCE  
FOR THE FORMULATION OF PHARMACEUTICAL DOSAGE FORMS \*

Prepared by  
UNIDO Secretariat

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V.87-82799

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### Preface

The First Consultation on the Pharmaceutical Industry held in Lisbon, Portugal in December 1980 discussed the issue of contractual arrangements for the production of pharmaceutical chemicals, their intermediates and formulations and made recommendations on this subject. In accordance with the recommendations, UNIDO was thereby requested to prepare documents on the various contractual conditions and variations thereof including background notes, related to contractual arrangements for the transfer of technology in the pharmaceutical industry.

Subsequent to that, a Round Table Meeting of Experts on the pharmaceutical industry (December 1981) concluded and recommended the main principles to be considered in the preparation of such documents <sup>\*/</sup>. UNIDO prepared accordingly documents on contractual arrangements regarding the transfer of technology for pharmaceutical chemicals and formulations, taking into account the experience of developing countries in the matter. These documents were considered by the Second Consultation on the Pharmaceutical Industry (November 1983, Budapest) and were subsequently finalized in cooperation with the Adhoc Panel of Experts in April 1985.

The Second Consultation on the Pharmaceutical Industry also recommended that UNIDO in cooperation with the Adhoc Panel of Experts should prepare further documents on: (i) items that could be included in contractual arrangements for the setting up of turn-key plants for (a) the production of bulk drugs (pharmaceutical chemicals) or intermediates included in the UNIDO illustrative list and (b) the production of pharmaceutical formulations, and (ii) Arrangements for technical assistance for the formulation of pharmaceutical dosage forms and submit these to the Third Consultation on the Pharmaceutical Industry.

In line with the recommendations of the Second Consultation, this paper provides general guidelines and proposal to be applied in negotiating the arrangements for technical assistance for the formulation of pharmaceutical dosage forms.

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<sup>\*/</sup> See UNIDO/PC.33, 21 January 1982

## Introduction

### Purpose and scope

This document has been prepared in accordance with the recommendation 1.6.e ii) of the Second Consultation on the Pharmaceutical Industry (Budapest, 21-25 November 1983).

Technical assistance is often an integral part of broader licensing or engineering agreements. However, in some cases, particularly when the technology is neither secret nor protected by industrial property rights, it may constitute the single or principal object of a transfer of technology agreement.

As stated in UNIDO document ID/WG.393/3 (page 9), "the technology for the formulation of final pharmaceutical products, in contrast to the technology for the manufacture of bulk drugs is in most cases well-known and well diffused and non-patented. For this reason, arrangements for the transfer of technology (other than those involving industrial property rights) for formulations may be limited to the supply of technical assistance for short periods, or alternatively to other type of agreements which do not oblige the recipient to effect continuous payments or observe restrictive conditions".

It should be noted that technical assistance arrangements constitute a very flexible approach towards technology transfer for pharmaceutical formulations. It does not entail a long-term relationship, and significantly simplifies the contractual terms and conditions, including on payments. It may also constitute the most unexpensive modality of arrangement.

The application of such modality will, however, generally presuppose the existence of a recipient who already operates a formulation plant. Under technical assistance arrangement he may obtain advisory services relating to various matters such as assessment of market and products, technology choice, training of personnel, preparation of product specifications, maintenance procedures, etc.

This document may be especially useful for technology transfer among developing countries, but also provide a framework for traditional contractual relationships among firms in developed and developing countries. The document is intended to provide guidance for the negotiation and drafting of contracts for new entrepreneurs or those who have already a plant in operation and would like to add new products or adopt new technology.

In the context of this document, a contract means an agreement freely entered into by parties in accordance with national laws and regulations and the specific circumstances of each case.

### General framework and content

In the preparation of the document, available guidelines and documents, in particular UNIDO previous works on the matter, have been considered in the framework of the principles recommended by the Morocco Round Table on the Pharmaceutical Industry (UNIDO/PC.19, October 1981) which read as follows:

- (a) The transfer of technology should contribute to the identification and solution of economic and social problems related to the production and use of pharmaceutical in developing countries, with an aim at substantially improving, at adequate costs and quality, the availability of essential drugs in developing countries;
- (b) The parties to a transfer of technology agreement should be responsive to the health, drug, industrial and other relevant policies of the receiving country, including import substitution, development of technical skills, promotion of local innovations, etc.;
- (c) Licensing agreements should contain fair and reasonable terms and conditions to both parties, including payments, and be no less favourable for the recipient than the terms and conditions usually applied by the supplier or other reliable sources for similar technologies under similar circumstances;
- (d) The agreement should, in particular:
  - (i) Ensure the absorption of technology transferred by local personnel;
  - (ii) Allow the use, as far as possible, of locally available materials and services;
  - (iii) Facilitate and, in any case, do not restrict the adaptation and further development of technology received;
  - (iv) Include adequate guarantees for the performance of the parties' obligations;
  - (v) Provide full information on the characteristics of the technology and drugs to be manufactured, especially in respect of possible hazards and side effects;
  - (vi) Not contain unjustified restraint on the recipient's use of the technology.

The document deals with the main items to be negotiated when concluding agreements of the type referred to. When appropriate, it includes:

- (i) Elements to be taken into account in the negotiation and drafting of the clauses;
- (ii) Technical aspects, and particularly difficulties that may be faced at the negotiating phase and implementation of the agreement;

(iii) Recommendations as how to deal with the particular issues;

(iv) Possible clauses and variations thereof.

**\*\*/** It should be noted here that the illustrative clauses provided in this document are presented as examples that could be used to achieve transfer of technology. These clauses should not be construed as being exhaustive or covering all possible situations that can arise in transfer of technology.

The alternatives included are those deemed more important or appropriate in view of the principles and objectives that precede the document's preparation. The importance and appropriateness of possible solutions have been assessed on the basis of four main criteria:

- (i) The likely acceptability of proposed solutions for both contracting parties;
- (ii) The compatibility of proposed solutions with existing regulations and positions on the matter, as described - for a number of issues - in an earlier UNIDO document. \*/;
- (iii) The practices which are generally accepted in international licensing and trade, particularly in developing countries;
- (iv) The recommendations and suggestions of available clauses, contracts, or guidelines, as listed in document UNIDO/PC.19, Annex I.

Since the recommendations made in this document are addressed to parties located in any country, the formulations proposed here are not referred to any particular national legislation. This does not mean, however, to support the idea of a contract "without law", i.e. which is self-sufficient for solving all aspects of the relationship between the parties.

Obviously, national approaches and solutions to a number of aspects considered, vary considerably between the common and the continental law countries. The document attempts to suggest formulations which conform to the general principles referred to above, and at the same time, are compatible with the main current regulation trends at the international and national level, particularly in developing countries.

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\*/ See "Preparation of Guidelines. Background paper", ID/WG.331/3, 23 September 1980.

1. Definitions

While not indispensable, a clause containing the definitions of the main terms and expressions used in the agreement may avoid repetition and misinterpretation.

Such a clause would usually define, in a licensing agreement for formulations, terms such as "Supplier", "Client", the "Products" (i.e. the pharmaceutical formulations/medicines to be formulated), etc.

Illustrative clauses \*/

1. Definitions

In this agreement the following words will have the meaning herein assigned to them.

- 2.1 "The Supplier" will mean the party named as such in this Contract or his legal assignee or successor.
- 2.2 "The Client" will mean the party named as such in this Contract or his legal assignee or successor.
- 2.3 "The Contract" will mean this agreement together with all its annexes and any subsequent amendment made thereto in accordance with the provisions of the Contract.
- 2.4 "The Supplier's plant" will mean the plant/manufacturing facilities of the Supplier located at .....
- 2.5 "The Client's plant" will mean the plant of the Client at .....
- 2.6 "Products" will mean .....

2. Object of the Contract

A technical assistance arrangement embraces a wide diversity of supplier's services in accordance with the specific needs of the Client, such as following: \*\*/

- a) Supply of technical personnel for supervision of plant start-up, stabilization of operations, trouble shooting, etc.
- b) Training (local and overseas) of Client's personnel in production operations, maintenance, technical audit and safety, marketing, etc;

\*/ See page 4, para. \*\*/

\*\*/ See UNIDO, "Guidelines for evaluation of transfer of technology agreements" Development and Transfer of Technology Series No 12, New York, 1979



- c) Preparation of literature on operation in process quality control procedures and maintenance of plant, product specifications, etc;
- d) Productivity standards, etc;
- e) Quality control procedures specifications;
- f) Overseas testing services for raw materials, products, etc;
- g) Transfer of know-how, manufacturing formulae and instruments and other information for the formulation of specific dosage forms including advice regarding banned active ingredients or excipients in the country of origin of the Supplier.

The description of the object of the contract will obviously vary depending upon the nature and extent of Supplier's obligations. It may include only one type of services or incorporate a combination thereof. In some cases, the Supplier's obligations will be fulfilled by making available his personnel for trouble shooting or other advisory/supervisory services, including the training of the Client's designated personnel. In other cases he may be required to prepare documents (e.g. maintenance manuals) to be transmitted to the Client. In a third situation, finally, the Supplier may directly undertake some technical activities (e.g. testing of raw materials) and submit the report to the Client.

In all three cases, as assumed in this document, the confidentiality of information is not a significant issue, and the services may be remunerated on the basis of a fee related to time and level of the personnel involved.

Illustrative clauses \*/

2. Object of the Contract

A. Supply of technical personnel

A.2.1 The Supplier will make available at the Client's Plant a total of ..... man-months of technical assistance, in order to provide advice and assistance to the Client in connection with (Supervision of plant, Start-up/Stabilization of operations/trouble shooting, etc.).

A.2.2 The personnel to be provided by the Supplier and the duration of their assignment will be as follows:

<u>Category</u>	<u>Duration of assignment</u>
-----------------	-------------------------------

.....  
 .....

A.2.3 The Licensee will pre-pay to Supplier an economic class round trip air ticket for the personnel deputed to Client's Plant.

-----  
 \*/ See page 4, para. \*\*/

A.2.4 (Alternative a: The Client will provide suitable accommodation, meals and transport for official work all free of charge at the Client's country).

(Alternative b: The Client will pay a subsistence allowance of ..... (local currency) for each calendar day of presence in Client's country to Supplier's personnel).

B. Training

B.2.1 The Supplier will provide training to qualified employees of the Client nominated by him at the Supplier's Plant on the manufacture, quality control and packaging of the Products. The selection of trainees shall be carried out by the Supplier out of candidates from client's personnel. The training programme will include on the job training for:

(Alternative a: the production and control of at least ..... batches from the beginning to the end)

(Alternative b: no less than ..... weeks).

B.2.2 In addition to the training given abroad the Suppliers will organize and supervise a training programme at the Client's plant.

B.2.3 The number, qualifications and the place of training will be as follows:

<u>Designation</u>	<u>Number</u>	<u>Time</u>	<u>Training unit</u>
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B.2.4 The schedule and contents of the training programme (including methods and procedures for evaluation of progress of training)

B.2.5 The costs of the trainees' travel, board and lodging and health insurance whilst in the Supplier's country will be borne by the Client.

B.2.6 The Client will provide the Supplier's personnel with suitable accommodation, meals and transport during the training period at the Client's Plant.

C. Preparation of manuals, specifications, etc.

C.2.1 Within ... days from the signature of this Contract, the Supplier will furnish the Client the following documentation:

.....

C.2.2 The aforesaid documentation will be furnished in the form of .....

C.2.3 All documentation referred to in C.2.2 will be drawn up in (language) and be presented in a clear manner comprehensible for a normally skilled professional in pharmaceuticals using ..... (unit system).

C.2.4 The documentation will be sent by registered air mail to the following address: .....

The Supplier will confirm by telex or other means to the Client the mailing date of each set of documentation.

C.2.5 Upon receipt the Client will issue a "reception certificate" stating that the documentation has been received indicating eventually the missing documents if any.

D. Quality control procedures

D.2.1 The Supplier shall assist the Client to constitute a Quality Control Department to enable the Client to meet quality standards for the Products as defined in Annex .....

D.2.2 The information to be transmitted and the verifications to be operated by the Supplier shall concern, but not be limited to:

- a) Internal organization, qualification, and responsibilities of Client's personnel
- b) Conformity of the Supplier's assistance with the quality control regulations in force in the Client's country
- c) Quality specification standards and detailed verifiable analytical procedures for each active ingredient, excipient, packaging material
- d) Identification (labelling) of the raw materials, semi-finished, products and finished products according to their respective step in the production process
- e) Equipment, materials, chemicals and reaction agents as well as their respective maintenance
- f) The sequence according to which quality control operations shall be performed and said operations
- g) Records of control performed and samples to be kept
- h) Assistance in training of Client's personnel in quality control procedures and management.

C.2.3 The Supplier shall assist the Client to allow (whenever possible) the integration of local basic drugs and raw materials and/or to allow modifications incurring cost reductions proposed by the Client's Quality Control Department.

E. Testing of basic drugs

E.2.1 The Supplier will, upon request of the Client, test the basic drugs purchased by the Client from sources located in

- E.2.2 The tests will be undertaken at ..... in accordance with methods and procedures normally employed by the Supplier for that purpose in his country.
- E.2.3 The Supplier will submit a report to the Client within ..... days from the receipt by the Supplier of the basic drugs to be tested.
- E.2.4 The Supplier and the Client will agree in each case the characteristics of the samples required to undertake the test.

F. Transmission of know-how

- F.2.1 The Supplier will provide the Client with Technical Information which have been proved as commercially feasible required for the manufacture, quality control and packaging of the Products, including the following:.....  
.....
- F.2.2 "Technical information" will mean for the purposes of this provision, a formulae, process and technical knowledge necessary for the manufacture and marketing of the Products, including production process, quality control methods, packaging methods and materials, machinery and equipment needed, stability data and full specification of the Products, raw materials, intermediate products, excipients, flavouring and colouring materials etc.
- F.2.3 The Supplier will provide the Client with Medical and Scientific Information relating to the Products.
- F.2.4 For the purposes of F.2.3, "Medical and scientific information" will mean all the medical, scientific and related literature and data on pharmacological and clinical trials on the Products, including information, reports, samples and documents required for the registration of the Product with the Health Authority of the Licensee's country.
- F.2.6 In order to fulfil its obligations under this provision, the Supplier will:
  - a) provide the Client with correct and complete documentation, presented in a manner comprehensible for a qualified personnel in the firm. All documentation will be drawn up in ..... (language), using ..... (units system).
  - b) make available at the Client's plant a total of ..... man/months for its personnel in order to provide advice and assistance to the Client for the initial production of the Products.

F.2.7 Within ..... months from the signature of this Contract or when otherwise agreed upon by the parties, tests will be carried out in the presence of authorized representatives of the Supplier and the Client, in ..... consecutive batches, in order to demonstrate whether the formulation produced meets the parameters as specified in Annex ..... Should the test run fail, the Supplier will assist the Client to achieve the agreed parameters.

### 3. Remuneration

In technical assistance agreements it will be usual to determine the price on the basis of the time required to perform the Supplier's obligations at an agreed rate. Eventually, and especially when the delivery of documentation is provided for, a lump sum may be established.

Payments related to man/month fees may include:

- a) Home office charges relating to the direct personnel costs required to undertake specified tasks (e.g. preparation of manuals).
- b) Expatriate personnel charges normally involve a daily rate (in foreign exchange) for each day of absence from the home office plus a reasonable overhead, and local allowances (in local currency) and travel costs. It is also customary to provide for overtime charges, as a percentage of normal rates.

Such payments may be combined with an advance payment, to be effected at the signature of the agreement or within a short period thereafter. From the Client's viewpoint, on the other side, it is convenient to provide for a maximum price, especially in connection with the work directly undertaken at the home office, since he will usually lack the means to verify the amount of work actually undertaken by the Supplier's personnel.

#### Illustrative clauses \*/

### 3. Remuneration

3.1 In consideration for the performance of the Supplier's obligations as stated in provision 2 above and elsewhere in this Contract, the Client will pay the Supplier:

(Alternative a: A lump sum of ..... (currency), in instalments scheduled as follows: .....)

- (Alternative b: i) an advance payment of ....., payable within ..... days from the signature of this Contract.
- ii) home office charges up to a maximum of ....., for the direct personnel costs per hour as follows:

\*/ See page 4, para. \*\*/

Designation                      Direct costs per hour

.....  
.....

The direct personnel costs shall be multiplied by the hours worked by each category of staff to arrive at the overall direct costs. The Supplier will prepare time logs specifying the name of the person undertaking the work, the dates and hours worked. To the direct personnel costs shall be added .....% to cover the Supplier overheads and profits.

iii) Charges for expatriate personnel for each day of absence from home office shall be as follows:

Designation                      Rates per day

.....  
.....

iv) Overtime charges shall be paid as follows:

Up to ..... hours/week                      (...%) of normal rates  
above ..... hours/week                      (...%) of normal rates  
for weekly and public holidays                      (...%) of normal rates

- 3.2 The Supplier's expatriate personnel will be entitled to tourist air travel tickets and to a living allowance at the rate of ..... (local currency) for each calendar day of presence at the Client's plant.
- 3.3 The period of stay of the Supplier's expatriate personnel (as stated in ..... ) is only indicative and the Supplier shall agree to extend the stay of such personnel if required by the Client, or to provide additional personnel in the categories required, if desired by the Client.
- 3.4 The Supplier shall provide such qualified and competent expatriate personnel as are necessary for the proper and final implementation of the Contract.
- 3.5 Before any of the Supplier's personnel is sent to Site, the Client shall be informed of his bio-data and the Client shall have the right to satisfy himself of the competence of such a person. Any person so rejected shall be substituted promptly by the Supplier.
- 3.6 If any of the Supplier's personnel is guilty of misconduct, the Client will have the right, after giving reasons thereof to the Supplier in writing, to send him back to his home office country, and ask for and obtain an adequate replacement at the Supplier's expense.

4. Liability and indemnification

The question of Supplier's liability may be left to the solution applicable in accordance with the local law governing the Contract, or the parties may attempt at establishing some general clauses regulating the matter.

The Supplier may be deemed liable only if the damage or injury has been produced while using the information it has supplied strictly in accordance with its instructions, or through acts or omission of its personnel.

Suppliers in technical assistance agreements may be reluctant to accept a wide or unlimited liability emerging from the causes referred to. A possible compromise may be reached by limiting the Licensor's liability either in scope, for instance, if it only applies in cases of negligence, or in extent, by putting a limit to the total liability of the Licensor.

On the other side, each party should be responsible vis-a-vis the other party, for its negligent acts or omissions, as well as for those of its employees and Sub-Contractors. The Contract may specifically state this principle, in order to confer reciprocal protection against any claims or proceedings brought by third parties for personal injury, death or property damage.

Illustrative clauses \*/

4. Liability and indemnification

- 4.1 The Supplier shall not be liable for any loss, property damage or personal injury except where such loss, damage or injury has occurred due to a negligence act or omission of the Supplier.
- 4.2 The total liability of the Supplier under this clause will be limited to .....
- 4.3 The Supplier shall indemnify and hold harmless the Client and anyone employed by him from and against all claims, demands, losses, costs damages, actions, suits, expenses (including legal fees) or proceedings by whomsoever made for personal injuries, death or third party property damage brought or prosecuted in any manner based upon, arising out of, related to or occasioned by the negligent act or omission of the Supplier and their employees in connection with this Contract.
- 4.4 The Client shall indemnify and hold harmless the Supplier, his employees and agents from and against all claims, demands, losses, costs, damages, actions, suits or proceedings for personal injuries, death (other than to Supplier's personnel) and property damage brought or prosecuted in any manner based upon, arising out of, related to or occasioned by the negligent act or omission of the Client and their employees in connection with this Contract.

\*/ See page 4, para. \*\*

5. Duration

The duration of the contract will depend on the nature and extent of the tasks to be undertaken. Unlike licensing agreements, which usually last for a long period, especially when the licensor is remunerated by royalties on sales, the lifetime of technical assistance agreements is generally short and confined to the execution of the Supplier's obligations.

Illustrative clauses \*/

5. Duration

5.1 The Contract will last

(Alternative a: for ..... counted from the date of signature of the Contract)

(Alternative b: during the time necessary to undertake the obligations provided for under provision 2, but not longer than .....)

6. Termination

Clauses on anticipated termination of the Contract will normally vary according to the applicable law, particularly as regards to the qualification and legal consequences of defaults by the parties.

The Contract may determine the causes that authorize any of the parties to terminate it (e.g. failure to effect payments, lack of supply of technical information, etc.) or leave such a determination to the law applicable to the Contract.

In any case, the parties should be given a reasonable term, after due notice by the other, to remedy the alleged default.

Illustrative clauses \*/

6. Termination

6.1 This Contract may be terminated by either party by written notice to the other party for any cause sufficient under the proper law of the Contract, if the party in default has not remedied its fault within ..... from receipt of the other party's notice.)

-----  
\*/ See page 4, f a. \*\*/



7. Force majeure

According to the traditional conception of force majeure a contracting party is not deemed to be in default of its obligations if the performance thereof is prevented by contingencies which are unforeseeable (at the time of the contract's signing), unavoidable and independent of the parties, and which render impossible the further execution of contractual obligations.

International contractual practice has generally attenuated the strict requirements of such conception. The unavoidableness is, thus, substituted by a reference to events beyond the control (or the reasonable control) of the parties. Likewise, instead of the extinctive effect traditionally accorded to force majeure, the practice recommends to suspend the Contract until the disturbing contingencies are overcome.

Provisions on this issue may include:

- a) Definition of exonerating circumstances and enumeration of contingencies that may be comprised, such as force of nature (acts of God), acts of war (whether declared or not), strike, lock-out, governmental order or regulation, etc.;
- b) Notification of the occurrence of such circumstances and proof thereof;
- c) Effects of the force majeure:
  - (i) exclusion of responsibility for non-performance;
  - (ii) consultation between the parties in case of continuation of circumstances.

Illustrative clauses \*/

7. Force majeure

7.1 Neither the Supplier nor the Client will be deemed to be in default of their contractual obligations whilst performance thereof is prevented by circumstances which were beyond the control of the party concerned and which by the exercise of due diligence and reasonable foresight it could not have prevented or overcome, including in particular war or hostilities, riot or civil commotion, natural physical disaster, strike, lock-out or concerted acts of workmen, accidents, fire or explosion.

7.2 The affected party will give notice as soon as possible to the other party, with evidence that a contractual obligation is prevented or delayed, and if the Force Majeure lasts continuously for a period of ....., the Supplier and the Client will consult together regarding the future execution of the Contract.

-----  
\*/ See page 4, para. \*\*/

- 7.3 If the consultations referred to in the preceding clause have not resulted in mutual agreement, or have not taken place because the parties have been unable to communicate with one another .....
- (Alternative a: either party will have the right to terminate the Contract giving written notice to the other party).
- (Alternative b: either party will have the right to resort to arbitration pursuant to article ..... ("Applicable law and settlement of disputes").

## 8. Assignment

Assignment of the Contract will not normally be permitted (unless with the prior consent of the other party), since it is usually deemed to be intuitu personae, i.e. entered into taking the solvency, capacity and reputation of the counterpart into account.

### Illustrative clauses \*/

#### 8. Assignment

8.1 This contract is not assignable unless with the prior and express consent of the other party. Neither party to this Contract will assign any of its rights or obligations thereunder to a third party, except to its legal successor or to any legal person which has acquired all or substantially all the assets and business of one of the parties.

#### 9. Applicable law and settlement of disputes

The alternatives chosen for dealing with these important issues will depend on the preferences of the parties and the applicable law.

One possibility - encouraged or imposed in some developing countries \*\*/ - is to submit the contract to the law of the Client's country, and any disputes between the parties to the judicial courts of that country.

Another usual approach in international trade practice is to stipulate the recourse to arbitration, provided that the law of the parties allows or does not prevent it. In respect of the law governing the contract, the parties may choose a law that has a close and real connection with the contract, or stipulate that arbitrators decide "ex aequo et bono". In any case, the choice of law should not be effective in matters relating to the internal or international public policy (ordre public) or sovereignty of the country where arbitration takes place and of the countries of the parties. With this reservation, the arbitration may conciliate its procedural advantages with the respect due to imperative rules of the States connected with the transaction, and also ensuring its enforcement in the jurisdiction of one of such States.

\*/ See page 4, para. \*\*/

\*\*/ E.g. Philippines, India, Mexico, Nigeria, Andean Group countries (Bolivia, Colombia, Ecuador, Peru, Venezuela)

If arbitration is provided for the contract it should specify, at least the following:

- (a) The number and method of nomination of arbitrators;
- (b) The seat of arbitration;
- (c) The procedure and language of arbitration.

The pertinent clauses may also refer to the binding character of the arbitral award. It is generally recognized that, in any case, any of the parties could request the submission of the arbitral award to an examination of legality, for instance before the courts of the country where the arbitration has taken place.

For the sake of simplicity and clearness, the Contract may refer to the arbitration rules of an international organization, such as to the Rules of Conciliation and Arbitration of the United Nations Commission on International Trade Law (UNCITRAL).

Before making use of any of the provisions referred to in this section, it is advisable that the parties endeavour to solve their difference by direct and amicable negotiations. Eventually, the Contract may also stipulate the nomination by mutual consent of an independent expert, whose findings and recommendations may not be binding on the parties, but which may contribute to the clarification and solution of the conflicts at stake.

Illustrative clauses \*/

9. Applicable law and settlement of disputes

9.1 (Alternative a: This Contract will be construed under and governed by the law of (Client's country)).

(Alternative b: This Contract will be construed under and governed by the law of (specified country or jurisdiction thereof), except as to matters relating to public policy (ordre public) of (Supplier's or Client's country) which will be decided in accordance with the applicable law of that country).

(Alternative c: The arbitral tribunal will apply the proper law under the conflict of laws rules which it considers applicable, without prejudice to any provisions relating to public policy (ordre public) of (Supplier's or Client's country)).

(Alternative d: The arbitral tribunal will decide ex aequo et bono and according to public policy (ordre public) provisions of the countries of the parties).

9.2 (Alternative a: All disputes arising out of or in connection with this Contract will be decided by the competent court of .....).

\*/ See page 4, para. \*\*/

**(Alternative b:**

- (i) All disputes arising out of or in connection with this Contract, if not resolved amicably by bona fide negotiation between the parties, will be finally settled by three arbitrators, of whom two will be appointed by the parties (one by each) and the third will be appointed by mutual consent of the parties. If the parties do not agree on the third arbitrator, either party may request the Director (name of institution) to appoint the third arbitrator. The arbitration will take place in accordance with (law of arbitration or rules, e.g. Arbitration Rules of the United Nations Commission on International Trade Law);
- (ii) If either party hereto defaults under any provision of this Contract and such default continues unremedied for ..... days after written notice has been given by one party to the defaulting party and settlement has not been arrived at by article (i) above, then the former party will have the right to have the matter resolved and settled by arbitration;
- (iii) The award of the arbitrators will be final and binding on the parties hereto. Judgement upon the award may be entered by the court of (country);
- (iv) The Supplier will continue to undertake its obligations under the Contract during any arbitration proceeding unless otherwise agreed by the Licensee in writing. The Supplier and Client agree that in the event of arbitration proceedings, the arbitrators will have unrestricted access to the Supplier's and Client's respective plants for the purposed of the said arbitration;
- (v) Arbitration will be in (town) and all proceedings will be in ..... (language).