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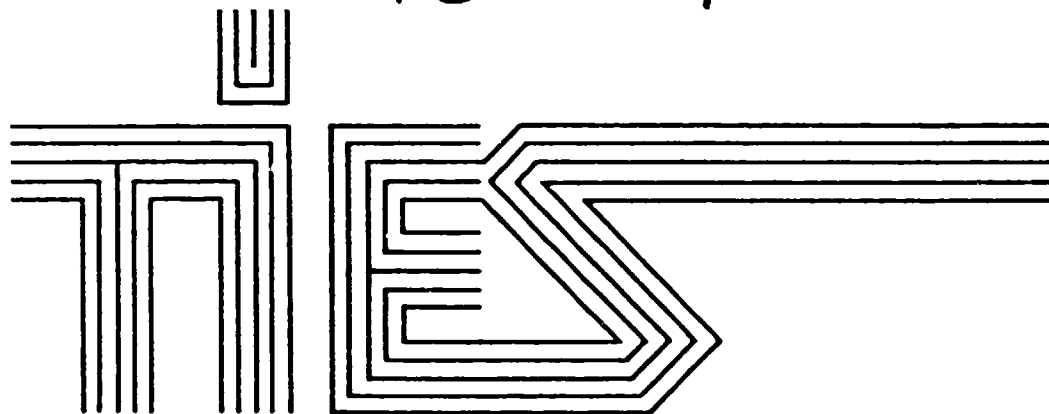
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NEWSLETTER

Technological
Information
Exchange
System

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Compiled by Development and Transfer of Technology Division, Department for Industrial Promotion, Consultations and Technology, UNIDO, P.O. Box 300, A-1400 Vienna, Austria.

Dear Reader,

As you know, the Technology Programme of UNIDO has always given special attention to the issues of technology negotiation for which two main vehicles have been used to spread knowledge and provide assistance to developing countries in this important area. We refer, on the one hand to the workshops and seminars regularly organised in developing countries and intended to improve the awareness and skills of negotiators and on the other hand, to the advisory services through which governments and entrepreneurs of developing countries may receive ad hoc assistance to solve practical problems related to the acquisition and negotiation of technology.

As a natural development of these two lines of work UNIDO is now combining the workshops and seminars with advisory activities through which experts are made available to the participants who may provide them with confidential advice on negotiations they may be facing with foreign technology suppliers or partners in joint ventures.

This new concept will be utilized in a programme planned for Madagascar next November. The team of UNIDO experts will be there not only as lecturers in a seminar on transfer of technology, but also to work with local negotiators and help them overcome the difficulties they are confronted with. In order to maximize the benefits of such a programme, specific cases requiring advice will be identified in advance and the team of experts will be selected accordingly. It is conceivable that some of the problems to be presented will require follow-up actions, especially if they relate to complex negotiations extended over a relatively long period.

We are convinced that the forthcoming programme in Madagascar will represent a rewarding experience and improve our ability to assist negotiators and facilitate business and technology flows to developing countries, which is after all our aim and continuous endeavour.

Development and Transfer of Technology Division
Department for Industrial Promotion, Consultations
and Technology

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UNIDO NEWS

Workshop on Negotiation of Transfer of Technology Contracts

As is the case in most developing countries, the industrial development of Trinidad and Tobago is strongly dependent on imported technologies, a situation which is likely to continue in the future.

It is known however, that in many cases the technology imported from abroad does not achieve the results expected, due to the lack of information and skills needed to identify the appropriate technology packages and to negotiate with their suppliers on equitable conditions which reflect normal market practices.

The problems and constraints related to the acquisition and negotiation of technology are detrimental not only to the entrepreneurial class but also to the domestic economy as a whole and are the cause of an unnecessary drain on foreign reserves. Among others, reference can be made to the following:

(i) Payments made by local companies for supplied technology are usually excessively high and may not be in line with the established international practices for the negotiation of the same technology package in other countries;

(ii) In some instances, local entrepreneurs pay for a technology on which the patent has already expired, without realizing that expired patented technology is available free of charge and obligation;

(iii) Contract periods are usually excessive and sometimes of indeterminate duration, thus perpetuating the financial obligations of the recipient;

(iv) The terms and conditions of the contracts often include several restrictive clauses which hinder the effective assimilation of the technology and the use of local inputs;

(v) Inadequate training provisions prevent the transfer of operational skills, thus leading to a continued dependence on the licensor and a further drain on foreign exchange.

The workshop, which took place in Port-of-Spain, Trinidad and Tobago, from 26 to 28 April 1988, was jointly organized by the Caribbean Industrial Research Institute (CARIRI), the Industrial Development Corporation (IDC) and the United Nations Industrial Development Organization (UNIDO) and was addressed to entrepreneurs in the manufacturing sector and key officials of government agencies with responsibilities related to technology acquisition and technological development.

The objective of the workshop was to sensitize the participants to the main issues involved in the transfer of technology process; to create an awareness of the pitfalls in the negotiation for the purchase of technology; to identify strategies in the negotiation of contracts; and to promote the need for an on-going information and advisory service on negotiation of technology contracts for businessmen.

The workshop covered the following subjects:

- (a) Role of technology transfer in development process
- (b) Forms and channels of transfer of technology
- (c) Legal environment
- (d) Success factors in transfer of technology
- (e) Information requirements and sources
- (f) Structure of agreements
- (g) Evaluation of payments
- (h) Guarantees and warranties
- (i) Binding nature and enforcement of contracts
- (j) Principles of contract drafting
- (k) Strategies of negotiation

The local counterparts presented a case study dealing with a concrete experience of Trinidad and Tobago in the field of transfer of technology negotiation.

The issues raised in the case study served as a basis for a panel discussion among the participants who dwelled upon their own experiences.

The workshop was intended to be practically oriented, with a focus on the problems of the business community and oriented towards developing an awareness and skills on issues of negotiation among the participants.

The presentations were followed by discussions and, whenever appropriate, examples derived from the experience of Trinidad and Tobago were utilized.

The experts were available to the participants, on a confidential basis if necessary, to assist them in solving concrete problems related to contracts they may have under negotiation.

TECHNOLOGY ACQUISITION

Classification in the UNIDO library of contracts

The present document contains the indices to the contracts in the library based on the industry and subject to which each contract relates and also to the type of contract. This document further contains title pages to each of the contracts, which indicate the various classifications of the contracts and the clauses contained in them. A brief explanation of the classifications is also given, as is a dictionary of the terms used in classifying the clauses contained in the contracts.

The contracts which form the UNIDO library are classified in a number of ways, by industry, subject, type of contract and language and also, when information is available, according to the International Standard Industrial Classification (ISIC) and the Standard International Trade Classification (SITC). This classification of each contract, together with a list of the clauses appearing in the contract, is given on the title page to the contract.

Numbers:

The first number to appear on the title page to each con-

tract is the number of the contract within the library of contracts. The ISIC number is then given followed by the SITC number or, where appropriate, numbers.

Headings:

The heading "Industry" on the title page describes the area of activity in which the contract is intended to operate. The titles used under this heading are those for major groups of industries under the International Standard Industrial Classification (ISIC).

A simpler description of the subject matter of the contract is given under the heading "Subject". Here contracts are classified by the specific products mentioned as intended to be manufactured under the contract or purchased or promoted through it.

The heading "Type" on the title page to the contract refers to the nature of the legal rights being transferred or that of the services to be rendered under the contract. The heading indicates the class of rights being granted or services provided under the contract. The heading "Language" indicates in which language the contract is available.

Clauses:

After the various classifications have been given, the title page to each contract lists the clauses contained in the contract. The clauses are listed using headings which are the same for all the contracts. As these headings are not always able to indicate all that is contained in the clause in question it may be useful when considering the clause titles to consult the dictionary of terms used under the heading "Clauses" which appears below.

The industry to which the contract relates is not always evident from the contract itself. Accordingly, it is not always possible to provide all the classifications referred to above. Furthermore, contracts often have as their subject matter products which fall within a number of industries and trades. In such cases the industry within which the first mentioned product falls (or in the case of the SITC number, the first two products mentioned fall) is used in the classification of the contract. In some cases looking at the "Subject" of the contract may be an easier way of finding a relevant contract

How to use the library

The library of sample contracts will serve as a tool to meet ad hoc requests of negotiators when they are confronted with particular needs and problems. This means the library as a whole will not be made available but UNIDO will provide samples of individual clauses or individual agreements as required to assist in specified circumstances.

Desirably, the utilizers of the library should also contribute to its expansion, by providing samples of agreements related to their own experience.

Requests related to the utilization of the library should be addressed to: Transfer of Technology Programme Branch, Department for Industrial Promotion, Consultations and Technology, United Nations Industrial Development Organization, P.O. Box 400, A-1400 Vienna, Austria.

Index of contracts by industry

Agricultural and livestock production
Construction
Grain mill products
Malt liquors and malt
Manufacture of bakery products
Manufacture of basic industrial chemicals except fertilizers
Manufacture of cement, lime and plaster
Manufacture of chemical products not elsewhere classified
Manufacture of cocoa, chocolate and sugar confectionery
Manufacture of dairy products
Manufacture of drugs and medicines
Manufacture of electrical apparatus and supplies not elsewhere classified
Manufacture of electrical appliances and housewares
Manufacture of electrical industrial machinery and apparatus
Manufacture of glass and glass products
Manufacture of machinery and equipment except electrical not elsewhere classified
Manufacture of metal and wood-working machinery
Manufacture of office, computing and accounting machinery
Manufacture of paints, varnishes and lacquers
Manufacture of radio, television and communication equipment and apparatus
Manufacture of soap and cleaning preparations, perfumes, cosmetics and other toilet preparations
Manufacture of special industrial machinery and equipment except metal- and wood-working machinery
Manufacture of synthetic resins, plastic materials and man-made fibres except glass
Manufacture of vegetable and animal oils and fats
Monetary institutions
Non-ferrous ore mining
Other financial institutions
Petroleum refineries
Slaughtering, preparing and preserving meat
Tyre and tube industries
Wholesale trade

Index of contracts by subject

Adhesives
Adhesives and other chemical products
Ammonia works
Beer and soft drinks
Belt conveyor systems
Biscuits
Bottling equipment
Brewery
Carbon black
Cement
Cleaning preparations
Cocoa and chocolate
Computer hardware
Cosmetics
Cosmetics and pharmaceuticals
Cotton seed oil
Dairy and food products
Dairy products
Dairy products and fruit juices
Diesel motors

Dry batteries
 Engineering systems
 Ethylene
 Exploitation of mines
 Flat glass
 Food products
 Glass containers
 Heating elements
 Industrial alcohol and brewers' yeast
 Industrial loans
 Machine tools
 Maize milling
 Malt
 Meat products
 Merchant bank
 Oil and gas well drilling
 Oils and fats
 Ore beneficiating works
 Ore dressing and non-ferrous metal production
 Packing materials
 Paints
 Paints and varnishes
 Palm oil
 Peanuts and snack foods
 Petroleum and other fuels
 Pharmaceuticals
 Plastics
 Poultry farming
 Printer's ink
 Refuse containers
 Seed oil
 Sugar cane growing and processing
 Switchgear
 Televisions
 Tyres
 Urea
 Vegetable and animal oils and fats

Index of contracts by types

Agency
 Consulting engineering
 Consulting engineering (including mineral testing)
 Consulting engineering and technical assistance
 Contract services
 Joint venture
 Licencing (patented processes)
 Licencing (patented processes) and sale of goods
 Licencing (patented processes) and technical assistance
 Licencing (factory extension) (patented processes) and technical assistance
 Licencing (trademarks)
 Licencing (trademarks) and technical assistance
 Licencing (trademarks and patented processes)
 Licencing (trademarks and patented processes) and technical assistance
 Licencing (trademarks and unpatented processes)
 Licencing (trademark and unpatented processes) and amending contracts
 Licencing (trademark and unpatented processes) and technical assistance

Licencing (unpatented processes)
 Licencing (unpatented processes) and technical assistance
 Loan agreement
 Maintenance
 Management
 Management and technical assistance (with Government as purchaser/guarantor)
 Management consulting (planning methods)
 Sale of goods
 Sale of goods and services
 Sale of goods and services and technical assistance
 Technical assistance
 Technical assistance and management
 Turn-key
 Turn-key (new company to take over and expand works)

Definition of terms

Access to equipment Maintenance contracts may contain a clause specifying the extent to which the equipment to be maintained is to be made available to the supplier.

Access to site A contract for the construction of works may contain a clause defining the parties' rights to visit the place of construction. Other contracts may also contain a clause stipulating the right of the supplier/licensor to visit the works. (See also "Rights of supplier/licensor".)

Accounting practices of company Joint venture contracts may specify what are to be the accounting systems of the joint venture company or may describe the sources for such accounting systems.

Accrued rights Where the parties have had contractual relations prior to a later contract between them, this later contract may contain a clause regulating the rights and obligations of the parties which came into existence prior to the later contract. (See also "Revocation of previous contract".)

Additional funds for company A joint venture contract may specify the sources from which and the amount in which the joint venture company may obtain additional funds beyond the capital of the company. The contract may also define the joint venture members' obligations in this regard.

Additional services A contract may contain a clause describing the services which the supplier/licensor may render in addition to those provided for in the contract. The terms upon which such additional services are to be provided may also be specified.

Amendment of contract Some contracts contain a clause specifying the extent to which and the method whereby the terms of the contract, or services to be rendered under it, may be altered by the parties.

Amount of repayments Loan agreements usually contain a clause providing for the periodic repayment of the loan by instalments. This clause may also specify the amount of interest to be paid with each loan repayment.

Appendix Where an Appendix or Appendices are specifically referred to in the contract in a separate clause, then a heading specifying this is included. (See also "Definition of contract".)

Applicable law This phrase refers to the national law specified in the contract by the parties as intended to regu-

late their contractual rights and obligations.

Appointment of representative The parties sometimes include a clause in their contract specifying the persons who are to be regarded as their authorized representatives in dealings between the parties. In some cases only one party may do so.

Articles of association of company This clause in a joint venture contract defines what are to be the articles of association of the joint venture company.

Assignment This phrase refers to the clause which permits or forbids one or both parties from transferring their rights under the contract. The clause may specify the conditions upon which such a transfer will be permitted.

Capital of company This clause in a joint venture contract defines what the initial capital of the joint venture company is to be and may describe the portions in which it is to be provided by the joint venture members. (See also "Increase in capital of company".)

Commission Loan or agency agreements frequently contain a clause requiring the borrower or supplier to pay a fee for the loan, in the case of a loan agreement, or for goods sold by the agent, in the case of an agency agreement.

Committee of engineers A contract for the construction of works may require engineering questions to be co-ordinated and discussed by a committee made up of the parties' engineers.

Company becoming public This clause in a joint venture contract defines the circumstances and conditions under which the joint venture company may become a public company.

Completion of erection A contract for the construction of works or for the supply of equipment may include a clause requiring the parties to sign a document indicating that the construction or installation of the equipment has been completed.

Consequences of change of applicable law Contracts occasionally provide what the effect on the parties' contractual obligations are to be, should there be a material change in the applicable law.

Consequences of failure to form A joint venture contract may stipulate what is to occur if the planned joint venture company is not formed.

Co-operation A contract may specify how and on what matters the parties are to work together.

Default This clause describes the failures in fulfilment of the parties' respective obligations which are sufficient to bring the contract to a premature end. (See also "Delay in completion or performance" and "Termination".)

Definition of contract Many contracts contain a clause setting out what documents or parts of documents constitute the contract, e.g. the Appendices to the contract. This clause may also state what part of the contract or what version of the contract is to take precedence over another.

Definitions Many contracts contain a clause which defines one or a number of different phrases or descriptions which appear frequently in the contract or are in need of specific interpretation.

Delay in completion or performance A contract may contain a clause providing what are to be the consequences of a suspension of performance or temporary failure

in completion of the contract by the supplier/licensor. The usual remedy provided is for the payment of liquidated damages. Another remedy may be for the purchaser/licensee to complete the obligations of the supplier/licensor at the cost of the latter. (See also "Default" and "Purchaser to carry out repairs".)

Delivery This clause contains details of the manner in which the supplier/licensor is to hand over the goods (including raw materials and spare parts) being supplied to the purchaser/licensee. Such a clause may deal with shipment, place of delivery or similar issues.

Derial of agency A contract may contain a clause stating that the parties are neither agents of each other, nor do not enjoy a similar type of relationship. This heading includes clauses which describe the supplier/licensor as 'an independent contractor'.

Discontinued products This clause contained in a licensing contract describes what is to happen to the licensee's stocks of products which the licensor decides are no longer to be sold by the licensee.

Dividends A joint venture contract may specify the way in which dividends are to be calculated and the manner in which they are to be paid.

Documents necessary for first withdrawal A loan agreement may require the borrower to fulfil certain conditions and provide certain documents before allowing a withdrawal of the loan funds.

Documents to be supplied One or other party may be required by the contract to furnish certain documents or written information to the other. For example, the supplier/licensor may have to provide documents to the purchaser/licensee explaining the functioning of equipment supplied. Similarly, the purchaser/licensee may have to supply certain reports to the supplier/licensor to enable the latter to determine what services are to be supplied to the purchaser/licensee. In this context the word "documents" includes statements of account, records, reports, etc., including those related to the payment of royalties.

Duration This clause deals with the length of time for which the contract is to run. The manner in which the contract may be renewed for a further period is sometimes also considered under this heading. (See also "Extension of contract".)

Duties and taxes This clause settles the parties' responsibilities with regard to the payment of duties and taxes resulting from the contract or on the fulfilment of obligations under it. The clause may also stipulate the effect, if any, which the duties and taxes are to have on the price.

Early repayments A loan agreement may contain a clause specifying the consequences of an early repayment of the loan, e.g. the lump sum amount to be paid as interest on the loan.

Entry into force This clause defines the point at which the contract is to be considered binding on the parties. In some cases the clause lists conditions to be fulfilled before the contract is to be considered in force. This clause may refer only to the "effective date" of the contract, the role of which date is usually defined in the contract.

Exchange of information This clause, usually contained in a licensing contract, requires the parties to give each other any useful information they may have regarding the

preparation or use of the products manufactured or sold in consequence of the contract.

Exclusion of intermediaries This clause heading describes the parties' agreement not to allow third parties as negotiators between them and may also provide that no payment will or has been made to any such third party to facilitate the contract.

Expenses The reimbursable costs which the supplier/licensor is to be repaid or the costs which are to be paid by the purchaser/licensee directly over and above the price are dealt with in this clause. Frequently, however, the "Scope of services" or "Price" clauses contain in them an element of "Expenses". Accordingly, only where these are considered as a separate item in the contract does this clause appear individually. (See also "Scope of services" and "Price".)

Expenses of formation This clause in a joint venture contract specifies which party is to bear the costs of formation of the joint venture company.

Extension of contract Such a clause regulates the manner and circumstances in which the contract may be extended beyond its original stated duration.

Final acceptance Contracts for the construction of works or supply of goods may provide that the purchaser will issue a certificate stating final acceptance of the services or goods supplied after a certain period, usually at the end of the guarantee period. (See also "Provisional acceptance".)

Force majeure Contracts usually contain a clause stipulating that one or both parties are not liable for their failure to perform their obligations, whether completely or temporarily, if that failure is due to causes altogether outside the control of the defaulting party such as war, acts of God, etc. This clause usually provides for the suspension or termination of the contract. (See also "Suspension" and "Termination".)

Formation of new company A joint venture or other contract may contain a clause dealing with the establishment of a new company. This clause may be detailed or may merely declare the intention of forming such a company.

Further assurances This clause contains the parties' promise to do any further acts, e.g. the execution of further documents, necessary to give effect to the contract.

Grant of licence This is the operative clause which gives the licensee the right to use the patents and/or trademarks of the licensor. The clause may define the limits of the licence granted, including the territory in which it may be used and the scope of the licence, whether it is to be exclusive or not. Where these issues are dealt with in separate clauses, they appear under different headings (see "Territory" and "Scope of licence or rights granted").

Guarantee This clause describes the responsibility of the supplier/licensor with regard to promises made concerning the quality and performance of the services or goods supplied. The limits of that responsibility may be detailed under this heading. The supplier/licensor's liability as to the replacement of goods or renewal of services which do not match the description given in the contract are also specified here.

Guarantee period The time during which the supplier/licensor is liable to replace or renew defective goods

or services is specified in this clause

Implied terms This heading refers to the clause which occasionally appears in a contract importing to the contract terms or conditions contained in another document.

Improvements Licensing contracts frequently contain a clause defining the parties' rights with regard to any developments they or the other party may make in the licensed products. For instance, licensing contracts frequently give the licensee first option to obtain a licence in improvements developed by the licensor. The expression "improvements" may include new inventions as well as developments of existing ones.

Increase in capital of company This clause in a joint venture contract defines the manner and circumstances in which the joint venture company's capital may be increased. (See also "Capital of company".)

Information to be supplied This heading covers information to be furnished by one party to the other. For example, the supplier/licensor may be required by the contract to provide technical information to the purchaser/licensee while the purchaser/licensee may be required to provide information as to its sales of products manufactured under the contract to the supplier/licensor.

Inspection and tests of equipment Where a contract provides for the supply of equipment by the supplier it may contain a clause entitling the purchaser to inspect and be present at tests of the equipment prior to or on its delivery.

Insurance This clause describes the obligations of one or both parties for insurance policies they are to maintain in connection with one or more of their obligations under the contract.

Interest on delayed repayments Loan agreements usually provide for the payment of additional interest, beyond the interest on the loan, if the borrower is in delay in its repayment of the loan or an instalment of such repayment.

Interest on loan Where money is borrowed under a loan agreement the contract will contain a clause specifying the rate of interest payable on the loan and may also detail when and how this interest is to be paid.

Invalidity of clause Some contracts contain a clause stating that if one clause in the contract is found to be invalid that this is not to render any other part of the contract invalid.

Joint venture members to remain shareholders in company Where a joint venture contract follows on an earlier contract, the second contract may provide for the continuing participation of the joint venture members in the joint venture company.

Language This clause specifies the language of the contract and that to be used in communications between the parties. (See also "Definition of contract".)

Legal opinion Occasionally a contract will require one or both parties to produce a legal opinion or other evidence of their capacity to enter the contract.

Letters of credit A contract may require the purchaser to obtain an irrevocable letter or letters of credit from a reputable bank in a specified amount so as to demonstrate the purchaser's ability to pay the purchase price.

Liability of guarantor Where there is a guarantor of the performance by one or other party of its obligations under the contract, the contract may define the responsibilities

of the guarantor.

Liability of purchaser/licensee This clause describes the consequences arising from the contract for which the purchaser/licensee is responsible. This responsibility may include an indemnity of the supplier/licensor but this aspect of liability is usually dealt with in a separate clause (see "Third party indemnity"). This clause may include a requirement that the purchaser/licensee act in conformity with the law.

Liability of supplier/licensor This heading describes a wide range of matters falling within the responsibility of the supplier/licensor such as the liability for damage caused by the latter's employees, for mistakes in the information provided by the supplier/licensor under the contract or the responsibility of the supplier/licensor for the fulfilment of the guarantee.

Liability of parties Such a clause describes both the parties' responsibilities. (See also "Liability of purchaser/licensee" and "Liability of supplier/licensor".)

Licensee's stock control A licensee may be required by the licensing contract to ensure that certain stocks of the licensed products are maintained.

Licensor's rights This clause in a licensing contract deals largely with the entitlements of the licensor in ensuring performance of the licensee's obligations. For example, this clause may permit the licensor to inspect the books of the licensee so as to check that the correct royalties are being paid.

Licensor to purchase products manufactured by licensee A licensing contract may require the licensor to purchase a certain quantity of products manufactured by the licensee under the contract.

Limitation of damages Some contracts contain a clause limiting the total financial liability of the supplier/licensor or, occasionally, that of both parties, arising as a result of a breach of contract or other liability under the contract.

Limitation of trade in similar products This clause may require a party not to manufacture or sell products other than those manufactured or sold by virtue of the contract. The limitation may be made to extend to all products or may apply only to products of the same kind as those manufactured or sold under the contract.

Limitation of supplier/licensor's liability This clause details the matters for which the supplier/licensor is not responsible. This clause may include a description of the consequences of performance or of failure of performance for which the supplier/licensor is not liable.

Management of company A joint venture contract may set out details of the composition of the board of directors of the joint venture company and may, further, detail the manner in which the company is to be managed.

Marketing This clause in a licensing contract deals with one or both parties' obligations in respect of the advertising for sale and promotion of the products manufactured under the contract. The clause may deal with the supply of advertising material. Furthermore, under this heading the licensee may be required to use the licensed trademark or specific advertising material.

Markings to be used Licensing contracts, particularly contracts granting a trademark licence, often specify how the products manufactured or sold under the contract are

to be labelled. This clause sometimes deals also with the circumstances in which the licensee is not allowed to use the markings.

Maximum price Occasionally a contract will specify what is to be the maximum paid by a purchaser/ licensee for the goods delivered, services rendered or licence granted. Such a clause is of particular significance when the price is not an absolute one agreed at the outset but rather one which accrues from time to time.

Memorandum of association of company This clause in a joint venture contract specifies the memorandum of association of the joint venture company. (See also "Articles of association of company" and "Name and charter of company".)

Name and charter of company A joint venture contract may set out the name of the joint venture company and may specify what are to be the rules governing the company (charter, articles of association and memorandum of association). (See also "Articles of association of company" and "Memorandum of association of company".)

Notices This clause may not only detail the way in which communications between the parties are normally to pass (type of postal delivery, language, etc.) but may also, or only, set out the addresses of the parties for the purposes of communications under the contract. (See also "Language".)

Object of joint venture company A joint venture contract usually sets out the purposes for which the joint venture company is being formed, it defines the company's anticipated activities.

Obligations of company This clause in a joint venture contract specifies the duties of the company, usually to enter one or a number of contracts with one or more of the joint venture members.

Obligations of parties Such a clause defines the parties' responsibilities. (See "Obligations of purchaser/licensee" and "Obligations of supplier/ licensor".)

Obligations of purchaser/licensee This phrase is a very general description of the duties imposed on the purchaser/licensee by the contract (over and above payment of the price). It includes the services which the purchaser/licensee may have to provide to the supplier/licensor to enable the latter to carry out its obligations under the contract and may run from obtaining import licences to providing accommodation for the supplier/licensor's employees.

Obligations of supplier/licensor This phrase describes the particular duties of the supplier/ licensor which are more specific or are ancillary to those under "Scope of services". The supplier/ licensor's obligations include such matters as the supply of information, the arrangement of seminars and the requirement that the supplier/licensor's employees comply with the laws of the purchaser/licensee's country. (See also "Scope of services".)

Option for licensor to subscribe in licensee A licensing contract may provide for the possible subscription in the licensee by a financial contribution of the licensor in the capital of the licensee.

Option to purchase trademark A contract licensing the use of a trademark may set out the circumstances in which the licensee may be entitled to purchase the trademark

outright.

Orders A contract for the sale of goods may contain a clause detailing how orders for goods are to be placed and other matters incidental to the ordering of goods.

Ownership of documents Some contracts contain a clause specifying the ownership of copyright in documents passing between the parties in the performance of the contract.

Packing This clause specifies the manner in which goods which are to be delivered under the contract are to be packed. The clause may also provide who is to own the packing materials used.

Payment This heading includes a large number of elements, amongst others, when and where payment of the price is to be made, what are to be the consequences of non-payment (interest) and the currency to be used.

Performance bond A contract may contain a clause requiring the supplier/licensor to furnish a bond or guarantee, to be valid for a certain duration and issued by a reputable bank or other institution, providing for the payment of a certain sum should the supplier/licensor default in performance of the contract.

Performance guarantee This guarantee is the promise of the supplier as to the capacity of the works constructed or goods supplied (including equipment). The promised parameters are usually set in terms of output from the works or goods. (See also "Performance tests".)

Performance tests This heading refers to the tests of work constructed or goods supplied under the contract carried out to check that the works or goods meet the performance parameters guaranteed in the contract. (See also "Performance guarantee".)

Place of performance This clause defines where the services to be supplied under the contract are to be carried out.

Price Most of the elements of the price to be paid (lump sums, royalties, etc.) for the goods, services or licence are included under this heading. When elements of the costs, reimbursable or payable by the purchaser/licensee, are not dealt with under a separate clause or under "Scope of services" then they are included here. (See also "Expenses".)

Price revision This clause specifies the circumstances in which the contract price may be changed and provides a formula to enable a calculation of the price change. The circumstances giving rise to the revision may be specified or a price revision due to changes in external circumstances (change in the law) may be envisaged.

Priority of loan A loan agreement may contain a clause defining the priority for repayment of the loan with respect to other debts of the borrower should the latter have insufficient assets to repay all its debts.

Procurement services A contract may require the supplier/licensor to give the purchaser/licensee assistance or advice to enable the latter to obtain a supply of suitable goods, whether from the supplier/licensor or directly from third parties.

Production facilities of the company A joint venture contract may regulate the construction and use of the joint venture company's manufacturing facilities.

Protection of licensor's ownership of trademark (or other industrial property) Licensing contracts, par-

ticularly contracts granting a trademark licence, may contain a clause stating the licensee's recognition of the licensor's rights of ownership or making other statements designed to protect the licensor's rights.

Provisional acceptance Contracts for the construction of works or supply of goods may contain a clause specifying that on the fulfilment of certain conditions (inspection, tests, etc.) the purchaser will be deemed to have accepted the goods or construction. Provisional acceptance is usually followed by a guarantee period and then by final acceptance.

Purchaser/licensee's right to use information Such a clause defines the extent to which the purchaser/licensee may use information obtained in the performance of the contract.

Purchaser to carry out repairs A contract may give the purchaser the remedy of carrying out repairs to defective goods supplied at the cost of the supplier in the event that the supplier does not fulfill its guarantee obligations.

Quality control Licensing contracts, particularly ones in which the use of trademarks is granted, often contain a provision requiring the licensee to maintain certain standards of quality in the goods manufactured or sold under the contract. Such a clause may also detail how the licensor is to be facilitated in checking such quality is maintained (e.g. the licensee may be required to provide samples).

Recitals The preamble to the contract may consist of recitals describing the business background of the parties, explaining the reasons for the agreement and the purposes and objectives of the contract.

Reduction in shareholding This clause in a joint venture contract defines the circumstances and conditions under which joint venture members may reduce their shareholding in the joint venture company.

Registration of contract This clause describes any registration of the contract which may already have occurred or which is required to take place. The phrase also describes any permits in respect of the contract which may have been obtained or which ought to be obtained.

Representations A contract may contain a clause which sets out one or both of the parties' qualifications. The clause may contain statements as to the parties' capacity to enter the contract.

Revocation of previous contract Where a contract follows upon another between the parties, the second contract may contain a clause putting an end to the previous contract and all obligations arising under it. (See also "Accrued rights".)

Right of first refusal to purchase shares A joint venture contract may give the joint venture members the option to buy the shares of any joint venture member desiring to sell shares before these are offered to third parties.

Rights granted This clause appears in licensing contracts and describes what the contract entitles the licensee to do beyond the specific licences granted to use patents or trademarks, if such are granted in the contract. In the case of licensing contracts for unpatented processes, this clause constitutes the licence.

Rights of purchaser/licensee The rights and powers which are to accrue to the purchaser/licensee in conse-

quence of the contract but subsidiary to its main purpose are described here.

Rights of supplier/licensor This clause gives the supplier/licensor authority to do certain acts, usually designed to enable the supplier/licensor to ensure compliance with the contract by the purchaser/licensee. The clause may also specify what is not granted by the contract, in other words, it may describe rights retained by the supplier/licensor which might otherwise be thought to have been granted to the purchaser/licensee.

Rights of parties This clause indicates that the parties are entitled to enforce remedies against each other for breach of contract over and above those remedies specifically provided for in the contract.

Scope of licence or of rights granted This clause defines the extent of the licence or of the rights acquired by the purchaser/licensee, e.g. whether the supplier/licensor has the right to grant to others licences or rights in the same industrial property as it has granted a licence or rights to the purchaser/licensee. The clause may also describe what is not granted.

Scope of services This is a heading which covers a wide number of subjects, from services in erecting equipment to management services. In essence, the work to be carried out by the supplier/licensor is described in this clause.

Secrecy Most licensing and technical assistance contracts, and some other types of contracts, contain a clause binding on one or both parties requiring them not to disclose information of a confidential nature which they may acquire in the performance of the contract.

Service requests A maintenance contract may contain a clause detailing the manner in which the purchaser is to make requests for the provision of the service.

Settlement of disputes Many contracts provide for arbitration rather than judicial proceedings as the forum for ultimately settling disputes which arise under the contract. The clause providing for arbitration may set out details of how the arbitration is to be organized. This clause may also provide for other means for the parties to solve their differences such as conciliation or the intervention of an independent expert.

Share subscription This clause in a joint venture contract specifies the level of subscription in the joint venture company of each joint venture member and may also indicate how the members are to pay their subscriptions.

Staff to be employed This clause specifies from what source one or both parties are to recruit staff.

Standards The standards to be employed in the fulfilment of the supplier/licensor's obligations under the contract are described in this clause.

Sub-contracting This clause describes the extent to which one or both the parties are entitled to depute performance of their obligations to another party. The liability for performance of its obligations by the party deputing may also be described.

Sub-licences Licensing contracts may contain a clause specifying the licensee's right or prohibition from granting a third party a licence in the same subject matter as is licensed in the contract. Where the right to grant sub-licences is given, the conditions for the exercise of the right may also be detailed.

Substantive transaction Some contracts set out in an initial clause what the basic agreement between the parties is, i.e. that the supplier/licensor is to provide goods or services or grant a licence in consideration of the payment of the purchase price.

Successors bound by contract A contract may provide that a successor to either party will be bound by the terms of the contract.

Supplier/licensor deemed fully cognisant A contract may contain a clause stipulating that the supplier/licensor is fully aware of the requirements of the purchaser/licensee and/or that the supplier/licensor knows the purchaser's local conditions.

Supply of goods This clause regulates either or both parties' obligations with regard to the supply of goods. Thus the clause may require the supplier to provide certain goods to the purchaser or, conversely, may require the purchaser to buy goods from the supplier.

Supply of know-how A licensing or technical assistance contract may contain a clause stipulating that the supplier/licensor is to provide the purchaser/licensee with know-how for the manufacture of certain products or for the use of certain processes. The phrase "know-how" has quite a wide meaning in this context.

Supply of raw materials A licensing or other contract may require the supplier/licensor to provide the purchaser/licensee with raw materials to enable the purchaser/licensee to manufacture the licensed or other products.

Supply of spare parts A contract which requires the supplier/licensor to supply goods to the purchaser/licensee may also require the supplier/licensor to make spare parts for the goods supplied available to the purchaser/licensee. The length of time for which the supplier/licensor is to fulfil this obligation may also be specified.

Suspension of services A clause with this heading describes the circumstances in which the supplier/licensor may temporarily cease the performance of its obligations and the consequences of such suspension. Suspension may result from force majeure (see "Force majeure").

Termination This phrase not only describes the circumstances in which the contract may be brought to a premature end (see also "Default") but also the consequences of such an ending of the contract; what is to be the effect of the termination on the rights and obligations of the parties.

Terms of withdrawal of funds A loan agreement may specify the time within which the borrower may withdraw the loan funds or may set other conditions to the withdrawal of the loan (e.g. the giving of notice of withdrawal).

Territory Licensing contracts usually contain a clause specifying the country or region in which the licensee may manufacture the licensed products or where it may sell them. Sometimes this limitation will be contained in the "Grant of licence" or the "Rights granted" clauses and is not dealt with separately. This clause may also be used to state that there is no limit on where the licensee may manufacture or sell the products.

Tests This clause refers to the tests to be carried out on

the works constructed or equipment supplied to ensure that all the services and goods to be supplied have been so supplied. Usually these tests are a condition of payment.

Timetable for completion or performance A contract may contain a clause detailing the times within which certain obligations under the contract are to be performed or completed by the supplier/licensor.

Third party bound by contract A joint venture contract may provide that any party becoming a shareholder in the joint venture company will be bound by the terms of the joint venture contract.

Third party claims This clause defines the parties' obligations towards each other in the event of a third party infringing some right or claiming some entitlement in the subject matter of the contract.

Third party indemnity This phrase refers to the promises given by one party to the contract to the other to save the other party harm from any claim by a third party to be injured by some element of performance of the contract.

Transfer of ownership Such a clause describes the circumstances in which and the time when the supplier/licensor is to hand over the constructed works, the erected equipment or documentation relating to such works, equipment or to a licence granted.

Transfer of shares This clause in a joint venture contract regulates the manner of and conditions necessary for the transfer of shares in the joint venture company.

Under-estimate of price Some contracts contain, not a definite price, but an estimate of what the price will be found to be when the contractual obligations are completed. Where such an estimated price is given, the contract may contain a clause specifying the conditions upon which the price may be allowed to exceed the estimate.

Variations This clause specifies whether or not the purchaser/licensee can ask for changes to be made in goods to be delivered or services to be rendered and describes the consequences of such changes.

Waiver Many contracts contain a clause stipulating that any forbearance by one party in the face of a delay or default of the other is not to mean that the forbearing party will not be entitled to seek a remedy to that defaulted or delayed obligation.

Warranty This clause contains an assurance or material representation that the supplier/licensor will carry out its obligations in a particular way, that the goods and services will contain certain qualities or that the supplier/licensor itself has certain qualities. This clause may also refer to the standards to be employed and the levels of service which are promised. The purchaser/licensee may also give a warranty about how it will use the goods, services or the licence granted.

Working hours A contract for the provision of services may contain a clause specifying the times during which the services will be provided.

Model form of contract – Republic of Korea

We have recently received a copy of a recommended technology transfer contract by the Korean Government, which we feel would be of interest and help to many of our

readers who may be in the throes of drawing up contracts.

THIS AGREEMENT, made and entered into on () of (,198) () by and between (), a corporation organized and existing under the laws of (), having its main office and place of business at () (hereinafter referred to as "Licensor") and (), a corporation organized and existing under the laws of the Republic of Korea, having its main office and place of business at (), Republic of Korea (hereinafter referred to as "Licensee").

WITNESSETH;

WHEREAS, Licensor has long been engaged in the manufacture and sale of () Products (hereinafter referred to as "the Licensed Products"); and

WHEREAS, Licensor has acquired and possesses valuable technical information on the design, manufacture, erection and use of the Licensed Products; and

WHEREAS, Licensor has the right to grant a licence to use Technical Information (or Industrial Property Rights) in connection with the Licensed Products; and

WHEREAS, Licensee desires to obtain, and Licensor is willing to grant, the right and license to manufacture, use and sell the Licensed Products utilizing technical information furnished by Licensor.

NOW, THEREFORE, in consideration of premises and covenants hereinafter set forth, the parties hereto agree as follows,

Article 1. Definitions

As used in this Agreement, the following terms have the following meanings respectively;

1. "Licensed Products" mean as mentioned below. As to details of the Products, the stipulation of Appendix hereto shall apply.
2. "Technical Information" means all the technical knowledge, know-how, standard calculations, data and information developed or otherwise generally used by Licensor pertaining to the manufacture, use and sale of the Licensed Products.
3. "Contract Territory" means the territory subject to the Government of the Republic of Korea.
4. "Industrial Property Rights" mean any or all rights under patents, utility models and application therefore presently owned or hereafter acquired by Licensor and/or which Licensor has or may have the right to control or grant license thereof during the term hereof and which are applicable to or may be used in manufacture of the Products. ()
5. "Licensed Trademarks" shall mean the trademarks which are specified in Appendix () hereto.

Article 2. Grant of License

1. Licensor hereby grants to Licensee (an exclusive, a non-exclusive) right to manufacture, use and sell the Licensed Products using the Industrial Property Rights and Technical Information furnished by Licensor in the Contract Territory.

2. Licensor hereby grants to Licensee (an exclusive, a non-exclusive) right to sell the Licensed Products to any country in the world (except).

Article 3. Sales Information

1. Upon written request of Licensee, Licensor shall furnish Licensee with necessary drawings, technical data and price information on a breakdown basis in order to enable Licensee to prepare quotations, in so far as such information is currently available from Licensor.

2. To assist Licensee in selling the Licensed Products, Licensor will furnish Licensee with one complete set of current materials generally used for sales promotion, such as brochures, catalogues and technical data available from Licensor, which cover the entire range of the Licensed Products.

Article 4. Technical Assistance and Services

1. Licensor shall supply Licensee with the following data in order that Licensee may manufacture to the best advantage the Licensed Products without delay.

(a) Drawings for designing, manufacturing and assembling.

(b) Specifications.

(c) Materials list.

(d) General calculation sheet.

(e) Data for inspections and trial operations.

(f) Fabrication and assembly procedures.

(g) Operating and instruction manuals.

(h) Any other necessary technical data and know-how generally used by Licensor.

2. Licensor shall, by request of Licensee, permit a reasonable number of technical personnel designated by Licensee to have opportunity to study the design and manufacture of the Licensed Products at Licensor's place of business. Licensee shall advise Licensor, in advance, of the purposes, numbers, names, qualifications and probable lengths of stay of Licensee's designated personnel desiring to visit Licensor. Licensor shall arrange to make available qualified personnel for consultation with, and training of such Licensee's personnel. Cost for round trips, meals, lodging, and other expenses of Licensee's personnel despatched for training shall be borne by Licensee.

3. Upon written request of Licensee, Licensor shall send to Licensee, subject to availability of personnel and to mutual agreement, qualified engineers and/or technicians to render assistance and services to Licensee in connection with the manufacture, sale and operation of the

Licensed Products for a reasonable period to be agreed upon by the parties hereto, provided, however, that Licensee agrees to bear the travelling expenses to and from () and living expenses in the Republic of Korea incurred by any such engineer and/or technicians. Licensor assures that such engineers and/or technicians are qualified with professional standards and reasonable skill, and will perform the assistance and services with care and diligence. ()

Article 5. Improvements

If at any time during the term of this Agreement one party hereto discovers or comes into the possession of any improvements or further inventions relating to the Licensed Products or in connection with the design, manufacture, use and sale of the same, the party shall furnish the other party with information on such improvements or further inventions without any delay and free of charge.

Article 6. Payment

1. In consideration of the Technical Information and the Industrial Property Rights furnished by Licensor to Licensee hereunder, Licensee shall pay to Licensor the following royalties in the amount and in the manner specified below.

(a) Initial Payment

Licensee shall pay Licensor the initial payment in US Dollars equivalent to (), Payment of the Initial Payment shall be made by means of telegraphic transfer remittance within () days from the date of approval of this Agreement by the authorities concerned, the Government of the Republic of Korea.

(b) Royalty

() percent of net selling price for each sale of the Licensed Products.

(c) Net selling price shall be the gross invoice price of the Licensed Products sold or otherwise disposed of by Licensee in normal, bona fide, commercial transaction without any deduction other than the following items of expenses, if any, to the extent to which they are actually paid and included in the gross invoice price.

(1) Sales discount

(2) Sales returned

(3) Indirect taxes on sales

(4) Insurance premiums on sales

(5) Packing expenses on sales

(6) Transport expenses on sales

(7) Sales commissions

(8) Advertisement fee

(9) Installation expenses at places where the Licensed Products are to be used.

(10) CIF price, and import duties of the rawmaterials, intermediate goods, parts and other components purchased from Licensor.

(d) Royalty shall be computed for a six month period terminating the last date of June and December of each year. Licensee shall make payment to Licensor within () days after receipt of relevant invoice from Licensor within () days after the last date of June and December of each year in the amount specified in Licensee's royalty statement mentioned in Article 8.

2. For the supervision and assistance by Licensor under paragraph 3 of Article 4, Licensee shall pay to Licensor service fees at the rates specified in Appendix () within () days after receipt of an invoice from Licensor.

3. All payments due under this Article shall be made in (US currency,) strictly in accordance with this article, converted from Won at the official telegraphic transfer selling rate of exchange prevailing in Seoul, Korea on the expiry date of the immediately preceding () month period of the calculation of the royalties hereunder.

4. All payments made to Licensor hereunder shall be by means of official telegraphic transfer remittance, mail transfer remittance, banker's check or through non-resident foreign currency deposit account established at bank(s) in () in the name of Licensee and shall be remitted to the bank designated by Licensor.

Article 7. Supply of components, parts and raw materials

1. Upon Licensee's written request, Licensor shall supply components, parts and raw materials to Licensee in due time and at reasonable and competitive prices.

2. Licensee shall open irrevocable Letter of Credit to buy components, parts and raw materials from Licensor.

Article 8. Records, Auditing and Reports

1. Licensee shall send its statement of royalties due for the immediately preceding () month period together with full evidences which Licensor may require, to reach Licensor not later than () days after the expiration of the immediately preceding () month period.

2. At the time of remitting the royalties, Licensee shall submit to Licensor a written report stating the net selling price, overall order price with clients, the number, and the type of the Licensed Products sold or used by Licensee under this Agreement during the () month period ended on 30 June and 31 December each year.

Article 9. Guarantee

1. During the terms of this Agreement, Licensor shall be responsible for damage resulting from defective Technical Information and parts furnished to Licensee by Licensor.

2. Licensor shall not be responsible for consequential damages resulting from the faulty application of Technical Information by Licensee.

Article 10. Duration and Termination

1. This Agreement shall be effective for an initial period of () years from the effective date of this Agreement.

After the end of this period, the Agreement shall expire without notice. The parties may agree to extend the term of this Agreement, provided, however, that any extension shall be subject to the necessary approval by the Government of the Republic of Korea.

2. If either party hereto continues in default of any obligation imposed on it herein for more than () days after written notice has been dispatched by registered airmail by the other party requesting the party in default to remedy such default, the other party may terminate this effect by registered airmail to the first party and this Agreement shall terminate on the date of dispatch of such notice.

In the event of bankruptcy, receivership, insolvency or assignment for the benefit of creditors of either party hereto, the other party may terminate this Agreement, effective immediately by giving the first party written notice to that effect.

Article 11. Use of Trademark and Brand Name

1. Licensor hereby grants to Licensee, upon the terms and conditions hereinafter specified, (an exclusive, a non-exclusive), non-assignable licence to use the Licensed Trademarks during such time as this Agreement subsist in such manner as not to deceive the public, on and in connection with the Licensed Products. Licensor will not grant a Licence to use the Licensed Trademarks in the Contract Territory to any other third party in Korea during the term of this Agreement.

2. Licensee shall be entitled to use Licensed Trademarks on Licensee's letter headings, invoices and all advertising and promotional material in such form and in such manner as shall be approved at the first consulting in writing with the Licensor.

3. Each Licensed Trademark shall be used only after it has been duly registered with the Patent Office, and after this Agreement has also been duly registered with the Patent Office.

4. This License to use the Licensed Trademark is provided on a royalty free basis.

5. If this Agreement is terminated, Licensee shall immediately cease using the Licensed Trademark.

Article 12. Patent Infringement

Should any Licensed Product manufactured by Licensee strictly in accordance with the Technical Information supplied by Licensor under this Agreement partially or totally infringe of patent right belonging to the third party which shall make a claim against Licensee for alleged infringement of such patent right, Licensee shall immediately by telex inform Licensor thereof and transfer the claim with all pertinent details to Licensor, who shall be responsible for handling of the claim and Licensee shall in no respect have any responsibility for the claim from such party.

Article 13. Secrecy

Licensee agrees that it shall not without prior written consent of Licensor sell, assign or divulge the Technical Information disclosed and furnished by Licensor hereunder in any manner to anyone except those of its employees and its subcontractors who will be using such information in the manufacture and erection of the Licensed Products.

Article 14. Taxation

Customs duties, taxes and any similar charges which may be imposed by the Korean Government with respect to this Agreement shall be borne by Licensee. All other customs duties, taxes and similar charges which may occur in () as a result of entering into this Agreement shall be paid by Licensor.

Article 15. Arbitration

Any dispute arising under or by virtue of this Agreement or any difference of opinion between the parties hereto concerning their rights and obligations under this Agreement, shall be finally resolved by arbitration. Such arbitration proceedings shall take place in (Seoul, Geneva) in accordance with the applicable rules of arbitration of (the Korean Commercial Arbitration Board, the International Chamber of Commerce), but the proceedings should take place in the English language. The decision of the arbitration proceedings shall be final and binding upon both parties.

Article 16. Effective Date

It is clearly understood and agreed by both parties that this Agreement shall be deemed effective when all conditions imposed by the Korean Government and the Government of () shall have been met to the satisfaction of Licensor and Licensee.

The date of the letter of such government approval shall become the effective date of this Agreement. Licensee and Licensor shall notify in writing to the other party specifying the date of their respective Government's approval.

Article 17. Applicable law

This Agreement shall be construed and interpreted in accordance with the laws of the Republic of Korea.

Article 18. Force majeure

Neither party shall be liable to the other party for non-performance or delay in performance of any of its obligation under this Agreement due to causes reasonably beyond its control including fire, flood, strikes, labour troubles or other industrial disturbances, unavoidable accidents, governmental regulations, riots, and insurrections. Upon the occurrence of such a force majeure condition the affected party shall immediately notify the other party with as much detail as possible and shall promptly inform the other party of any further developments. Immediately after the cause is removed, the affected party shall perform such obligations with all due speed unless the Agreement is previously terminated in accordance with Article 10

hereof.

Article 19. Notices

All communication notices or the like between the parties shall be valid when made by telegraph or telex communication subsequently to be confirmed in writing and addressed to the following addresses

To Licensee:

To Licensor:

Article 20. Language

1. The language to be used in rendering the Technical Information disclosed and furnished to Licensee by Licensor under this Agreement shall be in English.
2. The language for correspondence between the parties and any documentation shall be in English.

Article 21. Entirety

This instrument embodies the entire agreement and understanding between the parties hereto relative to the subject matter hereof and there are no understandings, agreements, conditions or representations, oral or written, expressed or implied, with reference to the subject matter hereof that are not merged herein or superseded hereby. No modification hereof shall be of any force or effect unless reduced to writing and signed by the parties claimed to be bound thereby and no modification shall be effected by the acknowledgement or acceptance of any order containing different conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

For and on behalf of

By:

Typed name:

Position:

For and on behalf of

By:

Typed name:

Position:

An introduction to the use of warranties and guaranties

For the benefit of our readers, we shall be reprinting a number of extracts in the next few issues of the *TIES Newsletter* from a highly informative paper we have had prepared by Mr. G. Markos of Chemokomplex, Budapest, Hungary.

The purpose of this paper will be to serve as an instruction manual during training workshops on contract and licensing procedures which we have found to be increasingly in demand by the developing countries.

The question of warranties/guaranties is *one of the most important* and also *one of the most intricate* problems in the international transfer of technology and yet, in general, it receives much less attention in the developing countries

than for example the problem of payments or that of the restrictive clauses.

The question, *why* is the problem of warranties/ guarantees *one of the most important ones*, can be easily answered:

Because the transfer of technology is one of the most important tools in the advance of the developing countries, and since it usually involves considerable amounts of money, usually in limitedly available free currency – especially when connected with the construction of a complete plant – the recipient company and its government are keenly interested in *getting assured that the project would bring the expected results*.

We may ask the question: *are warranties/guaranties the best assurances* for the success of the transfer of technology?

Whilst they are important and their role must be very strongly emphasized, the answer to this question is definitely: *NO*.

The best assurance, the best guaranty for a successful technology transfer is the proper selection of the technology and partner for such transfer, the thoroughly and well organized preparation and realization of the investment and that of the transfer, the creation of the proper interest in the success of all parties and persons involved and concerned, the good relationship based on mutual trust between the parties – and a carefully, precisely, fairly and properly conceived and worded agreement or contract – the warranty/guaranty clauses included.

In the process of transfer of technology we usually need *a new plant* or get an existing plant converted or enlarged. This involves a great variety of activities: supply of technology with the grant of licence rights, supply of basic engineering, supply of detailed or simple engineering, execution of civil engineering works, supply of equipment, execution of erection and commissioning, supervision of erection and of commissioning, provision of training, supply of software, supply of ancillary industrial property (trademark, utility model, etc.) rights, supply of management, etc.

All these activities may be covered by *one single agreement* or contract or they may become subjects of *more separate agreements* or contracts.

N.B. The words "agreement" and "contract" are both used here. It should be remembered, however, that in the Anglo-American legal usage, a *binding agreement*, irrespective of the fact, which title or word is used, is a "contract".

Our *responsibility* and also our *risk* is the greater, the more suppliers and contracts are involved. Our risk is reduced most in the case of a turn-key contract or in the case of a complete plant with an integrated responsibility of the supplier. Not only that the risk is reduced and the number of partners we are confronted with is reduced to one or two, but the formulation of the contractual warranties/guaranties is also significantly simplified. We are permitted in such a case not to bother with all the details, with all part supplies and services, but to concentrate on the really vital points.

Needless to say, this solution is more expensive.

In order to make an economy in free currency, we often may be forced to un-packaging, i.e. to want that what could

be produced and done by local suppliers, should be supplied or done by them.

In such cases, possibilities as to *structure of contracts and responsibilities* are principally as follows:

- We succeed in getting the licensor to accept that he subcontract such local suppliers as a main contractor. In this case the contract still remains a real turn-key or complete plant job.
- We accept the role to act as the sub-contractor to the licensor and we make the contracts with the local suppliers. In such a case we take the responsibility for our part suppliers, leaving the responsibility of the licensor as main contractor for the entire plant quasi intact. In such a case the agreement will be a "quasi turn-key" or a "quasi complete plant" one.
- We make the contracts with the local suppliers and exclude such supplies from the scope of our contract with the main contractor. This is also a variety of the quasi complete plant contract.
- We undertake the role of the main contractor, sign a licence agreement with the licensor, an engineering agreement, contracts for civil engineering works, contracts for the procurement of all equipment, contracts for erection and commissioning and agreements for technical assistance.

This series of possibilities is a series of decreasing expenses, but also a series of increasing responsibilities and of risks from our own point of view.

The choice will be ours. It will be a matter of sound and realistic, prudent judgement of the local forces and experience, of the task, of the financial possibilities and of the risks involved. The more experienced our staff and management is, the more inclined shall we be to take such risk and become even more experienced, earlier and more self-reliant, otherwise the damage could be much greater than the economy that could be made in expenses.

Independently from the possibility of the above structure, from the number of contracts, of the type of the contract in question, it will be valid for every contract that the *main obligation of the supplier is to supply the goods or provide the services as specified in the contract*, whilst the *main obligation of the Licensee* is a double one: *to accept the goods or services and to pay the considerations, again as specified in the contract*.

What is the *role of warranties/guaranties* in a contract?

To clearly stipulate the contractual liability of the supplier for defects in his supplies.

What is *liability*?

According to *Black's Law Dictionary*, "liability is a broad legal term to describe the state of someone who is bound in law and justice to do something which may be enforced by action or to do, pay or make good something; it is an unliquidated claim".

And "*liable*", i.e. *to be liable* means: "bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation or restitution; to be obligated; accountable for or chargeable with; exposed, as to damage, penalty, expense, burden, or anything unpleasant or dangerous; justly or legally responsible or

answerable".

According to *Webster's Dictionaries*, "liable" is the state of someone answerable for consequences; the state of being bound to make good a loss; the state of being responsible; of being liable.

And "liable" or to be liable means: "1. legally bound, as to make good any loss or damage that occurs in a transaction; answerable for consequences; responsible; 2. likely to have, suffer from, etc. exposed to or subject to; 3. subject to the possibility of; colloquially: likely (synonyms: subject, open, exposed, susceptible, prone)".

Consequently: liability means a responsibility of the "liable person" to do something he promised to do and for making good the damage caused by his not doing it or not correctly doing it, such responsibility being enforceable by law.

In other words: to promise means to undertake an obligation. And obligation is inherent with being responsible or liable for acceptance of its consequences.

In everyday language, the role of the warranty/guaranty provisions in a contract is to specify what the responsibilities of the supplier are in the case of defects, or in other words, what he is to do if something goes wrong within his scope of obligations.

Now, it has been said that the problem of warranties/guaranties is not only one of the most important ones, but also one of the most intricate ones. Why?

This question is not so easy to answer, because it is the result of a number of factors and aspects.

Before indicating here at least some of such factors or aspects, without going much into details and into theory, let us first try to clarify the meaning of the main terms used.

What is a WARRANTY?

According to *Black's Law Dictionary*, "it is a promise that a certain fact or state of facts, in relation to the subject matter, is, or shall be, as it is represented to be".

According to the *Webster's Dictionary*, "it is a legal deed of security, a promise from a vendor to a purchaser, that the thing sold is such as represented. It is a guaranty, specifically a guaranty or an assurance, explicit or implied, of something having to do with a contract, as of sale; especially, the seller's assurance that the goods or property is or shall be as represented, or promised to be and although breach of such undertaking does not void the contract, it does make the warrantor liable for damages. A usually written guarantee of the integrity of a product and the good faith of the maker given to the purchaser and generally specifying that the maker will for a period of time be responsible for the repair or replacement of defective parts and will sometimes also for periodic servicing (a one-year warranty on a television set)".

The one, who warrants, i.e. provides such promise, is called the WARRANTOR, whilst the one, to whom it is made, is called the WARRANTY.

And what is a GUARANTY?

According to the *Webster's Dictionary*, "it is a form of warranty, an undertaking that the engagement or promise of another one shall be performed: specifically (a) a pledge that something is as represented and will be replaced if it does not meet the specifications, (b) a positive assurance

that something will be done in the manner specified; a GUARANTEE; an expressed or implied assurance of the quality of goods offered for sale, or the length of satisfactory use to be expected from a product".

The text of the dictionaries was quoted at such length to show what difference there is between the "commercial usage" and the "strict legal usage" even in the Anglo-American practice, not to speak of the differences in the way of writing them. It should be added that in the legislation of a number of European countries, the term "guaranty" means obligations expressed in the contract, *additional* to the warranties.

In short, warranty is a promise that the "thing" sold will be as it is promised to be.

Some of the factors and aspects making the problem of warranty/guaranty provisions intricate

Such aspects or factors could be grouped according to their legal, economical and commercial nature.

Let us review some of the more important ones.

At the beginning of this article above it has been mentioned that the transfer of technology usually involves a great variety of activities. In addition to those said above, it is obvious that the supplier's responsibility for the commodity sold by him will be different from that for the service provided by a consultant, or from one's doing a simple detailed engineering job not involving know-how, only conventional design knowledge or experience, or from one's doing a basic engineering for a special and proprietary process involving know-how (covered perhaps by a patent), or from that of a supplier of an equipment not developed by him only produced on the basis of drawings given to him, or from that of a supplier of serial catalogue equipment or from that of a company undertaking an erection job, or from someone providing a proprietary software.

The responsibilities in said cases will considerably differ from each other in contents, limits and liabilities.

The above activities also have legal contents as obligations and are of a different nature having an influence on and affecting both the circle of responsibilities and the price.

According to *Black's Law Dictionary*, it is: "A collateral agreement of another's undertaking: A promise to answer for payment of debt or performance of obligation if the person liable in the first instance fails to make payment or perform the obligation; An undertaking by one person to be answerable for the payment of some debt, or the due performance of some contract or duty, by another person, who himself remains liable to pay or perform the same: A guaranty is a contract that some particular thing shall be done exactly as it is agreed to be done by one person or another, and whether there be a prior or principal contractor or not".

Black continues:

"Guaranty and warranty are derived from the same root, and are in fact etymologically the same word, the "g" of the Norman French being interchangeable with the English "w". They are often used colloquially and in commercial transactions as having the same signification, as where a piece of machinery or the produce of an estate is "guaran-

teed" for a term of years, "warranted" being the more appropriate term in such a case. A distinction is also sometimes made in commercial (i.e. not legal - author's comment) usage, by which the term "guaranty" is understood as a collateral warranty (often a conditional one) against some default or event in the future, while the term "warranty" is taken as meaning an absolute undertaking, *in praesenti*, against the defect, or for the quantity or quality contemplated by the parties in the subject matter of the contract. But in strict legal usage the two terms are widely distinguished in this, that the warranty is an absolute undertaking or liability on the part of the warrantor, and the contract is void unless it is strictly and literally performed, while a guaranty is a promise, entirely collateral to the original contract, and not imposing any primary liability on the guarantor, but binding him to be answerable for the failure or default of another".

The one who GUARANTEES, i.e. provides such promise, is called the GUARANTOR, while the one to whom such promise is made, is called the GUARANTEE.

It should be mentioned that the word GUARANTY is nowadays often written in the form of GUARANTEE. It should not be mixed up with the person (the GUARANTEE) receiving the guaranty.

The supply or sale of a simple serial catalogue equipment, i.e. of a serial pump is clearly of the "dare" (to give) character. A simple detailed engineering or an erection is clearly of the "facere" (to do) character.

There are also mixed cases of both characters, e.g. the supply of a special unit equipment developed by the supply involving process and engineering know-how elements.

It will be obvious that in the case of *unpackaging* and by having separate contracts and separate suppliers for the above elements or activities involved with the project, it is quite an intricate job to harmonize not only the timing and sequence of such contracts, but also the obligations, responsibilities and liabilities of the partners. All the more so, as there are considerable differences in the various national legislations and in the codified laws and uncodified, so-called "common laws" not only in terminology, but also in the contents of the responsibilities or liabilities and in the consequences and remedies in the case of defects or defaults.

The technology transfer or the *licence* is a more intricate category than the above elements or activities from two points of view.

The first one is that it is of a *complex character* having both "dare" (e.g. supply of documentation) and "facere" (e.g. provision of training) elements, making it similar to those mentioned above, but having also a third element making it similar to that of a lease or usufructuary lease (the technology is not "sold" but "licensed", it is the licensor, who remains the owner, but the licensee - in a similar way as the usufructuary lessee - is entitled to make profits by its use), and also a fourth element making it similar to a contract for work (the licensor undertakes to produce a result).

The second point of view is that except for a few countries there is practically no specific legislation anywhere on licence or technology transfer agreements. Consequently, if disputes between partners to such agreements get into courts, since responsibilities of a licensor

are not dealt with in most of the national legislations, the judge will have to apply the rules or norms relating to the sale, to the lease (usufructuary lease) or to the contracts for work, i.e. the general rules of contract law dealing with tangible commodities, whilst the licence and its subject, the technology are definitely non-tangible commodities.

The job of the court would be considerably easier if there is a clearly, precisely and fairly worded contract.

The above described situation might even be more aggravated if such a dispute has to be judged by a court of a developing country, where *courts* are even *less experienced* in the judgement of such disputes and where in a considerable number of countries, no codified law exists.

Even in cases where the national legislations contain rules or norms concerning such transactions, many such *rules are not binding*. Consequently, the contents and provisions of the contract will become more important and these will greatly depend on the negotiating power of the parties, where the licensor will have more experience and therefore be at an advantage - except for a well-prepared licensee, matching him.

Legal literature available on warranties/ guaranties and connected provisions: are usually and *mainly written from the supplier's point of view*, providing little help to the licensee.

Differences in the technical/industrial natural environment and development stage of the technology supplying and acquiring parties are usually great. Because the licensor might only be accustomed to partners at a similar stage of development to his own, even in the case of perfect goodwill, he might under estimate or over estimate the possibilities of the licensee, resulting in difficulties in the execution and leading to disputes. This makes it even more imperative that the licensee be well prepared and doubly thorough in wording the contract in general and the warranty/guaranty and connected provisions of the contract in particular.

Resulting from the nature of the licence, in the concept of most national laws, and mainly in the common law countries, as already mentioned, responsibilities of a licensor are not dealt with. In addition to those already mentioned, it also has the result, that *the risk should mainly be borne by the licensee*. For quite a long time in the history of licensing, it was the principle of "*caveat emptor*" (the buyer should be careful) that prevailed and in some countries it partly continues to prevail. For a historically quite long period, no guaranty was given by the licensor, and as McIlville cited it, a typical clause of licence agreements reads as follows:

"Licensor believes that know-how supplied or to be supplied hereunder will be of commercial value to Licensee, but does not warrant or represent that any of it is fully comprehensive in its fields, that it is suitable to Licensee's purposes, that it is or is not capable of being patented, that it does not infringe the rights of third parties and will not cause any damage or harm..."

This has changed, and nowadays licensors are already inclined to offer some guaranties (not all of them).

Usually, the licensor is prepared to warrant that the product works if the technology is correctly applied. The licensor would probably seek to disclaim all responsibility

other than this.

It must be admitted that there are a number of reasons for their cautiousness, among them that much of the success of a licence or of the transfer of technology depends on the activity and participation of the licensee, on his skills, on the conditions prevailing at his works and in his industry, on his supplies, etc.

It has been mentioned already that many of the rules or norms in existing legislations (these are called "implied warranties") are not binding. It also should be mentioned that there are also binding rules. Such binding legal norms have priority over contractual provisions and cannot be validly excluded.

But also non-binding norms or rules have a relevance, in so far as the contents of such norms should be compared with the contents of the suggested warranty/guaranty provisions. If the latter is found to be more restrictive than the *non-binding law provision*, they may serve for the recipient as a *valuable guideline* both in the wording of the contract and in negotiating it. Preparation therefore should also include the study of the provisions of the governing law, since the statutory provisions could be more favourable for the licensee than the contractual warranties.

It should be kept in mind that a warranty/guaranty is also a commodity and also has a price that must be paid. Consequently, an over-extensive thrust for too severe warranty/guaranty provisions may not only lead to an increase of the licence fees, but also might result in an over-dimensioning of the equipment by the licensor in order to reduce his risks in not meeting the guaranty values.

This, of course, would mandatorily lead to an unnecessary increase of the cost of the entire investment, impairing the calculated return of capital. Therefore, it can be said that the extent and the contents of the warranty/guaranty provisions are a matter of sound and prudent business judgement, to find the limit between what is critical and must be guaranteed and what is overdoing things in order to over-assure ourselves.

The *interests of the two parties are definitely conflicting* ones before the contract is signed. Obviously, the licensor will be interested in reducing his own responsibilities and liabilities and if not totally excluding such liabilities, at least to reduce the content of guaranties below that provided by law and to set a limit to his liabilities as low as possible. Quite obviously, the licensee will be interested to extend the content of the guaranty beyond that provided by law and to set the limit of the licensor's liabilities as high as possible. This again emphasizes the importance of the negotiating power of the licensee, but also, how intricate a job it is.

In what has been said above some of the factors and aspects making the problem of warranty/guaranty provisions not only an important but also an intricate one has been given.

Why do we need warranty/guaranty provisions in the transfer of technology agreements?

Vulgarly speaking, because we want to be assured that we get what we expected to get by signing the contract or contracts and because the best designed and most carefully prepared products are very often imperfect.

Legally, we need such provisions in the contract(s), because should anything go wrong due to some wrongly fulfilled or unfulfilled obligation, and should the dispute come to a legal process, the first and most important "law" (after the constitution and some stringent rules) any civil court or board of arbitration will consider, will be the 'will of the parties', as laid down in the contract(s). It is also, because, as already indicated, most of the potential laws governing the contract do not clearly specify the responsibilities and liabilities in the technology transfer agreement for the good performance of a licensed technical solution, and because consequently, such responsibilities and liabilities might exist only to the extent as specifically worded, stipulated and undertaken in the contract(s). And it is also because the licence and know-how transfer is seldom the single subject and obligation in the contract, making the nature of the contract and of the obligations not only a mixed one, but also one, wherein such obligations are correlated to and overlapping each other.

It is therefore important, to have written provisions in the contract for warranties/guaranties which should be carefully, but fairly worded.

When emphasizing the importance of the warranty/guaranty provisions, it should be permitted to repeatedly remind ourselves of certain conclusions the history of transfer of technology transactions has taught.

As far as the issue of warranty/guaranty provisions has been dealt with in handbooks, manuals and other literature, it has been usually treated as a legal question which must be solved *after* a problem in the performance of the contract has arisen. It is therefore limited to the "ex post" or ulterior interpretation of given contractual clauses.

But we should always handle it from an "ex ante" or *preventive* approach. The licensee is less interested to solve problems and to settle disputes in court after they have arisen. His main interest is to *avoid* problems and disputes from the very beginning. A lucrative transfer of technology has never ended in court. And cases in court have rarely resulted in the lucrative production of the licensed goods.

Therefore, it should always be borne in mind that the set of warranty/guaranty provisions is only a means and not a purpose. And that our purpose is the success of the INNOVATION for which we need the assistance and long term truthful co-operation of the licensor, and that if we fail and our innovation fails, also his reputation will be at stake. *The reputation of any serious company acting as a licensor is a very serious and valuable guaranty.*

It also should be remembered that according to many experts in licensing, a license agreement and a technology transfer transaction comes close to a sort of a joint venture. It should be remembered that the licence fee is practically based on the profit-sharing principle. This also means that both parties take their share not only in the profits, but also in the risks. It should also be added that it is always the licensee that takes the greater part from both the risks and the profits.

Consequently, it again should be stressed that the best assurance, the best "guaranty" is the appropriate preparation of the transaction, the proper selection of the technology based on an extensive market research, the proper selection of the licensor, the timely and proper organization of the entire investment, the proper organization of

the absorption of the new technology, including the proper organization of research and further development, the harmonization of the interests of the recipient company with the national priorities, in short, to make the transaction a real INNOVATION process. In doing so, we will also have a proper, balanced contract and we will be able to have our risks reduced and our technology bring the expected results.

RECENT LEGISLATION

Transfer of technology regulations for Spain

In the last issue of the TIES Newsletter (No. 39) we mentioned under "Registry News" that Spain has adopted new transfer of technology regulations. Hereunder we are pleased to print a translation from the Spanish text.

From Official Bulletin of State No. 11 dated Wednesday, 13 January 1988, pages 1082-1091.

MINISTER OF RELATIONS WITH THE CORTES AND SECRETARY TO THE GOVERNMENT

671 Royal Decree 1750/1987 of 18 December liberalizing the transfer of technology and the provision of foreign technical assistance to Spanish enterprises.

Decree 2343/1973 of 21 September (published in the "Official Bulletin of State" dated 2 October), together with its procedures for practical implementation, has been the provision that to date has governed contracts for the transfer of foreign technology for the benefit of Spanish enterprises. While it has been in force, the Decree has enabled the Administration to exercise control over an aspect of particular importance in the economic life of the nation, namely the import of foreign technology. Nevertheless, owing, first, to the considerable industrial development in our country since that date and, second, to the pressing need for liberalization which, for transactions of this kind, derives from their "current" nature, it became an urgent matter to establish regulations to govern technology transfer that were more liberal than those embodied in the aforesaid Decree.

The present Royal Decree puts this into effect and expressly abolishes the rules in force until now. It also seeks to reconcile the essential principle of liberalization, embodied in article 2.1, with the need felt by the Administration to possess detailed qualitative knowledge of the type of technology and technical assistance imported by Spanish enterprises, as well as the participation by Spanish enterprises in technological research projects carried out beyond our frontiers, whether by international consortia, with the participation of a Spanish enterprise, or by the parent companies of the Spanish enterprises.

The twin objectives of liberalization and acquisition of information are reconciled by the establishment of an administrative vetting procedure to be carried out prior to transactions of this type, similar to that currently in force for specific foreign investments in Spain, a system which has proved to be a useful source of statistical information to some extent at variance with the principles of liberalization and flexibility in international mercantile trade. As a

guarantee that this prior vetting procedure is not designed to grant any discretionary powers to the Public Administration in connection with the transfer of technology and foreign technical assistance, article 2.6 stresses that vetting may only be negative when the value of the agreed counter-services clearly exceeds the true value of the technology transferred or of the technical assistance rendered.

The Royal Decree makes the General Directorate for Foreign Transactions the sole organ concerned with the particulars and vetting of transactions, but establishes a system to enable the General Directorate for Industrial and Technological Innovation to be kept abreast of operations subject to vetting. It also lays down that the Register of Contracts for the Transfer of Technology shall subsist, in a merely statistical role, and that the registration of contracts therein shall be a discretionary administrative procedure and shall not be a prerequisite for the effectiveness of the contracts.

Therefore, subject to the approval of the Ministry responsible for Public Administration, on the joint proposal of the Ministers for Economic Affairs and for Industry and Energy, and subject to the opinion of the meeting of the Council of Ministers on 18 December 1987,

I HEREBY DECREE THE FOLLOWING:

Article 1. *Sphere of application*

1. The following transactions are subject to the present Royal Decree:

(a) A non-resident transfers to a resident the right of ownership, exploitation or use of:

Patents of invention

Working models

Non-patented secret information applicable to production activity (know-how)

Computer programs for industrial or business use (software).

The foregoing shall in no case include programs for recreational purposes.

(b) A non-resident transfers to a resident the right of ownership, exploitation or use of registered trademarks or signs, models, industrial drawings or designs, or signs franchise agreements with residents in the capacity of franchiser.

(c) A non-resident provides a resident enterprise with any of the following services:

Engineering or elaboration of technical projects

Access to data bases or technical or economic information and documentation services for Enterprises

Any other form of technical assistance directly connected with the activity of the Spanish enterprise and requiring payment of more than 10 million pesetas per annum.

(d) A resident should pay non-resident persons or organizations for participation in research and development activities carried out by:

International consortia, groups, companies or unions of enterprises of which it is a member or in which it participates

Foreign companies or organizations of which it is a

parent or subsidiary enterprise.

2. The following services are not subject to the provisions of the present Royal Decree:

Those connected with assembly, supervision, start-up, maintenance or repair of machinery, means of transport, industrial plant and any other items of equipment.

Those connected with the training and instructions of personnel working for Spanish enterprises, whether provided in Spain or abroad.

Likewise, the present Royal Decree does not apply to derived transactions, such as sublicences, subfranchises or others, in which the transferer resident in Spain partially transmits to another resident the rights resulting from a transaction which is subject hereto.

3. The definitions of resident and non-resident are set out in the provisions of Law 40/1979 of 10 December, and Royal Decree 402/1980 of 10 October (published in the "Official Bulletin of State" dated 8 November) on the Legal Exchange Control system and the other such regulations.

In accordance with the terms of the above-mentioned regulations, branches and establishments in Spain of foreign legal entities or non-resident individuals shall be deemed to be resident in Spain.

Article 2. Conditions applicable to transactions

1. The transactions subject to the present Royal Decree may be carried out freely, but remain subject to the prior administrative vetting procedure. The omission of this procedure may give rise to the liabilities indicated in Law 40/1979 and Royal Decree 2402/1980, mentioned in the preceding article.

2. Prior vetting of transactions subject to the present Royal Decree shall be requested from the General Directorate for Foreign Transactions on form TE30, as shown in annex 1 hereto, which shall be accompanied in duplicate, with a Spanish translation if it is completed in any other language, by the accrediting documentation for the transaction (contract, invoice or similar document).

In the case of contracts which include more than one of the types of transaction defined in article 1.1, a single form TE30 shall be submitted.

In the case covered by article 1.1 (d), the accrediting documentation shall consist of the contract or agreement of the group making up the participating enterprises, the type of activity involved, the cost sharing criterion and the rights attaching to the enterprises.

3. The application must be submitted by the Spanish enterprise receiving the technology or benefiting from the technical assistance. Notwithstanding this, in the case of computer programs the application must be submitted by those who distribute them in Spain.

4. The General Directorate for Foreign Transactions shall immediately pass the application on to the General Directorate for Industrial and Technological Innovation of the Ministry of Industry and Energy, which shall give it a decision within the period of ten working days indicated in article 86.2 of the Law on Administrative Procedure. If the General Directorate for Industrial and Technological Innovation deems the documentation provided to be incomplete or defective, it shall notify the General Directorate for Foreign Transactions accordingly and the latter shall, if it has not already done so on its own initiative, re-

quire the party concerned to make good such defects or deficiencies, suspending the period referred to in point 8 of this article which shall recommence once the omission or defect has been corrected.

5. The General Directorates for Foreign Transactions and Industrial and Technological Innovation shall pass the documentation on to the General Directorate for the Protection of Competition if they find therein any clauses that may be contrary to Spanish or Community legislation on free competition.

If this occurs, it shall not interrupt processing of the application and the interested party shall be informed thereof.

6. The General Directorate for Foreign Transactions is only empowered to reject favourable vetting of a transaction when the value of the agreed counter-service clearly exceeds the true value of the technology transferred or the technical assistance rendered. If the General Directorate for Industrial and Technological Innovation thinks this may be the case, it shall notify the General Directorate for Foreign Transactions accordingly, as set out in point 4 of this article, and the latter shall reject favourable vetting of the transaction.

The rejection, of which the interested party must be notified, must be accompanied by the relevant reasons, as required in article 43 of the Law on Administrative Procedure, and under the provisions of that law may be subject to appeal.

7. If the application is favourably vetted, the General Directorate for Foreign Transactions shall process the model form submitted, one copy of which being returned to the interested party.

8. At the end of a period of 30 working days from submission of the documentation referred to in point 2, if there has been no express notification of a decision or any administrative notification, the transaction shall be deemed to have been favourably vetted.

9. After a period of five years from the date of favourable vetting of the transaction, the validity of it shall expire and it shall be necessary, on occasion, to submit an application for renewal using form TE30R, as shown in annex 2 to the present Royal Decree.

It will also be necessary to submit an application for amendment, using form TE30R, when any aspect of a transaction that has already been vetted is altered or there is any substantial change in the content of the transaction or the payment agreement.

10. Favourable vetting by the General Directorate for Foreign Transactions of a transaction subject to the present Royal Decree shall be considered effective for the sole purpose of exchange control and shall not prejudice either the fiscal assessment relating to foreign payments deriving therefrom or to the transaction's compliance with the remaining legal requirements.

Article 3. Conditions relating to payments

1. Once the transaction has been favourably vetted, either expressly or tacitly, the payments devolving therefrom may be freely made through the designated agency within a period of six months from the date of devolution, in accordance with the procedure established by the General Directorate for Foreign Transactions.

MINISTRY OF ECONOMIC AFFAIRS
 GENERAL DIRECTORATE FOR FOREIGN TRADE AND CO-OPERATION

DECLARATION OF FOREIGN TRANSFER OF TECHNOLOGY OR TECHNICAL ASSISTANCE

(I) INFORMATION ABOUT THE SPANISH TRANSFEREE ENTERPRISE

1. Holder: (domicile and telephone)	2. Representative: (domicile and telephone)	3. Number of declaration: 3 0 / 0 0 0 0 0 0 <input checked="" type="checkbox"/> INITIAL ESTABLISHMENT <input type="checkbox"/> Extension <input type="checkbox"/> Amendment <input type="checkbox"/> Correction of errors
Postal code	Postal code	

Principal activity and establishments: _____ C.M.A.E. _____
 PRINCIPAL ACTIVITY: _____

Class of establishment	Municipality	Province	Key	Class of establishment	Municipality	Province

5. Financial information 1. PAID UP COMPANY CAPITAL: _____ 2. NET ASSETS OR OWN RESOURCES: _____ 3. SALES FIGURE AND OTHER INCOME IN LAST ACCOUNTING PERIOD: _____	6. Percentage foreign participation: _____ % 7. Additional information 1. Involved in R&D activities: YES <input type="checkbox"/> NO <input type="checkbox"/> 2. Technology transfers to enterprises in other countries: YES <input type="checkbox"/> NO <input type="checkbox"/>
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(II) DATA ON THE FOREIGN TRANSFEREE ENTERPRISE

8. Foreign transferer enterprise and domicile: Country of residence: _____	9. Main activity: _____ C.M.A.E. _____ 10. Links with the Spanish transferee enterprise: _____
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(III) DATA ON THE TRANSACTION

11. Subject <input type="checkbox"/> 1. Patents of invention <input type="checkbox"/> 2. Working models <input type="checkbox"/> 3. Know how <input type="checkbox"/> 4. Software <input type="checkbox"/> 5. Trademarks or signs <input type="checkbox"/> 6. Models, industrial drawings or designs <input type="checkbox"/> 7. Franchise contract <input type="checkbox"/> 8. Engineering and technical projects <input type="checkbox"/> 9. Data bases and documentation services <input type="checkbox"/> 10. Technical assistance <input type="checkbox"/> 11. R&D in international consortia <input type="checkbox"/> 12. Participation in R&D costs of parent companies	12. Conditions <input type="checkbox"/> 1. TRANSFER OF OWNERSHIP <input type="checkbox"/> 2. TRANSFER OF RIGHT OF USE <input type="checkbox"/> 3. TRANSFER OF RIGHT OF MARKETING AND EXPLOITATION
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13. Technical specifications: _____

In the case of a transfer of patents
 Number on the Register of Industrial Property: _____
 Date of expiry: _____

14. Payment agreement (A) FIXED AMOUNTS: YEAR: _____ YEAR: _____ YEAR: _____ YEAR: _____ YEAR: _____ Statistical code* _____ Currency: _____ (B) VARIABLE AMOUNTS: DESCRIPTION: <input type="checkbox"/> DESCRIPTION: <input type="checkbox"/> DESCRIPTION: <input type="checkbox"/> Statistical code* _____ Calculation base: _____ X or unitary scale: _____ Date: _____ Payment forecast: YEAR: _____ YEAR: _____ YEAR: _____ YEAR: _____ YEAR: _____ YEARS: _____ (Estimated figures in pesetas)

15. Documents provided <input type="checkbox"/> Original contract <input type="checkbox"/> Invoice <input type="checkbox"/> Other documents: _____ _____	16. Date, signature and stamp of declarer: _____	17. GDFE VERIFICATION: _____	18. GDFE REGISTRATION: _____
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FORM 15/10

* To be completed by GDFE

If favourable vetting is given tacitly in accordance with the provisions of point 8 of the preceding article, the interested party must inform the designated agency chosen to make the payments of this circumstance.

2. With regard to the variable inputs to be transferred which are not indicated as fixed on form TE30 subject to vetting, the interested party shall notify the designated agency of the form established by the General Directorate for Foreign Transactions and its compliance with the payment agreement covered by the favourable vetting.

3. If the technology transferred takes the form of a direct contribution to a Spanish enterprise, in addition to the provisions of this Royal Decree it will be necessary to comply with the legislation governing foreign investments in Spain.

In particular, if the foreign investment specifies prior administrative vetting or authorization as stipulated in the Royal Decree 2077/1986 of 25 September (published in the "Official Bulletin of State" dated 7 October) approving the Regulations governing Foreign Investments in Spain and the various supplementary rules, the relevant application shall be submitted at the same time as the application for vetting of the transfer of technology.

Article 4. *Monitoring and control*

1. Without prejudice to the strictly confidential nature of the transactions covered by the present Royal Decree, the General Directorate for Foreign Transactions shall notify the General Directorate for Industrial and Technological Innovation of the transactions that have been favourably vetted and shall provide it with information for the purposes of the statistical monitoring of the ensuing payments.

2. The General Directorate for Foreign Transactions, on its own initiative or at the behest of the General Directorate for Industrial and Technological Innovation, may make a subsequent check on the truth and accuracy of the payments generated by the transactions to which the present Royal Decree refers and may also require the Spanish enterprises to provide any supplementary information needed to build up a better statistical picture of such transactions.

ADDITIONAL PROVISIONS

1. There shall be a Register of Contracts for the Transfer of Technology, established by Decree 2343/1973 of 21 September, for the sole purpose of statistical records, as indicated in the present Royal Decree.

2. Contracts for foreign technical assistance which are not subject to the present Royal Decree, as well as the costs incurred in the registration and approval of patents and trademarks, shall be free and the foreign payments deriving therefrom shall be subject to the procedure established by the General Directorate for Foreign Transactions.

TEMPORARY PROVISIONS

1. Proceedings concerning transactions subject to this Royal Decree which have not been completed when it takes effect shall continue to be processed according to the procedure applicable to date, without prejudice to the right of the interested parties to terminate their applica-

tion and submit a new application as required in the present Decree.

2. Holders of contracts for the transfer of technology and the provision of foreign technical assistance which are in force and have been authorized according to the previous requirements have the option of submitting an application for amendment in accordance with the procedures contained in the present Royal Decree using form TE30R.

The payments generated by the contracts mentioned in the preceding paragraph, whether or not they are amended, shall be subject to the procedures contained in the present Royal Decree from the date on which it takes effect.

FINAL PROVISION

The Ministries of Economic Affairs and of Industry and Energy are hereby empowered to lay down the provisions necessary for the enactment of the present Royal Decree and to amend the annexes thereto.

EXCEPTION

Without prejudice to the terms of the first additional provision, Decree 2343/1973, the Orders issued by the Ministry of Industry and Energy on 5 December 1973 (published in the "Official Bulletin of State" dated 17 December) and 30 July 1981 (published in the "Official Bulletin of State" dated 13 August) and any other provisions of equal or lower status than the present Royal Decree which are contrary to the provisions contained herein are hereby repealed.

Issued in Madrid on 18 December 1987.

Juan Carlos R.

Minister of Relations with the Cortes and Secretary to the Government

Virgilio Zapatero Gómez

PUBLICATIONS

Follow-up Subregional Meeting on the Promotion of Intra-African Industrial Co-operation within the Framework of the Industrial Development Decade for Africa (IDDA) Tangier, Morocco, 30 May - 3 June 1988

ID/WG.472/3(SPEC.) Revised integrated industrial promotion programme for the North African subregion. Background document No.1

ID/WG.472/4(SPEC.) Subregional co-operation in the fields of industrial training, consultancy and entrepreneurship. Background document No.2

ID/SER.M/23 Industry and development No.23 (ISBN 92-1-106223-3/ISSN 0250-7935) (Sales No.: E.88.III.F.3 \$US 18)

ID/354 (UNIDO/LIB/SER.B/62) Industrial development abstracts. UNIDO Industrial Information System (INDIS) Nos. 15401-15700 (ISSN 0378-2654 \$US 22)

ID/357 (ID/WG.470/11) First Consultation on the Non-ferrous Metals Industry. Budapest, Hungary, 30 November - 4 December 1987. Report.

*First Consultation on the Non-ferrous Metals Industry
Budapest, Hungary, 30 November - 4 December 1987*

ID/WG.470/11 (ID/3.1) Report.

ID/SER.M/22 Industry and development No.22 (ISBN 92-1-106222-5/ISSN 0250-7935) (Sales No.: E.88.III.E.2 \$US 18)

PPD.41/Rev.1 Solidarity Ministerial Meeting for (SPEC.) Co-operation in the Industrial Development of the Republic of Cape Verde. Praia, Cape Verde, 6-10 June 1988. Basic country paper.

PPD.41/Add.1 Project proposals. Addendum. (SPEC.)

IPCT.56(SPEC.) Global Preparatory Meeting for the First African Regional Consultation on the Phosphatic Fertilizer and Pesticide Industry. Lomé, Togo, 3-6 February 1988. Report

IPCT.55 Meeting of the Consultative Group on Informatics Technology for Development. Vienna, Austria, 14-16 December 1987. Report

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IPCT.46 Small-scale manufacture of stabilized soil blocks. UNIDO/ILO Technical Memorandum No. 8

IPCT.54(SPEC.) Expert group meeting for the Asian and Pacific Region, in preparation for the First Consultation on the Sugar-cane Processing Industry. Guangzhou, People's Republic of China, 22-24 March 1988. Sugar situation in Africa, Asia, Latin America and the Caribbean, and Oceania: Problems and solutions

PPD.69 Tariff and non-tariff measures in the world trade of pesticides (prepared by the UNCTAD secretariat for UNIDO). Sectoral Working Paper Series No. 65

PPD.70 Management of industrial research and service institutes in the building materials and construction sector in developing countries. Sectoral Working Paper Series No. 66

IPCT.52(SPEC.) Technology profile on mini foundries

IPCT.53(SPEC.) Discussion meeting on advanced materials for developing countries. Vienna, 7-10 December 1987. Report

IO.69(SPEC.) Workshop on small-scale boatbuilding and boatrepair technology for the selected West African countries. Accra, Ghana. 30 November - 5 December 1987. Final report

PPD.62 The building materials industry: its role in low-cost shelter programmes. Sectoral Studies Series No. 39

IPCT.49 Joint UNIDO/UNESCO/KIER (Korean Institute of Energy and Resources) Workshop on Information Network for New and Renewable Sources of Energy and Energy Conservation in Small and Medium Industries of Asia and the Pacific Region. 26-31 October 1987, Daejeon, Republic of Korea. Report

IPCT.50(SPEC.) Information package on production of baker's yeast

IO.10 The rice bran oil refining technology

PPD.63 Industrial development review series. Zimbabwe

PPD.68(SPEC.) Improving the international comparability of industrial statistics: illustrations of UNIDO methods

PPD.72 Women and human resource development for industry

MEETINGS

16-20 May. Workshop on Industrial Co-operation among Developing Countries in the Field of Agricultural Machinery and Agro-Industries (UNIDO Meeting). Novi Sad, Yugoslavia.

16-22 May, 23 May-1 June, 2-9 June. Renewable Energy Equipment Projects Identification and Promotion Programme (UNIDO Meeting). Rome, Italy. Milan, Italy. Vienna, VIC Conf. Rm. III.

30 May-3 June. Follow-up Subregional Meeting on the Promotion of Intra-African Industrial Co-operation within the Framework of the IDDA for North Africa (UNIDO Meeting). Tangier, Morocco.

30 May-3 June. Workshop for UNIDO/INTIB National Focal Points on Industrial Information Networking and Co-operation (UNIDO Meeting). Moscow, USSR.

6-10 June. Solidarity Ministerial Meeting for Co-operation in the Industrial Development of the Republic of Cape Verde (UNIDO Meeting). Praia, Cape Verde.

7-10 June. Regional Expert Group Meeting on Small- and Medium-scale Enterprises including Co-operatives (African region) (UNIDO Meeting). Harare, Zimbabwe.

27-30 June. FAO/WORLD BANK/UNIDO Working Group on Fertilizers (UNIDO Meeting). Vienna, VIC Conf. Rm. VII.

June. Expert Group Meeting on the Processing of Raw Materials (UNIDO Meeting). Vienna, VIC.

June. Workshop on the Fisheries Industry in the Caribbean Islands (UNIDO Meeting). Port-au-Prince, Haiti.

5-15 July. UNCTRAL - Working Group on International Payments, 17th session. New York, USA.

6-8 July. Preparatory Committee on the Establishment of the International Centre for Genetic Engineering and Biotechnology (ICGEB), 12th session (UNIDO Meeting). Vienna, VIC Conf. Rm. III.

26-30 September. Interregional Consultation on the Food Processing Industry with Emphasis on Sugar Cane Processing (UNIDO Meeting). Havana, Cuba.

September. Expert Group Meeting on Fruits and Vegetable Processing in preparation for the First Consultation on the Fruits and Vegetable Processing Industry (UNIDO Meeting). China.

September. Global Preparatory Meeting on Small- and Medium-scale Enterprises including Co-operatives (UNIDO Meeting). Tallinn, USSR.

September (5 days). Expert Group Meeting on Off-shore Industry (UNIDO Meeting). Hamburg, Federal Republic of Germany.

17-28 October. UNCTRAL - Working Group on the New International Economic Order, 10th session. Vienna, VIC Conf. Rm. III.

October. Regional Expert Group Meeting in Central America on Low-cost Building Materials (UNIDO Meeting). Guatemala City.

October. Ninth Session of the Leather and Leather Products Industry Panel (UNIDO Meeting). P/cs, Hungary.

October. Asian Preparatory Meeting for the Regional Consultation in Africa on the Phosphatic Fertilizers and Pesticides Industries (UNIDO Meeting). Lahore, Pakistan.

7-11 November. Investors' Forum for the Philippines. (UNIDO Meeting). Manila, Philippines.

November (3rd week). Global preparatory meeting on the Electronic Industry (UNIDO Meeting). Grenoble, France.

5-16 December. UNCTRAL - Working Group on International Payments, 18th session. Vienna, VIC.

December. Investors' Forum for West Africa (UNIDO Meeting). Dakar, Senegal.

December. Regional Consultation on the Phosphatic Fertilizers and Pesticides Industries in Africa (UNIDO Meeting). Abidjan, C/te d'Ivoire or Lomé, Togo.

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

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