

# 新合同法

## 文本操作实务

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# 4 合同文本及合同拟订

## 技巧大全

中华工商联合出版社

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## 第二十一章 涉外合同文本及拟订技巧<sup>①</sup>

### 一、涉外合同文本标准范式及分析解说

#### (一)合同文本标准范式

##### 生产及装配许可协议

本协议是中国\_\_\_\_\_公司(以下简称甲方)和\_\_\_\_\_ (以下简称乙方)制订于1992年。

乙方希望自甲方取得生产和/或装配合同附件所列明的产品(以下简称许可证产品)。”许可证产品包括所有经过证实,增加或修改的许可证产品的组成部分。经过双方书面协议,附件A可以任何时间修改。

鉴于上述目的,甲方期望与乙方依本协议进行合作以生产及装配上述许可证产品。

据此,甲方与乙方双方就下列内容达成一致:

##### A. 生产及装配的权利

1. a. 甲方作为生产及装配许可证产品的权利所有人,特授予乙方生产及装配许可证产品,以及依照本协议条款出售许可证产品。但是,这一授权仅限于在附录甲所列明的许可证产品车型以及由甲方提出的涉及许可证产品的改进和技术解决方案,这种改进和技术解决方案是为使许可证产品更具竞争力,提高效率,更适合于市场并使生产效率提高并降低成本。其目的是为使现有甲方的设计在生产上有合理的延续性。

b. 并未列明在附录甲中的有关许可证产品“新的/更新的车型”的生产及装配的权利不包含在授权范围之内。所谓“新的/更新的车型”是指与附录甲所列任何一种车型在外观、性能或机械功能方面有明显区别的车型。新的/更新的车型可以在任何时候基于双方商讨同意后加入本协议。

c. 在新的/更新的车型加入本协议之中时,本协议有关此类新的/更新的车型内容的有效期限自将此车型加入附录甲之日起五年。

2. 甲方同意在本协议有效期内,除非有乙方的书面许诺,则自身不从事且亦不再授权他人在秘鲁生产及组装许可证产品,仅限于乙方在从事该许可证产品的生产及组装。

3. 乙方同意,本协议项下的授权不得自愿或非自愿地由乙方再行转让。双方同意甲方可以通过其子公司、分支机构,或甲方受证人及分合同执行人履行其合同义务并行使其权利。

4. 在本协议项下所授予的权利明确限制零部件的生产和采购以及更换零件的供应仅得用于许可证产品的组装。乙方同意自身不使用,亦不以任何方式向第三者出售、转化此类零部件以组装许可证产品之外的设备或为许可证产品之外的设备更换零件。

5. 乙方同意不在不符合甲方生产规范所生产的许可证产品上标识甲方的车型号。乙方亦同意须得到甲方批准后方可在许可证产品上标识替代牌号。

6. 乙方同意在未得到甲方事先许可的情况下,不在许可证产品上标识任何甲方的商标或商业名称,乙方亦同意本协议并不视为构成甲方对于其商标或商业名称的许可。

乙方明确同意如果因任何原因本协议终止,其将不得继续使用甲方的商标或商业名称,即使此

<sup>①</sup> 涉外合同有许多种类,没有标准文本。此处只是为了便于说明。

时依规定商标或商业名称许可协议并未终止的情况下亦如此。

7. 乙方须确认许可证产品是基于甲方的许可制造的,此类确认文件的形式和存放须经由甲方批准。

8. 如果自本协议生效之日起 10 个月内未采取生产许可证产品的积极步骤,则甲方有权选择是否将非独占地生产及销售许可证产品的权利扩展及他人。甲方将在采取扩展许可的行动之前三个月向乙方发出通知,以使乙方可以选择是否采取生产许可证产品的积极步骤。

#### B. 提供技术文件和技术援助

1. 甲方将在收到乙方书面请求之后的 90 天内向其提供依商标许可和技术援助协议 B.1. 部分所规定的两套文件,其中一套将是可复制的。

#### C. 更换零件

1. 乙方同意将保存有关更换零件的充分的纪录并允许甲方根据其需要查阅此类纪录。

2. 乙方应向甲方按季提供生产报告,如属尚未开始生产的情况,也应如实反映。

#### D. 部件及更换零件的供应

1. 甲方同意依本协议规定就其便利提供毛坯或成品形式的部件,以满足乙方生产许可证产品的需要。这类部件将是与现行甲方设计或依乙方订单相一致。

2. 乙方同意依本协议仅向甲方购买此类部件,这些部件是由甲方专有设计,或依甲方专有标准生产,或以甲方专有工具生产的,但由当地供货商依分合同供应的在生产的部件。

3. 甲方或其指定的子公司、分支机构或受证人可以甲方公布的许可证产品的净出口价格为基础出售部件。如果不存在净出口价格,则其价格是可以商讨的。双方确认此公布的净出口价格可由甲方于任何时候修改,其编制发票时的价格依订单发出之日生效的价格为准。

4. 乙方同意于当月 15 日向甲方或其所指定的子公司、分支机构、受证人下达确定的部件订单,并为甲方作出生产此类型号和数量部件所需不少于四个月的预先通知。乙方亦将尽其最大努力向甲方提出其后八个月的生产计划预计需求量。关于供货计划(订单)的修正,(无论是增加或减少、新的零部件序号的增加或前一计划数量的全部删除)均由甲方在当月 15 日前收到请求后在确定计划的当月和下月的一日或二日进行确认。

5. 甲方同意将由甲方或其子公司、分支机构或受证人向乙方供应非在秘鲁生产的更换零件,该更换零件价格为甲方所确定的净出口更换零件价格。

6. 乙方同意另行下达购买更换零件的订单,该订单与用于完整的许可证产品及其附件生产相区别。购买更换零件的订单应是具名的即:

7.a. 所有购买车辆或部件的由乙方下达给甲方或其指定子公司、分支机构、受证人的订单应同时伴有进口许可(如果必要的话)以及由一家中国银行确认的以美元标识的不可撤销信用证或其他双方同意的支付手段。该不可撤销信用证须在包装工厂启运之前至少两周送达甲方。

b. 所有购买更换零件的由乙方下达给甲方或其指定子公司、分支机构、受证人的订单应同时伴有进口许可(如果必要的话)以及由一家中国银行确认的以美元标识的不可撤销信用证或其他双方同意的支付手段。该不可撤销信用证须在包装工厂启运之前至少两周送达甲方。

c. 乙方同意通过一家美国银行设立一项担保金,金额为 20 万美元。该担保金将作为依上述 a 款和 b 款同意之开证能力的担保。

d. 甲方同意自本协议终止为满足用户需求而生产的许可证产品停止生产之日起五年内向乙方供应许可证产品所需更换零部件。此类供应应是以装运前预付现金或其他双方同意的方式支付。

8. 所有由乙方购买的货物均在甲方所属工厂交付给乙方。包装费用、内陆运输费用、装船费

用、海运杂费以及保险费不论由乙方出具指令与否,经甲方判别和斟酌后由乙方支付,仓储费用、保险费(内陆)、异议费用和其他费用,包括所有签证、认证和领事认证费用,以及所有银行费用和税费,均由乙方支付。

9. 甲方将从速满足已确认订单的要求并同意在任何情况下尽其最大努力按乙方所提出经确认的订单规定的日期或提前装运货物,但甲方不承担因非其所能合理控制的因素而未能按时装运或确认订单的责任。

10. 乙方须监督全部货物到港事宜的办理,并应在收到货物 60 天之内以书面形式通知甲方(最好是使用甲方标准溢短装及损害报告程序)关于所收到货物溢短装或货物损害索赔要求。如乙方未能在上述规定期间提供信息,则免除 NOR-INCO 更正其错误的责任。

如果通知按时送达,甲方将有一段合理的时间审核乙方的索赔要求,并依乙方的指令或要求,作出如下选择:

- (1) 延展或拒绝延长信用证以更换受损害部件;
- (2) 拒绝或给予乙方双方事先商定并由乙方进行的重复性工作费用;
- (3) 建议处置不当部件或溢装货物;
- (4) 建议对短装货物处理方法。

溢装部分和不当部件依甲方的要求运返预定地点的运费由甲方承担。

11. 甲方向乙方保证依本协议项下交付的所有部件和零件在依甲方标准组装车辆时就通常使用和服务目的在材料和工艺方面是无瑕疵的。基于本担保,甲方的责任限于在由其所指定的工厂修理或更换经甲方确认并发现有缺陷部件或零件。本担保将在乙方收到部件或零件之日 15 个月后或向以该部件或零件装配许可证产品的用户交付之日 12 个月后终止,二者以先达到者计。

12. 甲方不承担由于任何非因部件或零件缺陷而引起的不论是否属于本担保项下的任何直接或间接损失的赔偿责任。上述担保内容将优先于任何其他担保内容、明示及暗示担保内容,而且任何人,包括甲方的代理人或代表均无权给予涉及部件和零件的以甲方为名义的任何其他担保责任。

13. 凡涉及外埠零部件供应商时,乙方可被授予与甲方相类似的特权,但此特权不得超过外埠零部件供应商可能基于任何担保给予甲方的类似特权范围。

#### E. 实施

1. 乙方同意依照由甲方向其提供的文件、专有技术和技术援助生产及装配许可证产品并生产及装配许可证产品的部件和工具。除非因生产能力、履约无力或材料适用方面的原因不得不使用其他设计方案,则乙方须依甲方的设计方案执行。

乙方有责任保证由其依甲方零件序号所生产和/或供应的全部零件在所有方面须与甲方基于同样零件序号所生产的零件相同。除非此类零件是绝对相同,否则不得使用甲方的零件序号。

任何改变或变更须依商标许可和技术援助协议第 C.1. 部分规定的方式进行。

2. 甲方有权在任何时间内对甲乙方或其供应商生产的许可证产品或部件进行检验,以判定其材料和工艺是否符合甲方规定的图纸和规格标准。乙方同意就类似的检验提供合作及必需的设施。

3. 乙方确认由其生产的许可证产品须严格依照甲方规定的设计方案、图纸和规格进行生产,除非依 C.1. 的规定进行修正则不在此列;同时许可证产品应具有与甲方所生产的产品相同的质量特征。然而,甲方并不承担对于乙方生产的许可证产品的任何担保责任。

#### F. 短期服务

1. 依乙方的要求及甲方视其服务需要,甲方准备向乙方派出技术生产和实施操作人员。此类人员的数目,停留时间和期间,以及费用由双方协商决定。



### G. 许可证产品销售

1. 双方同意依本协议在秘鲁生产的许可证产品及许可证产品的工具应由甲方的分销商或分支机构在秘鲁独家销售,如果没有此类分销商或分支机构则可由甲方与乙方双方协商确定其他分销商。

2. 除在秘鲁生产的许可证产品之外,甲方产品在秘鲁的销售应建立在分销合同的基础上。本协议不得构成对甲方或其授权人销售甲方产品、附件和工具的阻碍,但依分销合同在秘鲁生产的许可证产品则不在此列。

3. 所有由乙方在秘鲁生产的许可证产品的出口只能通过甲方的分销商进行。

a. 双方同意许可证产品不得以违背本协议规定的方式直接或间接地在秘鲁销售从而导致产品的出口行为,而且该许可证产品不得以未经甲方许可的出口交易方式自秘鲁出口。

b. 乙方将直接自分销商或其他用户接受由乙方自定价格、交货条件和其他条件的许可证产品订单。乙方在直接和此类分销商或用户收运货物并出具发票的同时,应依每批货物价格计向甲方支付5%的使用费,除非在特定情况下由甲方以书面形式同意以另一比率或支付条件之外不得变更。上述使用费应在乙方向其用户出具发票时支付,但在任何情况下不得迟于发运日或使用费支付指令发出日30天。此笔使用费包括了甲方的担保管理费用和在销售国内的产品售后支持费用。

c. 双方同意甲方就分销商或用户的义务并不导致对乙方的责任,而且就乙方的义务亦不导致对此类分销商或用户的责任。

4. 甲方同意鼓励其在拉美市场周边的或其他由甲方指定市场的分销商和用户考虑以乙方作为许可证产品的主要供货渠道,同时乙方与甲方承认上述分销商或用户并不受其主要供货渠道的约束。

### H. 协议的有效期

本协议自首签之日起五年内有效;四年之后本协议可商讨其续展问题。任何一方在协议最后有效日内或随后的任何时间之前90天以书面通知方式终止本协议。如果没有此类一方对另一方的通知则本协议仍然有效。

1. 作为本协议的一个基本条件,乙方须依本协议规定积极地生产和销售许可证产品;甲方与乙方将在协议首签之日商定年度生产目标。任何一方将保留在乙方未能依乙方与甲方双方商定的年度生产目标生产时审核本协议条款的权利。

2. 在任何一方未能履行协议规定的条款和条件,而且在收到另一方书面通知之后90天内未对其不履行进行补救的情况下,发出通知的一方可依通知终止协议。

3. 任何一方可以在对方破产和资不抵债的情况下终止本协议。

4. 双方一致同意亦可终止本协议。

5. 如本协议因任何理由而终止,所有由甲方提供的图纸、图片、规格以及其他全部生产和操作资料,包括全部复制品,均返还甲方,同时乙方应停止生产上述许可证产品、或部件、或零件。

本协议的终止不得影响乙方对甲的既存债务。

6. 如本协议因任何理由而终止,依G3.b.规定的任何未付使用费,或由乙方向甲方采购的部件或更换零件货款,均应立即得到清偿。

#### I. 一般条款

1. 除非另有书面通知,则有关的通知及联络均以下述邮政地址为准:中国\_\_\_\_\_

2. 甲方同意向乙方提供必需的销售规格图表、销售目录、操作手册以及零件目录的复制件,以英文方式表述。

a. 甲方同意尽可能提供可供复制的文件资料。

b. 甲方不承担就上述资料翻译成另一种文字或转换度量制式的责任。

c. 乙方同意就上述以书面订单形式索取的资料支付费用,其包括由甲方确认的管理费用和支出。

3. 甲方同意保护乙方不受由于甲方许可证产品设计缺陷而引起任何责任、费用及支出的损害,而且乙方同意保护甲方不受由于乙方在生产许可证产品过程中使用材料或工艺方面缺陷而引起任何责任、费用及支出的损害。

4. 本协议构成协议双方生产及装配许可证产品的完全和完整的合意内容,在此之前任何超出本协议范围的口头或书面的允许不再产生拘束力。任何协议的修改内容须经双方授权代表签署书面意见。

5. 本协议的附件构成本协议不可分割的一部分。

6. 任何一方在任何时间内未能对另外一方采取行动或未能就某种原因终止协议,其并不影响该方要求全部履行协议或在其后任何时间内终止本协议的权利;并且,违反本协议条款的任何一方的自动弃权并不构成其后违约的自动弃权。

7. 除非商标许可与技术协助协议在首签之日或由甲方和乙方双方同意的其后时间计 60 天内能得到有关权力机关的认可,则依甲方的选择可终止本协议。

8. 除另有规定外,所有双方之间的纠纷或争议,无论是否与本协议有关,抑或是违约或过失行为(包括但不限于涉及本协议存续的纠纷,以及仲裁条款的有效性的争议),如友好协商解决不成则提交仲裁。

仲裁应依联合国国际贸易法委员会仲裁规则进行,除非该程序规则进行了修改。

仲裁应组成仲裁庭,在瑞士苏黎世进行。

仲裁庭由三名仲裁员组成,乙方与甲方各自指定一名仲裁员。如果被诉方在接到申诉方仲裁通知之日后 30 日内未能指定仲裁员,则由苏黎世商事仲裁院主席指定,或在其妨碍仲裁程序或不作为的情况下由苏黎世行政区最高法院依民事程序法典第 364 条指定。此二仲裁员将推举第三位仲裁员并作为仲裁庭主席,如果在被诉方指定仲裁员的通知之日后 30 日内先提名的两名仲裁员未能就第三名仲裁员人选达成一致意见,则该第三名仲裁员依上程序指定。

仲裁程序(包括书面通讯及仲裁庭的其他文件)应以英文作成,而且所有的仲裁员应精通英文。解决争议的仲裁决定应由至少三名仲裁员中的两名通过方可作成,仲裁员应以书面裁决形式表明其基本意见。

仲裁庭的仲裁决定或裁决是终局的,任何一方可以裁决要求任何有管辖权的法院作成司法判决。双方须以良好诚信的态度遵守仲裁庭的决定。

仲裁员应以中华人民共和国的法律作为实体法律。

仲裁的费用由双方均摊,但各方各自承担其律师和证人费用。

9. 本协议将在得到所有有关权力机关的认可后生效。

本文件一式两份,由双方分别于文首日期订立,特此为证。

甲方公司

乙方公司

代表:\_\_\_\_\_

代表:\_\_\_\_\_

## LICENCE AGREEMENT FOR THE MANUFACTURE AND/OR ASSEMBLY

This agreement is made and entered into this 1st day of May 1992, by and between Corporation, \_\_\_\_\_ China, (hereinafter referred to as Party A) and \_\_\_\_\_, (hereinafter referred to as Party B).

WHEREAS Party B is desirous of manufacturing and/or assembling the line of Party A buses (hereinafter referred to as Licensed Products) whose products are identified in Exhibit A attached hereto. The term "Licensed products" is meant to include all components as improved, added to or modified, which now from of may hereafter form an integral part of the Licensed Product (s). Said Exhibit A may modified at any time only by written agreement of both parties.

AND WHEREAS to attain the above Party B is desirous of acquiring manufacturing and/or assembly rights from Party A;

AND WHEREAS Party A is willing to cooperate with Party B

in manufacture and/or assembly of said Licensed Products in accordance with this Agreement; THEREFORE, it is agreed between Party A and Party B as follows:

### A. RIGHT TO MANUFACTURE AND/OR ASSEMBLY

1. a. Party A hereby grants to Party B such right as Party A must possess for the manufacture and/or assembly of Licensed Products in Peru, and to sell License Products in accordance with this Agreement. However the rights herein are granted solely for those models of Licensed Products specifically set forth in Exhibit A and improvement or technical solution introduced into the Licensed Products by Party A which make them more competitive or more efficient or more adaptable or enables them to be manufactured more efficiently or more cheaply. The object of the foregoing is to permit reasonable continuity of production according to current Party A designs.

b. Rights are not granted for the manufacture and/or assembly of "New/Replacement models" of Licensed Products not set forth in Exhibit A. The term "New/Replacement models" is defined as a model that is quite different in terms of appearance of function or function or mechanical solution or capacity from any model set forth in Exhibit A. New/Replacement models may be added to this Agreement at any time on the basis of terms to be mutually negotiated between the parties hereto.

c. In the event that New/Replacement models are added to the Agreement, then the term of this Agreement with respect to such New/Replacement models shall be five years from the date of addition of such models to Exhibit A.

2. Party A agrees that it will not undertake itself nor grant to others the right to manufacture and/or assemble in Peru while this Agreement is in effect. Such of the Licensed Products as are manufactured and/or assembled in Peru only by Party B from time to time unless the written consent of Party B.

3. Party B agrees that the rights granted herein are not subject to either transfer of assignment, voluntary or involuntary, by Party B. It is agreed that Party A may from time to time fulfill its obligations and exercise its rights through a subsidiary, affiliate or licensee of Party A or

through a subcontractor.

4. The rights granted herein are expressly limited to the manufacture and procurement of components and parts for use in the assembly of Licensed Products and the supply of replacement parts therefore. Party B agrees that it will not use itself or sell, assign or transfer in any way to others, such components or parts for the assembly of equipment other than Licensed Products or as replacement parts for equipment other than Licensed Products.

5. Party B agrees not to use Party A model designations on Licensed Products produced in Peru which do not conform to current Party A production specifications, Party B further agrees to obtain Party A's approval of alternate designations selected for use on Licensed Products.

6. Party B agrees that it will not use any of the Party A's trademarks or trade names on the Licensed Products without first obtaining a license to do so from Party A, and agrees further that nothing in this Agreement is to be constructed as a license from Party A use either its trademarks or trade names.

Party B expressly agrees that if for any reason this Agreement is terminated it will not continue using Party A's trademarks or trade names even if such license agreement is not terminated according to its provisions.

7. Party B shall identify Licensed Products as being made under license from Party A. The forms and location of such identification shall be approved by Party A.

8. If Party B within ten (10) months from the effective date of this agreement does not take active steps for the production of a Licensed Product, Party A shall have the option to extend not —exclusive manufacturing and sales rights to others for such Licensed Product. Party A will give three (3) months' notice to Party B before any such license is extended, during which period Party B may elect to take active steps for the production of such Licensed Product.

#### B. SUPPLY OF DOCUMENTATION AND TECHNICAL ASSISTANCE

1. Party A will furnish Party B within ninety (90) days of the receipt of the written request two (2) copies of the documentation, one of which will be reproductive, specified in section B. I. of the Trademark License and Technical Assistance Agreement.

#### C. REPLACEMENT PARTS

1. Party B agrees to maintain adequate records of replacement parts and will permit Party A to examine such record as at Party A's option.

2. Party B shall submit a quarterly statement of production to Party A. If no production has taken place, the statement shall so indicate.

#### D. SUPPLY OF COMPONENTS AND REPLACEMENT PARTS

1. Party A agrees for the term of this Agreement to supply components available to Party A in rough or finished state which may be required by Party B for the production of Licensed Products. Such components are to be to the current Party A design or as ordered by Party B.

2. Party B agrees to purchase only from Party A proprietary standards or manufactured on Party A proprietary tooling except as Party A proprietary standards or manufactured on Party A proprietary tooling except as Party B may subcontract with local vendors, for manufacture in Peru in accordance with this Agreement.

3. Party A or its designated subsidiary, affiliate or licensee will sell the components to Party B on the basis of Party A's published net export price for the licensed product. If no net export price exists, the prices will be negotiated. The parties understand that such published net export price is modified from time to time by NOORINCO and the prices used in the preparation of invoices will be those in effect at the time of order shipment.

4. Party B agrees to place with Party A or its designated subsidiary, affiliate or licensee firm orders for components by the 15th of the month so as to give Party A not less than four (4) months' advance notice of its requirements for such production by type and quantity. Party B will also use its best endeavors to provide Party A with a further eight-months' estimate of requirements for planning purposes. Requests for schedule (order) revisions, (either increases or decreases, adding of new part numbers or cancelling of total quantities previously schedule), received by Party A prior to the 15th of the month will recognize the current month as a firm schedule month and successive month 1, and 2 also having firm schedules.

5. Party A agrees that Party B will be supplied replacement parts which are not manufactured in Peru at net export replacement parts prices established by Party A or its respective subsidiary, affiliate or licensee.

6. Party B agrees to place purchase orders for replacement parts requirements separate from those for components for production of complete License Products or attachments. Purchase orders for replacement parts will be addressed:

7. a. All buses or component orders placed by Party B on Party A, its designated subsidiary, affiliate or licensee shall be accompanied by import licenses (where necessary) and irrevocable letters of credit confirmed by a Chinese bank in U. S. dollars or other agreed upon methods of payment. The irrevocable letters of credit must be received by Party A at least two weeks prior to shipment from the packing plant.

b. All replacement part orders placed by Party B on Party A, its designate subsidiary, affiliate or licensee shall be accompanied by import licenses (where necessary) and irrevocable letters of credit confirmed by a Chinese bank in U. S. dollars or other agreed upon methods of payment. The irrevocable letters of credit must be received by Party A at least two weeks prior to shipment from the packing plant.

c. Party B agrees to established through an acceptable U. S. bank, a bond in the ammount of U. S. dollars 200 000 00 to guarantee that Party B will be able to open letters of credit as agreed in paragraph a and b.

d. Party A agrees to supply Party B with replacement spare parts for the Licensed Products for a period of five (5) years after the termination date of this Agreement of the production of Licensee Product in order to satisfy the requirements of the users of the Products. Such supply will be subject to cash in advance payment before shipment or other terms as mutually agreed upon.

8. All goods purchased by Party B hereunder are to be delivered to Party B at Party A's factory. Packing, inland freight, loading costs, ocean transportation; freight and insurance to be arranged for Party B's account per Party B's instructions and in absence of instructions then according to Party A's judgement and direction. Storage, insurance, demurrage, and any other charges, as

well as all visas, consular and notary fees, and any bank charges, import fees and duties will be paid by Party B.

9. Party A recognizes the desirability of filling orders promptly and agrees that it will at all times use its best efforts to make shipments on or before the dates specified in orders accepted from Party B but it shall not be responsible for any failure to ship on time or fill orders where prevented by causes beyond Party A's reasonable control.

10. Party B shall examine all shipments on arrival and within 60 days after receipt shall notify Party A in writing (preferably using NOORINCO standard over, Short and Damaged report Procedures) predetermined location upon Party A's specific request will be paid by Party A.

11. Party A warrants to Party B that any parts or components delivered to Party B under this Agreement will be free from defects in material and workmanship under normal use and service when assembled according to Party A specifications. Party A's obligation under this warranty is limited to repairing or replacing at the factory designated by Party A any parts or components which shall be examined by Party A and found defective. This warranty will cease 15 months after receipt of the parts or components by Party B or 12 months after delivery to the user of Licensed Products incorporating the parts or components, whichever occurs first.

12. Party A will not be liable under this warranty or otherwise for any direct or indirect loss whatsoever arising out of any defect in the parts or components or any parts thereof. The above warranty is in lieu of all other warranties, expressed or implied, and no person, agent or representative of Party A is authorized to give any other warranties on Party A's behalf or to assume for it any reliability in connection with the parts or components.

13. With respect to outside supplier parts or components Party B shall be entitled to similar benefits as Party A, but in no event in excess of such benefits as Party A may receive under any warranty that Party A may be given by the outside supplier.

#### E. ENGINEERING

1. Party B agrees to manufacture and/or assemble Licensed Products as well as components and service tools for Licensed Products in accordance with the documentation, knowhow and technical assistance supplied to Party B by Party A. Party B will adhere to Party A's design except for compelling and necessary reasons caused by manufacturing capability, performance failures, or material availability.

It shall be Party B's responsibility to assure all parts produced and/or supplied by Party B under the Party A part number be equivalent in all respects to parts produced by Party A under the same part number. Party A's part numbers will not be used unless such items are an exact equivalent.

Alternations or changes will be processed in the manner agreed upon in section C. I. of the Trade mark License and Technical Assistance Agreement.

2. Party A has the right at any time to inspect the Licensed Products or components manufactured by Party B or Party B's suppliers to determine that the materials and workmanship conform to the standard of drawings and specifications supplied by Party A. Party B agrees to cooperate and make available the necessary facilities for such inspections.

3. It is understood and agreed by Party B that Licensed Products manufactured by Party B shall be manufactured strictly in accordance with the design, drawings, and specifications furnished by Party A unless modified pursuant to C. I. and in any event the Licensed Products will possess the same characteristics in quality as products produced by Party A. Party A, however, does not assume any warranty obligations with respect to Party B Licensed Products.

#### F. SHORT TERM SERVICES

1. At the request of Party B and subject to NORICNO's own requirement for their services, Party A is prepared to supply technical manufacturing and engineering personnel to Party B. The number of person and periods of time and terms and fees involved to be determined by mutual agreement.

#### G. SALE OF LICENSED PRODUCTS

1. It is agreed that Licensed Products and service for Licensed Products, Produced in Peru under of any claim that goods were either short-shipped, excess quantities received or damaged parts were received. Party B's failure to provide Party A with information within the specified period waives Party A's obligation to make correctional.

When timely notice has been given, Party A will have a reasonable time to examine the claim and according to Party B's instructions and/or requests, will either (1) extend or deny credit for replace damaged parts, (2) deny or extend credit to Party B to cover rework expenses and cost for such rework has been agreed to prior to rework operations actually being performed by Party B (3) advise disposition of in correct parts shipped or quantities overshipped and (4) will advise disposition of claims for short shipments.

Freight charges for ever-shipments and for material wrongly shipped returned to NLRINCO to as the terms of this Agreement, will be sold in Peru exclusively by the distributor(s) of Party A or its affiliates of, if this be not the case, such other distributor(s) as Party A and Party B may mutually agree upon.

2. The conditions of sale in \_\_\_\_\_ of Party A products, excepting Licensed Products produced in Peru, shall be those established in the Distributor Contract. Nothing contained in this Agreement shall prevent Party A or any person authorized by Party A from selling Party A products, attachments, and service tools therefore, excepting Licensed Products produced in Peru pursuant to that Distributor Contract.

3. All exports of Licensed Products manufactured by Party B in \_\_\_\_\_ will be made only through distributors of Party A.

a. It is further agreed that such Licensed Products will not be sold in Peru either directly or indirectly in such a manner that would result in exports not in accordance with this agreement, and that such Licensed Products will not be exported from Peru in a type of export transaction which would not be permitted by Party A.

b. Party B will accept orders for such Licensed Products directly from such distributors or other customers, subject to prices, terms, and other conditions which Party B establishes. Party B will ship and invoice such goods directly to such distributors or other customers, paying in each case, a fee to Party A of five percent (5%) of such prices, unless an other rate or other terms of

commission payment are specifically agreed by Party A in writing in respect to particular situations. Said fee will be due and payable when Party B invoices its customer but in not event later than thirty (30)days from the date of shipment and instructions as to the payment of said fee. This fee will cover Party A's warranty administration and product support in the country of sale.

c. It is agreed that Party A shall have no responsibility to Party B in respect to the obligations of such distributors or other customers or to such distributors or other customers in respect to the obligations of Party B.

4. Party A agrees to encourage Party A's distributors and customers in the neighboring Latin American market to consider Party B being their principal source for the Licensed Product, or in other markets so designated by Party A. Party B and Party A both recognize that said distributors and customers are not bound to consider their principal source.

#### H. TERM OF THE AGREEMENT

The terms of this Agreement shall be five years from the date first above written. This Agreement may be renegotiated for renewal after four years. Either party may by ninety (90) day's prior written notice terminate this Agreement of the final date hereof or any subsequent date. In the absence of such notice by one party to the other, this Agreement shall remain in effect.

1. It is deemed a material condition of this Agreement that Party B will actively pursue the manufacture and sale of Licensed Products in accordance with the terms of this Agreement. Annual manufacturing objectives will be mutually agreed upon by Party A and Party B as of the date first above written. Either party reserves the right to review this agreement in the event that Party B fails to meet the annual manufacturing objective mutually agreed upon between Party B and Party A.

2. In the event that either party shall fail to comply with any of the terms or conditions. Hereof and shall fail to remedy such failure within ninety (90) days of the giving of written notice by the other party thereof, then and in such event the party giving notice may terminate this Agreement forthwith by notifying the other party.

3. Either party may terminate this Agreement forthwith in the event of the bankruptcy or insolvency of the other party.

4. This Agreement may be terminated forthwith by the mutual consent of both parties.

5. Upon termination of this Agreement for any reason whatsoever, all drawings, transparencies, specifications, and any other manufacturing or engineering information supplied by Party A, and all copies thereof, will be returned to Party A and Party B will cease to manufacture said Licensed products or components, or parts thereof.

Termination of the Agreement shall not affect any accrued liability of Party B to Party A.

6. Upon termination of this Agreement, for any reason whatsoever, any unpaid balance of fees, G. 3. b., or for components or replacement parts purchased by Party B from Party A, shall become immediately due and payable.

#### I. CENERAL PROVISIONS

1. Until otherwise notified in writing, the mailing addreses of the parties hereto for notices and communications, are all follows:



2. Party A agrees to supply Party B copies of all available sales specifications sheets, sales catalogues, operator's manuals, and parts catalogues, in the language of English.

a. Party A further agrees to supply the above information in reproducible form where possible.

b. Party A assumes no obligation to translate any of the above material into another language or alternate system of measurement.

c. Party B agrees to pay Party A for such materials as it may order from Party A in writing, the cost thereof including applicable overheads and expenses at such figure as shall be certified by Party A.

3. Party A agrees to indemnify and hold Party B harmless from any and all liabilities, costs and expenses which arise out of or result from a defect in a Party A design of the Licensed Product and Party B agrees to indemnify and hold harmless from any and all liabilities, costs and expenses which arise out of or result from a defect in material or workmanship on the Licensed Product manufactured by Party B.

4. This Agreement contains the full and entire agreement for Manufacture and/or Assembly between the parties hereto and no prior outside or oral or written undertaking is of any force shall be in writing signed by the duly authorized representatives or the parties.

5. The Exhibits to this Agreement form an integral part of this Agreement.

6. The failure of either party hereto at any time to take action against another party, or the failure of either party hereto to terminate full performance of this Agreement or to terminate this Agreement any time thereafter, and the waiver by either party of a breach of any provision of this agreement shall not constitute a waiver of any subsequent breach thereof.

7. This Agreement may be terminated at the option of Norinco unless the consent of all relevant authorities shall be obtained to the terms of the Trade mark License and Technical Assistance Agreement within sixty (60) days from the date first above written or such subsequent date as shall be mutually agreed upon by Party A and Party B.

8. Except as is otherwise expressly provided herein, all disputes, controversies or differences arising between the parties out of or in relation to or in connection with this Agreement, or any breach or default hereunder (including but not limited to, a dispute concerning the existence or continued existence of this Agreement, and the validity of the arbitral provision) which cannot be settled amicably shall be subject to arbitration.

Arbitration shall be conducted in accordance with the procedures and rules set forth in the UNCITRAL arbitration rules except as modified herein.

The arbitral tribunal shall have its seat, and arbitration proceedings shall take place in Zurich, Switzerland.

The arbitral tribunal shall consist of three arbitrators. Party B and Party A shall each appoint one arbitrator. If the respondent does not designate an arbitrator within thirty (30) days after the date of notification by petitioner, such arbitrator shall be named by the President of the commercial court of Zurich or, in the case of this impediment or nonaction, by the Supreme Court of the Canton of Zurich as provided in Article 364 of the Code of Civil Procedure. The two arbitrators