

Department of State

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not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.”

(6) “All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.”

§ 124.9 Additional clauses required only in manufacturing license agreements.

(a) *Clauses for all manufacturing license agreements.* The following clauses must be included only in manufacturing license agreements:

(1) “No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.”

(2) “It is agreed that sales by licensee or its sub-licensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.”

(3) “If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived

through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.”

(4) “If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data.”

(5) “The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State.” This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See §126.10(b) of this subchapter.

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

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(b) *Special clause for agreements relating to significant military equipment.* With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) "A completed nontransfer and use certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place."

(2) "The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."

§ 124.10 Nontransfer and use assurances.

(a) *Types of agreements requiring assurances.* With respect to any manufacturing license agreement or technical assistance agreement which relates to significant military equipment or classified defense articles, including classified technical data, a Nontransfer and Use Certificate (Form DSP-83) (see §123.10 of this subchapter) signed by the applicant and the foreign party must be submitted to the Office of Defense Trade Controls. With respect to all agreements involving classified articles, including classified technical data, an authorized representative of the foreign government must sign the DSP-83 (or provide the same assurances in the form of a diplomatic note), unless the Office of Defense Trade Controls has granted an exception to this requirement. The Office of Defense Trade controls may require that a DSP-83 be provided in conjunction with an agreement that does not relate to significant military equipment or classified defense articles. The Office of Defense Trade Controls may also require with respect to any agreement that an appropriate authority of the foreign party's government also sign the DSP-83 (or provide the same assurances in the form of a diplomatic note).

(b) *Timing of submission of assurances.* Submission of a Form DSP-83 and/or diplomatic note must occur as follows:

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(1) Agreements which have been signed by all parties before being submitted to the Office of Defense Trade Controls may only be submitted along with any required DSP-83 and/or diplomatic note.

(2) If an agreement has not been signed by all parties before being submitted, the required DSP-83 and/or diplomatic note must be submitted along with the signed agreement.

NOTE: In no case may a transfer occur before a required DSP-83 and/or diplomatic note has been submitted to the Office of Defense Trade Controls.

[59 FR 29951, June 10, 1994]

§ 124.11 Certification to Congress for agreements.

Regardless of dollar value, a Technical Assistance Agreement or a Manufacturing License Agreement that involves the manufacture abroad of any item of significant military equipment (as defined in §120.7 of this subchapter) shall be certified to Congress by the Department as required by 22 U.S.C. 2776(d). Additionally, any technical assistance agreement or manufacturing license agreement providing for the export of major defense equipment, as defined in §120.8, sold under a contract in the amount of \$14 million or more, or of defense articles or defense services sold under a contract in the amount of \$50 million or more, shall be certified to Congress by the Department as required by 22 U.S.C. 2776(c)(1). The Office of Defense Trade Controls will not approve agreements requiring Congressional notification unless Congress has not enacted a joint resolution prohibiting the agreement and:

(a) In the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand, at least 15 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(d); or

(b) In the case of an agreement for or in any other country, at least 30 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(d).

[62 FR 67276, Dec. 24, 1997]