

# Tillståndspliktiga **AVTAL**

Förslag till  
identifiering  
och avtalstexter



**SOFF**  
Säkerhets- och  
försvarsföretagen

Säkerhets- och försvarsföretagen (SOFF) har tagit fram en rekommendation om hur företag kan hantera identifiering och avtalsskrivning när det kommer till avtal som kräver tillstånd att ingås.

Denna rekommendation syftar till att öka möjligheterna för regelefterlevnad. Det kan givetvis förekomma gråzoner och oklarheter om tillämpning och då bör företaget kontakta ISP eller söka juridisk rådgivning.

## 1 General

---

**Entering into certain types of agreements** relating to military controlled products require prior approval from the Swedish Inspectorate of Strategic Products (ISP) in accordance with §§7-9 in the Swedish Military Equipment Act (lag (1992:1300) om krigsmateriel).

**This recommendation is focused on** approval of certain types of agreements. All other types of authorizations are still required for other controlled activities. For instance, export of controlled technical data or hardware still require an export license in addition to prior approval of agreements.

**This recommendation is meant to** support Swedish companies to determine if an agreement requires prior approval and to provide suggested texts that can be used in the agreements. The second purpose is to provide an explanation to foreign parties why Swedish companies require certain texts or authorisations from the Swedish authorities.

**There are different ways of entering into an agreement, which can confuse the issue. Ordinary contractual principles apply. For instance:**

- ▶ **Signing terms and conditions** that does not give the Swedish party a contractual commitment to perform the controlled activities does not constitute a controlled agreement.
- ▶ **Signing an order** that gives the Swedish party a contractual commitment to perform the controlled activities constitutes a controlled agreement.
- ▶ **Signing a delivery and event schedule or statement of work** not connected to terms and conditions may constitute a controlled agreement if there are contractual commitments in them.

**It is important to understand** contract law to determine which document actually binds the Swedish party and creates the contractual commitment (oral commitments are also agreements). The name of the document is irrelevant.

**The usual scenario** is that the order is the guiding document and it in turn reference the terms and conditions, delivery and event schedule, technical specification and statement of work etc. Although, sometimes the entire agreement is written in the same document.

**It is quite common** that the same terms and conditions are applied for many different business opportunities between the parties. Therefore it is important to include the texts either in the order or in the terms and conditions.

## 2 Responsibility to identify Agreement types

**The company is responsible** to determine if an agreement is a controlled Development Agreement or a License Manufacturing Agreement that require prior approval from ISP. This includes incorporating relevant texts, examples detailed below in clause 5 and 6, in the agreement.

**The intention with this recommendation** is to enable a decision regarding which agreements require prior approval and to facilitate the submission and approval process both within the Swedish company and ISP. If export control is not regulated properly in the agreement there is a high risk of procedural delays and also a risk of denial of approval from ISP. It is beneficial to include a list of all known customers, recipients and end-users of the products from the start in the agreement for ISP to make a determination of the exportability.

**Agreements that require prior approval before entering into force:**

- ▶ **Agreements with a foreign party that grants the foreign party** ownership of controlled military technology or a right to license manufacture Swedish controlled military products.
- ▶ **Agreements with a foreign party to mutually develop** or produce controlled military products.
- ▶ **Agreements with a foreign party that require** the Swedish party to develop controlled military products on behalf of a foreign party.
- ▶ **Agreements under which a Swedish party** will provide controlled military technical data and technical assistance.

**The following agreement types does not require prior approval:**

- ▶ **Supplier agreements** that grants a foreign supplier a right to license manufacture Swedish controlled military **components** on behalf of and for delivery to the Swedish company (foreign lego-manufacturing).
- ▶ **Supplier agreements** with a foreign supplier for mutual development of controlled military **components** on behalf of the Swedish company.
- ▶ **Agreements** to buy or sell military controlled products (where the Swedish party will obtain an export license and will only provide military technical data or technical assistance minimally required for installation, operation, maintenance or repair).

**When determining the applicability** of the exception and if the product actually is a component or a sub-system, please consult your company's export control function who can make the determination. If it is too difficult to make the determination, the export control function can consult ISP.

### 3 Responsibility to submit Agreements to ISP

---

In addition to identifying which agreement require prior approval from ISP the company is also responsible to apply for approval to enter into the agreement. Agreements that require prior approval by ISP must not be allowed to enter into force until such approval is obtained.

### 4 Responsibility to submit approval of changes to Agreements

---

#### § 9 Changes to already approved Agreements

Amendments and changes to an approved agreement shall also be submitted to ISP for approval and the texts in this instruction shall be inserted in the agreements prior to the change enters into force. The changes that require approval are:

- ▶ Change of military material or technology that the agreement covers
- ▶ Change of ownership, sub-licensing or granting of rights to other parties
- ▶ Change of customer, recipients or end-users
- ▶ Change or extension of agreement duration
- ▶ Changes to the non-disclosure or export control clause

The company is responsible to determine if the change require prior approval from ISP.

### 5 Agreement scope

---

#### § 7 License Manufacturing Agreements texts

As an identifier, the following text or equivalent is beneficial to insert in all License Manufacturing Agreements that is deemed a controlled agreement requiring prior approval:

*"This agreement grants the non-Swedish party a right to license manufacture Swedish controlled military products, components or software based on export controlled military technical data and technical assistance provided from Sweden."*

#### § 8 Development Agreement texts

As an identifier, the following text or equivalent is beneficial to insert in all Development Agreements that is deemed a controlled agreement requiring prior approval:

*"This agreement covers mutual development and/or production of export controlled military products, components, software, technical data or technical assistance together with a foreign party and/or development by the Swedish Party on behalf of a foreign party."*

## 6 Agreement text for controlled agreements

The texts below that is marked as negotiable can be re-written or omitted in the agreement without ramifications but omitting them may mean that the company doesn't receive necessary information or get the support that may be required. The texts that is marked as prioritized may have the consequence that the agreement cannot be authorized by ISP if they are omitted.

No.	Text	Importance
a.	Both Parties undertake and agree that they will not export, re-export, transfer, retransfer, import, disclose, license, sublicense or make available any export controlled products, components, software, technical data or technical assistance to any third party without necessary authorization, exemption or prior written consent from applicable authorities.	Negotiable
b.	This agreement is subject to authorization from the Inspectorate of Strategic Products and it shall not enter into force until such authorization, or a written confirmation from the authority that the Agreement is not controlled, is obtained. This includes updates that require authorization from the Authority.	Prioritized
c.	Each Party is responsible to timely apply for, obtain and secure all necessary export, re-export, transfer, retransfer or import licenses, in the territory of the Party, required to enable the timely delivery and discharging of all its obligations under this agreement.	Negotiable
d.	Each Party is responsible to provide the parties in their supply chain with necessary information to enable timely license applications and if any party requires signed end user certificates the Parties agree to assist each other in timely completing such end user certificates.	Negotiable
e.	The delivering/disclosing Party shall provide the receiving/viewing Party with the export control codes and restrictions of any delivered, provided or disclosed export controlled products, components, software, technical data or technical assistance, including export control codes and restrictions from third parties.	Negotiable
f.	Export (including in-country transfer) of products, components, software, technical data or technical assistance that is based on export controlled technical data or technical assistance provided by the Swedish Party is prohibited to any third party without prior written consent of the Inspectorate of Strategic Products as well as other authorities if applicable.	Prioritized
g.	Re-export (including in-country retransfer) of export controlled products, components, software, technical data or technical assistance provided by the Swedish Party under this agreement is prohibited to any unauthorized third party without prior written consent or authorization from the Inspectorate of Strategic Products as well as other authorities if applicable.	Prioritized
h.	Each Party shall promptly notify the other Party if the Party is, or becomes, listed in any Denied Parties List or if the Party's export privileges are otherwise denied, suspended or revoked in whole or in part by any governmental entity. Each Party shall timely inform the other Party of violations of any applicable trade control rules, undertakings or authority restrictions if such violation may affect the other Party, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in the Party's performance under the agreement and shall comply with all reasonable requests from the other Party for information regarding any such violations.	Negotiable
i.	Each Party shall promptly notify the other Party of a change of legal name, registered or operating address, legal entity status or control or ownership (e.g. acquisition by or change of parent company), and have this information immediately passed on to the other Party so that any necessary compliance measures can be undertaken on a timely basis	Negotiable
j.	If any necessary export, reexport, transfer, retransfer or import license are delayed, denied or revoked, the Party shall notify the other Party thereof in writing, and the Party shall be entitled to suspend, partly or in whole, performance of its obligations under this agreement, without incurring any liability toward the other Party, except where such delay, denial or revocation is due to circumstances within the control of that Party.	Negotiable