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Marketing ITAR Controlled Items

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Presentation Topics

Marketing Defense Items & Services to Foreign Parties:

- ITAR Controlled Explained
- Marketing ITAR Controlled Items to Foreign Parties
- International Business Considerations – Short Version

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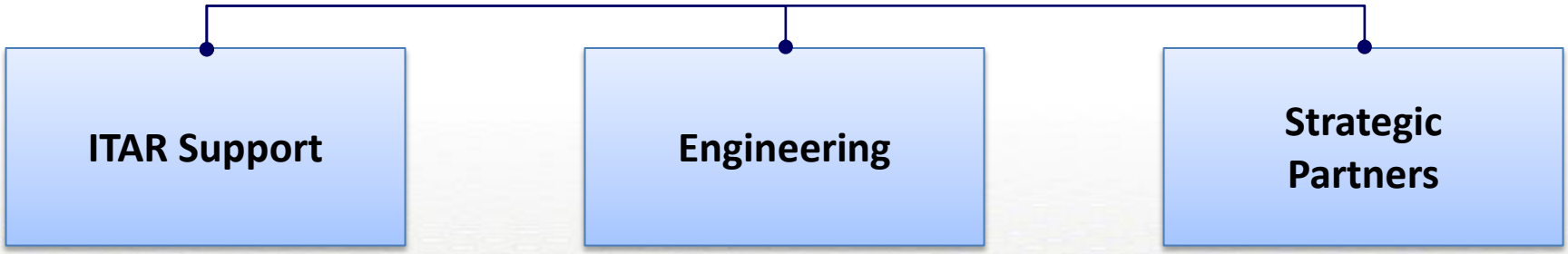
Why Excelerate….

- Established 2004 – International Defense Business – 24/365
- Direct Commercial Sales (DCS) – Defense and Aerospace
- Domestic Support on ITAR Related Activities
- International Support on System Development & Integration
- Orchestrate Business Internationally
- Working in Most Areas of the World



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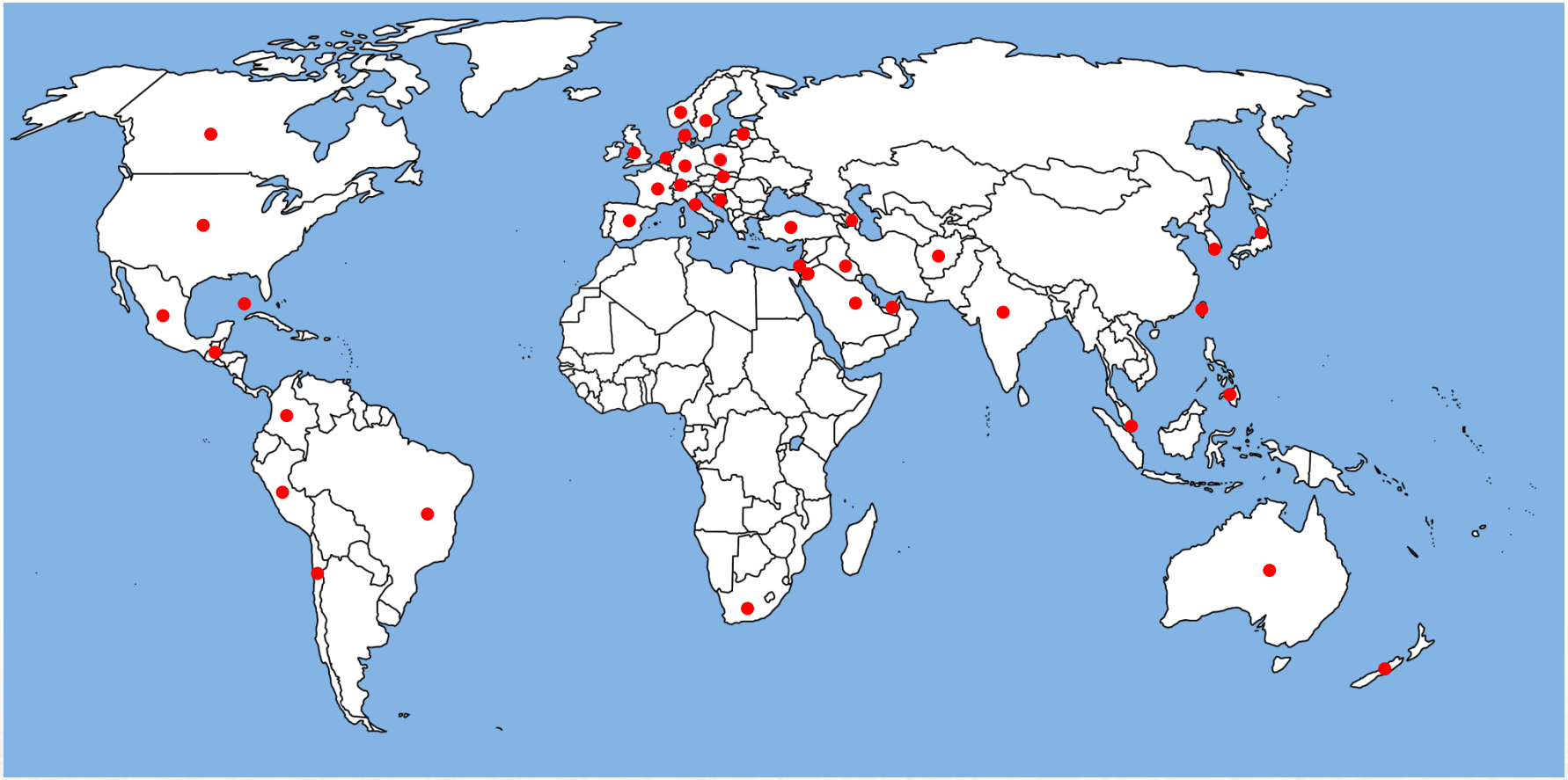
Where Excelerate Works….



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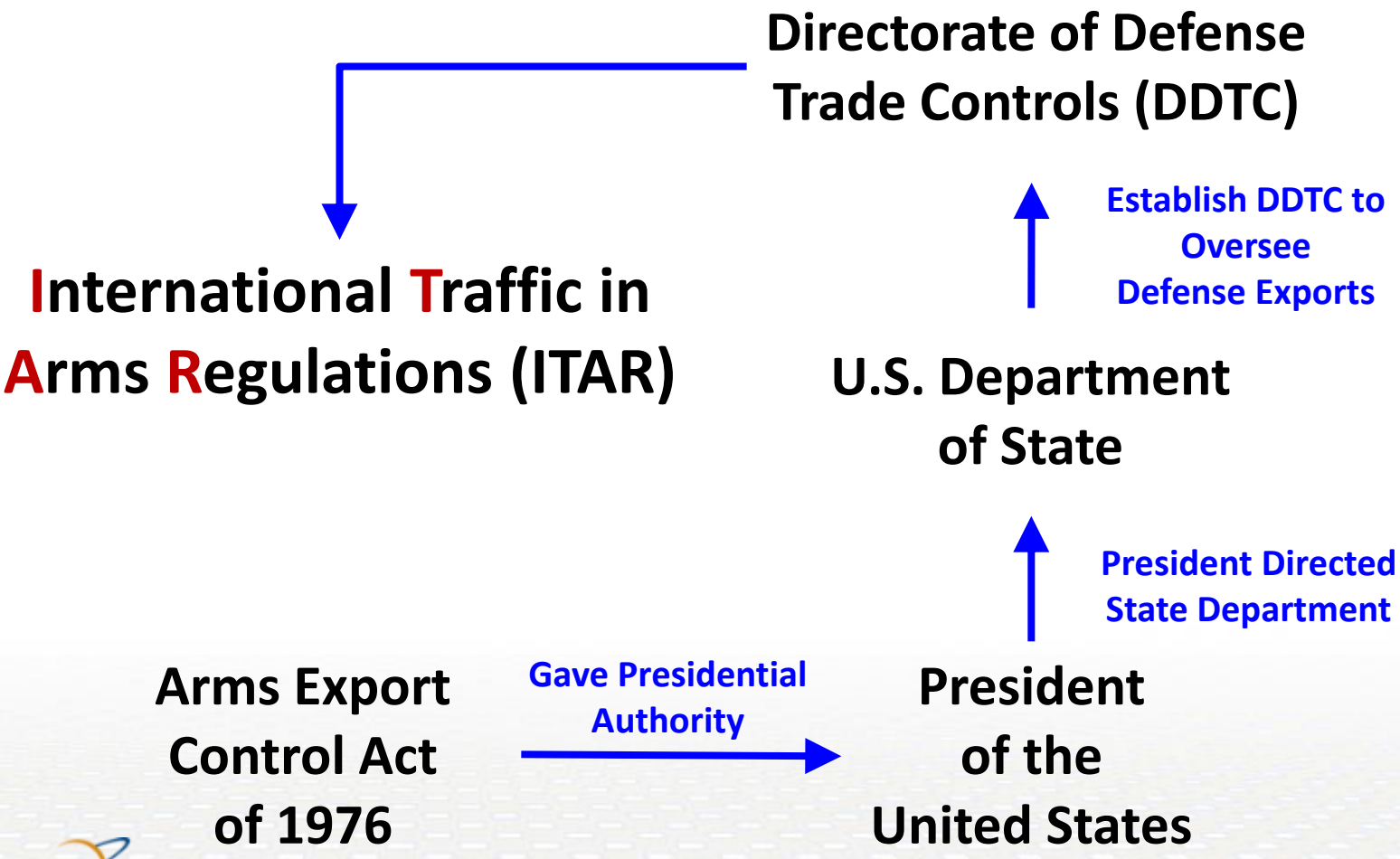
Origin of the ITAR



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ITAR Controlled Explained

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ITAR Fundamentals

ITAR controlled articles, technical data and services cannot be exported to a foreign person without approval.

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What does the ITAR control? (1 of 3)

The ITAR controls:

- Defense Articles
- Technical Data
- Defense Services

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What does the ITAR control? (2 of 3)

Defense Articles

Items: designed configured, adapted or modified for defense purposes

Includes: end items, components, parts, accessories and / or attachments

Can also include: hardware, software, technical data, formulas, manufacturing processes, parameters, etc.

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What does the ITAR control? (3 of 3)

Technical Data

Information required for the design, development, production, manufacturing, etc. of defense articles

Defense Services

Providing assistance or training in the design, development, testing, manufacturing, production, assembly, maintenance, modification, operation, or use of defense items.

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Marketing to Foreign Parties

- **"Top-Level" marketing information can be shared without approval from DDTC.**
  - Basic form, fit and function of product
  - Information considered public domain
- **Information that goes beyond "Top-Level" marketing requires approval from DDTC.**
  - Rule of Thumb: Information you wouldn't want your competitor to know

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What is Public Domain?

- **Public Domain = information published and generally accessible**
  - Approved public release by the appropriate U.S. Government department/agency
  - Sales at newsstands and bookstores
  - Patents available at any patent office
  - Public libraries
  - Subscriptions
- **Internet ≠ Public domain**

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Marketing Information Requiring Approval

- Identify specific ITAR controlled systems
- Detailed performance specs – ranges, velocities…
- Potential countermeasures
- Operational, functional or design limitations
- How the product is optimized
- Engineering design and processes
- U.S. Gov specific users (without release)

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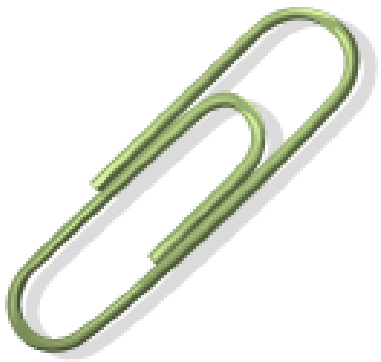
ITAR Controlled Paper Confinement Tool



Non-Permanent Paper Binding Apparatus

- OD Green
- Made from high quality non-obtainium to reduce IR signature
- Holds 10 sheets of MIL-SPEC-123 paper for 254.3 days
- Dissolves if placed in salt water for 2.3 days
- 17 stacked in a crisscross pattern can stop a BB

Customers

- US SEAL Team 6
- Secret Service
- Army Rangers
- Navy Cooks
- Israeli Special Forces

Other Uses

- Fish Hook
- Fidget Toy
- Crude Digger
- Tiny Poker
- Projectile
- M16 Doohickey

Specifications

- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- Fastener Tension – 0.25 N
- MTBF: 6 months
- Max Wind Gust: 4.7 m/s

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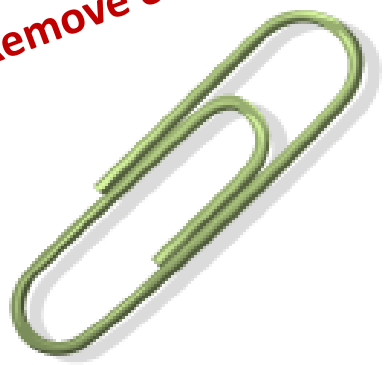
ITAR Controlled Paper Confinement Tool

Remove or Modify



Non-Permanent Paper Binding Apparatus

- OD Green
- Made from high quality non-obtainium ~~to reduce IR signature~~
- Holds 10 sheets of MIL-SPEC-123 paper ~~for 254.3 days~~
- ~~Dissolves if placed in salt water for 2.3 days~~
- ~~17 stacked in a crisscross pattern can stop a BB~~

Customers

- ~~US SEAL Team 6~~
- ~~Secret Service~~
- ~~Army Rangers~~
- ~~Navy Cooks~~
- ~~Israeli Forces~~

Other Uses

- Fish Hook
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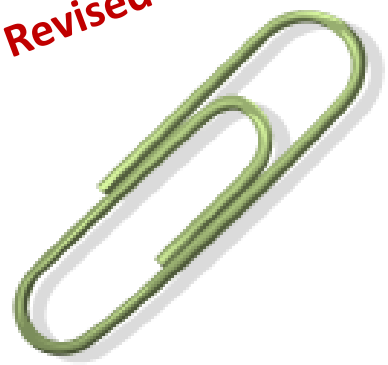
ITAR Controlled Paper Confinement Tool

Revised Version



Non-Permanent Paper Binding Apparatus

- OD Green
- High quality construction and material
- Holds 10 sheets of MIL-SPEC-123 paper
- Rugged – the harshest environments
- Reconfigurable for many uses

Customers

- US Army
- US Navy
- Foreign Forces
- Israel MOD
- Many Customers Worldwide

Other Uses

- Fish Hook
- Fidget Toy
- Crude Digger
- Tiny Poker
- Many Military Applications

Specifications

- 63.5 x 11.4 x 1.3 mm
- Weight: 45 grams
- Holds tight for long periods
- 400% longer product life
- Positive retention in worst conditions

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Summary

- ITAR controlled articles, technical data and services cannot be exported to a foreign person without approval.
- "Top-level" information does <u>not</u> need DDTC approval
- Performance, Engineering and Specific End Use/ End Users need approval

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Marketing ITAR Controlled Items to Foreign Parties

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Types of ITAR Licenses & Agreements

LICENSE

- **DSP-5: Permanent Export/Marketing**
- DSP-61: Temporary Imports
- **DSP-73: Temporary Exports**
- DSP-85: Classified Exports/Imports
- DSP-94: Foreign Military Sales Exports
- DSP-119: Amendment to Above Licenses
- DSP-6: Amendment to DSP-5
- DSP-62: Amendment to DSP-61
- DSP-74: Amendment to DSP-73

Others

- DSP-83: Non-Transfer & User Certificate
- DS-4076: Commodity Jurisdiction Request
- DS-4071: Declaration of Electronic Transfer
- DS-6000: General Inquiry
- DS-6001: Advisory Opinion
- DS-6002: Prior Notification of Briefing/Proposal
- DS-6003: Reconsideration of Proviso
- DS-6004: Reconsider End User or End Use

AGREEMENTS

- Technical Assistance Agreements (TAA)
- Manufacture Licensing Agreements (MLA)
- Warehouse Distribution Agreement (WDA)

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DSP-5 Marketing License

- **Allow a company to export controlled information to identified foreign parties.**
- **Can be broken down into two categories:**
  - General Marketing License
  - Specific “Proposal” License

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General Marketing License (1 of 2)

- **Allows you to market your company's products / services to identified foreign parties.**
  - Briefings on key features
  - Product presentations
  - Etc.
- **Foreign parties can be located in one country, or across multiple countries inside DoS defined Regions:**
  - African Affairs (AF)
  - Western Hemispheric Affairs (WHA)
  - Near Eastern Affairs (NEA)
  - South and Central Asian Affairs (SCA)
  - East Asian and Pacific Affairs (EAP)
  - European and Eurasian Affairs (EUR)

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General Marketing License (2 of 2)

- **You will need to provide to DDTC:**
  - Information you plan to share (product brochures, Presentations, etc.)
  - List of foreign parties you wish to market to:
    - For foreign governments can simply say “Govt. of Japan”, “Govt. of Taiwan”, etc.
    - For foreign companies must ID each company and give a valid address

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Specific "Proposal" License (1 of 2)

- **Allows more detailed technical information to a limited number of foreign parties.**
  - Detailed insight into your products system architecture (hardware, software, communications, etc.)
  - Technical response to an RFP.
- **Foreign parties generally need to be located in one country**
  - Actual foreign customer / end-user
  - In-country partners (sales reps, integrators, etc.)

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Specific "Proposal" License (2 of 2)

- **You will need to provide to DDTC:**
  - Detailed information you plan to share ("whitepaper" describing your product and what you plan to propose to the foreign party, etc.)
  - Specific list of foreign parties you plan to share information with:
    - Specify which government agency and give address
    - For foreign companies must ID each company and give a valid address

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Provisos & Limitations

Most Marketing Licenses are accompanied by provisos and limitations

- **Some are Administrative:**
  - "This license expires on …"
  - "Final USG configuration authorization MUST be the subject of separate export license application..."
- **Some are technical…**
  - "Software source code may not be OFFERED or DISCUSSED"
  - "No US Government threat data can be passed"
  - "Input data for simulation planning MUST be generic in nature or provided by the end-user."
- **Look out for "death by proviso"**
  - Failed to properly scope the license
  - Mistake by USG

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DSP-73 – Temporary Export License

- **Used to temporarily take your product overseas.**
- **Can be for:**
  - Specific demonstrations related to a DSP-5 Marketing License
  - International Tradeshows
- **Information needed is similar to General Marketing License + transmittal letter**.

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Trade Show Exemption §123.16 (b) (5)

US. Customs and Border patrol will allow the temporary export of a defense item w/o a license if:

- Unclassified, and
- Destined for a ***public*** exhibition, trade show, etc.), and
- Previously been licensed for the same purpose, and
- Previous license is still valid.

NOTE: Some restrictions apply, item can't be considered "Significant Military Equipment" or controlled by the MTCR, etc.

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International Business Considerations

(Short Version)

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Topics

- Marketing
- Requirements
- Proposals
- Pricing
- Contracts
- Negotiations
- Execution
- Delivery

International Direct Commercial Sales – Lessons Learned – Compare/Contrast to U.S.

Short Version Due to Time Constraints

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International Business Notes (1 of 4)

- Patience is not just a virtue but a requirement….
- ITAR controlled does not mean ITAR prevented
- Culture, Culture, Culture, Culture……
- Always negotiating – always!
- Manage leverage as well as program
- Be careful not to force U.S. Government approach
- Never ever give keys until paid – <u>never</u>
- Understand the Foreign Corrupt Practices Act (FCPA)

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International Business Notes (2 of 4)

- Brochures are important
- Rarely are detailed requirements provided
- Plan on iterating – iterating – iterating to achieve the final technical specification
- Proposals are smaller and direct
- Assume your proposal may be shared
- Few want a “Phased” program approach
- Few understand support (T&M) contracts

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International Business Notes (3 of 4)

- Include proposal sections detailing: list of deliverables, assumptions and expectations
- Never divulge prices until you know contract terms and requirements – never
- Negotiating tactics that you can't expect or foresee
- Know your lowest price and be prepared to walk away
- Assume you will not take legal action
- Firm Fixed Priced (FFP) contracts always
- Letters-of-Credit (LC) are tricky and not fun

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International Business Notes (4 of 4)

- Always push for bank transfer payments
- Train all participants on ITAR limitations – important
- A good freight forwarder makes delivery easy
- Take care countries goods transit through during delivery

- Patience is not just a virtue but a requirement….

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Questions?

Thank You!

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