

AGREEMENT TO SUPPLY TECHNICAL KNOW-HOW

THIS AGREEMENT is made at this... day of..... between M/s. XYZ Co. Ltd., a Company incorporated under the laws of..... and having its registered office at hereinafter referred to as the 'Foreign Company, of the One Part and M/s. ABC Co. Ltd., a Company registered under the Indian Companies Act, 1956, and having its registered office at ... hereinafter referred to as the 'Indian Company' of the Other Part.

WHEREAS the Foreign Company is carrying on business of manufacturing/fabricating the Items of machinery/the products, the particulars of which are set out in the Schedule hereunder written, at ...

AND WHEREAS the Foreign Company has the exclusive expertise or know-how in respect of the said items of machinery/product.

AND WHEREAS the Indian Company proposes to set up a factory at ... with intent to manufacture similar machinery/product and requested the Foreign Company to make available the know-how to the Indian Company.

AND WHEREAS after the negotiations the Foreign Company has agreed to make available to the Indian Company know-how on the following terms and conditions and which are set out and now proposed to reduce to writing.

AND WHEREAS approval of the Government of India will be obtained to enter into this agreement and this agreement will be subject to such approval.

NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Foreign Company shall make available to the Indian Company all the expertise or know-how in relation to the manufacture of the said items of machinery/product mentioned in the Schedule hereunder written within a period of days from the date hereof.
2. The Foreign Company shall supply to the Indian Company all the materials regarding such know-how, such as the formulae, charts, drawings, process sheets, calculation sheets, standards and other Information as Is necessary to understand and utilise the said know-how and to implement the same In the manufacture of the said items of machinery/ products.
3. All such material referred to above shall be in the English language and shall be supplied to the Indian Company by the Foreign Company within ... days from the date hereof and as and when required subsequently by the Indian Company.
4. If the Foreign Company effects any improvement or makes any additions or alterations in the technology for the manufacture of the said items of machinery/product, the same will be intimated to the Indian Company forthwith and all the literature, new formulate, drawings and other information in respect of such new technology or improvement, additions or alterations shall also be supplied to the Indian Company forthwith.
5. All the know-how and other Information supplied to the Indian Company shall be kept secret by the Indian Company and shall not he directly or indirectly passed on to any other person In or outside India. The Indian Company will secure from its employees who become acquainted with such know-how, proper agreements for maintaining the secrecy of the know-how and supply copy thereof to the Foreign Company.

6. The Foreign Company will assist the Indian Company in selecting and buying the modern and up to date machinery and equipment in India or abroad, suitable for the manufacture the type of machinery /product aforementioned and supply the necessary Information with the Foreign Company in connection with such machinery product.
7. The material relating to the know how mentioned above shall be in English language or If the original is any other language it will be accompanied by English translation thereof and measurement and weight figures will be as for metric system.
8. The know-how material will be handed over by the Foreign Company in at the registered office of the Foreign Company to the authorised representative of the Indian Company with utmost secrecy
9. The Foreign Company shall not enter into any agreement with any party for the use of the said know how by such party in India.
10. The Indian Company may not grant a sub-licence or permission any party for manufacturing their machinery /product with the help of the said know how except with written consent of the Foreign Company and which consent maybe given on such terms and conditions as may be agreed upon.
11. The said machinery /product will be according to the specification quality and standard envisaged by the know-how. The Indian Company shall have the first production tested by the Foreign company and if any deficiency is found the same will be rectified by the Indian Company.

12. On the termination of this agreement by efflux of time (but not otherwise) Indian Company will be entitled to use the know-how free of charge. But if the agreement is terminated earlier as herein in after provided that the Indian Company shall-not be entitled to make use of the know how and shall forthwith return all the technical material relating to the know how to the Foreign Company.
13. If and whenever required by the Indian Company, the Foreign Company shall depute one or more representatives who are specialised in the application of the said know-how with a view to teach any one or more employees of the Indian Company for the application of the said know-how and/or supervise the application of the know-how in the factory of the Indian Company.
14. The Indian Company will bear and pay all the travelling charges to and from India of such representatives of the Foreign Company 'as aforesaid and shall also bear and pay the expenses incurred for their stay in India and other incidental charges.
15. If so desired by the Indian Company it may send one or more representatives to the factory of the Foreign Company to get themselves acquainted with the Implementation of the know how and with the process of manufacture of the said items of machinery/product and in that case the Foreign Company shall render them all facilities and assistance to achieve the said object. The Foreign Company will make all arrangements for the stay of such representatives or representative of the Indian Company. All the expenses on account of travelling from and to India and of the stay of the said representative or representatives of the Indian Company at the place where the factory of the Foreign Company is situate will be borne and paid by the Indian Company.

16. If any special tools, Instruments and material are required in the application of the said know-how and which are not available in the Indian market. the same will be supplied by the Foreign Company. The Indian Company will obtain the necessary Import License for the same and the price thereof will be paid by the Foreign Company opening a Letter of Credit on any Indian Bank through Foreign Bank in favour of the Foreign Company. Such goods will be sent F.O.B. to some port In India.
17. The Indian Company shall not make any innovations or additions or alterations in the said know-how and the process of manufacture. without the written consent of the Foreign Company and the Indian Company "I take care to see that the said items of machinery/products will be In strict compliance with the specifications of quality and standards laid down by the Foreign Company.
18. The Indian Company in all advertisements wherever made and other literature mention the fact that the item of machinery/products are manufactured in collaboration with the Foreign Company.
19. The Foreign Company will have the right to send its one or more representatives on its own but at its own costs to India and to visit the factory of the Indian Company. to supervise and cheek that the said know-how or expertise Is being utilised properly and according to the requirements and the items of machinery/product are according to the standards maintained by the Foreign Company.
20. The items of machinery/products manufactured by the Indian Company will be sold only in the Indian market and not outside India except with the written consent of the Foreign Company.

21. The Indian Company will furnish to the Foreign Company a statement every six months of the total production of the said Items of machinery/products, and the total sale effected to enable the Foreign Company to ascertain the response to the said items of machinery/products from the Indian market.
22. Indian Company may sell the said items of machinery/products, under Its own trade mark or trade name In India but shall not use the trade mark or trade name of the Foreign Company without a separate written agreement to that effect between the Foreign Company and the Indian Company.
23. In consideration of the Foreign Company making available to the Indian Company the said know-how. the Indian Company shall pay to the Foreign Company as follows :-
 - (a) A lump sum payment of American Dollars in the manner hereinafter mentioned and (b) a royalty at the rate of Rs on the ex-factory price of the each of the said items of manufacture/product at the end of every three months as hereinafter stated. The lump sum legally payable as aforesaid shall be paid to the foreign company in three instalments unless otherwise stipulated in the letter of the Reserve Bank of India namely-
 - (i) One third of the said amount will be paid on the approval of this agreement by the Reserve Bank of India and on this agreement being pledged with the authorised dealer in foreign exchange.
 - (ii)The second instalment of one-third amount will be paid on the supply of the know-how.
 - (iii) The third instalment of the balance will be paid after four years

or on the approval of the Reserve Bank and the agreement is filed with the authorised dealer in foreign exchange whichever is earlier.

(iv) All remittances of money to be made to the Foreign Company under this agreement will be forwarded as per the exchange rates prevailing on the date of remittance.

24. The Indian Company will submit to the foreign company every three months from the date the first item of machinery/product is produced and the statement of the total production during the previous months duly certified by a Chartered Accountant and after the same is verified and accepted by the Foreign Company. The India Company will pay the amount of royalty at the rate aforesaid on such three months production within one month from the date of such acceptance.
25. The payment to be made by the foreign company will be subject to payment of cess. if any payable under the Research and Development Cess Act of 1986.
26. The Indian Company will also, be entitled to deduct from such payment the income tax, if any payable under the Income Tax Act. 1961.
27. Copy of this agreement signed by both the parties will be filed with the several authorities as required by law.
28. The Indian company will submit to the Foreign Company every three months from the date the first item of machinery /product is produced , a statement of the total production during the previous months duly certified by a Chartered Accountant and after the same is verified and accepted by the Foreign Company, the Indian Company will pay the amount of royalty at the rate aforesaid on such three months production within one months

from the date of such acceptance.

29. The payment to be made to the Foreign Company will be subject to payment of cess, if any payable under the Research and Development Cess Act of 1986.
30. The Indian Company will also be entitled to deduct from such payment the income tax, if any payable under the Income Tax Act, 1961.
31. A copy of this agreement signed by both the Parties will be filed with the several other authorities as required by law.
32. All payments to be made by one party hereto to the other in Indian or foreign currency under this agreement will be made subject to the approval of the Reserve Bank of India and In the manner stipulated by the said Bank.
33. The Letter of approval of the Government of India hereinbefore recited shall be deemed to be a part of this agreement and any term herein contained which is contrary to or inconsistent with any term or condition contained In the said letter, shall be treated as void and of no effect.
34. This agreement will remain in force for a period of... years from the date hereof subject to the other terms hereof. The parties may extend the said period by mutual consent.
35. This agreement will be treated as terminated on the happening-of any of the events below mentioned.

(i) If any party hereto commits breach of any provisions of this agreement

and the party who is alleged to have committed breach is served with a notice by the other party. three months prior to the intended date of termination by the other party and the former party has failed to amend the breach within the said period.

(ii) If any event happens which will make the performance of this agreement Impossible including any force majeure event.

(iii) If either the Indian Company or the Foreign Company goes into either voluntary or compulsory liquidation according to or under the law by which it is governed.

(iv) If the parties hereto mutually agree to terminate this agreement.

36. All the sanctions, approvals, permissions, licenses and other requirements of the Government of India and of any statutory authorities required for giving effect to all the terms and conditions, of this agreement shall be obtained by the Indian Company.

37. In the event of any dispute or difference arising between the parties hereto or as to the rights and obligations under this agreement or as to any claim, monetary or otherwise of one party against the other or as to the interpretation and effect of any terms and conditions of this agreement, such dispute or difference shall be referred to Arbitration of a common Arbitrator if agreed upon otherwise to two or more Arbitrators, one to be appointed by each of the parties to this agreement and such Arbitration shall be governed by the Indian Arbitration & Conciliation Act, 1996. The venue for such Arbitration shall be in India.

38. The validity of this agreement and the effect or meaning of the terms hereof will be decided according to the Indian Law.

39. Any communication by one party to the other shall be made by registered

post through airmail. with acknowledgement due or by telex or fax or cable. In case the communication is made by telex or fax or cable, the same will be subsequently but immediately thereafter confirmed by written communication sent by registered post as aforesaid. Any evidence showing the communication was posted or telex, fax or cable communication was made will be sufficient to prove the posting of sending the communication.

40. In this agreement the expression 'know-how' shall include technical information such as Inventories formulae process, engineering and manufacturing skill, scientific data. calculations. specifications, drawings, standards. sketches and all other relevant information and knowledge.
41. Each of the parties hereto shall be deemed to include its successors or permitted assigns..

THE SCHEDULE ABOVE REFERRED TO

IN WITNESS WHEREOF the parties have put their respective seals
the day and year first hereinabove written.

The common seal of M/s. ABC Co. Ltd.,
is hereunto affixed pursuant to the resolution of the
Board of Directors dated in the presence of
Mr....., a Director duly authorised in that behalf

The common seal of M/s. XYZ & Co. Ltd.,

is hereunto affixed pursuant to the resolution of the
Board of Directors dated..... in the presence of
Mr. a Director, duly authorised In that behalf.

Witnesses;

1.

2.