

TRIPARTITE LEASE AGREEMENT BETWEEN LESSOR, LESSEE

AND THE GUARANTOR

THIS AGREEMENT of Lease made at ..... this ..... day of ....., 2000, between ABC Co. Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at ..... (hereinafter referred to as "the lessor") of the FIRST PART and XYZ Co. Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at ..... (hereinafter referred to as "the lessee") of the SECOND PART and M, son of ..... resident of ..... (hereinafter referred to as "the Guarantor") of the THIRD PART.

WHEREAS on the request made by the Lessee, the Lessor has agreed to purchase the equipment, more particularly described in the Schedule hereto (hereinafter referred to as "the Equipment") at the price mentioned in the proposal form signed by the Lessee.

AND WHEREAS the Lessee has offered to take the equipment so purchased by the lessor.

AND WHEREAS the Guarantor has agreed to stand surety for the payment of lease rentals and observance and performance of covenants, stipulations and terms and conditions of this agreement.

AND WHEREAS the Lessor has agreed to purchase and lease the said equipment to the Lessee upon the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. In pursuance of the said agreement and in consideration of the lease rent hereby reserved and of the covenants, stipulations and terms and conditions herein contained and on the part of the lessee to be observed and performed, the Lessor doth hereby grant the lease of the equipment unto the Lessee upon the terms and conditions hereinafter mentioned for the term of ..... years commencing on the ..... day of ....., 2000.
  
2. The Lessee shall pay to the Lessor lease rent at the rates on the days and in the manner specified in the Schedule hereunder written without deduction or abatement in advance on the 10th day of each calendar month, the first such payment to be made on the ..... day of ..... and if the lease rent is not paid on the due dates, the Lessee

shall pay interest thereon at the rate of ..... % per month from the due date till payment.

3. The equipment shall be delivered to the Lessee by the manufacturer at the Lessee's factory at the address specified in the Schedule and the Lessor will not be liable for any loss or damage caused to the equipment before or in the process of transportation or delivery of the equipment.

4. The Lessee acknowledges, declares and agrees that:

(i) the equipment is of a size, design, capacity and manufacture selected by the Lessee;

(ii) the Lessee has selected the equipment and the manufacturer based on its own judgment;

(iii) the Lessor is not the manufacturer or supplier of the equipment and it has not made any representations or statement about the equipment and the Lessee disclaims any reliance on the statement made by the Lessor, if any relating to the equipment;

(iv) the Lessee has not given any warranties express or implied on to any matter whatsoever including the condition, fitness or merchantability of the equipment or suitability of the same for any purpose;

- (v) the Lessor will not be liable to the lessee for any liability, claim, loss, damage or expenses of any kind or nature whatsoever arising from the leasing, installation, use or operation of the equipment or its failure to operate or perform or otherwise howsoever.

5. The lessee shall throughout the said term:

- (i) Pay the lease rentals and other amounts regularly and punctually payable hereunder.
- (ii) Keep and maintain the equipment in good and substantial repair and condition (fair wear and tear excepted) and in case the equipment is required to be repaired, to get the equipment repaired by the person, firm or body nominated by the lessor and in the event of the lessee failing to do so, the lessor shall be entitled to take possession of the equipment and get the equipment repaired and in such case the lessee will forthwith repay to the lessor the full cost of repairs incurred by the lessor.
- (iii) Install, use and operate the equipment properly and carefully and in conformity with the instructions given by the manufacturer in this behalf.
- (iv) To pay or cause to be paid all rates, taxes, licence fees, duties, surcharges, registration charges and other outgoings payable in respect of the equipment, or its installation, use or operation thereof or in respect of the premises where the equipment may be placed or kept for the time

being and on demand produce the receipts thereof to the lessor or his authorised representatives and in case of failure by the lessee to pay the rates, taxes, etc., the lessor shall be at liberty (but not bound) to make all or any of such payments and to recover the amount thereof from the lessee forthwith.

- (v) Keep the equipment at all times in its possession and control at the location shown herein viz. .... and will not remove the said equipment therefrom without the prior written consent of the lessor.
- (vi) Not cause or permit affixation of equipment to any immovable property.
- (vii) Insure and keep the equipment insured during the term of the lease, at its own cost, in the name of the lessor against loss or damage by theft, fire, accident, and other risks and on such terms as the lessor may require with ..... company Ltd. for an amount equal to the full value of the equipment, in the event of the lessee failing to insure, the lessor may do so and recover the cost thereof from the lessee forthwith. The Lessee shall pay the insurance premiums and shall hand over the policies of insurance and receipts of payment of premiums to the lessor.
- (viii) Not to make any alteration, addition or improvement in equipment without the prior written consent of the lessor and any alteration, addition or improvement when made to the equipment shall be deemed to be part and parcel of the equipment owned by and belonging to the lessor.

- (ix) To permit lessor and all persons authorised by it at all reasonable times to enter upon the premises where the equipment is placed or kept for the time being in force and to inspect and examine the condition of the equipment.
  - (x) Obtain all necessary licences, permissions, etc. for the use and operation of the equipment and not to use the equipment in contravention of the terms and conditions of such licences, permissions, bye-laws or regulations of any local or statutory authority for the time being in force.
  - (xi) To indemnify and keep indemnified the lessor against any claim, demand, liabilities, proceedings or expenses, brought, filed or incurred against him relating to the transportation, delivery, operation or use of the equipment including injuries to or death of persons arising from or pertaining to the transportation possession, installation, operation or use of the equipment.
6. The lessee acknowledges, declares and confirms that it holds the equipment as a mere bailee and the lessor is and will be having sole and exclusive right, title and interest in the equipment and the lessee will affix or place plate or makings on the equipment indicating the lessor's title and therein.
7. (i) If the equipment or any part thereof is lost, destroyed or damaged, the lessee shall notify you the same to the lessor and receive the moneys

from the insurance company and hold the same on trust for the lessor and pay or apply the same as directed by the lessor.

(ii) If in the opinion of the lessor, the equipment is lost, stolen or damaged to such extent, which is incapable of repair; the insurance money will be applied to make good the damages under the insurance policies.

(iii) If in the opinion of the lessor. the equipment can be repaired then the insurance monies shall be applied in repairing or replacing the equipment with similar type and quality and in such an event the replaced equipment shall be held by the lessee under the terms of this lease.

(iv) Save as provided in above sub-clauses, the loss, theft or destruction of or damage to the equipment shall not affect the continuance of the lease and the lessee will continue to be liable to pay lease rentals in respect of the equipment.

8. If the lessee-

(i) fails to pay lease rentals or part thereof or any other payments payable hereunder for a period of one month; or

- (ii) fails to effect insurance of the equipment or fails to pay insurance premiums as and when due or fails to reimburse the same to the lessor if paid by him; or
- (iii) sells, mortgage, charge, demise, sub-let or otherwise dispose of or tries to sell, mortgage, charge, demise, sub-let or otherwise dispose of the equipment; or
- (iv) fails to perform or observe its covenants, stipulations, terms and conditions, to be performed or observed by the lessee under this lease deed or in any other document executed by the lessee in connection herewith and such failure or breach continues for a period of one month after service of written notice to the lessee; or
- (v) pass a resolution of winding-up or have a petition for winding-up presented against or if a receiver shall be appointed of the whole or part of the assets, properties or undertakings of the lessee or shall compound with or enter into any composition with its creditors;
- (vi) do or suffer any act or thing or omits to do or suffer any act or thing, in consequence of which the equipment may or is likely to be distrained, endangered, attached or taken execution under any legal process or by any public authority.'
- (vii) if any judgment or order against the lessee shall remain unsatisfied for more than fourteen days;
- (viii) if he abandons the equipment.

Then and on the occurrence of any such event it shall be lawful for the lessor to terminate this agreement, without prejudice to any action that it may take against the lessee for any right or remedy under this agreement or otherwise at law or to exercise all or any of the following rights or remedies viz:

- (i) to take possession of the equipment and for that purpose enter upon any premises where the equipment is or is believed by the lessor to be for the time being situated and detach and dismantle the equipment;
- (ii) sell, transfer, assign, lease or dispose of the equipment or part thereof by public or private sale with or without notice to the lessee;
- (iii) require the lessee to pay to the Lessor all sums due and payable under this lease, interest on the due lease, rentals, liquidated damages for loss of a bargain and not as a penalty and other expenses incurred by the lessor due to termination of the lease before the term of the lease;
- (iv) exercise any other right or remedy available to the lessor under any law for the time being in force.

It is hereby declared that the lessee shall also be liable to pay all legal fees, costs and expenses incurred by the lessor from the foregoing defaults or the exercise of the lessors' remedies and the remedies referred to above are not intended to be exclusive, but shall be cumulative and shall be in addition to any other remedy available to the lessor under any law for the time being in force.

9. Any express or implied waiver, by the lessor of any default shall not constitute a waiver of any default by the lessee or waiver of any of the lessor's right. The lessor shall not be deemed to have waived any of the lessor's rights or any provision of this agreement or any notice given hereunder unless such waiver be provided in writing by lessor.

10 If the lessee having paid all lease rentals and other amounts payable under the lease deed and observed and performed all the covenants, stipulations, terms and conditions, shall desire to renew this lease and shall give notice of such desire not less than ..... months prior to the expiration of the term hereby granted, the lessor shall grant renewal of the lease for a further period of ..... years commencing on the date of expiration of this lease on the same terms and conditions as those herein contained including the right of renewal, but at a lease rental of Rs..... per month.).

11. Upon expiry of the lease term hereby granted or renewal hereof or sooner determination in terms of this lease deed, the lessee shall at its own cost forthwith deliver or cause to be delivered the equipment to the lessor at such place as may be intimated by the lessor to the lessee.
12. Time shall be the essence of this agreement in so far it relates to the observance or performance of all or any of its obligation, covenants or liabilities hereunder by the lessee.
13. During the term of this lease, the lessee shall submit its Balance Sheet and Profit and Loss Account as and when they are ready and other information, reports and statements as may be required by the lessor.
14. This agreement is personal to the lessee and it shall not transfer, assign or otherwise dispose of its rights or obligations hereunder.
15. The Guarantor hereby guarantees the payment of lease rentals and other moneys payable by the lessee to the lessor under these presents and observance and performance of the covenants, stipulations, terms and conditions by the lessee. The Guarantor also hereby agrees to pay on demand any money due or which becomes payable under this agreement

and not paid by the lessee. The guarantor hereby further agrees that any time granted to the lessee or any indulgence shown to him in respect of this agreement shall not prejudice the lessor's right or relieve the guarantor from his guarantee, which shall be a continuing guarantee and his liability will be coextensive with that of the lessee and it will not be necessary for the lessor to serve any notice to the guarantor for any default committed by the lessee or any concession, or indulgence shown by the lessor to the lessee.

16. The lessor hereby assigns to the lessee the right of warranties provided by the manufacturer of the equipment and the lessee shall be entitled to make any claim for any defect or deficiency, for any breach of condition or warranty directly against the manufacturer and for this purpose if the lessee requests to the lessor, the lessor shall authorise the lessee for enforcing due performance of any warranties or performance guarantees relating to the equipment.
17. All disputes, questions, differences and claims whatsoever arising from this agreement between the parties and/or /their successors or assigns touching these presents or any right or liability arising from these presents shall be referred to the arbitration of two arbitrators, one to be appointed by each party and such reference shall be deemed to be reference under

and subject to the provisions of Arbitration Act, 1940 or any statutory modification or re-enactment thereof for the time being in force and arbitration proceedings will be held at .....

18. Any notice or letter required to be given herein shall be given to the parties hereto in writing by Registered Post Acknowledgment Due at the addresses above mentioned or such other address as the parties may hereafter substitute by notice in writing to the other parties.
19. All prior agreements or arrangements whether oral or written between the parties or relating to the lease of the equipment by the lessor to the lessee shall be deemed to be cancelled and superseded by this agreement.
20. This lease deed shall be executed in triplicate. The original shall be retained by the lessor, duplicate by the lessee and triplicate by the guarantor.
21. The stamp duty and all other expenses in respect of this lease deed and duplicate thereof shall be borne and paid by the lessee. (22) The headings to the clauses of this agreement are meant only for convenience of reference and shall not in any way be taken into account in the interpretation of these presents.

22. It is hereby agreed between the parties that this agreement shall be subject to the exclusive jurisdiction of the City Civil Court at .....

IN WITNESS WHEREOF the parties hereto have executed these presents and duplicate and triplicate copy thereof on the day and year hereinabove written.

*The Schedule above referred to*

Signed and delivered by the within named ABC Co. Ltd.,  
the lessor by the hands of Shri .....  
Managing Director thereof

Signed and delivered by the within named XYZ Co. Ltd.,  
the lessee by the hands of Shri ..... Managing  
Director thereof

Signed and delivered by the within named M, the guarantor

WITNESSES;

1.

2.