

Agreement to Help an Indian Industry for Putting Up Plant and Machinery

This Agreement is made at this ... day of between 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 One Part and M/s. XYZ Co. Ltd., a Company incorporated under the laws in force in ... and having its office at hereinafter referred to as the 'Foreign Company' of the Other Part.

Whereas the Indian Company has established a factory at ... by purchasing a highly technical machinery and equipment from the Foreign Company.

And Whereas at the treaty of the purchase of the said machinery and equipment It was agreed that the Foreign Company shall render all assistance In the maintenance and repairs of the said machinery and equipment on the terms and conditions agreed upon between the parties and to be subsequently recorded In writing.

And Whereas it is now proposed to execute these presents recording the said terms and conditions.

And Whereas this agreement is subject to the approval by the Reserve Bank of India or the Government of India.

Now It Is Agreed Between The Parties Hereto As Follows: -

The Foreign Company agrees and undertakes that whenever required by the Indian Company, the Foreign Company will send to India one of its technician who would be expert in the matter for which his help is required and he will attend to the matter of repairs or maintenance of any part of the said machinery and equipment and will have the work involved carried out.

2. The travelling expenses of such expert deputed as well as expenses of such expert incurred during his stay In India for travelling, boarding and lodging will be paid by the Indian Company.

3. If any expert sent by the Foreign Company fails to do the job of repairs or maintenance satisfactorily the Foreign Company will at its own expense, send one or more other experts to do the job involved.

4. The Foreign Company agrees to supply at the market rates such spare parts tools and other items or parts of the said machinery and equipment as will be required to carry out repairs and to keep the said machinery and equipment In working condition. The Indian Company will obtain necessary import license for such spare parts, tools etc. and the price thereof will be paid against Letters of Credit drawn in favour of the Foreign Company.

5. For the services to be rendered by the Foreign Company as herein provided the Indian Company will pay to the Foreign Company lump sum royalty of

6. The lump sum royalty payable as aforesaid shall be paid to the Foreign Company In three Instalments unless otherwise stipulated In the approved latter 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 and on this agreement being filed 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 of the approval of the Reserve Bank and the agreement is filed with the authorised dealer in foreign exchange.

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

8. 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.

9. The Indian Company will also be entitled to deduct from such payment income tax, if any payable under the Income Tax Act 1961.

10. Copy of this agreement signed by both the Parties will be filed with' the several other authorities as required by law.

11. The Foreign Company will supply to the Indian Company the knows how or technical information necessary for the running of the said machinery and any improvements made therein from time to time. The Indian Company undertakes to maintain such know-how a secret and shall not disclose the same to any other person. The Indian Company will secure agreements from its employees who all acquire knowledge of the know-how to keep the same secret.

12. The duration of this agreement shall be years from the date the Govt. approves this agreement but subject to the other provisions contained in the agreement. The said period may, however, be extended as may be mutually agreed.

13. All payments to be made by one party to the other under this agreement shall be made as per the directions and in the manner approved by the Reserve Bank of India.

14. The approval letter of the Government of India in the Department of Industrial Development shall be deemed to form part of this agreement. Any term of this agreement which is inconsistent with or contrary to any term or condition mentioned in the said letter of approval shall be treated as void and of no effect.

15. 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.

16. All the sanctions, approvals, permissions, licences 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.

17. 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 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.

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

19. 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 or sending the communication.

20. In this agreement the expression 'know-how' shall include technical information such as inventories formulae, processes, engineering and manufacturing skill, scientific data, calculations, specifications. drawings, standards, sketches and all other relevant information and knowledge.

21. The Foreign Company will, as a part of the know how render the following services namely -

- a. to make a study of the market survey profitability and project report.
- b. to provide latest manufacturing and engineering technology in the manner of production methods.
- c. to advise the Indian Company in the manufacture of the said products so as to maintain required standard and technology.
- d. to advise the Indian Company in the work of research and quality control of the said products
- e. to advise the Indian Company in the matter of purchasing suitable raw materials and other accessories.
- f. to assist the Indian Company in buying further suitable machinery spare parts, tools required in the manufacture.
- g. to advise the Indian Company in the matter of marketing of the products selling and exporting the same.
- h. to advise and assist the Indian Company in increasing the production in adopting proper and efficient system of production and efficiently maintaining the plant.
- i. to advise the Indian Company for adopting matters for economising the costs of production without sacrificing efficiency
- j. to advise the Indian Company generally in the best interest of the manufacture of the said products and the sale thereof

22. None of parties hereto consenting the rights and benefits under this agreement to any other party without the consent writing of the other.

23. Each of the parties hereto shall be deemed to include its successors or permitted assigns.

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;