

Agreement of Collaboration to Establish a Factory (Formation of a new Company)

This Agreement is made the ... day of 2000, between M/s. ABC & Co. Ltd., a company Incorporated in India and having its business address at (hereinafter called 'the Local Company' of the One Part And M/s. XYZ and Co. Ltd., a company Incorporated in and having its registered office at (hereinafter called the Foreign Company') of the Other Part.

Whereas the Local Company is carrying on the business. inter alia of manufacturing ... for export.

the foreign company is carrying on the business inter alia in the manufacture of

And Whereas the parties hereto have, after several consultations with each other shown the intention to co-operate with each other and enter into a joint venture relationship for the manufacture of ... (hereinafter referred to as 'the Product') for the consideration and upon the terms and conditions herein contained.

And Whereas pursuant to the aforesaid intention of the parties hereto they propose to procure the formation of a Limited Company in India known asunder the Indian Companies Act, 1956, (hereinafter called 'the Company') which would have an authorised share capital of Rs. (Rupees) divided into ordinary or equity shares of Rs.....each and an issued share capital of Rs.

Now It Is Hereby Agreed between the parties as follows: -

> 1. Forthwith upon the execution of this agreement the parties hereto shall get registered a Company in the name of M/s. Ltd., (and which name is approved by the Registrar of Companies at) with the said Registrar under the Indian Companies Act. 1956, In terms of the Memorandum and Articles of Association in the form of the drafts which have been approved by the parties and shall comply with the other requirements of such registration.

2. The rights attaching to the shares of the Company have been set out in the draft Articles of Association referred to in Clause 1 hereof.

3. Each of the parties hereto undertakes to the other –

1. To perform and observe and (so far as it is able by the exercise of voting rights or otherwise so to do) to procure that the Company will perform and observe all the provisions of this Agreement.

2. To take all necessary steps on its part to give full effect to the provisions of this agreement, and

3. without prejudice to the generality of the foregoing, to exercise and procure that every person for the time being representing it will exercise or refrain from exercising any rights of voting at any meeting of the members or of the Directors of the Company so as to ensure the passing of any and every resolution necessary or desirable to procure that the affairs of the Company are conducted In accordance with this agreement and otherwise to give full effect to the provisions of this agreement and likewise so as to ensure that no resolution is passed which does not accord with such provisions.

4. The registered office of the Company shall be at

5. The parties hereto agree that the share equity In the Company shall be in the following proportion:

a. The Foreign Company shall hold ... per cent, and

b. The Local Company shall hold percent of the total issued share capital of the company at any one time throughout the period of this joint venture.

6. All shares issued shall be paid in full in cash and/or in kind to the Company but no additional shares shall be issued without the prior mutual agreement of the parties hereto. However. the parties hereto shall have pre-emptive rights in proportion to the number of shares held by each of them with respect to any new issuance of shares of the Company, subject to approval of SEBI, if required.

7. Neither of the parties hereto shall pledge, sell, transfer or otherwise encumber or dispose of all or any of the shares of the Company without the written consent of the other party.

8. As provided in the draft Articles of Association referred to in Clause 1 hereof the number of Directors of the Company shall be of whom will be nominated by the Foreign Company and ... by the Local Company respectively hereto. Before the commencement of each financial year of the Company the Directors shall appoint one of their members to be the Chairman of the Board throughout such financial year and the person so elected shall be nominated in respect of alternate years by the parties hereto. The chairman shall have a casting vote at meetings of directors or at general meetings of the Company. The first Chairman of the Company shall be nominated from the Local Company. No director so appointed as herein provided shall be entitled to remuneration whatsoever unless otherwise agreed by the parties hereto.

9. In the event that a director vacates his position at any time for whatsoever reason the vacancy shall be filled by the nomination of the party whose nominated director as aforesaid has vacated his/her position.

10. The Board of Directors shall decide the time and venue for convening all meetings of the Company, provided that they will be held always in India.

11. All general meetings of the Company shall be conducted in the language understood by the parties hereto and/or the shareholders of the Company but all the minutes of such meetings shall be written in the English language.

12. The quorum for meetings of Directors of the Company and the procedure for transacting business at meetings of Directors of the Company shall be as prescribed in the draft Articles of Association referred to in clause 1.

13. The Local Company will arrange for the necessary accounting and other essential services and facilities to be provided for the Company on terms to be approved by the Directors of the Company.

a. the accounts of the Company shall be made upto the 31st day of March in each year.

b. The annual statement of account of the company shall be audited by an independent Chartered Accountant to be appointed on the mutual agreement of the parties hereto. The Company shall issue to the shareholders on a semi-annual basis and within sixty (60) days of the end of the relevant month the financial statements together with the report on operations for the period covered by the financial statements and which shall be submitted in the English language at the expense of the Company.

15. The Company shall open a bank account with the Bank of.... and such account shall be operated by any two (2) Directors of the Company or otherwise as may be determined by the Directors of the Company from time to time.

16. The Directors shall appoint two (2) Joint Representative Directors for the Company, one of whom shall be nominated by the Local Company and the other by the Foreign Company, who shall be responsible for the operation and administration of the Company in accordance with the decisions of the Directors. The Joint Representative Director nominated by the Foreign Company shall be designated the President of the Company and the Joint Representative Director nominated by the Local Company shall be designated the Vice-President of the Company.

17. The Directors of the Company may appoint a manager for the day to day management of the affairs of the Company and/or a manager for direction of manufacturing and sale of the product.

18. Except with the approval of the Directors of the Company –

a. The Company shall not engage in any other business than the manufacture of the Product.

b. The company shall not make or incur any commitment for capital expenditure. and

c. The Company shall not enter into any contract or engagement of a material nature outside the normal course of business.

19. This Agreement shall continue to be in effect so long as both parties remain the shareholders of the Company in the manner aforesaid unless the same is earlier terminated as provided here in below by written notice of one party to the other of its intention to terminate this agreement :

a. In the event that the necessary approvals by the Government authorities for this joint venture and/or the necessary approvals for the manufacture of the Product and such other related matters are not obtained within three (3) months from the date of this agreement or such other period the parties hereto may agree to. or

b. In the event that either party commits a breach of any of the terms of this agreement, provided that. the other party in writing requires the former to remedy such breach within ninety (90) days from the date of the notice and the party receiving such notice has failed to remedy the breach, or

c. In the event of any acts by force majeure which either of the parties are unable to remedy within ninety (90) days of its happening, or

d. In the event that either party hereto goes into liquidation voluntarily or compulsorily or enters into composition with its creditors or restructures itself or does anything whereby its corporate entity is so materially changed so as to adversely affect this joint venture and/or this agreement ; or

e. In the event that there be intervention by the local authorities thereby making the joint venture not viable to continue ; or

f. In the event that the parties hereto mutually agree to the termination of this agreement.

20. If either party hereto gives notice of termination of this agreement as aforesaid the party giving the said notice shall offer in writing the sale of its shares in the Company to the other party at the fair market value then prevailing and if the party receiving the said offer does not accept the offer itself or by its nominee or nominees within ninety (90) days from the date of the said notice then the Company shall be deemed to go into voluntary liquidation in which event a liquidator will be appointed for the eventual dissolution of the Company. For the purpose of this Clause the phrase 'fair market value' shall mean the price per share as agreed upon by the parties hereto or in the event the parties are unable to agree within the said period of ninety (90) days the price per share shall be determined by the Independent Chartered Accountant of the Company and such determination shall be final and binding on the parties hereto.

21. The failure of either party to insist on the strict and punctual performance of the provisions of this agreement shall not constitute a waiver of or estoppel against asserting the right to require such performance nor should a waiver or estoppel in one instance constitute a waiver or estoppel with respect to a later breach whether of similar nature or otherwise. Nothing in this provision shall prevent a party hereto from enforcing its rights by such remedies as may be available in lieu of termination of this agreement as specified in Clause 18 hereto.

22. In the event that there be any term or provision of this agreement becoming invalid, illegal or unenforceable in any respect after execution hereof such invalidity or unenforceability shall not affect any other term or provision of this agreement and this agreement shall be interpreted and construed as if such invalidity illegality or unenforceability had never existed and/or contained in this agreement.

23. The failure or delay of either party hereto to perform any obligation under this agreement solely by reason of acts of God, acts of Governmental policies (otherwise than provided herein) riots, wars, strikes, lockouts, accidents in transportation and/or such other causes beyond the party's control shall not be deemed to be a breach of this Agreement.

Provided Always, if the party is so prevented from performing as herein stated it shall continue to take all expedient steps and/or actions within its ability to rectify the situation.

> 24. Except where the nature of the happening is such as to prevent the party from doing so the party suffering from the acts by force majeure shall notify the other party in writing within seven (7) days after the occurrence of such happening.

25. This agreement shall not be construed by either party hereto as constituting each of them the agent of the other nor the Company as the agent for either of them.

26. This Agreement shall be binding upon and accrue to the benefit of the parties hereto and their respective successors and assigns but any assignment of this agreement by one party shall not be effective without the written consent of the other party being first had and obtained.

27. The costs and expenses incidental to this Agreement shall be paid by the parties hereto but such payments shall be reimbursed by the Company after the execution hereof.

28. The terms and conditions, apart from those contained herein, on which the Foreign Company has agreed to collaborate and to render necessary help in the manufacture of the said product by the Company by supplying the know-how and transferring its patents and trade marks, have been recorded in a draft of the agreement to be entered into between the Company and the parties hereto and such draft which is approved by both the parties hereto and is annexed hereto as Annexure A shall be deemed to form part of this agreement. On the registration of the said Company the said draft agreement will be got adopted by the Board of Directors of the Company and shall be thereafter executed by and on behalf of the Company and the parties hereto so as to be binding on the Company.

29. The parties hereto shall get the Articles of Association of the Company amended, if required, to make them consistent with the terms of this agreement.

30. The parties hereto covenant with each other as follows

- a. that it will carry out the provisions of this agreement in good faith and in the spirit it is executed.
- b. that it warrants and represents to the other party that it has no outstanding commitments or obligations which would impede its ability and right to enter into this agreement and/or fulfil its obligations hereunder except for those disclosed in writing at the time of the execution hereof.
- c. That it will indemnify the other party if the aforesaid warranty and/or representation is found to be false or untrue and save it harmless from all damages, fines, costs and such other expenses in consequence thereof.
- d. That it will not engage or participate in any manner with any other party in any venture within India which may compete and/or be detrimental to the Company's manufacture and sale of the Product or the goodwill and wellbeing of the Company generally, and

e. that it will do such acts and/or deeds as are necessary and beneficial to the Company upon the request by the other party hereto.

31. All disputes and/or differences arising between the parties hereto with regard to this agreement including Annexure A hereto or the duties, powers or liabilities or either party hereunder or with regard to the construction of any clause hereof or any act or thing to be done in pursuance thereof or arising out of anything herein contained whether during the continuance of this agreement or upon or after its termination by any act of either party hereto or otherwise shall be referred to a single Arbitrator In accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996.

32. Any notice required or permitted to be given hereunder shall be in writing and may be given by the personal service or prepaid mail or by electronic transmissions to the parties hereto at their addresses specified below :

To the Local Company: ...

To the Foreign Company: ...

and any such notice given shall be deemed to have been received by either of the parties hereto within fourteen (14) days after it has been posted and if it is sent by electronic transmission it shall be deemed to have been received within forty eight hours after it has been transmitted. For the purpose of showing proof of posting and/or transmitting it shall be sufficient to produce a letter, a telex, a cable and/or a telefax message containing the notice and properly addressed, posted and/or transmitted to the party intended therefor.

33. This agreement shall be construed and shall take effect in accordance with the law in India.

as Witness the Common Seal of the parties hereto have been hereunto affixed, 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;