

AGREEMENT OF COLLABORATION TO ESTABLISH A FACTORY

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 First Part, 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 Second Part and M/s. CDE Co. Ltd., a company registered under the (Indian) Companies Act, 1956, and having its registered office at (or Mr. A of..... carrying on business at (or residing at) hereinafter referred to as the 'confirming Party' of the Third Part-, as follows:

WHEREAS the Confirming Party has obtained an Industrial License and other licenses or permissions to set up an Industrial Unit or factory at ... to manufacture a products by name (hereinafter referred to as 'the said Product's) and a copies of which licenses are hereto annexed and marked 'A' (collectively).

AND WHEREAS at the request of the Confirming Party the Foreign Company has agreed to collaborate in the setting up of a unit or factory for manufacturing the said product on the terms and conditions mentioned in the agreement dated, the ... day of ... and entered into between the Confirming Party and the Foreign Company.

AND WHEREAS pursuant to the said agreement, the Confirming Party has promoted and registered a separate Company being the said Indian Company being the Party of the First Part.

AND WHEREAS by the said agreement it was agreed between the Confirming Party and the Foreign Company that they would cause a separate agreement entered into between the Indian Company after Its Incorporation and the Foreign Company In terms of the draft annexed to the said agreement dated.....

AND WHEREAS the Board of Directors of the Indian Company in their meeting held on the ... day of... adopted the said draft agreement and resolved to execute the same with a view to install the unit or factory for producing the said products referred to therein being the products known as ... and the particulars of which are set out In the Schedule hereunder written.

AND WHEREAS the confirming Party has obtained the consent of the licensing authority to transfer the benefit of the said licences (Ex. A hereto) during the currency of this agreement.

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

- 1 This agreement is subject to the approvals of the Government of India and other authorities concerned and shall be effective and binding on the parties only on the grant of such approvals. Subject to this the agreement shall be deemed to have commenced from the date hereof.
- 2 This agreement shall be subject to the terms and conditions on which such approvals as aforesaid will be granted and they shall be deemed to form part of this agreement. Any term hereof which will be inconsistent with or contrary to any term or condition stipulated as a part of such approvals as aforesaid will be treated as null and void.
- 3 The Foreign Company agrees with the Local Company ;
 - (a) to render all necessary advice in the matter of production of the products hereinafter mentioned and the purchase of raw materials , plant and machinery
 - (b) to supply all the know-how including plans drawings designs and other technical data required for the production
 - (c) to provide the assistances of technical staff required to install plant and machinery. to run the same and in the process of production .
- 4 The Indian Company agrees and undertakes to manufacture and produce the products namely... (hereinafter referred to as the said Products and the particulars of which are set out in the Schedule hereunder written.) mainly for export out of India and the Foreign Company agrees to collaborate and give all assistance in the manufacture of the said products as hereinafter mentioned for the commercial exploitation thereof.
- 5 The Foreign Company will make all arrangements, negotiations and bargain for the purchase of and supply to the Indian Company of the plant, machinery and all other Incidental equipment and spares required In the manufacture of the said products with a view to set up or install the manufacturing unit or factory at by the Indian Company.

- 6 The said plant and machinery and other related equipment will be negotiated at the best minimum market price available and the price thereof will be paid by the Indian Company to the Sellers thereof directly through Banks by opening one or more confirmed Letters of Credit in favour of such sellers. The Import Licenses and other permissions for purchase and import of such plant, machinery and equipment will be obtained by the Indian Company from the appropriate authorities In India.
- 7 The Foreign Company will depute and make available the services of such qualified person or persons from their factory or otherwise for helping and guiding and otherwise advising the personnel of the Indian Company In the installation, establishment and putting in working order the said plant and machinery and their services will be made available until the plant and machinery are fully installed and start functioning and the Indian personnel are found to be well trained and acquainted with the manufacture mechanism of the said plant and machinery and the operations thereof. The Foreign Company will also depute one or more members of their technical staff as and when required by the Indian Company to supervise, advice and help in the functioning of the plant and machinery and also in the manufacture of the said products or any of them on the same basis as provided herein.
- 8 The person or persons so deputed by the foreign Company since their landing in India till their departure from India will not be treated as the employees of the Indian Company but will be paid such remuneration and other allowances and travelling expenses as may be agreed upon between the Foreign Company and the Indian Company from time to time but subject to the approval of the Government of India and or the Reserve Bank of India if any required. The travelling charges of such technicians to and from India will also be paid by the Indian Company and the Indian Company shall make proper arrangement for the residence of such persons or person In India.
- 9 The Foreign Company will also fully train the one or more persons proposed to be deputed by the Indian Company in the factory of the Foreign Company at ... or other selected place. in the working of the said plant and machinery, in the mechanism thereof and also in the production or manufacture of the said products. The expenses on account of such person or persons for their residence travelling charges etc. will be paid by the Indian Company.

- 10 The Foreign Company will make available to the Indian Company the technical know-how for the installation of the said plant and machinery and in respect of the said products and all the literature, drawings, formula, data and all other information necessary or required to be known for the manufacture of the said product.
- 11 The Foreign Company shall also make available the benefit of improvements, research work, additions and alterations that may be made in the said plant and machinery or in the process of manufacture of the said products from time to time during the subsistence of this agreement.
- 12 The said products when so manufactured shall be exported out of India and the Foreign company will help the Indian Company for the sale thereof in the market available for the same In any country and the Foreign Company will act as the selling agent of the Indian Company. The license for exports will be obtained by the Indian Company and the benefit of such exports under the export promotion scheme or any other scheme for encouraging exports sanctioned by the Govt. of India will belong to the Indian Company. The Foreign Company will arrange to secure the payment of the price of the quantity of the said products exported from time to time, by getting the buyers to open Letters of Credit with any Bank in India in favour of the Indian Company.
- 13 The sale price of the said products for exports will be fixed from time to time by the Indian Company and the Foreign Company by mutual consent.
- 14 The Indian Company may also, with the approval of the Foreign Company, appoint other selling agents for any country or countries or any part or parts thereof on such terms as may be agreed upon between the Indian Company and Foreign Company on the one hand and such agent or agents on the other.
- 15 The Indian Company will be entitled to sell any quantity of the said products in India in case the same cannot be exported and sold outside for any reason, at such price as may be agreed upon between the parties hereto.
- 16 The Foreign Company shall allow the Indian Company to sell the said products on the trade mark or trade marks used by the Foreign Company and if the Foreign Company has any patent rights, in respect thereof the benefit of those rights will also be available to the Indian Company and for this purpose the Foreign Company shall

formally enter into a separate agreement for granting rights to use the trade marks or give a license to use the same and the patents in India.

- 17 All the expenses incurred by the Foreign Company and the Confirming Party for the Incorporation of the Indian Company of and incidental to the agreement entered into between the Foreign Company and the Confirming party and this agreement shall be payable and paid by the Indian Company.
- 18 The Foreign Company will also render such financial assistance in foreign currency as the Foreign Company will think fit and proper or necessary for buying the plant, machinery and other equipment and for the manufacture and export and sale of the said product, subject to approval by the Government of India and the Reserve Bank of India.
- 19 In consideration of all the services to be rendered by the Foreign Company as provided in this Agreement the Foreign Company shall be paid and reimbursed in the following manner and to the following extent.

a lump sum royalty of pounds, sterling

A royalty at per cent. on the value of yearly production .

- 20 The said lump sum royalty payable as aforesaid shall be paid to the Foreign Company in three instalments, unless otherwise stipulated in the approval by the Reserve Bank/Government, namely
 - (i) First 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 one-third amount will be paid on delivery of know how documents
 - (iii) The balance one-third will be paid on commencement of production or after four years after the approval of the agreement by the Reserve Bank of India and the agreement is filed with the authorised dealer in foreign exchange whichever is earlier .
- 21 All remittances of royalty and other moneys payable under this agreement will be made as per the exchange rate prevailing on the date of remittance.

- 22 The payments to be made to the Foreign Company will be subject to deduction for payment of cess if any payable under the Research and Development Cess Act 1986. And the Indian Company will be entitled deduct the same from the amount to be paid as aforesaid.
- 23 The Indian Company will also be entitled to deduct from any such payment to be made to the foreign Company and its technicians the income tax if any payable thereon under the Indian Income Tax Act, 1961.
- 24 A copy of this agreement signed by both the parties will be filed with the several authorities as required by law.

These payments and the manner of payment will be subject to the approval of the Govt. of India and the Reserve Bank of India and in the event of the said authorities making any modifications therein the same will be modified or deemed to be modified accordingly.

- 25 If the Government of India puts any terms and conditions for approving this agreement which are not acceptable to the Foreign Company, the latter will have a right to treat this agreement and the agreement between the Foreign Company and Confirming party as cancelled.
- 26 This agreement will remain in force for a period of... years from the date hereof subject to the other provisions hereof. The parties may extend the said period and to such extent as may be agreed upon. However, this shall be deemed to be a part of or incidental to the agreement between the Confirming Party and the Foreign Company hereinbefore recited and if this agreement is terminated by expiration of the said period or otherwise the said agreement shall also be deemed to be terminated. Notwithstanding anything contained in the said agreement and In the event of the termination of the said Agreement under this clause, the same consequences follow as would follow as if the said agreement was terminated under any of the provisions of the said agreement.
- 27 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. 28. 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.

28 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 or 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 Act, 1940. The venue for such arbitration shall be in India.

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

30 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.

31 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.

- 32 The Indian Company will be entitled to grant a sub-license to any other person in India of the rights and benefits under this agreement on such terms and conditions agreed to between the Indian Company, the Foreign Company and the sublicensee and subject to the approval of the Government of India.
- 33 Each of the parties hereto shall be deemed to include Its successors or permitted assigns.

THE SCHEDULE ABOVE REFERRED TO X

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

Common seal of the withinnamed Indian Company
M/s. ABC Co. Ltd. is hereto
affixed pursuant to the resolution
of the Board of Directors dated
in the presence of Mr
Managing Director duly authorised
in that behalf and who in token
thereof have put their/his
Signature opposite in the presence of Ms. X Y & Co. Ltd.
Common seal of the withinnamed
Foreign Company... Is hereto affixed
pursuant to the resolution of the
Board of Directors dated ... in the
presence of Mr... Director duly
authorised in and who in token thereof
have put his signature in the
presence of ...
Common seal of the withinnamed Confirming Party M/s. C & D Co. Ltd. is hereto affixed
pursuant to the resolution of the

Board of Directors dated ... in the
presence of ... duly authorised in
that behalf and who in token thereof
has put his signature In the presence of ...