

AGREEMENT FOR PERMISSION OF TECHNICAL KNOW-HOW

THIS AGREEMENT entered into on theday ofby
and between a company registered in India under the Companies Act, 1956 having its
registered office at (hereinafter referred to as the Licensee which
expression shall, unless repugnant to the context or meaning thereof, be deemed to
include its successors and assigns.....and a German
corporation, with place of registry in..... and having an office
at.....(hereinafter referred to as the Licensor which expression shall,
unless repugnant to the context or meaning thereof, be deemed to include its successors
and assigns.

WHEREAS the Licensor is engaged in the manufacture of.....

AND WHEREAS the Licensor is in possession of extensive know-how and
technical information concerning the manufacture of such products and has at its
disposal skilled technical personnel to assist in the transfer of such know-how and
technical information to a third party ;

AND WHEREAS the Licensee desires to acquire from the Licensor know-how,
technical information and assistance to enable the Licensee to
manufacture.....;

AND WHEREAS the Licensor is willing to furnish to the Licensee such know-
how and technical information and assistance for the manufacture of

THEREFORE, the parties have agreed as follows :

Article 1 : Definitions:-

For the purpose of this agreement , the terms set forth in this Article 1, when employed in this agreement either in the singular or plural form, are defined to mean, unless the context otherwise requires, the following

1 The terms “Contract Products” means

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.....

2 The terms ‘Technical Information’ means engineering and manufacturing information available with the Licensor relating to design, production methods, manufacture and testing of Contract Products as well as information relating to materials used in the manufacture thereof, insofar as such information has either been successfully incorporated in or forms part of the manufacturing or engineering technique of the Licensor and is applicable to the operations of the Licensee. With regard to materials used in the manufacture of Contract Products, ‘Technical Information’ means instruction on the required quantity, quality and characteristics and on their treatment in the manufacture of the Contract Products as well as sources of supply.

3 The term “Documentation” means and comprise the written Technical information and Improvements pertaining to Contract Products.

4 The term “Improvements” means future modification relating to designs, production methods, manufacture and testing of Contract Products insofar as such modifications have either been successfully incorporated in or form part of the manufacturing or engineering technique of the Licensor and are applicable to the operations of the Licensee.

- 5 The term 'Documentation' means and comprises the written Technical information and Improvements pertaining to Contract Products. The term 'The Licensor's Patent Rights' means and includes all patents of the Licensor that are in force during the term of his agreement, and patent applications of the Licensor filed or having a priority date prior to the termination of this agreement to the extent they apply to Contract Products and/or cover information available to the Licensee under this agreement.
- 6 The term 'Germany' means the Federal Republic of Germany including the territory of West Berlin.
- 7 The term "Effective Date of the Agreement" means the date on which the agreement has been taken on record by the Government of India after being duly signed by the two parties.
- 8 The term 'commencement of Regular Commercial On-Line Production' means the date on which the Licensee has delivered the initial orders of Contract Products for a total.....of at least..... production, to customers and said customers have accepted the delivered Contract Products.

Article 2 : Technical Assistance to be rendered by the Licensor

- 1 The scope of technical assistance will cover the following :
- 2.1.1 The Licensor shall assist the Licensee in order to enable the Licensee to adapt its available plant, machinery and equipment to the requirements for manufacture of Contract products by the Licensee. The assistance will include information regarding additional machinery any equipment required for the manufacture of Contract Products.
- 2.1.2 The Licensor shall train in adequate number of personnel of the Licensee as set forth in Article 3

- 2.1.3 The Licensor shall transmit its Technical Information to the Licensee as set forth in Article 4.
- 2.1.4 The Licensor shall transmit its Technical Information to the Licensee as set forth in Article 5.
- 2.1.5 The Licensor shall upon request of the Licensee render additional assistance to the Licensee under the provisions of Article 6.

Article 3: Training of the Licensee's Personnel

- 3.1 During the term of this agreement the Licensor shall receive the Licensee's personnel for training in its Plant in Germany. Such personnel will be trained by the Licensor in the functions relating to the design manufacture and testing of Contract Products and materials used therein and maintenance of plant and equipment. The Training shall be for such periods and for such numbers as may from time to time be agreed upon by the parties, but altogether for not more than twelve working man-months. The Licensor shall endeavor to ensure that training of the Licensee's personnel in the above fields will be adequate to impart complete competency in the respective fields to enable them to undertake eventual independent performance of these functions for the Licensee. The Licensee shall obtain the prior approval of the Government authorities concerned, wherever, applicable, for the delegation of their personnel to the Licensor.
- 3.2 The Licensee shall be responsible for and shall pay all such salaries, living allowances, travelling expenses and other remuneration and expenses to which its personnel delegated to the Licensor may be entitled.
- 3.3 The Licensee's personnel deputed to the Licensor shall have sufficient knowledge in their respective lines and actively participated in their respective

functions. They shall also have sufficient working knowledge of the German language.

- 3.4. A man-month as used in this Article 3 is based upon and regular working time of five days per week with eight hours each, with no working on holiday in Germany.
- 3.5. The Licensee's personnel shall during their training observe all the rules and regulations of the Licensor as applicable to the Licensor's own employees.
- 3.6. The Licensor shall not charge any additional remuneration apart from the payment provided for in Article 8.1 for the training of the Licensee's personnel in its factory.

Article 4 : Delegation of the Licensor's Personnel

- 4.1 Subject to the Licensee obtaining the prior approval of the Government authorities concerned, and upon mutual agreement of the parties, the Licensor shall delegate to the Licensee for periods to be agreed upon by the parties suitable specialists who are required in India in order to train personnel at the Licensee's factory and to provide general technical assistance by active participation in establishing production, quality control and testing at the Licensee's factory of Contract Products.
- 4.2. The delegation of the Licensor's technical personnel to India shall be on the terms and conditions and for the periods to be mutually agreed upon.

Article 5 : Termination of Technical Information

- 5.1 During the terms of this Agreement, the Licensor shall transmit to the Licensee the Technical Information and Improvements except Technical Information and Improvements that the Licensor is precluded from passing on to the Licensee in

view of contractual obligations under other agreements of the Licensor. In spite of the above restrictions, the Licensor confirms that the Technical Information that will be transmitted by the Licensor under this Agreement is sufficient to permit the manufacture to complete Contract Products and will enable the Licensee to fulfil the objectives of this Agreement.

- 5.2 The time and extent of the transmission of Technical Information and Improvements will be mutually determined by the progress of the Licensee in the respective manufacturing stages.
- 5.3. The Documentation to be supplied to the Licensee by the Licensor hereunder shall be in the metric system and in English, if available, otherwise in German.
- 5.4 The Documentation shall be given in a form of suitable reproducible available with the Licensor such as transparencies, microfilms, etc. If it cannot be furnished in the form of such reproducible, then the Licensor shall furnish on duplicate copy without additional charge.
- 5.5. The Licensor shall deliver documentation to the Licensee in Germany by either dispatching by airfreight, destination the Licensee, or at the request of the Licensee it shall be made available by the Licensor to personnel of the Licensee delegated to the Licensor or to a representative of the Licensee in Germany.

Article 6 : Additional Assistance –

- 6.1. Provided sufficient engineering capacity not required for other purposes is available at the Licensor and at the request of the Licensee, the Licensor is prepared.
 - (a) to provide assistance to the Licensee with regard to problems of import substitution, production techniques, variation in designs, etc., to manufacture the Contract Products suitable for the specific requirements of the Indian and Foreign Market ;

- (b) to undertake engineering development with respect to Contract Products or to the design and layout of the Licensee's factory and equipment (such as the preparation of engineering and manufacturing information specially prepared at the request of the Licensee) and provide additional Information, resulting therefrom ;
 - © to supply or give assistance to the Licensee to obtain tools and other manufacturing equipment required for the manufacture of Contract Products as parts or components of Contract Products or materials therefor at reasonable prices ;
 - (d) to give the Licensee advice and assistance for the adaptation of design, drawings and other manufacturing data furnished by the Licensor to Indian Standards.
- 6.2. For the services agreed to be rendered by the Licensor pursuant to Article 6.1, the Licensee shall obtain the prior approval of the Government authorities concerned and pay to the Licensor charges to be mutually agreed upon. Such charges shall be paid by the Licensee to the Licensor in the Federal Republic of Germany in Deutsche Marl of the Deutsche Bundes bank. The Licensor shall give an estimate of the charges and obtain the Licensee's clearance to go ahead commencing work.
- 6.3 The technical information originating from the service rendered by the Licensor under Article 6.1 shall otherwise be deemed to be Technical Information as defined under Article 1.2.

Article 7: Manufacturing Patent and Selling Rights-

- 7.1 The Licensor for the period of this Agreement grants to the Licensee under its Technical Information and Improvement furnished by the Licensor to the Licensee pursuant to this agreement as well as under relevant patents of the

Licensors which the Licensor has filed or will file for said Technical Information, non-exclusive, non-transferable rights to manufacture Contract Products in India and to sell Contract Products in accordance with Article 7.2.

7.2 The Licensee shall make arrangements for the marketing of Contract Products in consultation with the Licensor. In the same way, the offer for export of Contract Products may be arranged to other countries all over the world, except where the Licensor has manufacturing or contractual relationship (e.g. licensing) regarding Contract Products, from time to time. Currently, the Licensor has arrangements in the following countries :

7.3 During the term of this arrangement, the Licensor undertakes not to enter into a similar collaboration agreement with a third party for the manufacture of Contract Product in India without the prior written consent of the Licensee, which consent shall not be withheld unreasonably.

7.4 The Licensee shall have the right to sub-licence the rights granted hereunder to any other party in with the prior written approval of the Licensor and the Government authorities, on terms and conditions to be mutually agreed upon by the parties hereto.

Article 8: Consideration-

8.1 In consideration of the documentation prepared and transmitted in Germany and the technical assistance rendered in Germany comprising the training of the Licensee's personnel by the Licensor in Germany as per Article 3, the Licensee shall pay to the Licensor a lump sum payment of DM_____ subject to the applicable Indian taxes, in three equal installments as detailed below :

- (a) 1/3 on the agreement having been taken on record by the Central Government.
- (b) 1/3 at the time of transfer of technical documentation.
- © 1/3 within one month after the commencement of commercial production, or 4 years after the agreement is taken on record, whichever is earlier.

8.2 In consideration of the grant of the Licensor's Patent and other rights and use of Technical Information and Improvements as well as the technical assistance rendered in India, the Licensee shall pay to the Licensor a royalty of.....% (.....) of the ex-factory selling price of all Contract Products and parts thereof manufactured and sold or leased or used commercially by the Licensee during the validity of this Agreement as defined in Article 13.1. All payments of royalty shall be subject to the then applicable Indian taxes. According to Indian law, the liability to pay taxes lies with the Licensor. The Licensee shall be free to deduct such taxes at source on behalf of the Licensor from the royalty payable to the Licensor. In case any taxes are paid by the Licensee on behalf of the Licensor, the Licensee shall submit a tax receipt certificate to the Licensor.

8.3 Whenever Regular Commercial On-Line Production of a Contract Product commence, the Licensee shall immediately inform the Licensor in writing in this regard, i.e., of the date of delivery and acceptance of the respective order as defined in Article 1.8.

8.4 With regard to this Agreement, Contract Product shall be considered as sold when invoiced by the Licensee to the purchaser or, if not invoiced, when delivered, dispatched or set apart for the own use of the Licensee, and term

“ex-factory price” shall mean the net invoiced amount (or the current invoiceable value when not invoiced) of the Licensee excluding all charges and expenses relating to packing, freight, insurance as well as taxes and duties, if any, levied on the Contract Products and less the cost of standard brought out components and the landed cost of imported components, but not materials, made by the Licensor (or any other company abroad) and contained in such Contract Products.

- 8.5 Within two months after March 31st and September 30th of each year beginning with the Commencement of regular Commercial On Line Productions, the Licensee shall render to the Licensor a report showing the total ex-factory selling prices of each of the Contract Products manufactured and sold by the Licensee during the preceding half year, the amount invoiced for foreign supplies in components in accordance with Article 8.4 as well as the corresponding royalties due.
- 8.6 The royalties which are due shall, after conversion into Deutsche Mark of the Deutsche Bundesbank at the lawful selling rate (most favorable to the Licensor) , be remitted to the Licensor, arriving at their bank account in the Federal Republic of Germany within four months after the end of the respective half year defined in article 8.5. The Licensee shall send a copy of the respective documents (application for transfer of royalties) to the Licensor within two months along with the report of the royalties due.
- 8.7 The Licensee shall keep proper books and records giving full information regarding the turnover subject to royalties payable to the Licensor. The Licensor shall be entitled to have these records and relevant documents examined by independent chartered accountants. For the purpose of examination, the

Licensee is obliged to grant such chartered accountants inspection of its books and record and access to its offices.

Article 9: Improvements and Modification by the Licensee-

During the term of this agreement, the Licensee shall communicate to the Licensor all improvements and modifications developed by the Licensee with respect to Contract Products. Under such information and under any respective patents of the Licensee, the Licensee hereby grants to the Licensor a non-exclusive, unlimited licence, including the right to sub-licensee a non-exclusive, unlimited licence, including the right to sub-licensee to third parties. In case the Licensor or its sub-licensee make use of patents of the Licensee, the Licensor shall pay to the Licensee a reasonable patent royalty for such patent use, the amount of which shall be determined by mutual agreement.

Article 10 : Limitation of Liability-

10.1 The Licensor shall proceed with its usual care in preparing, selecting and transmitting Documentation, Technical information and/or Improvements to the Licensor. However, the Licensor shall not be responsible for any bon fide oversight, which may occur in spite of such care.

The Licensor shall not be responsible for the Contract Products manufactured by the Licensee under Documentation, Technical Information, Patents of the Licensor and/ or Improvements of the Licensor or for the claims of third parties with respect to Contract Products.

10.2 Neither party to this Agreement shall be liable for any failure or delay on its part in performing any of its obligations under this Agreement or for any loss, damages, costs, charges or expenses incurred or suffered by the other party by reason of such failure or delay, if and so far as such failure or delay shall be the result of or arising out of force majeure.

Article 11 : Standard of Quality : Designation of Contract Products_

11.1 Subject to the Licensor providing the necessary Technical Information and Improvements, the Licensee shall take all reasonable measures to ensure that the Contract Products made under the Technical Information and Improvement of the Licensor conform to the quality laid down in such Technical Information.

11.2 The Contract Products made by the Licensee according to the designs of the Licensor and conforming to the quality laid down in the corresponding Technical Information and Improvements furnished to the Licensee shall-if requested or at the request of the Licensee agreed to by the Licensor-be marked with a designation indicating that they are made under licence of the Licensor. The layout of the designation and any other markings on the Contract Products as well as the use and layout of name of the Licensor shall be made with the prior written approval of the Licensor

11.3 The Licensee forthwith, whenever called upon by the licensor in that regard, cease using any reference to the name of the Licensor.

11.4 Upon termination of this Agreement, the Licensee shall forthwith cease using any name, marking or other term or designation indicating that the Contract

Products are made according to the Licensor's design, unless otherwise agreed to by and between the parties hereto in writing.

Article 12 : Secrecy-

The Licensee is obliged to use the Documentation, Technical information and Improvements furnished to it under this Agreement only in the manufacture of Contract Products and keep confidential the same until the same has become public knowledge. The obligation shall survive the termination of this Agreement for five years.

Article : Validity

13.1 This agreement shall come into force on the Effective Date of the Agreement and it shall be valid for a period of five years therefrom, or where Regular Commercial On-Line Production of any of the Contract Products is commences after the Effective Date of this Agreement, for five years from the date of commencement of regular Commercial On-Line Production of the respective Contract Products, provided such production is not delayed beyond three years from the Effective Date of the Agreement (i.e. maximum period of period of eight years from the Effective Date of the Agreement and to the terms of any such extension shall be taken up one year prior to the expiry of this Agreement. Extension shall, however, be subjected to approval, if any, required of the respective Government authorities.

13.2 Either party hereto may, by notice in writing to the party terminate this Agreement if any order shall be made or effective resolution passed for the

winding up of such other party or if a receiver shall be appointed of such other party's undertaking and assets or, any part thereof.

13.3 Should there be at any time a change in the existing management and /or control of the Licensee whether through the alienation of shares, or through the increase of capital and the issue of new shares, otherwise howsoever, or should a different company form be chosen, then the Licensor shall forthwith be informed thereof by the Licensee by a registered letter. On receipt of such letter, the Licensor and the Licensee shall negotiate with each other with a view of to arriving at a mutually satisfactory arrangement with regard to the subject-matter of this Agreement, and upon such arrangement being arrived at, the parties shall give effect to it. In the event of no such mutually satisfactory arrangement being arrived at in six months' time, the licensor shall be at liberty to terminate this Agreement by giving 90 days' notice in writing to the Licensee in that behalf.

13.4 Furthermore, if the Licensor does not decide within the period indicated in section 13.3 to terminate the Agreement, the Licensor shall still be entitled later on to terminate the Agreement if, in the opinion of the Licensor, the actions of the Licensee as a result of the change referred to in article 13.3 above the prejudicial to the business interest of the Licensor.

13.5 The provisions of articles 13.3 and 13.4 also apply should the changes referred to therein occur repeatedly.

13.6 Should the Licensee make arrangements with a third party relating to manufacturing assistance in the same field without prior consent of the Licensor,

the Licensor, the Licensor may at any time terminate this Agreement on giving 90 days' notice if in the judgment of the Licensor there is a danger that the Technical Information/Improvements furnished or to be furnished by the Licensor under this Agreement may pass to such third party.

13.7 After the termination of the Agreement according to Article 13.1 hereof, the Licensee may continue to use the Technical Information/Improvements and Indian Patent Rights of the Licensor, and the Licensor may continue to use the Information and patent rights of the Licensee furnished to them under this Agreement free of charge.

13.8 After the termination of this Agreement according to any other Clause hereof, except for completion of work in progress under contract and orders already booked, the rights acquired by the Licensee under Technical Information, Improvements and Patent Rights shall expire with the termination.

13.9 Independent of the cause for termination, the Licensee shall remain obliged to pay all royalties accrued until such termination and accruing according to Article 13.8, if any

Article 14: Arbitration-

Any dispute or difference or claim arising out of or in relation to this Agreement including the construction, validity, performance or breach thereof which the parties thereto cannot settle by reaching a mutual understanding, shall be referred to the Indo-German Chamber of Commerce, Bombay for settlement under the Arbitration Rules then in force, and the Award of the Arbitration Court of the Chamber shall be final and binding on both the parties to this Agreement.

Article15 : Miscellaneous –

15.1 Neither this Agreement nor any rights hereunder in whole or part shall be assignable or otherwise transferable by one party without prior written permission of the other party to this Agreement.

15.2 This Agreement constitutes the full and complete understanding between the parties with respect to Contract products. This Agreement cannot be modified except by a written instrument signed by the Licensee and the licensor.

15.3 The correspondence in all matters concerning the validity , life interpretation, modification or extension of this Agreement or of the rights and obligations of the parties or the accounting the payment shall be addressed, if to the Licensee, to

and, if to the Licensor, to

All other correspondence shall be sent to such address as the party to receive the same may direct.

Article 16: Applicable Charges-

Except otherwise expressly provided elsewhere in this Agreement, all governmental applicable charges relating to or arising out of this Agreement or of any rights, granted in the form of permits, stamp duties, registration fees, contributions or taxes of any governmental or local law of any degree shall be paid as follows :

- (a) by the Licensor when such charges are due under any federal, state or other local law of Germany ; and
- (b) by the Licensee when such charges are due under any governmental, state or other local law of India.

Article 17-

This Agreement shall be subject to Indian Laws, IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals.

Signed sealed and delivered by _____

The Common seal of _____

_____ was hereunto affixed pursuant to a Resolution of its Board of Directors passed in that behalf in the presence of Mr.....a Director and Mr.....Its secretary who have signed in the presence of.....