

The Company has signed an agreement with .....(agency) for facilitating e-voting to enable the Shareholders to cast their vote electronically. The instructions for shareholders voting electronically are given at the end of the Notice.

### **EXPLANATORY STATEMENT**

As required by Section 102 of the Companies Act, 2013, the explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 1 & 2 of the accompanying Notice dated .....

#### **Item No. 1**

The Registered Office of the Company has been situated in .....since the incorporation of the Company. The business of the Company has increased manifold since incorporation and it is expected that such growth trends will be maintained in future.

The employee strength of the Company has also increased manifold and the Company needs an area of around 50,000 square feet to accommodate the entire staff and to carry out its growing business activities efficiently. However, expansion at the present location is not possible and prevailing rents in..... render it unviable to look for additional premises in the vicinity of the Registered Office.

The Board of Directors has identified suitable premises at .....in the State of ....., not very far from the present Registered Office. Acquiring such premises, situated close to ....., is advantageous for the Company to carry on its business more conveniently, economically and efficiently.

In view of these advantages, the Board of Directors has decided to shift the Registered Office of the Company from ..... (Name of State) to the ..... (Name of State) subject to necessary approvals.

In terms of Section 13 of the Companies Act, 2013, approval of the shareholders and the Regional Director is required for the purpose of shifting the registered office of the Company from one state to another state.

A copy of the Memorandum of Association is available for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Meeting and at the venue of the Meeting for the duration of the Meeting.

The Board commends the passing of the Resolution at Item No.1 as a Special Resolution.

None of the Directors and Key Managerial Personnel of the Company or their relatives is concerned or interested in the proposed Resolution.

#### **Item No. 2**

Mr. .... is an Independent Director of the Company, whose period of office is liable to be determination by rotation of Directors under the erstwhile applicable provisions of the Companies Act, 1956. He joined the Board in May 2010.

The Companies Act, 2013 came into force with effect from 1 st April, 2014. Section 149 of the Companies Act, 2013, provides that every listed public company shall have at least one third of the total number of Directors as Independent Directors. An Independent Director can be appointed for any period up to 5 years but can be reappointed for another term of not more than 5 years by passing a Special Resolution. The provisions relating to retirement of Directors by rotation shall not apply to the appointment of Independent Director.

The Board has undertaken due diligence to determine the eligibility of Mr. .... for appointment as an Independent Director on the Board, based upon his qualification, expertise, track record integrity etc. and recommends the appointment of Mr. .... to the shareholders for a period of three years, i.e. up to .....

Mr. .... will not be liable to retire by rotation during this period.

Other than Mr. ...., none of the Directors or Key Managerial Personnel of the Company or their relatives is concerned or interested in the proposed Resolution.

A brief profile of Mr. .... is given below.

**By Order of the Board of Directors**

For .....

.....(Signature)

Place : .....

.....(Name)

Date : .....20....

Director/ Company Secretary

DIN/ACS/FCS No

Specimen Notice in Newspapers of Annual General Meeting

**Name of the Company** .....

**Registered Address** .....

**CIN - ..... Email- ..... Telephone: .....**

**Website: .....**

NOTICE is hereby given that the ..... Annual General Meeting of the Company is scheduled to be held on .....(day) ..... (date) at ..... a.m. /p.m. at the registered office of the company situated at .....( address).

Notice of the Meeting setting out the Resolutions proposed to be transacted thereat and the Audited financial statements for the year ended at March 31, 201....., Auditors' Report and Report of the Board of Directors for the year ended on that date, have also been dispatched to the Members. Notice and the said documents are available at the Company's website ..... and copies of said documents are also available for inspection at the registered office of the Company on all working days during the business hours up to the date of Annual General Meeting. The Company has completed dispatch of Annual Report on ....., 201....

Pursuant to the provisions of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, your Company is pleased to provide remote e-voting facility to its Members to exercise their right to vote on the Resolutions proposed to be transacted at the ..... (Number) Annual General Meeting. The Company has arranged remote e-voting facility through .....(agency) at ..... (website) Notice of the Annual General Meeting is also available at the ..... (agency's) website.

A Member whose name appears in the register of members as on cutoff date i.e. ...., 201... only shall be entitled to avail the facility of remote evoting as well as voting through physical ballot at the Meeting. Members who cast their vote through remote e-voting may attend the Meeting but shall not be entitled to cast their vote again.

Any person who becomes Member of the Company after dispatch of the Notice of the Meeting and holding shares on ....., 201..., if already registered with ..... (agency), can use his/her existing user ID and password otherwise follow the detailed procedure mentioned in Notice of Meeting available at Company's website www.....com or may obtain the login ID and password by sending a request at ..... (email ID of agency) or to the Company's Registrar, M/s ..... at .....@.....com latest by ..... p.m. of ....., 201....

Remote e-voting facility shall commence on ....., 201..... at 10:00 hrs. and will end on ..... , 201... at 17:00 hrs. The remote e-voting will be disabled by ..... (agency) after the said date and time.

The Company has appointed Mr. ...., Practising Company Secretary as the scrutiniser to scrutinise the e-voting process in fair and transparent manner.

In case of any queries/grievances relating to e-voting process, the Members may contact at ..... (email ID of agency), Tel: .....or M/s. ....RTA address) at .....@..... com, Tel: 011..... or at the .....@.....com , Tel: +91 .....

Please keep your most updated email ID registered with the company/your Depository Participant to receive timely communications.

**By Order of the Board of Directors**

For .....

.....(Signature)

Place : .....

.....(Name)

Date : .....20....

Company Secretary

(ACS/FCS No.....)

**Annexure V**

Specimen Notice of postponed Annual General Meeting

**Name of the Company** .....

**Registered Address** .....

**CIN - ..... Email- ..... Telephone: .....**

**Website:** .....

Members are hereby informed that, due to unforeseen and unavoidable circumstances, the ..... Annual General Meeting of the Company, which was scheduled on ....., will now be held on ....., at .....p.m. at the Registered Office of the Company, to consider the business mentioned in the Notice dated ..... which had been sent to Members in connection with the Meeting originally scheduled to have been held on .....

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

**By Order of the Board of Directors**

**For** .....

.....(Signature)

Place : .....

.....(Name)

Date : .....20....

Company Secretary

(ACS/FCS No.....)

Note : Members may please immediately intimate any change in their address.

**Annexure VI**

Specimen Notice in Newspapers of postponement of Annual General Meeting

**Name of the Company** .....

Registered Address .....

CIN - ..... Email- ..... Telephone: .....

Website: .....

**NOTICE: POSTPONEMENT OF ANNUAL GENERAL MEETING**

Members are hereby informed that, due to the unforeseen and unavoidable circumstances, it has not been possible for the Company to convene the ..... Annual General Meeting of the Company, which was scheduled to be held on .....20.....

Accordingly, the Board of Directors of the Company has decided to postpone the said Annual General Meeting, which now is convened on .....20.... Notice and other documents, if any, relevant to the re-convened Meeting will be dispatched to Members shortly.

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

**By Order of the Board of Directors**

For .....

.....(Signature)

Place : .....

.....(Name)

Date : .....20.....

Company Secretary

(ACS/FCS No.....)

Note : Members may please immediately intimate any change in their address.

**Annexure VII**

**Specimen Notice by Requisitionists convening an Extra-Ordinary General Meeting**

NOTICE is hereby given that the persons named below, who are Members of ..... (Name of the Company), having its Registered Office at ....., and who have requisitioned the convening of an Extra-Ordinary General Meeting of the Company, hereby, in exercise of the powers and rights conferred by Section 100 of the Companies Act, 2013, give Notice that the said requisitioned meetings shall be held on ..... day, the .....20....., at .....a.m./p.m. at ..... (address) to consider the following proposal:

State the proposal

{OR

for considering and, if thought fit, passing the following Ordinary/ Special Resolution:

Reproduce the Resolution}

Names of requisitionists:

1. ....

2. ....

3. ....

4. ....

**Note :**

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

**By Order of the Board of Directors**

**For** .....

.....(Signature)

Place : .....

.....(Name)

Date : .....20

Company Secretary

(ACS/FCS No.....)

**Notes :**

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
2. The requisition dated ....., referred to above, signed by the requisite number of Members in terms of Section 100 of the Companies Act, 2013, and all documents referred to in the Notice are available for inspection by any Member at the Registered Office of the Company on any working day of the Company between the hours of 11:00 a.m. and 1:00 p.m. upto the date of this Extra-Ordinary General Meeting and at the venue of the Meeting for the duration of the Meeting.
3. Route-map to the venue of the Meeting is enclosed.

**Annexure VIII**

Specimen Notice of an Extra-Ordinary General Meeting called on the Requisition of Members

**NOTICE**

**Name of the Company:** .....

**CIN:** .....

**Registered Office :** .....

NOTICE is hereby given that, pursuant to a valid requisition under Section 100 of the Companies Act, 2013, lodged at the Registered Office of the Company by the Members whose names are annexed hereto, an Extra-Ordinary General Meeting of the Members of the Company will be held on ....., the .....20..., at a.m./p.m. at the Registered Office of the Company to consider the following proposal put forth by the requisitionists:

“RESOLVED that .....  
 .....  
 .....  
 .....”

The Board of Directors has considered the abovementioned Resolution in its Meeting held on .....  
 ...20... and submits the following observations thereon for the consideration of the Members:

.....  
 ..... {after stating the observations,  
 it should also be stated whether the Board supports or does not support the proposal of the requisitionists  
 contained in the aforesaid Resolution.}

**Annexure IX**

**Specimen Board Resolution for convening Extra-ordinary General Meeting on Requisition**

“RESOLVED THAT pursuant to the provisions of Section 100 and other applicable provisions of the Companies Act, 2013 and rules thereunder and as per the requisition received from the Members, the Board of Directors hereby authorises calling of an Extra-Ordinary General Meeting (EGM) of the Members on ..... (date) at .....(time) at .....(venue).

RESOLVED FURTHER THAT the draft notice of the EGM, the explanatory statement and other ancillary documents in connection with the EGM, as placed before the Board, be and are hereby approved.

RESOLVED FURTHER THAT any one of the Directors and the Company Secretary of the Company be and are hereby authorised to sign and execute the notice and other relevant documents in connection with the EGM and circulate them to the Members of the Company and do all such acts, deeds and things as may be necessary in connection with calling and convening of EGM including appointing scrutinisers and e-voting agencies, if required.”

**Annexure X**

**Specimen of a Demand for Poll**

Dated: .....

To

The Chairman of the ..... Annual General Meeting of ..... (Name of the Company) being held on ..... day, ..... 20... at ..... a.m. /p.m. at..... (address).

We the undersigned, being the holders of an aggregate of ..... equity shares of Rs.10/Re.1/- each of the Company, as per the details set out below against our respective names, demand that, pursuant to the provisions of Section 109 of the Companies Act, 2013, a poll be taken in respect of the Resolution proposed at Item No. .... of the Notice dated ..... 20..... of the ..... Annual General Meeting of the Company on which the voting is yet to be taken on a show of hands.

{OR

on which voting on a show of hands has been taken but the result thereof is yet to be announced

OR

which was declared carried on voting by show of hands.}

Sr No	Name of member	Folio No./ Client ID No.	No. of shares held	Signature of members

**Annexure XI**

Announcements by the Chairman of the Meeting in connection with a Poll

1. Immediately after a Poll is demanded:

“I request you to make your demand on the Poll Demand Sheet so that the same can be verified to ascertain the validity of the demand in terms of the Companies Act, 2013, and the Articles of Association of the Company.”

2. After verification of the demand and if the demand is found to be validly made:

“I now order that the Poll on the Resolution in respect of Item No. . . . . . of the Notice, on the subject of . . . . . be taken and I appoint Mr . . . . . and Mr . . . . . as the Scrutinisers.

The Poll will commence half an hour after the transaction of all the items on the Agenda for the Meeting.

The Poll will be held in a part of this Hall and will continue for half an hour or till all the Members or their valid Proxies or Authorised Representatives present and willing to cast their votes, have cast their votes, whichever is earlier.

I authorise the Scrutinisers to issue the Poll papers to Members/Proxies/ Authorised Representatives and to advise them about the procedure to be followed; and to declare the Poll as closed on conclusion thereof, after ensuring that all the Members/Proxies/Authorised Representatives present have been provided the opportunity to vote. In terms of the provisions of the Articles of Association of the Company, a Member who is in arrears of moneys payable on the shares allotted to him is not entitled to vote. The Scrutinisers can take the assistance as may be required of the officers or employees of the Company in the conduct of the poll. I request you all to extend your co-operation in the conduct of the poll.

The details of the result of the poll would be displayed on the notice board at the Registered Office of the Company not later than 11:00 a.m. on . . . . ., . . . . . It would also be put up on the website of the Company . . . . . under the head . . . . .”

**Annexure XIII**

Specimen Polling Record

Name of the Company : .....

Registered Office : .....

**POLLING RECORD**

Date of Meeting .....

Item No. of the Notice dated ..... of the Meeting on which the poll was held : .....

Subject matter on which the poll was held: .....

Sr No	Particulars	Details
1.	Name of the Member	
2.	Address	
3.	Registered folio No. / *Client ID No. (*Applicable to investors holding shares in dematerialised form)	
4.	Class of Shares (Whether shares have differential voting rights)	

5.	No. of shares held	
6.	Nominal Value of Shares	

No	Item No	Assent	Dissent

Date: ..... Initials of Scrutinisers: ..... {each page should be initialed by the Scrutinisers and they should sign the last page in full}

**Annexure XIV**

Specimen Announcement on the Notice Board of the Company of the Result of the Poll

**Name of the Company** .....

**Registered Address** .....

**CIN -** ..... **Email-** ..... **Telephone:** .....

**Website:** .....

**RESULT OF THE POLL HELD AT THE ..... MEETING OF THE COMPANY HELD ON .....**

Item No. .... of the Notice dated ..... Subject: .....

Total number of votes cast : .....

Invalid votes : .....

Total number of valid votes : .....

Number of votes cast FOR the Resolution : .....

Number of votes cast AGAINST the Resolution : .....

Result : .....

Place : .....

Date : .....

C HAIRMAN

Time : .....

**Annexure XV**

Items of Business which shall be passed only by Postal Ballot

1. Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum.
2. Alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company.
3. Change in place of registered office outside the local limits of any city, town or village.
4. Change in objects for which a company has raised money from public through prospectus and still has any unutilised amount out of the money so raised.
5. Issue of shares with differential rights as to voting or dividend or otherwise.
6. Variation in the rights attached to a class of shares or debentures or other securities.

7. Buy-back of shares by a company.
8. Appointment of a Director elected by small shareholders.
9. Sale of the whole or substantially the whole of an undertaking of a company or where the company owns more than one undertaking, of whole or substantially the whole of any of such undertakings.
10. Giving loans or extending guarantee or providing security in excess of the limit specified.
11. Any other Resolution prescribed under any applicable law, rules or regulations.

**Annexure XVII**

**Specimen Resolution Passed by Postal Ballot**

**Name of the Company** .....

**Registered Address** .....

**CIN - ..... Email- ..... Telephone: .....**

**Website: .....**

**RESOLUTIONS PASSED BY POSTAL BALLOT ON .....**

The Company had, on ..... dispatched to all the Shareholders, Notice dated ..... under Section 110 of the Companies Act, 2013, for obtaining the consent of the Shareholders to the following Ordinary Resolution by means of postal ballot :

“RESOLVED that the consent of the Company be and is hereby accorded pursuant to Section 180(1)(a) and other applicable provisions of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit, the whole or substantially the whole of the undertaking of the Company at ..... engaged in the business of manufacture of .....

RESOLVED FURTHER that the Board be and is hereby authorised to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect the aforesaid Resolution”.

The dispatch of Notices and accompanying documents were completed on ..... (date) to all Members appearing in the records of the Company as on ..... (cut-off date). Mr. ...., was appointed as Scrutiniser on ..... (date) and ..... (name of the Agency) was appointed as an Agency on ..... (date) for providing and supervising electronic platform for e-voting.

It was mentioned in the said Notice dated ..... that the postal ballot forms sent therewith should be returned by the Shareholders duly completed so as to reach the Scrutiniser on or before ..... The Notice also indicated the date of commencement of e-voting as ..... (Day) ..... (Date) and the last date e-voting as ..... ( Day ) ..... (Date) alongwith the process and manner of voting by electronic means. The Scrutiniser was required to submit his report to the Chairman after completion of the Scrutiny.

Mr. .... (Scrutiniser) carried out the scrutiny of all the postal ballot forms and electronic votes received upto the close of working hours on

..... He submitted his Report dated ..... on ..... (date) and the Chairman accepted the said Report.

The following is the result of the postal ballot as per the Scrutiniser's Report:

Number of valid postal ballot forms received	
Number of valid votes cast by electronic means	
Votes in favour of the Resolution including votes cast by electronic means	
Votes against the Resolution including votes cast by electronic means	
Number of invalid postal ballot forms received	
Number of invalid votes by electronic means	

In view of the foregoing, the Ordinary Resolution set out in the Notice dated ..... has been therefore duly approved/not approved by the requisite majority of the Shareholders.

Place :.....

Date :..... Chairman

**Annexure XVIII**

Specimen Minutes of Annual General Meeting

MINUTES OF THE PROCEEDINGS OF THE ..... ( Number of Meeting ) ANNUAL GENERAL MEETING OF ..... ( Name of the Meeting ) HELD ON ..... ( day ), ..... ( date ) 20... A T ..... ( address )

**Time of commencement** ..... a.m./p.m.

**Time of conclusion**.....a.m./p.m.

The following were present:

1. Mr. W (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. E. (Director and Chairman of Audit Committee)
6. Mr. F (Company Secretary)
7. .... (Members present in person) [state number]
8. .... representing ..... shares (Members present by Proxy) [state number]
9. Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.

**Mr. H, Practising Company Secretary, Secretarial Auditor of the Company, was also present.**

**1. CHAIRMAN**

In accordance with Article ..... of the Articles of Association, Mr. W, Chairman of the Board of Directors, took the Chair.

{OR Mr. B was elected Chairman of the Meeting, in terms of Article ..... of the Articles of Association of the Company}.

The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman stated that Mr..... and Mr.....Directors, could not attend the Meeting due to..... (explain the reason for absence).

Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.

The following documents / Registers of the Company remained open and accessible for inspection during the continuance of the AGM:

- (a) Financial Statements for the financial year ended 31st March, ....., including the Consolidated Financial Statements for the said financial year, and the Reports of the Board of Directors and the Auditors.
- (b) Register of Directors and Key Managerial Personnel and their shareholding.
- (c) Register of Contracts or Arrangements in which Directors are interested

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read.

The Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

### **1. Adoption of Consolidated and Standalone Financial Statements**

The Chairman requested Mr. .... to read the Ordinary Resolution for the adoption of the Financial Statements for the year ended 31st March, 20..... and Mr. .... read out the Ordinary Resolution as follows:

“RESOLVED that the Financial Statements of the Company for the year ended 31 st March, 20....., including Consolidated Financial Statements for the said financial year, along with the Reports of the Board of Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

After the above Resolution was proposed and seconded, but before it was put to vote, the Chairman invited Members (other than those present by Proxy) to make observations and comments, if any, on the Report and financial statements, as well as on the other Resolutions set out in the Notice convening the Meeting.

Some Members made their observations and comments and raised queries on the Annual Report and Financial Statements and other items set out in the Notice and the Chairman answered their queries.

Before putting the Resolution to vote, the Chairman reminded the Meeting that Proxies were not eligible to vote on a show of hands. Thereafter, the Chairman put the Resolution for the adoption of the Financial Statements, Consolidated Financial Statements and the Reports thereon to vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

### **2. Declaration of Dividend**

Mr. .... read out the following Resolution:

“RESOLVED that the dividend @ Rs. .... on the equity shares of Rs. 10/Re.1/ - each, fully paid-up, be and is hereby declared for payment, to those Members whose names appear on the Company's Register of Members on .....20...”.

The Resolution was proposed by Mr. .... and seconded by Mr. ...., and was put to vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**3. Appointment of Director**

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED that pursuant to Section 152 of the Companies Act, 2013, Mr. A, who retires by rotation and, being eligible for re-appointment, offers himself for reappointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**4. Appointment of Director**

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED that pursuant to Section 152 of the Companies Act, 2013, Mr. B, who retires by rotation and, being eligible for re-appointment, offers himself for reappointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**5. Appointment of Director**

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:

“RESOLVED that, pursuant to Section 152 of the Companies Act, 2013, Mr. C, who retires by rotation and, being eligible for re-appointment, offers himself for reappointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**6. Appointment of Auditors**

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s....., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the ..... Annual General Meeting of the Company (subject to ratification of their appointment at every AGM), at a remuneration of Rs. ..../- (Rupees ..... only) for the year ..... and Rs. ..../- (Rupees ..... only) per year for the subsequent ..... years plus reimbursement of out of pocket expenses and service tax, as applicable.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**7. Appointment of Director**

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. .... (DIN .....), who was appointed as an Additional Director of the Company with effect from ....., 20..... by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. .... for the office of Director, be and is hereby appointed as a Director of the Company, liable to retire by rotation with effect from the date of this Meeting.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

**8. Delisting of Securities – Special Resolution**

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded by the aforementioned two Members. was put to vote as a Special Resolution:

“RESOLVED that, subject to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India Act, 1992, and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by the Securities and Exchange Board of India and Stock Exchanges while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being, exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily de-list the equity shares of the Company from ..... (name of stock exchanges).

“RESOLVED FURTHER that the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above Resolution.”

On a show of hands, the Chairman declared the aforesaid Special Resolution carried with the requisite majority.

**Vote of Thanks**

There being no other business to transact, the Meeting closed with a vote of thanks to the Chair.

Date : .....

.....

Place: .....

CHAIRMAN (DIN...)

*Points relevant for drafting minutes:*

Under each item before proposal and seconding of the Resolutions, we should record as follows:

- “The objective and implications of the Resolution were explained by the Chairman (or at the request of the Chairman by Mr..... (designation)”
- The Chairman informed that there were no qualifications, observations or comments or other remarks, if any, mentioned in the Auditor’s Report or in the Secretarial Auditor’s Report.

OR

- The Chairman asked the auditors to read the qualifications\*/, observations\*/ comments\*/ other remarks\*, mentioned in the Auditor’s\* / Secretarial Auditor’s\* Report.
- Attention of the Members present was drawn to the explanations / comments given by the Board of Directors in their report at page.....para.....

\*as may be relevant or applicable.

**Annexure XIX**

**Specimen Minutes of Extra-Ordinary General Meeting**

**MINUTES OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING OF ..... ( Name of the Company) HELD ON ..... ( day ), ..... ( date ) 2 0 ..... A T ..... ( address)**

FROM..... TO..... A.M ./ P.M.

The following were present:

1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. F (Company Secretary)
5. .... (Members present in person) {state number}
6. .... (Members present by Proxy) {state number} Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.

**CHAIRMAN**

In accordance with Article ..... of the Articles of Association, Mr. A, Chairman of the Board of Directors, took the Chair.

{OR:

Mr. B was elected Chairman of the Meeting, in terms of Article ..... of the Articles of Association of the Company}

The Chairman welcomed the Members and introduced the Directors seated on the Dias.

The Chairman stated that Mr. .... and Mr. ....Directors, could not attend the Meeting due to..... (explain the reason for absence).

Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.

With the consent of the Members present, the Notice convening the ExtraOrdinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

### 1. Shifting of the Registered Office

Proposed by : Mr. ....

Seconded by : Mr. ....

The following resolution has been proposed and seconded by the aforementioned two Members was put to vote as a **Special Resolution**:

“RESOLVED that pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the ..... (Name of State) to the ..... (Name of State).

RESOLVED FURTHER that Clause - II of the Memorandum of Association of the Company be altered by substitution of the word.....

RESOLVED FURTHER that the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, ..... Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, including compliance of directions, if any, of the concerned authorities.”

The Chairman enquired if there were any clarifications required on the same. Since none of the Members required any clarification, the Special Resolution was put to vote and on a show of hands declared carried by the requisite majority.

### 2. Appointment of Independent Director

Proposed by : Mr. ....

Seconded by : Mr. ....

The following Resolution having been proposed and seconded respectively by the aforementioned Members was put to vote as an Ordinary Resolution:

“RESOLVED that pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and the rules made there under read with Schedule IV to the Companies Act, 2013, approval of the Company be and is hereby accorded for appointment of M r. E ( D I N No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to ....., ..... AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation.”

The Chairman enquired from the members present if there were any clarifications required on the same. Since none of the Members required any clarification, the Ordinary Resolution was put to vote and on a show of hands declared carried by the requisite majority.

### VOTE OF THANKS

There being no other business to transact the Meeting closed with a vote of thanks to the Chair.

Date : .....

.....

Place: .....

CHAIRMAN

(DIN.....)

## LESSON ROUND UP

- A company is an artificial judicial person created by law having its own distinct entity form and capable of entering into contracts. Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. Since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as “**resolutions.**”
  - There are two collective bodies in the company which take decision through resolutions:
    - (i) Board of Directors--- who manage, control and direct the business of the company
    - (ii) General body of members-- who ultimately own the company
  - Section 179 of Companies Act 2013 describes the scope of the powers of the Board of Directors as it states “The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.”
  - Board can exercise some powers only at its Meeting while some of its powers are subject to special resolution, approval of general meeting, approval of various authorities like NCLT etc.
  - The Board may, by a Resolution passed at a Meeting, delegate certain powers to , on such conditions as it may specify.
    1. any Committee of Directors,
    2. the Managing Director,
    3. the Manager or
    4. any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office,
  - Decisions are taken by general body of members either through Ordinary Resolution or Special Resolution.
  - Section 118(10) of the Companies Act, 2013, provides that every company shall observe Secretarial Standards with respect to general and board meeting specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government. The Ministry of Corporate Affairs on 10th April, 2015 accorded the approval of the Central Government to the Secretarial Standards (SS) namely
    - (i) **SS-1; Meetings of the Board of Directors** and
    - (ii) **SS-2 General Meetings**
- In terms of section 205(1)(6), it is the function of the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.

## SELF TEST QUESTION

1. Draft a specimen of board resolution for appointment of Mr. Ankur Chawla as an additional director in PQR Limited .
2. Draft a specimen of board resolution for appointment of Mr. Shankar Roy as Company Secretary in ABC Limited.
3. Draft a specimen of Board meeting (other than first Board meeting) considering payment of interim dividend in XYZ Limited.





# Lesson 4

## Drafting and Conveyancing Relating to Various Deeds and Documents (I)

### LESSON OUTLINE

- Drafting of Agreements
- Important Points Regarding Drafting of Contracts
- Terms and Conditions in the Agreement to Sell /Purchase
- Building Contracts
- Commercial Agency Contracts
- Collaboration Agreements
- Guidelines for Entering into Foreign Collaboration Agreements
- Arbitration Agreements
- Guarantees
- Hypothecation Agreement
- Outsourcing Agreements
- Service Agreements
- Electronic Contract & its Essentials
- Leave and License Agreements
- Will
- Gift
- LESSON ROUND UP
- SELF TEST QUESTIONS

### LEARNING OBJECTIVES

A contract lays out the understanding between a buyer and the seller and is important that such understanding be provided clearly and unambiguously. An effective contract is not only a reflection of the parties' intention to get into a legal relationship, but clearly lays out the respective obligations of the parties with necessary safeguards and efficacious remedies. Today's world is economized by trade, domestic and international, and this trade is facilitated through contracts either domestic or international entered into by the parties.

Accelerated globalization has almost removed the disparity of required terms between the domestic and international contracts. A domestic contract is one where both the parties operate their business from the one and the same country, whereas an international contract is one where both the parties operate their business from two different countries.

Drafting of contracts is a different kind of legal writing than petition writing. The goal is not to persuade someone of a position, but to specify very clearly what has been agreed between the parties.

The objective of the study lesson is to make the students understand and also learn the drafting of the various aspects of the topics mentioned in the lesson outline.

## DRAFTING OF AGREEMENTS

An agreement which is enforceable at law is called a contract. Generally when a contract is reduced to writing, the document itself is called an agreement. A company has to execute countless commercial agreements and other contracts during the course of its business. But how many company executives possess the simple, easily cultivable, yet rare acumen of concluding their contracts precisely, comprehensively and unambiguously? It is very much desirable and useful to keep in view certain important points in regard to the drafting of contracts, particularly commercial and international trade contracts.

## FORM OF CONTRACT

There is no particular form prescribed for the drawing up of trade contracts, except that they must fulfil all the essential requirements of a valid contract under the law applicable to the contract. If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with. A contract may be hand written, type written or printed. It may be as brief or as detailed as the circumstances of a particular trade transaction demand.

However, it is extremely desirable and essential that precise and comprehensive terms and conditions relating to the subject matter and performance of the contract should be incorporated by companies in both domestic and international contracts. In sale-purchase contracts well defined provisions relating to the quality and quantity of the goods, the shipment period, price (C.I.F./C&F/F.O.B., etc.), delivery, port of shipment and of destination packing and marketing, mode of payment, insurance, brokerage/commission etc. should also be stipulated. In international contracts additional provisions relating to the applicable law, licences and permits, taxes, duties and charges, exchange rate, etc. also become relevant and important. Some of the important matters which deserve to be provided for in the contract are discussed briefly hereunder:

## IMPORTANT POINTS IN REGARD TO DRAFTING OF CONTRACTS

1. *Description of Parties to the Contract:* Parties to the contract should properly be defined by giving their names, status and address. In case of an individual, father's name and in case of a company, the place where registered office is situated be also given. In case of firms and companies the particulars of persons representing them be invariably given including details of particulars of the firm.
2. *Legal Nature of the Contract:* In the title or in the introductory part of the contract, the parties should clearly indicate the legal nature of the contract as to whether it is a sale/purchase contract or a commercial agency contract or a contract for technical assistance and advice or building construction and erection contract, etc. so as to avoid any doubt as regards the nature of the contract and the legal position of the parties thereunder.
3. *Licences and Permits:* It is desirable to provide particularly in international trade contracts as to which party would be responsible for obtaining export/import licences and the effects of delay, refusal or withdrawal of a license by Government authority, etc. It is generally the commercial practice to provide that each party to the contract may obtain the requisite licences in its own country.
4. *Taxes, Duties and Charges:* A provision regarding the responsibility for payment of taxes, duties and other charges, if any, may also be included in the contract. In international contracts, it is generally provided that the seller would be responsible for taxes, duties and charges levied in the country of export and the buyer with such charges levied in the country of import. Provision should also be made for fluctuations in the rate of taxes, duties and fees, after the conclusion of the contract and it may be agreed upon whether any increase in such rates would be borne by the buyer or the seller.
5. *Quality, Quantity and Inspection of Goods:* Quality of the goods is very important to the buyer in a sale-

purchase contract and it is in this area that a number of disputes arise and, therefore, it is necessary to include a suitable provision relating to the description and inspection of the quality and quantity of the goods in the contract. Inspection of the goods may be provided either in the seller's country before shipment or in the buyer's country after delivery of the goods, depending upon the relative convenience of the parties in this regard. Some tolerance of 10 to 15% is generally provided for in regard to the quantity of the goods stipulated in the contract. It has to be provided whether the additional quantity will be calculated at the price quoted in the contract for at a different price.

6. *Packing*: Proper packing is very important, particularly in the case of goods which have to be set over a long voyage. Sometimes goods are spoiled during the transit because of poor packing and dispute may arise regarding the responsibility for damage to the merchandise during the transit. Therefore, a proper stipulation regarding packaging of the goods according to the nature of the merchandise should be included in the contract. Where the goods are of a fragile or inflammable nature, specialised packaging will have to be provided for them. Similarly, goods which require to be protected from humidity or chemical action of sea water etc. will require to be packed suitably, to meet the requirements. Another very important matter which needs to be provided for regarding packaging in the contract is the legal specifications, if any, regarding the packing material.

For example, in certain countries particular type of grass, etc. cannot be used for packing and if it is used, the customs authorities of the particular country may confiscate the consignment. In such cases, it should be stipulated in the contract that the buyer will inform the seller of any such legal specifications or requirement with regard to the packaging of the goods and that a damage or loss occurring for lack of such information, will not be the responsibility of the seller.

7. *Shipment of the Goods*: It is desirable to stipulate precise particulars regarding the rights and duties of the parties towards shipment of the goods, i.e., the time, date and port of shipment, name of the ship and other ship particulars. It may also be stipulated as to whether and up to what time the shipment may be delayed by the seller. Sometimes a penalty is provided for delay in shipment according to the time of delay.

8. *Insurance*: A provision regarding insurance of the merchandise is also made in the contract, as it is usual to insure the goods during transit particularly when the goods are to be shipped overseas. The insurance provision will state as to which party will be responsible for taking out insurance and what type of insurance cover has to be taken.

9. *Documentation*: In modern business transactions, it is sometimes necessary for the seller to supply detailed specifications, literature, etc. relating to the goods particularly if the goods are of scientific or technical nature. In such cases, it is usual to provide in the contract as to whether the technical documentation supplied by the seller will become the property of the buyer or it has to be returned to the seller after a stipulated time. It is also desirable to provide that the technical and confidential information contained in the documentation should be kept confidential by the buyer and that it will not be transmitted by him to a third-party without the permission of the seller.

10. *Guarantee*: Sometimes the goods sold are of such a nature that the buyer insists for guarantee regarding their use and performance for a particular period. Under a guarantee clause, the seller is held responsible for the defects appearing in the goods during the period of the guarantee. The seller is usually given an option to remove the defects in the goods either by replacement or by repair. The replaced or repaired goods will usually be given a new guarantee of the same length of time as the original goods but a different period can also be provided for the replaced goods.

11. *Passing of the Property and Passing of the Risks*: It is very important to provide for the exact point of time when the title or the property in the goods and the risk will pass from the seller to the buyer. This is important to ascertain as to whether the seller or the buyer will be responsible for the damage or loss to the goods during transit at a particular point of time. Moreover, the control over the goods will be with the person in whom the title

or the property in the goods vests. Similarly, it is necessary and useful to provide for the point of time at which the risk in the goods will pass from the seller to the buyer.

12. *Amount, Mode and Currency of Payment*: It is useful to provide for the amount, mode and currency in which the price for the goods has to be paid. Modes of payment may be on D/A or D/P basis or it may be a Letter of Credit or otherwise as per the agreement of the parties. One of the most important matter which needs to be provided in international contracts relates to the exchange rate. It is advisable to provide the exchange rate of the currency of payment in terms of dollar, pound or any other currency agreed to by the parties so that if a devaluation, revaluation or fluctuation takes place before the payment of price, the liability of the buyer and the seller regarding the amount of payment may be clearly known.

13. *Force Majeure*: Another very important provision witnessed in modern commercial contracts relates to force majeure or excuses for non-performance. This provision defines as to what particular circumstances or events beyond the control of the seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the seller to delay or refuse the performance. It may be further provided that events of a similar nature which are beyond the control of the seller and which could not have been avoided with due diligence would also furnish the above relief.

14. *Proper Law of Contract*: When both the parties to a contract are resident in the same country, the contract is governed by the laws of the same country. However, in international contracts, the parties are subject to different legal systems and, therefore, they have to choose a legal system which will govern the rights and duties of the parties. Therefore, it is desirable and necessary to stipulate the proper law of contract in international contracts.

15. *Settlement of Disputes and Arbitration*: The last but not least important is the provision regarding settlement of disputes under the contract by arbitration or otherwise. It is usual to provide for an arbitration clause in the contract, particularly under the auspices of an arbitral institution. A suitable arbitration clause may be provided by the parties by mutual agreement. It is also desirable to provide for the mode of appointment of arbitrator and also for the venue of the arbitration in the arbitration clause.

## **ADDITIONAL GUIDELINES REGARDING AGREEMENT TO SELL/PURCHASE**

In an agreement to sell/purchase, the following details must be incorporated:

- names and descriptions of the contracting parties;
- consideration and earnest money if paid;
- subject-matter of the agreement;
- time within which the agreement is to be performed; and
- special terms agreed upon between the parties.

## **Contracting Parties**

The vendor and the purchaser must be sufficiently described, irrespective of the fact that the parties know each other. There must be reciprocity of interest between the person who wants to enforce the agreement and the person against whom it is sought to be enforced. A stranger to the agreement has no enforceable claim and as such no court shall entertain his claim for specific performance. However, specific performance may be enforced not only against a party to the contract but also against a person claiming title under it. If one of the parties to the agreement is acting in his representative capacity, such capacity must be clearly and precisely disclosed and his authority to act in that capacity must form part of the agreement.

Legal representatives of parties have a right to require specific performance of a contract or are bound by the promise to perform the contract in the absence of a contrary intention. This rule does not apply where the obligation is personal in nature. As a rule, obligation under a contract cannot be assigned except with the consent of the promisee. On the other hand, rights under a contract are assignable unless the contract is personal in nature or the rights are incapable of assignment either under the law or under the agreement between the parties. If one of the parties to the agreement is acting in his representative capacity, such capacity must be clearly and precisely disclosed and his authority to act in that capacity must form part of the agreement. It is, however, usual to have a clause in a deed specifically stating that the parties shall include their executors, administrators, heirs, legal representatives and assigns.

### **Consideration**

Price is the essence of an agreement of sale/purchase and unless the price is clearly and precisely disclosed in the agreement, there is no enforceable contract between the parties because if no price is named in the agreement, the law does not imply, as in the case of sale of goods, a contract to buy/sell at a reasonable price is implied. Therefore, in all sales, the price is an essential ingredient and where it is neither ascertained nor rendered ascertainable, the contract is void for incompleteness and is incapable of enforcement. Price may not necessarily be in the form of money, it may be any other consideration. The word “price” is comprehensive enough to include any other lawful consideration. If any earnest money is paid, the same should be stated and the consequences arising in breach of the agreement may be stipulated for, namely, by forfeiture of the deposit, payment of a fixed sum by the vendor, if the breach is committed by the purchaser or the vendor, respectively.

### **Subject Matter**

Property of any kind subject to the provisions of the Transfer of Property Act, 1882, and those of any other applicable law or custom may be sold/purchased. Transferability is the general rule and the right to property includes the right to transfer the property to another person. The property, subject-matter of the agreement, must be described in detail giving its precise situation and the extent of interest agreed to be conveyed therein should be clearly stated. If the property is subject to certain charges, easements, encumbrances, restrictions, covenants etc., the same should be clearly stated so that the purchaser knows the real nature of the property he is purchasing. The vendor should not conceal any material particular with regard to the property he is selling, which the purchaser has a right to know.

### **Time for Performance**

If the time for performance is the essence of the agreement, the same should be clearly stipulated and the consequences of non-performance within the stipulated time should also be clearly and precisely declared.

### **Drafting of an Agreement**

An agreement between the parties is an instrument whereby the parties freely agree to perform certain acts or refrain from doing sometimes unilaterally or bilaterally. The purpose of the instrument is to bind the parties to the terms and conditions agreed upon. The agreement should, therefore, be drafted as deeds between the parties thereto. The old practice of drafting them as Deeds Poll should be discouraged.

While preparing agreements it is necessary and important that the intention of the parties should be set forth explicitly so as to leave no room for doubt or future controversy. The language should be simple and the words used should be definite and precise; the use of loose expression such as “proper”, “reasonable”, should, as far as possible, be avoided.

The provisions of the Indian Contract Act, 1872 about the essential incident and legality of agreements (Sections 2 to 30) should be studied and nothing should be introduced or left out which would make the agreement void.

But, if the material terms of an agreement are clear and specific, omission of certain details which can be worked out by consent of the parties or in its absence be settled by court will not invalidate the agreement (*Ramchandra v. Chinnubhai*, AIR 1945 Mad. 10).

An agreement can be split into same parts as any other document viz. Title, Date, Parties, Recitals, *Testatum*, Operating Clause, Schedule (if necessary), Exceptions and Reservations (if any), *Habendum*, *Covenants* (if any) and Testimonium. The above clauses were discussed in detail in Study Lesson-1 and a reference to the same may be made. However, model forms of a few general/usual clauses in agreement may assume the following forms:

**(i) Operation of Agreement:**

“THIS AGREEMENT shall come into force w.e.f. (date) and shall remain in force for a period of (period) until determined earlier by notice as hereinafter provided.”

**(ii) Termination by Notice:**

“THIS AGREEMENT shall be liable to be terminated by either party by giving (period) notice to the other party (without assigning any reason or cause)”.

**(iii) Arbitration Clause:**

“Every difference or dispute which may hereafter arise between the parties hereto or their respective representatives in relation to this agreement or arising thereout whether as to the constructions or operations thereof, or the respective rights and liabilities thereunder or any thing done hereunder or otherwise shall be referred to a sole arbitrator in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996. His award shall be accepted and binding on both the parties.”

**(iv) Clause for Services of Communication:**

“Any notice may be sent through the post to the last known place of abode or business of the party to whom it is given, and if so sent under a certificate of posting shall be taken to be sufficient service thereof.”

If it is desired that each party should have a copy of the agreement, it should be executed in duplicate, either party signing one of the duplicates and such duplicates being exchanged. Thus, the duplicate signed by A is given to B and that signed by B is given to A, but it is better if both the duplicates are signed by both the parties. The duplicates must be the exact reproduction of the original and require signature and attestation in the same manner as the original.

### Attestation, Registration and Stamp Duty

**Attestation:** It is not necessary for an agreement to be attested by any witness. But agreements are usually attested by one witness. Where registration is desired the agreement should be attested by two witnesses.

**Registration:** Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable. Only agreements creating an interest in immovable property worth more than Rs. 100 are required by law to be registered.

**Stamp Duty:** For the purpose of stamp duty, agreements are covered by Article 5 of Schedule I to the Indian Stamp Act, 1899. The stamp duty for different kinds of agreements varies from State to State. While drafting an agreement the draftsman should ascertain the proper stamp duty having regard to the changes made in the Stamp Act in the State where the agreement is executed.

**TERMS AND CONDITIONS IN THE AGREEMENT TO SELL/PURCHASE**

The usual conditions in an agreement to sell/purchase are:

- (i) The vendor has a marketable title in the property agreed to be sold/ purchased and that the vendor has produced the title deeds relating to the property to the purchaser for his inspection or in any other manner, must be specifically stipulated between the parties to the agreement.
- (ii) If the property agreed to be sold is a part of a larger property, an agreement as to retention of a particular or all the title deeds to the property by a party should be arrived at and incorporated in the agreement to sell/purchase.
- (iii) If the property is subject to any prior charge or encumbrance, the parties must agree that the sale is to be subject to such encumbrance or price payable under the agreement included the sum due under the encumbrance and is required to be paid to the chargeholder at the time of registration or thereafter.
- (iv) The mode of payment of the price or the balance thereof, if some earnest money or deposit has been paid, should also be stipulated in the agreement. It should also be clearly stated whether the vendor or the purchaser shall be liable to pay rates, rents, taxes or other imposts for the period commencing from the date of execution of the agreement to sell/purchase till the execution of the conveyance deed. It should also be stated in the agreement that interest at a particular rate shall be payable by the vendor on the earnest money paid in the event of his delaying the execution of the conveyance deed or the liability of the purchaser to pay interest at a particular rate, to the vendor, if he fails to pay the balance amount of consideration at the agreed date and the execution of the conveyance deed is delayed on that account.
- (v) The parties should agree as to the point of time when possession of the property should be handed over by the vendor to the purchaser, if the vendor is in possession or how the attornment by the tenant(s), if the possession is to be effected.
- (vi) The parties should also agree as to who shall bear the cost and expense of execution and registration of the sale deed and if both the parties have to bear the same, in what precise proportions they shall bear.
- (vii) If any broker is involved in the transaction, the agreement should clearly spell out if any brokerage is payable and by whom and at what rate, and at what point of time.

The agreement must incorporate if there are any other particular conditions attached to the transaction of sale/purchase so that the document is complete and self-contained and nothing is left to draw inferences or to presume intentions of the parties.

**A Specimen Agreement of Sale of House Property**

THIS AGREEMENT OF SALE executed on the ..... day of .....  
 .... 2018, between AB son of .....  
 residing at ..... hereinafter called the vendor of the one part and CD son  
 of ....., resident at ..... hereinafter called the  
 purchaser of the other part,

(The expressions “vendor” and “purchaser” wherever they occur in these presents, shall unless the context otherwise admits, also mean and include their respective heirs, executors, administrators, legal representatives and assigns).

WHEREAS the vendor is the sole and absolute owner of the property more fully set out in the Schedule hereunder:

AND WHEREAS it is agreed that the vendor shall sell and the purchaser shall purchase the said property for a sum of Rs..... (Rupees.....) free of all encumbrances.

NOW THIS AGREEMENT OF SALE WITNESSETH AS UNDER:

1. The price of the property more fully set out in the Schedule hereunder is fixed at Rs..... (Rupees.....) free of all encumbrances.
2. The purchaser has paid to the vendor this day, a sum of Rs..... (Rupees .....) by way of earnest money for the due performance of the agreement, the receipt whereof the vendor doth hereby admit and acknowledge.
3. The time for performance of the agreement shall be..... months from the date hereof and it is agreed that the time fixed herein for performance shall be of the essence of this agreement.
4. The purchaser shall pay to the vendor the balance sale price of Rs..... (Rupees .....) before registration of the conveyance deed.
5. The vendor agrees that he will deliver vacant possession of the property to the purchaser before registration of the conveyance deed. Or alternatively, the vendor agrees that he will put the purchaser in constructive possession of the property by causing the tenants in occupation of the property to attorn their tenancy to the purchaser.
6. The vendor shall execute the conveyance deed in favour of the purchaser or his nominee as the purchaser may require.
7. The vendor shall hand over all the title deeds of the property to the purchaser or an advocate nominated by him within..... days from the date of this agreement for scrutiny of title and the opinion of the vendor's advocate regarding title to the property shall be final and conclusive. The purchaser shall duly intimate the vendor about the approval of title within..... days after delivering the title deeds to him or to his advocate.
8. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund the purchaser the earnest money received by him under the agreement and on failure of the vendor to refund the same within..... days, he shall be liable to repay the same with interest thereon at the rate of..... per cent per annum.
9. If the purchaser commits a breach of the agreement, he shall forfeit the earnest amount of Rs..... (Rupees .....) paid by him to the vendor.
10. If the vendor commits a breach of the agreement, the vendor shall not only refund to the purchaser the sum of Rs..... (Rupees.....) received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.
11. Nothing contained in paras 9 and 10 above shall prejudice the rights of the parties hereto specific performance of this agreement of sale/purchase.

*Schedule of Property*

House No. .... situated in .....

On its North is .....

South is .....

East is .....

West is .....

IN WITNESS WHEREOF the vendor and the purchaser have set their respective hands to the agreement of sale/purchase on the day, month and the year above written, in the presence of the following witnesses:

Witnesses:

(1) Name :

Father's Name :

Address :

Signature :

Vendor

(2) Name :

Father's Name :

Address :

Signature :

Purchaser

## BUILDING CONTRACTS

Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act.. Such an agreement or contract must be drawn in accordance with the provisions of the Indian Contract Act, 1872. All the essential ingredients of a contract, such as, a proposal, its acceptance, its due communication to the proposer, lawful consideration, lawful purpose and competence of parties to the contract etc. must be duly satisfied and ensured while drafting such contracts.

It is essential to ascertain not only the legal position or condition of each of the parties to the contract, e.g. an individual, a firm or partnership, a company, or as the case may be, but also that each person signing the document has capacity to contract. The contract should clearly state the full names, addresses (The addresses being that to which all communications, including notices and judicial processes, should be sent), and capacities of each of the contracting parties and, in the case of firm, partnership or company, the name or complete style of the firm, partnership or company, its legal status, the date and place of its incorporation, Registered office, and so on.

### Specimen of a Building Contract

The following specimen of a building contract shall be helpful to those who are required to draw such agreements:

This agreement is made on this ..... day of ..... 2018 between ABC Ltd., a company incorporated under the Companies Act, 2013, having its Registered Office at ..... acting through Shri ....., its Company Secretary, hereinafter called "the builder", which term shall, unless repugnant to the context, include its legal representatives, of the one part and Shri ..... son of Shri ....., resident of ..... hereinafter called "the owner", which term shall, unless the context otherwise admits, include his heirs, executors, administrators, legal representatives, nominees and assigns, of the other part.

WHEREAS the owner has a plot of land measuring ..... sq. meters situated at ..... (as specified in Schedule I) duly registered in his own name with the rights, title and interest therein absolutely vesting in him;

AND WHEREAS the owner has requested the builder to build a bungalow on the said piece of land according to the plan approved by the Municipal authorities, of the area;

AND WHEREAS the builder, has agreed to build the desired bungalow.

Now this AGREEMENT is reduced into writing and respective parts thereof shall be performed by the owner and the builder in accordance with the following terms and conditions:

1. The builder will build and complete the bungalow within six months from the date of execution hereof in a thorough manner and with the best material and work as specified in Schedule II hereof on the plot of land belonging to the owner, which is more clearly and precisely described in Schedule I hereof.

2. Subject to the conditions hereinafter contained, the owner will pay to the builder a sum of Rs..... as cost of labour for construction and all other type of labour, cost of materials, electrical and sanitary fittings, wood work, doors and windows, white-washing, painting and polishing etc., as per specifications of the architect of the owner, which have been given in detail on the approved plan of the bungalow and a photo-copy whereof has already been handed over to the builder, who has received the same and has signed the original sanctioned plan in token of having received a photo copy thereof, in the following manner and at varying stages of the construction:

- (a) Construction up to plinth level - Ten per cent of the total contract amount.
- (b) Completion of walls up to roof level - Fifteen per cent of the total contract amount.
- (c) Completion of roof slab of the entire structure of the bungalow - Thirty per cent of the total contract amount.
- (d) Fixing of shutters of doors, windows, completion of wooden almirahs, pelmets and all other wood work - Twenty per cent of the total contract amount.
- (e) Finishing of the entire construction and fixing of electrical and sanitary fittings - Fifteen per cent of the total contract amount.
- (f) After receipt of Completion Certificate from the Municipal authorities - Balance amount of the contract money.

3. The owner shall pay to the builder a sum of Rupees twenty thousand only immediately on execution of this Agreement in the form of earnest money, immediately on receipt whereof, the builder shall procure building materials and start construction work. The said sum of Rupees twenty thousand shall be adjusted by the owner from the last instalment payable to the builder.

4. It is expressly, agreed between the owner and the builder that in respect of the aforesaid payments and in respect of the construction of the bungalow, time is the essence of this agreement.

5. The builder will do and perform all works incidental to the proper execution and completion of the bungalow including all works rendered necessary in consequence of the doing of the works and will supply all the required skilled, semi-skilled and unskilled labour and materials necessary for the same and no additional payment shall be made by the owner to the builder for the same.

6. The builder will permit the owner, his representatives and his architect to have access to the works while the same are under construction and to inspect the same so as to make sure that the construction work is being done according to sanctioned plan and materials are being used as per specifications given by the architect.

7. While the bungalow is in the course of construction and until the owner takes over the same, all materials used or to be used in the construction, shall remain at the builder's risk and the builder shall not be entitled to any compensation for injury/or loss/or destruction of, such works or materials arising from any cause whatsoever.

8. The owner will not be entitled to take possession of the bungalow until the entire amount is paid within the time stipulated hereinabove.

9. The owner shall make payments of all the amounts in respect of the said bungalow towards water and electricity deposits etc.

10. It is agreed by the owner that any amount that will be due and payable to the builder as mentioned in this agreement shall be treated as a charge on the bungalow till such time the same is paid in full.

11. If the owner requires any additional or extra items of work to be carried on by the builder in the bungalow, other than the above specified works, the builder should be informed by the owner in advance and the cost and/or difference of cost for such items of work as per rates mutually agreed upon should be paid by the owner to the builder in advance.

**SCHEDULE I**

Details of the plot of land upon which the bungalow is to be built by the builder for the owner:

Plot No. .... measuring..... sq. metres

Street .....

Road .....

Bounded on East .....

West .....

North .....

South .....

Within the district of.....

**SCHEDULE II**

**1. Foundation and Super-structure:**

Earth digging for foundation up to a depth of six feet. R.C.C., framed structure with R.C.C. foundation columns, beams and slabs all the partition and main walls shall be of 1<sup>st</sup> quality red bricks in cement mortar, both sides plastered and finished with snowcem painted on outer side and plastic emulsion painted inside.

**2. Almirahs, Doors and Windows:**

All the almirahs, doors and window frames will be of teak wood and all the window frames will be of teak board (1/2" thick) covered by kail wood frames. All the doors and window frames will be fixed with M.S. Grills and glazed shutters and wooden plank shutters. All the doors, windows, shutters etc. will be painted with synthetic enamel paint. Drawing-cum-dining room will have a sliding gate.

**3. Flooring:**

Entire flooring will be laid with light grey colour mosaic tiles with 6" skirting for all the rooms. Bathrooms and toilets will have square while 5" x 5" tiles to a height of seven feet.

**4. Electrical Fittings etc.:**

Concealed electrical wiring will be done with best quality insulated wires and cables. Light points will be as per the specifications shown in the site plan.

**5. Water Supply:**

There will be an underground water storage tank which will be 10' x 10' with 4' depth fully water proof coated with a booster pump to lift water to an overhead R.C.C. water tank of similar capacity to be constructed on four R.C.C. columns. A tubewell will also be bored and fitted with a booster pump, which may be used as an alternative source of water supply in the event of Municipal Water Supply failure.

**6. Kitchen:**

Kitchen will be fitted with an exhaust fan of the best available make and suitable for the size of the kitchen to be constructed in the bungalow. White 4" x 4" white tiles will be fixed up to a height of 9' on all the walls. There will be raised platform on two sides as shown in the plan with tops fitted with 1/2" thick white marble slabs with

a stainless steel sink at the space provided therefor.

IN WITNESS WHEREOF, the parties afore-mentioned have signed this deed in token of acceptance of the terms thereof.

Witnesses:

(1) Name :

Father's Name :

Address :

Signature : Owner

(2) Name :

Father's Name :

Address :

Signature : Builder

## COMMERCIAL AGENCY CONTRACTS

Sometimes business is conducted by traders not directly with their counterparts but through the agency of independent agents appointed for the purpose. Such agents would locate customers for the principal's goods and in certain conditions would have an implied authority to deal with the goods of the principal, allow credit terms to customers and receive payment from the customers on behalf of the principal. The rights and duties of the principal and his agent abroad would be governed by the contract of agency concluded between them. Commercial agency contracts exhibit certain peculiar characteristics of their own and their terms and conditions are substantially different from those of a sale purchase or other trade contracts.

A commercial agency contract should *inter alia* include provisions regarding the date of commencement and of termination of the agency, the goods or products to be covered by the agency, the contractual territory, the nature of the agency, e.g. sole or exclusive agency, etc. The rate and basis of commission payable to the agent should also be clearly indicated. The conditions regarding the reimbursement of expenses incurred by the agent; payment of commission on orders received directly by the principal from the agent's territory and commission on repeat orders may also be defined. The commission may be calculated on the gross amount or the net amount of the invoice. If the net amount is used as the basis it may be further specified what elements of the cost, such as, freight, insurance, discount, taxes, packing and the like would be deducted from the sales amount for calculation of the commission. It may also be stipulated when the commission will accrue and be payable, e.g. when the order is transmitted or accepted or when the goods are delivered or when the payment is received by the principal. It may also be stipulated how far the amount of the commission would be affected by such subsequent events as cancellation of an order, reduction in price, failure to deliver the goods, bankruptcy or insolvency of the buyer and so on. The currency of payment of the commission and the rate of exchange applicable may also be mentioned. The permission of the Reserve Bank of India may be required for fixing the rate and remittance of the commission to foreign agents.

The agency contract should clearly indicate whether the agent may or may not make binding agreements on behalf of the principal in respect of orders obtained by him. The circumstances in which the principal may validity refuse to accept the orders transmitted by the agent may also be mentioned. It is usual to provide in the agency contracts that the agent shall guarantee certain minimum sales turnover over a given period. The duties of the agent would further include not to divulge confidential information of the principal to third-parties, not to make secret profits or accept bribes and to use all reasonable diligence, disclose all material facts and be accountable to the principal for all monies received by him on behalf of the principal.

In drawing up Commercial Agency Contracts between parties residing in different countries, it is essential to ensure that nothing contained in such a contract shall be repugnant to imperative provisions of the law of any country in which such a contract or any part thereof has to be carried into effect. It is also appropriate, as stated earlier, to add a warning against the possible liability of the principal to tax in the contractual territory.

Experience has clearly shown, especially in the field of international trade the expediency of reducing to writing the commercial agency contract and any amendments thereto; in certain countries the law requires that this be done. Further, it is always advisable to seek legal and fiscal advice, not only in the country of the principal, but also in each of the countries (if more than one) wherein the commercial agent is to have authority to act in that capacity for the principal.

It is for the parties to the contract, carefully to decide, in the light of the facts of each case, the various points which should be covered therein. The points to be covered and the way in which they should be covered will depend largely upon the extent to which the law of the country or countries concerned covers these matters and the extent to which the law leaves them freely to be expressed in the contract.

The contract should clearly define the territory or territories (including or excluding any other country which may be associated with any such territory) in which the agent is entitled to act. It is important that the parties should give serious thought to this matter, as lack of precision may give rise to disputes between the agent and other agents of the principal to disputes between the agent and other agents of the principal as regards their respective territorial rights.

If the agent is to have the sole and exclusive right to represent the principal within contractual territory, the parties should agree to what extent, if any, the principal may nevertheless reserve the right to operate in the territory, either himself or by means of his employees, with or without, as the case may be, the assistance of the agent.

In addition, it may be expedient in certain cases to append to the contract a list showing the customers of the principal in the contractual territory to whom the contractual goods or any of them had been sold before the coming into force of contract, and the quantities and value of goods so sold during that twelve months (or as the case may be) last preceding such time.

The parties should always insert a suitably worded clause at the end of their contract to the effect that there are no other agreements in existence between the parties and that the whole of the terms between the parties are set out in the contract.

### **Del Credere Agency**

There is a special type of agency, which combines agency with guarantee. This is known as *del credere* agency. A *del credere* agent is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer. By reason of his charging a *del credere* commission he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss. He, therefore, gives an additional security to the seller, but he does not shift the responsibility of payment from the buyer to the seller. A commission *del credere* is the premium or price given by the principal to the agent for guarantee, which presupposes a guarantee.

A *del credere* agent like any other agent, is to sell according to the instructions of his principal, to make such contracts as he is authorised to make for his principal and be bound, as soon as he receives the money, to hand it over to the principal. He is distinguished from other agents simply in this that he guarantees that those persons to whom he sells perform the contracts which he makes with them.

### **Ingredients of an Agency Contract**

The contract of agency is governed by Chapter X (Sections 182 to 238) of the Contract Act, 1872. The basic

features of contract of agency are:

1. Authority should be given either expressly or impliedly to bind his principal.
2. While the principal should not be a minor, an agent could be a minor.
3. Consideration is not necessary for an agency contract.
4. For the acts of the agent, the principal is liable unless the principal has exceeded his authority.
5. The authority of an agent extends to the doing of all that is necessary and collateral to the doing of the main act.
6. The obligations under the contract of agency is not assignable unless:
  - (i) the nature of the business necessitates such assignment.
  - (ii) customs of usage of trade in the locality with regard to the business permit such assignment.
  - (iii) such assignment is expressly permitted by the contract of agency.

### **A Specimen of an Agency Contract**

The following specimen may serve as a model for drafting agency contracts, which may be adopted according to the requirements of each case.

An agreement made this..... day of..... between.....  
(principal) (hereinafter called "the principal") of the one part and..... (agent) (hereinafter called "the agent") of the other part.

Whereby it is agreed between the parties as follows:

1. That the agent is hereby appointed the sole agent of the principal for the town..... (in the district of) (hereinafter called "the agency town") for the purpose of making sales of the principal's goods for a term of..... years commencing from the date hereof on the terms and conditions set forth hereunder.
2. That the agent shall not, while selling the principal's goods make any representation in the trade or give any warranty other than those contained in the principal's printed price list.
3. That the agent shall be allowed to deduct and retain as his agency commission with himself..... per cent of the list price of all goods sold on behalf of the principal. The agent shall keep a record of all sales and shall regularly remit to the principal on each Saturday all sums received by the agent in respect of such sales less..... per cent his agency commission. All sales shall be made for cash against delivery of goods unless the principal's consent in writing to give credit to any particular purchaser be in any case first obtained and in the case of such credit sales the principal may direct for such increase in the price of his goods over and above the current list price of the principal.
4. That the agent shall not make purchases on behalf of nor in any manner pledge the credit of the principal without the consent in writing of the principal.
5. That the agent shall, at the expense of the principal, take on rent and occupy for the purpose of the agency, suitable premises with prior approval of the principal and shall keep insured for full value against all available risks, all the goods entrusted to his custody by the principal under this agreement and on request, shall produce to the principal, receipts, for the rent, rates and taxes of the said premises and for the premiums on insurance policies showing that the same have been paid on or about their respective due dates. That the agent shall bear all expenses relating to or incidental to the said agency.
6. That the agent, while selling to persons in the trade, shall obtain the purchaser's signature to an agreement to the following effect:

- (i) That the said principal's goods shall not directly or indirectly be re-sold outside the agency district.
  - (ii) That the said principal's goods shall not be re-sold to the public below the list price for the time being.
7. That the agent shall, in all his commercial dealings and on documents and on the name-plate or letter-head indicating his place of business, describe himself as selling agent for the principal.
  8. That a breach of the condition in clause 6 hereof shall entitle the principal to put an end to this agreement forthwith and also to recover from the said agent by way of liquidated damages the sum of Rs..... for each such article sold in breach of such clause. The agent undertakes that all purchasers to whom he may sell the principal's goods shall duly enter into, and carry out the aforesaid agreement referred to in clause 6 hereof for the purposes of this agreement be deemed to be a breach of clause 6 of this agreement by the agent and give the principal the rights and remedies against the agent for breach by the agent of this agreement.
  9. That the principal shall keep with the agent a stock of his goods free of all expenses of delivery to the value of Rs..... according to the principal's current price list and the principal further undertakes to replenish such stock on the close of each month so as to keep it at the agreed value. Provided always that the agent shall have no right of action against the principal for delay resulting from shortage of stock, delays in transit, accidents, strikes or other unavoidable occurrences in replenishing such stock. The principal shall always have the right, without any prior notice, to cause a stock checking of the said goods and on any shortage or deficiency found on such stock-taking the agent shall on demand pay to the principal the list price of such shortage or deficiency less the deduction by way of commission or rebate receivable by the agent. The agent shall not alter, remove, or tamper with the marks or numbers on the goods so entrusted into his custody.
  10. That the agent shall not sell the goods of the principal to any purchaser except at current price list of the principal conveyed by him from time to time. The agent may, however, allow a discount or rebate of..... per cent.
  11. That in the event of any dispute arising between the agent and a purchaser of the principal's goods, the agent shall immediately inform the principal of the same and shall not without the principal's approval or consent in writing take any legal proceedings in respect of or compromise such dispute or grant a release to any purchaser of the principal's goods.
  12. That either party may terminate this agreement at his option at any time after the expiration of..... years by giving the other one month's notice in writing.
  13. That the benefits under this agreement shall not be assignable to any other person.
  14. That the agent shall always, during the existence of this agreement, devote his whole business time and energy for pushing the sale of the principal's goods and shall in all such dealings act honestly and faithfully to the principal and shall carry out orders and instructions and shall not engage or be interested either directly or indirectly as agent or servant in any other business or trade without the prior consent in writing of the principal.
  15. That on the termination of his agreement for any reason whatsoever, the agent shall not for the period of one year solicit trade orders from the persons who had been purchasers of the goods of the principal any time within..... years immediately preceding the date of such termination and the agent shall not for a period of one year engage or be interested as agent or servant in any business, firm or company manufacturing, selling or dealing in goods similar to those of the principal.
  16. That all goods shall be sold by the agent for delivery at agent's place or business but the agent shall, at his own expense, have the right to deliver goods to purchasers at their places of business.

17. That without prejudice to any other remedy he may have against the agent for any breach or non-performance of any part of this agreement, the principal shall have the right summarily to terminate this agreement:
  - (i) on the agent being found guilty of a breach of its provisions or being guilty of misconduct or negligence of his duties; or
  - (ii) on the agent absenting himself from his business duties entrusted to him under this agreement for..... days without the principal's prior permission in writing; or
  - (iii) on the agent committing an act of bankruptcy.
18. That in the event of any dispute arising out of or in relation to or touching upon the agreement, the same shall be decided by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
19. That the principal shall be entitled to terminate this agreement by one month's notice in writing to the agent in the event of his ceasing to carry on the said business of the principal.
20. That on the termination of this agreement for whatever reason, the agent shall forthwith deliver to the principal all the unsold stock of goods and shall pay to the principal for the shortages of deficiency of stock at list price less commission and rebate allowable to the agent. The agent shall also deliver to the charge of the principal all books of account and documents of the agency, cash, cheques, bills of exchange or other securities he may have received during the normal course as a result of sales of the principal's goods and shall transfer, assign or negotiate in favour of the principal all such securities on demand.

IN WITNESS WHEREOF the parties have signed this deed.

Witness:

*Principal*

Witness:

*Agent*

## **COLLABORATION AGREEMENTS**

When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be collaborating in a desired venture. The word "collaboration" has, however, acquired a specific meaning, which refers to cooperation between a party within India and a party abroad. The agreements drawn and executed between such collaborating parties are known as "foreign collaboration agreements". With sophistication and technical advance achieved in the developed countries and motivated by the desire of carrying the country into the twenty-first century, the Indian entrepreneurs are seeking all possible avenues for obtaining technical know-how in the fields of industry, agriculture, mining, oil exploration, power generation, etc. A large number of Indian industrialists have already entered into long and short-term collaboration arrangements with foreign companies, firms etc. In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.

## **GUIDELINES FOR ENTERING INTO FOREIGN COLLABORATION AGREEMENTS**

These guidelines cover the following aspects of foreign collaboration agreements:

1. *Investment:* Where in a foreign collaboration agreement, equity participation if involved, the value of the shares to be acquired about be brought in cash.

2. *Lump sum payment:* The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer should be paid in three instalments as follows:
  - (i) one-third to be paid after the agreement has been approved by the Central Government;
  - (ii) one-third on transfer of the technical documents; and
  - (iii) one-third on the commencement of commercial production.
3. *Royalty:* Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be three per cent to five per cent. This rate will depend upon the nature and extent of the technology involved. Payment of a fixed royalty is preferred by the Government in certain cases. There should be no provision for payment of a minimum guaranteed royalty, regardless of the quantum and value of production.
4. *Duration of agreement:* Normal period of a foreign collaboration agreement is eight years subject to maximum of ten years. The period is approved by the Government usually for five years from the date of the agreement in the first instance or five years from the date of commencement of commercial production; the total period, however, not exceeding eight years from the date of the agreement.
5. *Renewal or extension of agreement:* The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.
6. *Remittances:* Remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.
7. *Sub-licensing:* An agreement shall not normally impose any restriction on the sub-licensing of the technical know-how to other Indian parties. The terms of such sub-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however, subject to the Central Government's approval.
8. *Exports:* No foreign collaboration agreement shall be allowed to contain any restriction on the free export to all countries, except in a case where the foreign collaborator has licensing arrangements in which case the countries concerned shall be specified.
9. *Procurement of capital goods etc.:* There should be no restriction on procurement of capital goods, components, spares, raw materials etc. by the Indian party. The Indian collaborator must be free to have control over pricing facility and selling arrangements.
10. *Technicians:* The number terms of service, remuneration etc. of technicians to be deputed on either side are subject to approval of the Reserve Bank of India.
11. *Training:* Provision shall be made in the agreement for adequate facilities for training of Indian technicians for research and development.
12. *Exploitation of Indian patents:* Where any item of manufacture is patented in India, the payment of royalty or lump sum to the foreign collaborator should make provision for compensation for use of such patent until its expiry. There should also be provision for manufacture by the Indian company of the said item even after the expiry of the collaboration agreement without making any additional payment.
13. *Consultancy:* If the necessity for any consultancy arises, it should be obtained from an Indian company. If, however, in the special circumstances foreign consultancy becomes essential, even then the prime consultant should be an Indian company.
14. *Brand Name:* There should be no insistence on the use of foreign brand names on products for sale in

India. There can, however, be no objection for use of foreign brand name on products to be exported to other countries.

15. *Indian Laws:* All collaboration agreements shall be subject to Indian laws.

16. *Approval of Central Government:* Every foreign collaboration agreement shall be approved by the Central Government.

While drafting a collaboration agreement, care should be taken that it is in strict compliance with the guidelines as detailed above. Every collaboration agreement must contain one or more clause to the effect: "The agreement shall be subject to Indian laws. The agreement shall be subject to the approval of the Government of India".

**A Specimen Collaboration Agreement**

Agreement executed this ..... day of ..... between M/s ..... a Foreign Company incorporated in the United Kingdom and having its registered office at ..... hereinafter called the U.K. Company of the ONE PART.

AND

M/s..... a company incorporated in India and having its registered office at ..... hereinafter called the Indian company of the OTHER PART:

WHEREAS the Indian company has been incorporated having for its object the manufacture and production of.....; WHEREAS the Indian company has already constructed factory buildings, installed plant and machinery and commenced manufacture and production of.....; WHEREAS the Indian company with a view to improve still further the quality of the commodities manufactured and to increase production are desirous of procuring the latest technique and know-how relates to the manufacture of the abovesaid commodities; WHEREAS the Indian company therefore approached the U.K. company who have considerable experience in the line of manufacture engaged in by the Indian company, and requested them to extend to them necessary technical assistance in that behalf; AND WHEREAS the U.K. company has agreed to extend technical assistance and to furnish to the Indian company for improvement of their business the requisite know-how in the form of designs, plans, engineering drawings, technical advice and also to supply technicians to advice for improvement of the existing factories, machineries and plant and also to provide to the Indian personnel necessary technical training to enable them to successfully handle and exploit the technical know-how to be imparted to the Indian company subject to the terms and conditions set out hereunder:

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

(1) In consideration of the remuneration paid by the Indian company to the U.K. company as described hereinafter the U.K. company shall supply to the Indian company:

- (a) technical advice and know-how for the purpose of improving or adding to the existing factories and installing additional plant and machineries if necessary for the manufacture of.....;
- (b) further the necessary plans, factory-design and layouts, charts and drawings, documentation and other forms of technical know-how for the said purpose;
- (c) render advice in the matter of purchase of the further plant and machinery suitable and necessary for the factory;
- (d) lend the services of their technicians to assist the Indian company in carrying out the improvement to the factories and for installing additional plants and machinery;
- (e) provide technicians from their own staff to attend at the Indian company's factory in India whenever necessary;

- (f) impart technical training to selected Indian personnel at their works in England or in their associated companies, to enable them to operate the machinery and plant to be installed and to exploit the imported technical know-how to the best advantage;
- (g) advise the Indian company, promptly and to the best of their ability, in connection with any technical or manufacturing problems or difficulties which may be referred to it by the Indian company during the continuance of this agreement.

(2) For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian company shall make a lump sum payment of Rs..... to the U.K. company phased as follows:

- (a) one-third on approval of the agreement by the Central Government;
- (b) one-third, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;
- (c) the balance one-third in three equal annual instalments thereafter after commencement of production.

(3) This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.

(4) The Indian company may but not bound to use foreign brand names on their products for internal sale or on products to be exported.

(5) There shall be no restriction on the Indian company exporting their products to foreign countries.

(6) The Indian company shall not have the right to pledge, mortgage or assign or to sub-licence the technical know-how, data, engineering designs, layouts etc. to other parties, without the consent in writing of the U.K. company.

(7) There shall be no restraint on the Indian company having their own arrangements for procurement of raw materials, purchase of spares and components and for pricing their products and the sale thereof.

(8) Technicians who may be deputed by the U.K. company to the Indian company to advise and assist the Indian company under this agreement shall be paid their salary, travelling expenses and boarding and lodging by the Indian company.

(9) The Indian company shall likewise bear all the expenses of the persons sent by them to the U.K. company for training in their works under clause 1(f) *supra*.

(10) The parties hereto mutually agree that they will each inform the other of any new development in design or methods of manufacture which they respectively may discover during the continuance of this Agreement in so far as such new developments are applicable to the products manufactured by the Indian company.

(11) The Indian company shall maintain the utmost secrecy in connection with any technical data supplied by the U.K. company under this Agreement, and in particular shall keep all data concerned with the manufacturing processes under lock and key.

(12) It is agreed that the payment made to the U.K. company shall include the compensation for use of the patent rights for the period of its duration and that the Indian company shall have the right for the period of its duration and that the Indian company shall have the right to manufacture their products even after the expiry of this Agreement.

(13) The Indian company shall not during the continuance of the Agreement refer any technical or manufacturing problems or difficulties to any one other than the U.K. company but shall regard and use the U.K. company as its sole technical consultant.

(14) On the expiry of the period prescribed herein or of extended period provided in clause 3 (*supra*) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies of information data or material sent to it by the U.K. company under this Agreement and then in its possession and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

IN WITNESS WHEREOF the parties hereto have signed this Agreement this..... day of..... 2018 in the presence of the following:

WITNESSES:

- 1.
- 2.

**Specimen Joint Venture Agreement  
(Joint Venture with Foreign Company)**

THIS AGREEMENT IS MADE on this .....day of 2018 BETWEEN AMCO INC. Incorporated under the appropriate laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART and INCO LTD. a company registered under the Companies Act, 2013 having its office at 99 Chowring Road Calcutta 700071 of the OTHER PART.

WHEREAS AMCO INC. (hereinafter referred to as AMCO) carries on business as manufacturer of and dealer and exporter in Computers, Computer Hardwares and Softwares and has worldwide market and intends to extend its market here in India and elsewhere.

Whereas INCO LTD. (hereinafter referred to as INCO) carries on business as manufacturer of, dealer in and exporter of Computer Softwares and intends to expand its business in India and abroad.

Whereas AMCO and INCO intend to co-operate in manufacturing/dealing in and exporting Computers, Hardwares and Softwares in India and abroad for mutual benefit by setting up a new company.

NOW THESE PRESENTS WITNESSETH and the parties hereby agree as follows:

1. A Joint-stock company would be formed under the name and style of Indo-American Company Pvt. Ltd. under the Companies Act 2013 having its Registered Office at 99 Chowringhee Road, Calcutta 700 071.
2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of AMCO and INCO in relation to the said proposed company.
5. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated. The consideration for allotment of shares to AMCO would also include the supply and transfer of technical formula, new inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of

Computers, Hardwares and Softwares and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.

6. Will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.
7. Will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development facilities should be arranged for, provided and continued for successful running of the business of the new company.
8. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
9. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.
10. AMCO will buy 75% of the products of new company for exporting; to other countries through its own organisations or outlets at a remunerative price not below the price at which the products are sold in India.
11. Neither party shall carry on their own business in a manner which will directly adversely affect the business and profitability of the new company.
12. The expenses for the setting up and promotion of the new company would be shared equally by AMCO and INCO.
13. The consideration for allotment of shares of the new company to INCO shall be paid in cash and in kind such as by transfer of immovable properties for the setting up of factory and making arrangement for the office accommodation of the new company. The valuation of such immovable properties including office accommodation would be decided by mutual agreement between AMCO and INCO.
14. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.
15. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.
16. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be in conformity with such directions or approvals of the appropriate authorities.
17. IN WITNESS WHERE OF the parties hereto have signed, sealed and delivered these presents on the day, month and year first above-written.

Signed, sealed and delivered by

Mr. ....

Pursuant to the Board Resolution dated of AMCO Inc Signature in Calcutta in the presence of:

1 .....

2 .....

Signed, sealed and delivered by

Mr. ....

pursuant to the Board Resolution dated ..... of INCO Ltd.

Signature in the presence of :

1 .....

2 .....

## ARBITRATION AGREEMENTS

The 'arbitration agreement' under the Arbitration and Conciliation Act, 1996 means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined relationship whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement. It has to be in writing. It is in writing if it is contained in a document signed by the parties, or in an exchange of letters, telex telegrams or other means of telecommunication "including communication through electronic means" which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of agreement is alleged by one party and not denied by the other.

The important ingredient of the arbitration agreement is the consent in writing to submit dispute to arbitration. Consent in writing implies the application of mind to the reference of dispute to arbitration in accordance with Arbitration and Conciliation law and the binding nature of the award made thereunder.

An arbitration agreement stands on the same footing as any other agreement. It is binding upon the parties unless it is intended with fraud, undue influence etc., in which case it can be avoided like any other agreement.

An arbitration rests on mutual voluntary agreement of the parties to submit their differences to selected persons whose determination is to be accepted as a substitute for the judgement of a court. The object of arbitration is the final determination of differences between parties in a comparatively less expensive, more expeditious and less formal manner than is available in ordinary court proceedings.

### Pre-requisites of Arbitration

Every arbitration must have the following three pre-requisites:

- (i) a dispute between parties to an agreement, requiring a settlement;
- (ii) its submission for a settlement to a third person; and
- (iii) a decision by such third person according to his own judgement based on the facts and circumstances of the dispute, which is binding on both the parties.

### Submission of Dispute to Arbitration

A submission is an agreement between two contracting parties to take decision from a third mutually-agreed party, to whom they refer the dispute. The arbitration presupposes that the arbitrator must accept the office of arbitrator to perfect his appointment.

### Aim of Arbitration

Civil litigation takes years and years to settle simple disputes. Arbitration is a means devised to quick and economical settlement of a dispute between two contracting parties, who also agree as part of the main agreement to refer dispute or difference arising out of or touching upon the terms and conditions of the agreement to a third person to give his judgement, which shall be binding on both the parties. Where the decision of a person is binding on only one of the parties and not on all the parties to the dispute, it cannot be said that the function, which the person giving the decision is exercising, is arbitral in character.

### Methods of Arbitration

The parties to the dispute will enter into an agreement to refer the dispute to arbitration and will agree on the terms of reference, that is, to state clearly and precisely the matter the arbitrator is required to decide. An arbitrator is not bound by the strict rules of evidence of courts of law. However, he does follow the practice of presentation and conduct of a case in a court of law. Most of the evidence is in writing. The party adducing evidence has to be present before the arbitrator so that he may be cross-examined on his written evidence. After hearing the evidence of both the parties, the arbitrator makes his award. The award must be within the terms of reference.

It is for the arbitral Tribunal to lay down its own procedure during the arbitration proceedings. The law should however, be fair and reasonable. The tribunal may decide to ask the parties to adduce evidence by way of affidavits. In that case it would be fair and just to allow cross-examination of the witness whose affidavit has been filed.

#### Requisites of an Award

The general requisites of an award are:

- (a) it must be consistent with the submission;
- (b) it must be certain;
- (c) it must be fair to the parties;
- (d) it must be final;
- (e) its implementation must be possible.

### Specimen of Arbitration Agreement to Refer the Dispute to two Arbitrators

This agreement made and entered into between Mr..... and Mr..... on this ..... day of (month) and (year) witnesseth as follows:

WHEREAS differences and disputes have arisen between the parties above-mentioned regarding the matter of ..... and the parties could not mutually settle the matter. Now the parties agree that the matter as under be referred to arbitration to obtain an award:

1. For the purpose of final determination of the dispute, the matter will be referred to Mr... .. nominated by one party and Mr. .... nominated by the other party as arbitrators and their award shall be final and binding on both the parties.

2. If differences should arise between the said two arbitrators on the questions referred to them, the said arbitrators shall select an umpire and the award to be given by the umpire shall be final and both the parties hereby agree that the award so given by the umpire or arbitrators shall be binding on both the parties.
3. A reasonable time-limit may be fixed after consulting the arbitrators for the grant of the award by them and umpire if appointed and the said time may be extended in consultation with the arbitrators or umpire if need be.
4. The provisions of the Arbitration and Conciliation Act, 1996 so far as applicable and as are not inconsistent or repugnant to the purposes of this reference shall apply to this reference to arbitration.
5. Both the parties agree that they would co-operate and lead evidence etc. with the arbitrators so appointed as expeditiously as possible and it is an express condition of this agreement, that if any of the parties non-co-operates or is absent at the reference, the arbitrators would be at liberty to proceed with the reference ex parte.
6. The parties hereto agree that this reference to arbitration would not be revoked either by death of either party or any other cause.
7. If the arbitrators or anyone of them as chosen under this agreement become incapacitated either by death or sickness or other disability, the parties retain the right of nominating substitutes and no fresh agreement therefor would be necessary.
8. It is an express stipulation that any award passed by the said arbitrators shall be binding on the parties, their heirs, executors and legal representatives.

Having agreed to the above by both the parties, the said parties affix their signatures to this agreement this..... day of (month and year) at (place).

Signature I

Signature II

**Specimen of Arbitration Agreement to Refer the Dispute to a Common Arbitrator**

THIS AGREEMENT is made at ..... this..... day of ..... between Mr. X ..... of ..... residing at ..... hereinafter referred to as the Party of the First Part and Mr. Y ..... of..... residing at ..... hereinafter referred to as the Party of the Second Part.

WHEREAS by an Agreement (Building contract) dated..... 2018 entered into between the parties hereto, the Party of the First Part entrusted the work of constructing a building on his plot of land situated at..... to the Party of the Second Part on the terms and conditions therein mentioned.

AND WHEREAS the Party of the Second Part has commenced the construction of the building according to the plans sanctioned by the..... Municipal Corporation and has completed the construction to the extent of the 1st floor level.

AND WHEREAS the Party of First Part has made certain payments to the Party of the Second Part on account but the Party of the Second Part is pressing for more payments which according to the Party of the First Part he is not bound to pay and, therefore the work has come to a standstill.

AND WHEREAS disputes have therefore arisen between the parties hereto regarding the interpretation of certain provisions of the said agreement and also regarding the quality of construction and delay in the work.

AND WHEREAS the said agreement provides that in the event of any dispute or difference arising between

the parties the same shall be referred to arbitration of a common arbitrator if agreed upon or otherwise to two Arbitrators and the Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

AND WHEREAS the parties have agreed to refer all the disputes regarding the said contract to Mr. .... Architect, as common Arbitrator and have proposed to enter into this Agreement for reference of the disputes to the sole arbitration of the said Mr.....

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the following points of dispute arising out of the said agreement dated... are hereby referred to the sole arbitration of the said Mr..... for his decision and award.

The points of dispute are:

- (a) Whether the Party of the Second Part has carried out the work according to the sanctioned plans and specifications.
  - (b) Whether the Party of the Second Part has delayed the construction.
  - (c) Whether the Party of the Second Part is overpaid for the work done up to now.
  - (d) Whether Party of the First Part is bound to make any further payment over and above the payments made up to now for the work actually done.
  - (e) All other claims of one party against the other party arising out of the said contract up to now.
2. The said Arbitrator shall allow the parties to file their respective claims and contentions and to file documents relied upon by them within such reasonable time as the Arbitrator may direct.
  3. The said Arbitrator shall give hearing to the parties either personally or through their respective Advocates but the Arbitrator will not be bound to take any oral evidence including cross examination of any party or person.
  4. The said Arbitrator shall make his Award within a period of four months from the date of service of a copy of this agreement on him by any of the parties hereto provided that, the Arbitrator will have power to extend the said period from time to time with the consent of both the parties.
  5. The Arbitrator will not make any interim award.
  6. The award given by the Arbitrator will be binding on the parties hereto.
  7. The Arbitrator will have full power to award or not to award payment of such costs of and incidental to this arbitration by one party to the other as he may think fit.
  8. The Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

IN WITNESS WHEREOF the parties herein under have set their hands the day and year hereinabove mentioned.

*Signed by the within named*

*Signed by the within named*

*Mr. X.... in the presence of*

*Mr. Y.... in the presence of*

## **GUARANTEES : COUNTER GUARANTEE, FIDELITY GUARANTEE, PERFORMANCE GUARANTEE, BANK GUARANTEE**

A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”; and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written. (Section 126 of the Indian Contract Act, 1872)

A guarantee which extends to a series of transactions is called a “continuing guarantee”.

A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a “fidelity guarantee”.

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called “counter-guarantee”.

A guarantee which ensures the contracted performance of another person and under which the surety undertakes to compensate the person in whose favour the guarantee is given, in the event of failure on the part of the person on whose behalf the guarantee is given, is known as “performance guarantee”.

A “bank guarantee” is a guarantee given by a bank on behalf of its client or account-holder to another person with whom the client has entered into a contract to perform some job or to do and call upon the bank to pay the guaranteed amount in the event of the contingency, mentioned in the guarantee, happening or not happening, as the case may be.

### **Purpose of a Guarantee**

The primary idea of a guarantee or suretyship is, an undertaking to indemnify the creditors in case the principal debtor does not fulfil his promise; the contract of guarantee in that sense is a contract to indemnify. The central point in such a case is to determine what was the contingency which the parties had in their minds when the contract of guarantee was entered into.

### **Form of a Guarantee**

The law does not require a contract of guarantee to be necessarily in writing. It may be either oral or in writing. It may be express or it may even be implied. It might be even inferred from the course of conduct of the parties concerned. However, whatever may be the form of the contract, it must be satisfactorily proved. Like any other contract, a contract of guarantee must be supported by consideration. It is, however, not necessary that the consideration should flow from the creditor and be received by the surety. Consideration between the creditor and the principal debtor is a valid and good consideration for the guarantee given by the surety. A contract of guarantee as specified in Section 126 of the Indian Contract Act, 1872 presupposes the existence of a principal debtor and no such contract can be made before a sale has taken place when there is no principal debtor in existence in respect of whose default the guarantee can be given.

### **Fidelity Guarantee**

A surety’s liability for the faithful discharge by another of his duties depends in each case on the exact terms of that guarantee. The surety is not discharged from the liability for the principal debtor’s default because the default would not have happened if the creditor had used all the powers of superintending the performance of the debtor’s duty which he could have exercised, because the employer of the servant whose due performance of work is guaranteed does not contract with the surety that he will use the utmost diligence in checking the servant’s work.

If the employer of a servant whose fidelity has been guaranteed continues to employ him even after a proved

act of dishonesty without notice to the guarantor, the surety is discharged. That is a basic principle implicit in the very nature of a fidelity guarantee. The guarantor in such a case guarantees the fidelity and ensures the loss against the risk of infidelity and not the fact of infidelity. If the employer wants to continue a dishonest servant after his dishonesty has been proved then he must give the guarantor notice of the fact of infidelity so that the guarantor may get an opportunity to say whether he would continue his guarantee or not for a man whose infidelity has been proved.

### **Construction of a Guarantee**

The terms of a guarantee must be strictly construed. The surety receives no benefit and no consideration. He is bound, therefore, merely according to the proper meaning and effect of the written engagement that he has entered into.

In construing a guarantee, the principle is that a guarantee will only extend to a liability precisely answering the description contained in the guarantee.

### **Consideration for a Guarantee**

Section 127 of the Indian Contract Act, 1872 defines consideration for guarantee as “Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee”.

Consideration between the principal debtor and the creditor is good consideration for guarantee given by surety. It is not necessary that the thing done or the promise made for the benefit of the principal debtor should be at the desire of the surety. The word “done” in the above definition shows that past benefit to the principal debtor can be good consideration for a bond of guarantee.

### **Surety's Liability**

According to Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

The surety's liability is not deferred until the creditor exhausts his remedies against the principal debtor. In the absence of some special equity the surety has no right to restrain an action against him by the creditor on the ground that the principal debtor is solvent or that the creditor may have relief against the principal debtor in some other proceedings.

The liability of the surety being co-extensive with that of the principal debtor, is joint and several with the latter and, therefore, in the absence of a clear intention to the contrary it is at the option of the creditor, to decide whether he shall proceed against the surety or the principal debtor. Of course, a guarantor is prima facie entitled to have the debt proved as against him.

### **Subrogation of Surety to the Rights of Creditor on Payment**

Section 140 of the Indian Contract Act invests a surety with all the rights which the creditor has against the principal debtor, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety has made the payment or performed all that he is liable for.

### **Continuing Guarantee**

Section 129 of the Act lays down that a guarantee which extends to a series of transactions is called a continuing guarantee, and according to Section 130, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the creditor.

**Specimen Deed of Guarantee by a Bank on behalf of a Company for the Performance of a Contract in favour of State Government**

THIS DEED OF GUARANTEE made on this..... day of..... Two Thousand..... between the (Bank) ..... (hereinafter called "the Bank") of the one part and the State of ..... represented by the Governor, Shri..... (hereinafter called "the State") of the other part.

WHEREAS by Acceptance of Tendor No..... dated..... made between ..... Ltd., a company incorporated under the Companies Act, 1956 having its Registered Office at agreed by the Company with the State for the supply of plant, machinery and equipment in accordance with the terms, specifications and conditions therein contained which inter alia to.....% of the total value of the contract price, such payment to be secured by a Bank guarantee;

AND WHEREAS the bank has, at the request of the Company, agreed to stand surety for and guarantee refund of the said advance in case the plant, machinery and equipment of the value of Rs..... aforesaid is not delivered to the State in accordance with the terms and conditions of the said agreement, and the State agreed to make the said advance on such bank guarantee as aforesaid:

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the State of..... having agreed to advance a sum of Rs..... to the Company, through the Bank, for the purpose hereinafter indicated, the bank, does hereby guarantee that in case the Company shall fail and/or neglect to supply the State, the plant, machinery and equipment of the value of Rs..... in accordance with the terms, specifications and conditions contained in the Acceptance of Tendor dated the..... subject to any amendments or modifications thereof, if any, when made, the bank shall repay to the State such amount or amounts as the bank may be called upon to pay subject to the maximum limit of Rs.....

2. This guarantee of the Bank shall be effective immediately upon receipt of the sum of..... from the State for and on behalf of the Company and shall continue in force until the supply of plant, machinery and equipment of the value of Rs..... aforesaid is fully effected.

3. The guarantee hereinbefore contained shall not be affected by any change in the constitution of the bank or of the Company nor in the event of any winding up being made against the Company.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day, month and year first above-written.

For and on behalf of the Bank

Witness 1.....

.....

Witness 2 .....

For and on behalf of the State of

.....

**Specimen Deed of Guarantee for the Performance of a Contract**

THIS DEED OF GUARANTEE made this ..... day of ..... between Shri ....., son of Shri..... resident of..... (hereinafter called "the Guarantor"), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc of the one part and Shri ....., son of ..... resident of .. (hereinafter called "the Principal), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED..... made between Shri..... son of

Shri..... resident of..... etc., therein referred to as “the Contractor”, of the one part and the said..... Shri..... herein referred to as “the Principal”, of the other part, it was inter alia agreed by and between the parties as follows:

*(Here state the nature of the work to be done by the Contractor);*

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof. Now it is agreed and declared by and between the parties as follows:

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgement on the part of the Contractor in performing or non-performing the contract.
2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.

Signed, sealed and delivered in the presence of

1. Guarantor
2. Principal

## **HYPOTHECATION AGREEMENT**

Hypothecation is a form of transfer of property in goods. Hypothecation agreement is a document by which legal property in goods passes to the person who lends money on them, but the possession does not pass. This form of transfer is not regulated in India by any statute. Neither the Transfer of Property Act, 1882, nor the Indian Contract Act, 1872, nor the Sale of Goods Act, 1930, recognize the non-possessory hypothecation of immovables and the rights and remedies of the parties are regulated by the courts according to the general law of contract.

In hypothecation, there must be an intention of the parties to create a security on the property on which the money has been lent. If that intention can be established, equity gives effect to it.

A hypothecation not merely of moveable existing on the premises at the time but also in respect of moveable which might be subsequently acquired and brought there, is valid though it is not governed by the Transfer of Property Act or by the Indian Contract Act, 1872. An oral or written hypothecation is permitted under the law in India.

Hypothecation is an extended form of pledge. Pledge has been codified by the Indian Contract Act. Sections 172 to 176 deal with pledge of goods. Under Section 172, a pledge is a bailment of the goods as security for payment of a debt or performance of a promise. Section 172 entitles a pawnee to retain the goods pledged as security for payment of a debt and under Section 175 he is entitled to receive from the pawnor or the pledger any extra-ordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a pawnee and provides that in case of default by the pawnor the pawnee has the right to sue upon the debt and to retain the goods as collateral security and to sell the goods after reasonable notice of the

intended sale to the pawnor. Once the pawnee, by virtue of his right under Section 176 sells the goods, the right of the pawnor to redeem them is extinguished. However, the pawnee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pawnor. So long the sale does not take place the pawnor is entitled to redeem the goods on payment of the debt. Therefore, when a pawnee files a suit for recovery of debt, though he is entitled to retain the goods, he is bound to return them on payment of the debt. The right to sue on the debt assumes that he is in a position to re-deliver the goods on payment of the debt and, therefore, if he has put himself in a position where he is not able to re-deliver the goods, he cannot obtain a decree.

As against pledge of goods, the transfer of legal title in the goods in the case of a hypothecation, the rights of the lender and the borrower are strictly governed by the terms and conditions of the hypothecation agreement executed by the parties. No assumptions can be drawn in such a case. Hypothecation is resorted to mostly by banks and other financial institutions for securing their long-term and medium-term loans and limits of working capital, bill discounting, letters of credit and guarantees to limited companies, partnerships etc. Alongwith the hypothecation agreements, the loaning institutions including banks have a plethora of other documents executed by the borrowing companies e.g. demand promissory note, collateral personal guarantees of managing directors, directors and other persons having substantial interest in the borrowing entities, second charge on fixed assets like land and building and plant and machinery permanently attached to land by legal or equitable mortgage and so on and so forth.

Hypothecation agreements usually cover moveable machinery, equipment, stocks of finished and semi-finished goods, raw materials, consumable stores, present and future available in factories and godowns of the borrower and also enroute to the borrower's factories and book debts. While these items as moveable assets, remain in the possession of the borrower and he has absolute right to convert them, sell them and deal with them in any manner the borrower likes in the course of his business, the legal title vests in the lending institution by virtue of the hypothecation agreement. Pledge, which is regulated by the Indian Contract Act, 1872, as stated above, technically speaking, cannot exist without bailment or possession. Though not accompanied by delivery of possession, the validity of hypothecation of moveables has been recognised in India and it has sometimes been enforced even against a bona fide purchaser without notice. Since such hypothecation is not governed by the Transfer of Property Act, 1882 or the Indian Contract Act and even the Sale of Goods Act, 1930, the Court is thrown back upon principles of equity and justice.

**A Specimen Agreement to Hypothecate Goods to Secure Fixed Loan**

The Manager,  
 .....Bank,  
 .....  
 ..... Sir,

In consideration of your Bank advancing to me/us on loan the sum of Rs..... I/We hereby agree to hypothecate and hold under lien to the Bank as security for the repayment as per Schedule hereto of the principal amount of the loan and payment of interest on demand at.....% per annum subject to a maximum of.....% per annum above Bank Rate.

The goods so to be held by me/us under lien to the Bank I/We declare to be my/our absolute property, and to be stored in my/our godowns at..... I/We hereby agree to furnish you at the close of business on the last day of each English calendar month so long as any money remains due in respect of the said loan with a full and correct statement of particulars of all goods so held under lien to the Bank, with the market value thereof respectively on that day.

All goods from time to time held by me/us under lien to the Bank in terms of this agreement shall be kept

separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any company, firm or person on the security of such goods stored in the same godown in a way that such other goods may be mixed with the goods held under lien to the Bank nor shall I/We do any other act by means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/We are at liberty, from time to time in the ordinary course of business, to sell all or any of the goods from time to time held under lien to the Bank under this agreement provided that no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank plus the margin of..... per cent. In case of any goods held under lien to the Bank reducing the value of the goods held under this lien to less than the amount of my/our said debt to the Bank plus such margin, the proceeds of such sale, as soon as the same are received, shall be paid into the bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/ us on the security.

I/We empower you or any one from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the bank under this agreement shall be from time to time stored, for the purpose of inspecting and taking an account of the said goods.

I/We further empower you or anyone authorised by you as aforesaid so long as any money advanced by the bank under this agreement remains unpaid, to take possession of any goods from time to time held by me/us under lien to the Bank under this agreement and or any promissory notes or bazaar chits held by me/us in respect of any of the goods which may have been sold in such manner as you may think fit and on so taking possession to exercise on behalf of the Bank all the rights of a pawnee under the Indian Contract Act and failing payment of the amount under this loan on....., to sell and realise the said goods and promissory notes or bazaar chits. No notice to me/us of such sale shall be necessary, and I/ We hereby agree to waive any such notice. I/We agree to accept the Bank account of such sale signed by the Manager, Accountant or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by the Bank and the charges and expenses incurred in connection with such realisation, and I/We hereby further agree to sign all documents, furnish all information and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any promissory notes or bazaar chits of which you shall so take possession.

I/We undertake to keep all held under lien to the Bank under this agreement, insured against fire to their full value, and to produce and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in respect of my/our said loan. It shall be optional for, but not obligatory on the Bank, to insure the said goods in the Bank's name or to appropriate floating policies for the time being effected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums.

It is understood that the Bank's lien on the goods, so held under this agreement shall extend to any other sum or sums of money for which I/we or any other of us either separately or jointly with any other person or persons may be or become indebted or liable to the bank on any account.

Schedule of securities referred to in the agreement.....

Schedule of instalments for the repayment of the loan amount.....

Yours faithfully,

For A B C Ltd. (.....)

Managing Director,

New Delhi

Dated.....

## OUTSOURCING AGREEMENTS

Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.

Two common types of outsourcing are Information Technology (IT) outsourcing and Business Process Outsourcing (BPO). BPO includes outsourcing related to accounting, human resources, benefits, payroll, and finance functions and activities. Knowledge Process outsourcing (KPO) includes outsourcing related to legal, paralegal, and other highly skilled activities.

A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider. It minimizes complications when a dispute arises. However, many a times people neglect to pay attention while drafting an outsourcing agreement. Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. It is advisable to consult a lawyer before finalizing any outsourcing agreement.

Before signing an outsourcing agreement, the following factors must be properly addressed:

- Duties and obligations of Outsourcer
- Duties and obligations of service receiver
- Security and confidentiality
- Legal compliance
- Fees and payment terms
- Proprietary rights
- Auditing rights
- Applicable law to outsourcing agreement
- Term of the Agreement
- Events of Defaults and Addressing
- Dispute Resolution Mechanism
- Time limits
- Location of Arbitration
- Number of Arbitrators
- Interim measures/Provisional Remedies
- Privacy Agreement
- Non-compete Agreement
- Confidentiality Agreement
- Rules Applicable
- Appeal & Enforcement
- Be aware of local peculiarities
- Survival terms after the termination of the outsourcing agreement.

Every outsourcing agreement should be modified as applicable under different circumstances. [Source: [www.madaan.com](http://www.madaan.com)]