

# DRAFTING, PLEADINGS & APPEARANCES

**CS Vikas Vohra** *Corporate BaBa*



## HIGHLIGHTS

- As per new ICSI modules
- Colored book for better learning
- Important concepts highlighted for quick revision

**PART - 1**

# TEAM YES

Most ❤️ ❤️ ❤️ Academy  
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YES  
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## CS VIKAS VOHRA (FOUNDER)

CSEET	EXECUTIVE	PROFESSIONAL
Legal Aptitude	Company Law & Practice	Drafting, Pleadings & Appearances
	Capital Market & Securities Laws	



## ADV CHIRAG CHOTRANI

CSEET	EXECUTIVE	PROFESSIONAL
Legal Aptitude	Setting Up of Business, Industrial & Labour Laws	Environmental, Social & Governance - Principles and Practice
	Jurisprudence, Interpretation & General Laws	Corporate Funding & Listings in Stock Exchanges
	Economic, Commercial & Intellectual Property Laws	



## CS VAIBHAV CHITLANGIA

CSEET	LAW ENTRANCE	PROFESSIONAL
Logical Reasoning	Logical Reasoning	Strategic Management & Corporate Finance
Quantitative Aptitude	Maths	Corporate Restructuring, Valuation & Insolvency



## ADV. AMRUTA CHHAJED

LAW COURSE DIRECTOR



## CA CS HARISH A. MATHARIYA (FOUNDER)

CSEET	EXECUTIVE	PROFESSIONAL
Business Environment	Corporate Accounting & Financial Management	



## CMA VIPUL SHAH

CSEET	EXECUTIVE
	Tax Laws & Practice



## CS MUSKAN GUPTA

CSEET	LAW ENTRANCE	PROFESSIONAL
Business Communication	English Language	Compliance Management, Audit & Due Diligence
	Legal Aptitude	CSR & Social Governance
		Intellectual Property Rights- Law & Practice



## ADV. VISHISHTA NAYAK

CSEET	LAW ENTRANCE
Current Affairs	Current Affairs
Economics	General Knowledge

Whether you like it or not, the inherent question in everyone is - What's in it for me? It will be your folly to ignore this aspect of life. Some are motivated by money, some by a sense of purpose, some by a learning environment, some need cool environments and some need challenging environments. Nothing works for all. Something works for all. Everybody has a dominant need, which keeps changing as they keep growing. Every heart has a yearning. In that sense, we are all the same and we are all different.

The key is to take others perspective into consideration. Unless you see the world the way other sees it, you cannot empower the world to see it the way you see it. Leadership is to step into others shoes and then empowering them to walk in the direction that's right for them and that's good for all. There is no one way for all the people. Leadership has to be customized.

People relate to you not for what you are with them but for what they can be when they are with you. Deep relationships are not built by making you understand me but in giving you the confidence that I have understood you. Even with children, they find you interesting only if you talk to them about what they are interested in. Once they develop that interest in your company, then you can empower them.

The secret is - **TO SEE THROUGH OTHERS EYES!!!!**

### MY LOVE AND RESPECT TO.....

To **Rajlaxmi** - My Soul. You are around.

To my **Mummy** - You are my source of inspiration, your sacrifices showed me the right path every time I went wrong

To my **Papa** - You taught me the ability to bounce back and stand still, come what may

To every **Student** - Glad to have found so many teachers in you, my source of happiness, my strength

To my **Competitors** - You added meaning and worth to my name - Vikas. Thank you for being so strong and amazing. You bring out the best in me

To **my Team** - I can fight the world, when someone goes on to argue that you guys aint the best. Because you certainly are.

To **YES Academy** and to every person around, my well wishers, my critics for helping me rise in every walk. Its your blessings, which lets me survive and go far.

**VIKAS VOHRA (Corporate Baba)**

**SANDESH....**

Dear Reader,

At the outset, let me first take this opportunity to thank you for spending some of your valuable time with my words. I feel pleased to present to you, notes on updated notes for **Drafting, Pleadings & Appearances for CS Professional (NEW Syllabus)**.

While writing this book, I have taken every possible effort to cover each and every legal point as may be applicable to you and in the most lucid language, so this sums up the entire syllabus. Howsoever, there is always a scope for improvement. I shall highly appreciate any changes, corrections, errors, interpretations suggested by you so that the same can be incorporated in the subsequent editions. You may write to me at [vikasvohralectures@gmail.com](mailto:vikasvohralectures@gmail.com) or get in touch directly on my cell at +91 8888 078 078.

Many a times, while speaking with students, I come across this question about the opportunities for a Company Secretary and their scope in the times to come. I shall be wrong; if I simply quote that life would be simple post completion of the Course. Perhaps, the times ahead poses a lot of challenges and like I always say the only thing, which shall survive in the long run, shall be the Power of Knowledge and the ability to express the same and apply. Readers, empower yourself so robustly that as and when a challenge arises, it turns its way and says: let's catch hold of a weaker one.

It's said, "Fortune favors the brave". You give your best shot and leave the rest upon god to decide. Realize your strengths, work on your weaknesses, grab the best possible opportunity and overcome your threats. Different people define success differently as it means different to different. Realize your "**Being Successful**" factors and start chasing them every morning as you get up.

**"Do everything no matter how unglamorous, to the best of your ability"**

Because in the end, what shall matter would be quality of life you spent and the smiles you lent to the people around you !!!!

With this, I wish you all a happy reading and I hope that you fall in love with this subject. I wish you all good luck and that you achieve what all you work for. Keep working, keep reading, keep spreading love, happiness and smile. You shall be a part of my prayers. I promise to serve you with the best. Someday, we shall once again meet AT THE TOP....

Try to

Reinvent

Yourself

**VIKAS VOHRA (Corporate Baba)**

**+91 8888 078 078**

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**(70 marks)**

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## CHAPTER 1 - TYPES OF DOCUMENTS

### DEEDS

A deed may be defined as a **formal writing of a non-testamentary character** which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest.

#### Definition on 'Deeds' by Norten:

A deed is a writing -

- (a) on paper, vallum or parchment,
- (b) sealed, and
- (c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmation of some act whereby an interest, right or property has been passed.

A deed is a present grant rather than a mere promise to be performed in the future. Deeds are in writing, signed, sealed and delivered. All Deeds are instruments, but all instruments are not deeds.

### 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.** Accordingly, there cannot be an agreement unless there are two or more parties that agree to perform certain acts or refrain from doing something.

While preparing agreements, it is necessary and important that the intention of the parties should be set forth explicitly so as not to leave any room for doubt or future controversy. The language should be simple and the words used should be definite and precise; the use of loose expressions such as "proper", "reasonable", should, as far as possible, be avoided.

## TYPES OF AGREEMENTS

1. **Sale/Purchase Agreements:** Sale and Purchase agreements are entered into by the parties for the purpose of transfer to property. These agreements ensure that the property legally transferred and conveyed to the other party without dispute.
2. **Commercial Agency Agreements:** Sometimes businesses are 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. Commercial Agency Contracts are entered into by organisations for running businesses through this mode of business operation.
3. **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. Commercial Agency Contracts are used in such scenarios.
4. **Arbitration Agreements:** The 'arbitration agreement' 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.
5. **Hypothecation Agreement:** 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.
6. **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.

7. **Agreement for Assignment:** An **assignment** is a form of transfer of property and it is commonly used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property. An important aspect of intellectual property laws deals with assignment agreements. For eg. Assignment of Patents, Assignment of Trade Marks, Assignment of Copyrights, Assignment of Business and Goodwill etc.
8. **Shareholders' Agreements:** In India, shareholder's agreement have gained popularity and currency only lately with bloom in newer forms of businesses. There are numerous situations where such agreements are entered into - **family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on.** Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations.
9. **Employment Agreements:** They are entered into between parties for the purpose securing the availability of manpower for an organisation.

## CONTRACTS

As per Section 2(e) of the Indian Contract Act, 1872 "**every promise and every set of promises, forming the consideration for each other, is an agreement.** It is apparent from the definition that an agreement is based on a promise.

According to Section 2(b) of the Indian Contract Act, 1872, "**when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.** An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto.

Therefore, every contract is an agreement but not vice versa.

### Example

The following are agreements but not contracts:

1. Agreements relating to social matters such as to go together to the cinema, or for a walk.
2. Domestic arrangements between husband and wife.

### DIFFERENCE BETWEEN DEEDS, AGREEMENTS AND CONTRACTS

	Deeds	Agreements	Contracts
Meaning	Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability	Every promise and every set of promises, forming the consideration for each other, is an agreement	An agreement enforceable by law is a contract
Mode	Preferable in writing	It may be oral or in writing	Preferable in writing
Purpose	Effecting a Right or Liability	Agreement on certain Act or Omission	Enforceability of agreements according to Law
Creation of records	Yes	Not necessary	Yes
Relation	Deed may be agreements and contracts	Agreements are not necessarily Deeds or Contracts	It succeeds Agreement
Example	Sale Deed, Lease Deed etc	Non-Disclosure Agreements, Joint Venture Agreements	Agreements reduced into writing and enforceable under any law

## CIRCULARS

1. According to Cambridge dictionary, a **circular** is a letter or notice sent to a large number of people.
2. The purpose of circulars is to disseminate the information to large number of individuals. Generally, circulars are in written form so as to create a permanent record of the information and the same may be accessed to by the individuals in present as well as in future.
3. A circular may be issued and circulated in various modes but in present era, the prevalent mode in which circulars are issued are in electronic form such as by placing them at the website, sending them by emails etc.
4. However, conventional method are still in operation such as circulating the written, typed or printed copies of circulars to individuals.
5. Circulars are issued by varied range of individuals and authorities. For example, A company may issue a circular to its employees for dissemination of a policy approved by the Board of Directors to be complied by the employees. Directors may issue a circular to the shareholders. Central Government may issue a circular for giving clarification on any point of Law or providing any other necessary information to public at large.

## IMPORTANT POINTS FOR DRAFTING A CIRCULAR

1. **Issuing Authority:** It is important to mention the name of the issuing authority on the circular for communicating the position and authority of the addressor.
2. **Details of Addressee:** It is essential to mention the details of addressees by name, designation etc. in circulars. The addressees are required to comply with the information specified a circular. Therefore, mentioning the details of addressees make the circulars effective.
3. **Subject:** The mention of subject in a circular ensures that the circular receives the required attention. This will make circular more effective and chances of avoidance gets reduced.

4. **Reference to Preceding information:** It is mandatory to mention the reference to the information already provided before the present circulars. It ensures the completeness of information and the addressee may understand the complete matter contained therein.
5. **Main Information:** The main purpose of the circular is to disseminate the information to selected group of individuals. The information should be complete and in understandable language leaving no chance of ambiguity.
6. **Source of Authority:** It is always preferable to mention the source of authority under which the signatory has issued the circular. This gives emphasis on observance of the circular and increases the chances of amenability.
7. **Signature:** The signature on the circular makes it more reliable.

### ADVANTAGES OF CIRCULAR

1. **Ease of dissemination of information:** Circulars play significant part in the development and easy working of the businesses of organisations. Through circulars the information is circulated with ease.
2. **Economical:** Circulars are economical way of dissemination of information effectively. Through circulars, large number of individuals may be reached.
3. **Expediency:** Through circulars, important information can be disseminated to a large number of people expeditiously. Hence, it saves time and efforts of the authority.
4. **Less Efforts:** Issuing circular for dissemination of information requires less efforts and can produce upright results.
5. **Develop Consciousness:** Systematic and regular use of circulars for dissemination of information develops consciousness in the addressees and improves effectiveness.

**SPECIMEN CIRCULAR**

General Circular No.

File No. Policy -

Government of India

(Name of the Ministry)

(Address)

Date

To,

The DGCoA,

All Regional Director,

All Regional of Companies, All Stakeholders.

**Subject:** Clarification of holding of Annual General Meeting (AGM) Through Video Conference (VC) Or Audio Visual Means (OAVM)-reg.

Sir/Madam,

1. In continuation to this Ministry's General Circular NO. 20/2020 dated 05.05.2020 and General Circular No. 02/2022 dated 05.05.2022 and after due examination, it has been decided to allow the companies whose AGMs are due in the year 2023, to conduct their AGMs on or before 30th September, 2023 in accordance with the requirements laid down in para 3 and para 4 of the General Circular No. 20/2020 dated 05.05.2020.
2. It is clarified that this General Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act. 2013 (the Act) and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.
3. This issues with the approval of the Competent Authority.

Yours faithfully,

## PUBLIC NOTICES

1. Public notices are issued to convey information to large number of receivers that may be called public.
2. These are announcements made on a happening of a certain event of public interest.
3. These may be issued by a Government Agency or by an individual including organisations.
4. These may be issued for varied reasons such as providing information relating to change in a law, Struck off the name of companies by Registrar of Companies, Status of Complaints by an authority, Call for Information regarding submission of information pertaining to 'Unclaimed Non-convertible Securities', Public Notices by companies etc.
5. They are published through websites, newspapers or any other prevalent way. Public notices have gained admiration in present era due to public has become vigilant and technology is developed.

## HOW TO DRAFT A PUBLIC NOTICE?

1. **Name of the Issuer:** A public notice should start from the name of organisation in order to be distinct, highlighted and attract attention.
2. **Details of the Issuer:** A public notice should also contain all the details of the organisation which a reader may require after reading. This will be helpful for the readers who wish to take necessary action or seek further details.
3. **Title Heading:** The heading of Public notice should be expressed in clear words so as to understand the purpose of issuing the public notice. This enables to attract the attention of the readers who are interested in the matter.
4. **Comprehensive Details:** The information is to be written in comprehensive manner. It is the duty of the draftsmen that it provides all the relevant details considering the available resources such as space for advertisement and cost involved.

5. **Statutory/Regulatory Requirement:** If a Public Notice is published in compliance of a statutory requirement, it is **necessary to give the reference of the particular statutory/Regulatory provision along with the name of statute.**
6. **Date and Place:** It is imperative to **mention the date and place** for issue of Public Notice.
7. **Designation of the issuer:** The designation of the issuer should be mentioned in the public officer. The **mention of the name of the authority** can also be published.

**PUBLIC NOTICE OF EXTRACT OF STANDALONE UNAUDITED FINANCIAL RESULTS FOR THE QUARTER AND NINE MONTHS**

XYZ Limited

CIN:

Regd. Office:

Cont. No. \_\_\_\_\_ Email id. \_\_\_\_\_ Fax. No. \_\_\_\_\_

Website \_\_\_\_\_.

**EXTRACT OF STANDALONE UNAUDITED FINANCIAL RESULTS FOR THE QUARTER AND NINE MONTHS ENDED 31ST DECEMBER .....(YEAR)**

S. No.	Particulars	Quarter ENDED			NINE MONTH ENDED		YEAR ENDED
		31/12/21	30/09/21	31/12/20	31/12/21	21/12/20	

The above is an extract of the detailed format of quarterly and nine months ended unaudited financial results filed with the stock exchange under Regulation 33 of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015. The full format of the Quarterly

Financial Results are available on the stock exchange websites ([www.....com](http://www.....com) and [www.....com](http://www.....com)) and also hosted on the Company's website at [www.....com](http://www.....com)

For and On Behalf of Board of Directors

XYZ Limited

(Name)

(Designation)

Date

Place

### SPECIMEN PUBLIC NOTICE

(Name of the Exchange)

(Address of the Exchange)

### NOTICE

Notice is hereby given that the following Trading Member of the \_\_\_\_\_ Stock Exchange has been expelled from the membership of the Exchange under Rules 1 and 2 of Chapter IV of Bye Laws and declared defaulter.

Sr. No.	Member Name	SEBI Registration No.	Date of declaration of Defaulter	Date of Expulsion

The Constituents of the above-mentioned member are hereby advised to lodge claims, if any, in the prescribed claim form, against the above-mentioned within 3 months from the date of this notice.

All claims submitted by investors will be considered for Processing if found due and payable in accordance with Rules, Byelaws, Regulations, guidelines etc of the Exchange, SEBI circulars and Regulations and the maximum compensation limit per investor is Rs 25 lakhs out of the Investor Protection Fund.

The claim can be lodged online on the Exchange portal \_\_\_\_\_ where the relevant documents can be uploaded. A sample claim form and FAQ is made available on the Exchange website \_\_\_\_\_ for the convenience of the claimants. The claimants who have already submitted Form A need not file a separate Claim against the said member.

Alternatively, the claim form, duly filled and signed, along with the relevant documents may also be sent in Physical form to the Defaulters' Section of the Exchange at \_\_\_\_\_ (Address). For this purpose, the format of the Claim form may be downloaded from \_\_\_\_\_ or obtained from the corporate office or the regional / branch offices of the Exchange.

However, the Exchange urges all claimants to make use of the online claim lodgment facility as mentioned above for better tracking of your claims.

In case of any queries you may contact us on \_\_\_\_\_ or on toll free number \_\_\_\_\_.

For \_\_\_\_\_ (Name of Stock Exchange)

Chief Manager

Defaulter's Section

Place: \_\_\_\_\_

Date: \_\_\_\_\_

## STANDARD BIDS AND TENDERS

1. As per the Cambridge dictionary, **tender** is a written or formal offer to supply goods or do a job for an agreed price. It refers to an invitation to offer (bid) for a purpose.
2. The tendering process becomes open for all the eligible bidders thereby ensuring the competitive prices. It also stimulates the availability of the resource required in a timely manner.
3. The process of tendering is formal and legally binds the person entering into the contract after awarding of tender. The process of inviting tender empowers the Tender issuing authority to finalise the terms and conditions of the tender independently. However, the conditions of the tender should comply with the statutory, regulatory requirements, should not be unreasonable and arbitrary.

## CASE LAWS

In the case of **Tata Cellular v. Union of India**, it was observed that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. Further, as laid down in **Tata Cellular** and **New Horizons** cases, the tender conditions cannot ordinarily be subjected to judicial scrutiny, but if the tender conditions are so arbitrary and no procedure was prescribed for evaluating the standards or the tender conditions do not satisfy Wednesbury principle of unreasonableness (See **Associated Provincial Picture Houses Limited v. Wednesbury Corporation**, (1948) 1 KB 223 = (1947) 2 All ER 680, followed and explained in **Om Kumar v. Union of India**, (2001) 2 SCC 386, besides many other cases), they shall be deemed to be irrational and as a necessary corollary arbitrary to be cursed with invalidation under Article 14 of the Constitution.

## IMPORTANT CONSIDERATIONS FOR PREPARING A DOCUMENT FOR TENDERING PROCESS

1. **Name and address of the organisation:** The name and address of the organisation be mentioned on the initial page of the document.

2. **Subject of the document:** The subject of the tender documents to be mentioned in clear and comprehensive manner in order to attract the attention of the Bidder.

3. **Index of the tender document:** The index of the documents can make the document convenient for the prospective bidder.

4. **Important dates and necessary information:** The information such as Tender Publication Date, Last date and time for sending Pre-Bid Queries in writing, Cost of Tender, Earnest Money Deposit, Pre-Bid Meeting date, time & venue, Last Date & address of Submission of Bids, Date, time & Venue of opening of Technical Bids and Financial Bids, contact details etc. should be provided in the tender document.

5. **Disclaimer Clause:** A disclaimer clause with respect to reservations or observation on the tender documents should be placed in the tender document.

6. **Job Description:** The job description in details should be mentioned in the tender document in order to acquaint prospective bidders with the requirements attached with the Job and evaluate and prepare their bids accordingly.

7. **Division of tender documents in parts:** The tender document be preferably prepared asking for Bid submissions in two parts i.e. Technical Bid and Financial Bids.

8. **Fees and Deposits:** The tender document should mention the fees and deposits commensurating the nature and quantum of work. The cost of the tender document may be required from the prospective bidder. Further, the provisions relating to Earned Money Deposit (EMD) and Security Deposit are also to be placed in the tender document.

9. **Conditions for forfeitures of EMD:** The clause providing for the circumstances in which EMD may be forfeited to be mentioned in the tender document. The general conditions in which EMD be forfeited are as under:

- i. If the **bidder withdraws** its bid;
- ii. the **selected bidder delays or does not accept the Purchase / Work Order**;
- iii. the **selected bidder fails to supply goods / services** as per the terms of the Tender or fails to execute Purchase / Work Order.

**10. Pre Bid Meeting:** Pre Bid Meetings be conducted in order to provide any clarification sought on the tender.

**11. Scope of Work:** The scope of work in details be mentioned in the tender documents.

**12. Mention of Technical and administrative requirements:** The technical and administrative requirement be mentioned comprehensively **in order to prevent the halt in the Job at the later stage**. The document should be clear and specific with respect to technical and administrative requirements for performing the Job.

**13. Eligibility Criteria:** Essential Requirements are to be mentioned in the tender document.

**14. Necessary forms and documents:** Formats such as of Technical Bids, Financial bids, past experience of the bidder, Tender Acceptance Letter, Standard Terms and Condition of Agreement may be mentioned in the tender document. Further, a list of document required to be attached in the tender document may also be provided in the document.

### LETTER OF CREDIT, BANK GUARANTEE, AND PERFORMANCE GUARANTEE

#### LETTER OF CREDIT

1. Letter of Credit ('LC'), also known as a **documentary credit is a payment mechanism used specially in international trade**.
2. In an LC, buyer's bank **undertakes to make payment to seller on production of documents** stipulated in the document of LC.
3. LC play an important role in the trade of a country, especially in its international trade.

4. In most of the cases, the exporters (sellers) are **personally not acquainted with the importers (buyers) in foreign countries**. In such cases the exporters bear great risk, if they draw bills on importers, after having dispatched the goods as per their orders, because if the latter default in accepting the bills or making the payment, the exporter will suffer heavy losses.
5. To avoid such risks, the **exporters ask the importers to arrange a letter of credit from their banker in favour of themselves**, on the basis of which goods may be exported to the foreign importers.

### PARTIES TO LETTER OF CREDIT (LC)

There are following four main parties to LC transaction:

1. **Applicant Bank:** Applicant or he is also called as Opener of LC. The bank opens LC on behalf of the applicant customer who is buyer / importer of goods.
2. **Issuing Bank:** Issuing bank is a bank which opens LC and undertakes to make payment to the beneficiary (seller/ exporter) on submission of document as per the terms of LC.
3. **Beneficiary:** Beneficiary is the seller / exporter of goods in whose favour LC is opened.
4. **Advising Bank:** Advising Bank is the bank through whom LC is advised to the beneficiary. Normally it is located in seller's location / country.

In addition to above four parties, following parties may also be involved in LC transaction.

- A. **Confirming Bank:** The bank which in addition to LC issuing bank, undertakes the responsibility of payment under LC. This is required since the LC issuing bank may not be known to the exporter and he therefore needs reputed bank from his country to add confirmation to the LC.
- B. **Negotiating Bank:** The Bank that negotiates the documents under LC.
- C. **Paying Bank:** Paying Bank or Nominated Bank is the bank nominated or authorized by the LC issuing bank to make payment under LC. In practice, the paying bank presents the documents

received by it either to issuing bank or Reimbursing Bank for payment and transfers the proceeds to the beneficiary's account.

**D.** **Reimbursing Bank:** Bank with whom the LC issuing bank maintains foreign currency account (NOSTRO account). LC issuing bank authorizes the reimbursing bank to honor the LC reimbursement claim of negotiating bank.

### DOCUMENTS UNDER LC

1. **Financial documents:** Bill of Exchange, co-accepted draft. It is the basic document drawn by the beneficiary (exporter / seller) and has to be drawn as per the terms of the LC.
2. **Commercial documents:** Invoice, packing list. It is addressed to the buyer (importer), signed by the seller (exporter) and contains details of sales like quantity, rate, specification and total amount.
3. **Shipping documents:** Bill of lading, airway bill, lorry/truck receipt, railway receipt etc. It is a document of title to the goods, proof that the exporter has dispatched the goods.
4. **Official documents:** License, certificate of origin, inspection certificate, health certificate. These are the documents as specified in the LC document.
5. **Insurance documents:** Insurance policy or certificate but not a cover note.

### TYPES OF LETTER OF CREDITS

1. **Documentary LC and Clean LC:** When the LC contains a clause that the payment is conditional on submission of document of title to goods such as bill of lading (evidence of dispatch of good), it is called Documentary LC. If no such clause is in the LC, it is called a clean LC.

2. **Fixed Credit and Revolving Credit:** Fixed credit is where LC specifies the amount up to which one or more bills can be drawn by the beneficiary within the specified time. The LC remains effective till the specified amount is exhausted within specified time.

In Revolving Credit, the LC opening bank does not specify the total amount up to which bills may be drawn, but mentions total amount up to which the bills may remain outstanding at a time. Thus after reaching that amount, as soon as the importer pays the bill, to that extent the limit gets reinstated. It is thus automatic and does not need renewal within the specified period of time.

3. **Revocable and Irrevocable LC:** In case of revocable LC, the opening bank reserves the right to cancel or modify the credit at any moment without prior notice to beneficiary. Irrevocable credit constitutes a definite undertaking of the issuing bank. Such an LC once established and advised cannot be cancelled or amended except with the consent of interested parties – beneficiary and negotiating bank.

4. **Confirmed and Unconfirmed LCs:** When the opening bank requests the advising bank in the exporter's country to add its confirmation to an irrevocable LC and the advising bank does so, the LC is "irrevocable and confirmed". The advising bank is then called as 'confirming bank' and its liability then becomes similar to the issuing bank. The confirmation cannot be cancelled or amended unless agreed by all the parties. A confirmed irrevocable LC provides absolute security to the beneficiary. If the advising bank does not add its confirmation, the LC remains as unconfirmed. In such case there will be no such obligation on the advising bank.

5. **'With' and 'Without Recourse' Credit:** In case of "with Recourse" bills, the banker as a holder of the bill, can recover the amount of the bill from the drawer, in case the drawee of the bill fails to pay it. In order to avoid such liability, the seller / exporter / drawer asks the importer / buyer to arrange credit "Without Recourse" to the drawer. In such a credit the issuing bank will have no recourse to the drawer (exporter) if the drawee (importer) fails to honour the bill. The liability of such a bill ends as soon as the bill is negotiated.

6. **Transferable LCs:** Ordinarily the beneficiary is authorized to draw bills of exchange under LC.

But if the beneficiary is an intermediary in the transaction and the goods are actually to be supplied by someone else, the beneficiary may request the opener to arrange a transferable credit.

7. **Back to Back LC:** When a beneficiary receives a non-transferable LC, he may request a bank to open a new LC in favour of some other person (may be local supplier), on the security of LC issued in his favour. Such LC is called Back to Back LC. The terms of such LC are identical except that the amount (price) may be lower and the validity earlier.

8. **LC with Red Clause / Green Clause:** LC with a clause printed in red ink, contains authority from the issuing bank to the advising / negotiating bank to grant advances (packing credit) to the beneficiary up to a specified amount at the responsibility of former. It is a short term advance recovered from the amount, payable by the negotiating bank to the beneficiary when it negotiates the documents under LC submitted by the beneficiary. Green Clause is an extension of red clause LC allowing advances for storage of goods in warehouse in addition to packing credit.

9. **Instalment Credit:** LC is issued for full value of goods but part-shipments of specific quantities of goods within nominated period are required. Credit is not available for missed shipment and shipments thereafter unless permitted in LC document.

### ADVANTAGES OF LC TO THE EXPORTER (SELLER) AND THE IMPORTER (BUYER)

1. Facilitates trade transactions between two parties who are not known to each other and located in two different countries.
2. Beneficiary is assured of payment as long as it complies with the terms and conditions of LC.
3. The credit risk is borne by the issuing bank and not the applicant (buyer).
4. LC accelerates payment of receivables and helps beneficiary (seller) in minimizing collection time.
5. The beneficiary's foreign exchange risk is eliminated with LC issued in the currency of seller's

country.

6. On the basis of LC the exporter may obtain advance from the bank for procuring and processing or manufacturing goods to be exported.
7. Buyer is enabled to import goods.
8. LC assures importer that bills drawn under LC will be honoured only when they are strictly in accordance with the conditions stipulated in LC document and the documents are duly submitted.

### SPECIMEN FORMAT OF LETTER OF CREDIT AND FORM OF DEMAND

#### LETTER OF CREDIT & FORM OF DEMAND

Date

To

X Inc. (beneficiary)

Address

Subject: Irrevocable revolving letter of credit

Dear Sir/Madam,

This letter of credit has its reference based upon the agreement executed between X Inc. & A Ltd. (Applicant). At the request of A Ltd, we are issuing this irrevocable revolving letter of credit for the benefit of the beneficiary for an amt. of Rs. \_\_\_\_\_ upon the following terms & conditions.

#### a) DEFINITION

- 1) Advising bank: Means the bank of the beneficiary as informed by the beneficiary for the purpose of this letter of credit.
- 2) Agreement means the agreement as executed between X inc. & A Ltd dated \_\_\_\_\_

- 3) Banking day means any day on which the bank operates subject to Indian Rules & regulations
- 4) Demand means a demand of payment made by the beneficiary to the issuing bank.
- 5) Expiry date means for the purpose of this LC expiry date means the date on which LC shall cease to have effect.
- 6) INR means Indian Rupees.
- 7) USD means American Dollar

**b) TERMS & CONDITIONS**

- 1) The issuing bank confirms that this is an LC issued in favor of the beneficiary which is an unconditional, irrevocable, revolving LC.
- 2) This LC allows partial or multiple payments to be made to the beneficiary upon his request to the issuing bank submitted either physically at the bank's counter anywhere in India electronically.
- 3) The issuing bank confirms that this LC shall be honored immediately on demand made by the beneficiary without any terms or conditions.
- 4) since this is revolving LC, any payment made by the applicant to the issuing bank shall further enhance the limit on this letter of credit with the amt. deposited by applicant
- 5) In case if there is a delay in payment by the issuing bank. 7 days after the date of demand letter the same shall be paid along with interest at base rate (+) 4%. On the time of delay
- 6) Any change in the constitution or structure of the bank shall not affect the right of beneficiary under this letter of credit.
- 7) Any opening, renewal, banking or any other charges including any transfer fee & alignment shall be borne by the applicant.
- 8) The issuing bank shall be under an obligation to submit this LC to advising bank on behalf of beneficiary.

**c) TERM**

- 1) This LC is issued with an initial term of 12 months from the date of this letter
- 2) Upon the request of the applicant, the issuing bank shall renew this LC for a further period of 12 months.

3) As soon as complete payment is made to beneficiary as per the terms of the agreement, this LC shall stand terminated after giving 7 days notice in writing to beneficiary.

4) The obligation of issuing bank shall stand terminated on making necessary payment within the due date of this letter of credit

d) All the payment under this LC shall be made in INR by issuing bank which shall be converted to USD to be paid to beneficiary.

e) The beneficiary shall be obligated to make a demand in writing to issuing bank either at designated branches of issuing bank or via email along with all the necessary documents in support of the claim

f) **JURISDICTION**

That this LC shall be subject to Indian Laws & in case of any dispute shall be subject to the jurisdiction of Indian courts only.

Thanking you,

Yours faithfully,

For A Ltd

sdl-

P (name)

Manager (designation)

**FORM OF DEMAND****DEMAND NOTICE**

Date

To,

Issuing bank

Address

**Subject: Irrevocable letter of credit.**

Dear Sir,

Issuing bank issued a letter of credit of amount of Rs. \_\_\_\_\_ Dated \_\_\_\_\_ vide invoice no \_\_\_\_\_. In furtherance to this letter of credit, we demand payment of Rs. \_\_\_\_\_

All the necessary documents as requested have been attached to this letter.

The said payment may be deposited to the following

Account:

Name -

Account -

Bank name -

This letter is issued before the expiry date.

Thanking you,

Yours faithfully

Sd/-

## BANK GUARANTEE

It is a **non-fund-based facility required by the borrowers**. A bank guarantee ensures that the liabilities of the debtor will be met in the event he fails to fulfil his contractual obligations.

It is an agreement between three parties – the bank, the beneficiary and the applicant who seeks the guarantee from the bank. This agreement acts as an undertaking assuring the beneficiary that the bank would pay the specified amount, in the case of applicant's default in delivering the "financial" or "performance" obligation as mentioned in the guarantee.

## TYPES OF BANK GUARANTEES

1. **Financial Guarantee:** Under this, bank guarantees that the **applicant will meet the financial obligation and in case he fails, the bank as a guarantor is bound to pay** (e.g. guarantees towards revenue dues, taxes, duties and for disputed liabilities for litigations pending at courts; credit enhancement; repayment of financial securities etc.).
2. **Performance Guarantee:** Under this, guarantee issued is for honouring a particular task and completion of the same in the prescribed / agreed upon manner as stated in the guarantee document. (e.g. bid bonds, retention money guarantee etc.)

## SPECIMEN FORMAT OF BANK GUARANTEE

### PERFORMANCE GUARANTEE

Date

To,

B Ltd

Address

Subject: Performance cum bank guarantee on behalf of C Ltd

Dear Sir,

This letter has its reference to the above referred subject and the agreement executed between B Ltd (Hereinafter referred to as the purchasing party), having its registered office at \_\_\_\_\_ and C Ltd (Hereinafter referred to as the vendor), having its registered office at \_\_\_\_\_

In furtherance to this agreement, M/s C Ltd approached us as their bankers to secure their performance, scope of which is described in above referred agreement, a copy of which is also annexed to this letter.

In furtherance, we, A bank Ltd extend our full guarantee up to an amount not exceeding Rs. .... covering the scope of the entire above referred agreement.

We further confirm that this guarantee shall continue to be in force till the work order is completely executed after which our liability under this letter shall stand discharged.

We further confirm that we shall never revoke this guarantee till the subsistence of the agreement and a written confirmation received from you regarding the completion of work. No change in the structure or constitution of the bank shall affect this guarantee contract

**Kindly note the key points for your quick reference**

- i. Maximum amount of guarantee shall not exceed Rs. \_\_\_\_\_
- ii. Effective date of this letter shall be up to the completion of work
- iii. This guarantee contract does not secure any further activity between B Ltd. & C. Ltd. except what is stated above
- iv. We are liable to pay the guarantee amt. based upon letter received from you a demand letter in case of default by C Ltd.
- v. We assume unconditional guarantee under the agreement in case of any breach

Thanking you,

For A Bank Ltd

sdl-

Manager

Encl: As above

Seal & stamp

## BYE LAWS

1. According to Collins' Dictionary, A bye law is a law **which is made by a local authority and which applies only in their area**. So, certain organisations frame their Bye Laws for effective functioning.
2. Bye-Laws are **legal tools used to regulate a particular subject or area** so as to achieve orderly development of that subject.
3. The nature of the Bye-Laws i.e. **Mandatory or directory depends upon the subject matter for which they were made** and the language used by the draftsmen in drafting the legislature empowering the making of Bye Laws.
4. The **authority to frame the bye laws are generally provided by the legislative enactment** that is mandatory for that organisation to comply.
5. According to Article 13(3)(a) of the Constitution of India, "law" includes any **Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law**.
6. According to section 3(29) of General Clauses Act, 1897, "Indian law" shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or Part C State or Part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act.

## WHEN A BYE LAW SHOULD BE MADE

Section 22 of General Clauses Act, 1897 provides that where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the

Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

### EXAMPLES OF BYE LAWS

1. New Delhi Municipal Council Solid Waste Management Bye-Laws, 2017
2. Bye Laws of National Stock Exchange of India Limited
3. Bye Laws of Bombay Stock Exchange
4. Bye-laws of a Multi State Cooperative Society
5. Bye- laws of ICSI Institute of Insolvency Professionals
6. ICSI registered Valuers Organisation Bye Laws
7. Bye Laws made by various bodies for Arbitration Proceedings

### SPECIMEN OF BYE LAWS OF SOCIETY

#### BYE - LAWS OF

##### I. GENERAL

- (1) The name is \_\_\_\_\_ (hereinafter refer to as Society).
- (2) The Society is registered under Delhi Cooperative Societies Act, 2003 office situated at \_\_\_\_\_.
- (3) These bye-laws may not be amended, except in accordance with the approval of competent authority.

##### II. DEFINITIONS

- (1) In these bye-laws, unless the context otherwise requires –
  - (a) “authorisation for assignment” means an authorisation to undertake an assignment
  - (b) “certificate of membership” means the certificate of membership of the Agency granted under bye-law;
  - (c) “Electronic mode” means through video conferencing or other audio visual means and such

other means as may be recognised under the Information Technology Act, 2000 including amendment thereof;

- (d) "Governing Board" means the Board of the Society;
- (e) "relative" shall have the same meaning as assigned to it in Income-tax Act, 1961.

(2) Unless the context otherwise requires, words and expressions used and not defined in these bye-laws shall have the meanings assigned to them in Delhi Cooperative Societies Act, 2003.

### III. OBJECTIVES

- (1) To produce and provide safe and Healthy food.
- (2) To develop the ecosystem that help to identify the adulterated Food.
- (3) The Society shall carry on the functions as may be decided by the Board for the purpose of point no. 1 and 2.
- (4) The Society shall not carry on any function other than those specified, or which is inconsistent with the discharge of its functions.

### IV. DUTIES OF THE SOCIETY

- (1) The society shall maintain high ethical and professional standards in the regulation of its members.
- (2) The society shall:
  - (a) ensure compliance with the statutory enactments;
  - (b) employ fair, reasonable, just, and non-discriminatory practices for the enrolment and regulation of its members;
  - (c) be accountable to the Board in relation to all bye-laws and directions issued to its members.

### V. COMMITTEES OF THE SOCIETY

The Board may form an Advisory Committee of members of the society to advise it on any matters pertaining to achievement of its objective.

- (2) The Board shall form a Finance Committee consists of at least 10 members of the Society.
- (3) The Board shall form a Disciplinary Committee consists of at least 10 members of the Society.
- (4) The Committees may meet at such places and times as the Board may provide.

## VI. ELIGIBILITY FOR ENROLMENT

An individual may be enrolled as a member on payment of Enrollment Fees of Rs. 10,000/-.

## VII. MEMBERSHIP FEE

The society may require the members to pay a fixed sum of money as its annual membership fee.

## VIII. DISCIPLINARY PROCEEDINGS

The Disciplinary committee may initiate disciplinary proceedings by issuing a show-cause notice against members

- (a) based on a reference made by the Board;
- (b) following the directions given by the Board or any court of law; or
- (c) suo moto, based on any information received by it.

## IX. SURRENDER OF MEMBERSHIP

- (1) A member who wishes to surrender his membership of the society may do so by submitting an application for surrender of his membership.
- (2) Upon acceptance of such surrender of his membership, and completion of thirty days from the date of such acceptance, the name of the member shall be struck from the registers of the society, and the same shall be intimated to the Board.

## X. EXPULSION FROM MEMBERSHIP

A member shall be expelled by the society -

- (a) on an expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the competent court;
- (b) upon non-payment of membership fee despite at least two notices served in writing;
- (c) upon the cancellation of his membership by the Board;
- (d) upon the order of any court of law.

## SHOW CAUSE NOTICE (SCN)

1. A show cause notice is a **document delivered to other party to represent the matter**. It summarizes the alleged matter and grants the other party an occasion to explain themselves.
2. SCN may be issued for varied reasons by various authorities such as by Courts, Government, Quasi-judicial Authorities, Employers, other authorities etc.
3. The issuance of SCN is preferred by authorities due to the observance of the principle of **Natural Justice**. It is based on the principle audi alteram partem (hear the other side) i.e. no one should be condemned unheard.
4. This rule implies that a **person against whom an order to his prejudice is passed should be given information as to the charges against him** and should be given opportunity to submit his explanation thereto.

## ESSENTIALS OF SHOW CAUSE

1. SCN should contain the **name of the issuer**.
2. It should be issued in **writing**.
3. It should be written in **clear language** in order to avoid ambiguity.
4. It should mention the **correct and brief facts**.
5. If there is a **violation of Law**, it should be **specifically mentioned**.
6. Charges should be **levelled specifically** and they should be vague or in contradiction with the information contained in SCN.
7. **Proposed action should also be mentioned** in the SCN. For eg. Penalty, Legal action, Suspension etc.
8. The **time limits** that have been provided to the receiver should be mentioned in the notice.
9. **Adequate time limit should be given for the reply**, unless otherwise specifically provided by any law.
10. **References and Annexures** should be provided, wherever required.
11. The mode of representation warranted should be mentioned in SCN i.e. in person, Meeting (Online or face to face).
12. The **address of the authority** should be mentioned in SCN.

13. SCN should be **dated**.

**SPECIMEN SHOW CAUSE NOTICE**

GOVERNMENT OF INDIA

MINISTRY OF \_\_\_\_\_

Tel: \_\_\_\_\_ Address: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Date

To,

M/s \_\_\_\_\_.

Address: \_\_\_\_\_.

Subject: Violation of provisions of \_\_\_\_\_.

Dear Sir,

During the inspection of your registered office of your company on 21.02.2023 by the undersigned, violation of provisions of Rule \_\_\_\_\_ of \_\_\_\_\_ (Rules), was observed. The details of violations are as under:

1. \_\_\_\_\_.
2. \_\_\_\_\_.
3. \_\_\_\_\_.

In this connection, it is brought to your notice that the above violation of said rule constitutes an offence punishable under \_\_\_\_\_ (Rules).

You are, therefore, show cause within a period of 30 (thirty) days from the date of issue of

this notice.

Please note that no further notice will be given to you in this regard.

Yours truly,

(Name)

(Designation)

## STANDING ORDERS

1. Standing Orders defines the **conditions of recruitment, discharge, disciplinary action, holidays, leave, etc, go a long way towards minimising friction between the management and workers in industrial undertakings.**
2. The Industrial Employment (Standing Orders) Act (said Act) requires employers in industrial establishments to clearly **define the conditions of employment** by issuing standing orders duly certified.
3. It applies to every industrial establishment wherein **100 or more workmen are employed or were employed on any day during the preceding twelve months.**
4. Model standing orders issued under the Act **deal with classification of workmen, holidays, shifts, payment of wages, leaves, termination etc.**
5. The text of the Standing Orders as finally certified under the said act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

## IMPORTANT ASPECTS FOR ISSUING STANDING ORDERS

1. The employer of the establishment **submits to the Certifying Officer five copies of the draft Standing Orders** proposed by him for adoption in that establishment.
2. Such draft Standing Orders **shall be in conformity with the Model Standing Orders.**

3. It shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any.
4. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections.
5. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.
6. Certifying Officer files a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.
7. Standing Orders comes into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.
8. The text of the Standing Orders as finally certified under the said Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

### MODEL STANDING ORDER

#### (I) SERVICE RECORD

Matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age.

#### (i) Service Card- Every industrial establishment shall maintain a service card in respect of each workman in the form appended to these orders, wherein particulars of that workman shall be

recorded with the knowledge of that workman and duly attested by an officer authorised in this behalf together with date.

**(ii) Certification of service-**

(a) Every workman shall be entitled to a service certificate, specifying the nature of work (designation) and the period of employment (indicating the days, months, years), at the time of discharge, termination, retirement or resignation from service;

(b) The existing entries in para 16 of Schedule 1 and para 20 of Schedule 1-A shall be omitted.

**(iii) Residential address of workman-** A workman shall notify the employer immediately on engagement the details of his residential address and thereafter promptly communicate to his employer any change of his residential address. In case the workman has not communicated to his employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication.

**(iv) Record of age-**

(a) Every workman shall indicate his exact date of birth to the employer or the officer authorised by him in this behalf, at the time of entering service of the establishment. The employer or the officer authorised by him in this behalf may before the date of birth of a workman is entered in his, service card, require him to supply :-

(i) his matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority ; or

(ii) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;

(iii) in the absence of either of the aforesaid two categories of certificate, the employer or the officer authorised by him in this behalf may require the workman to supply, a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon indicating the probable age of the workman provided the cost of obtaining such certificate is borne by the employer;

(iv) where it is not practicable to obtain a certificate from a Government Medical Officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a first Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.

(b) The date of birth of a workman, once entered in the service card of the establishment shall

be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of the date of birth shall be finalised within three months of the appointment of a workman.

(c) Cases where date of birth of any workman had already been decided on the date these rules come into force shall not be reopened under these provisions.

Note. - Where exact date of birth is not available and the year of birth is only established then the 1st July of the said year shall be taken as the date of birth.

### (1) CONFIRMATION

The employer shall in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible workman and issue a letter of confirmation to him. Whenever a workman is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

### (2) AGE OF RETIREMENT

The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of [58]24 years of age by the workman.

### (3) TRANSFER

A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer:

Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer:

Provided further that a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another

such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment, and provided also that (i) reasonable notice is given to such workman, and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid traveling allowance including the transport charges, and fifty per cent thereof to meet incidental charges.

#### (4) MEDICAL AID IN CASE OF ACCIDENTS

Where a workman meets with an accident in the course of or arising out of his employment, the employer shall, at the employer's expense, make satisfactory arrangements for immediate and necessary medical aid to the injured workman and shall arrange for his further treatment, if considered necessary by the doctor attending on him. Wherever the workman is entitled for treatment and benefits under the Employee's State Insurance Act, 1948 or the Workman's Compensation Act, 1923, the employer shall arrange for the treatment and compensation accordingly.

#### (5) MEDICAL EXAMINATION

Wherever the recruitment rules specify medical examination of a workman on his first appointment, the employer, shall, at the employer's expense make arrangements for the medical examination by a registered medical practitioner.

#### (6) SECRECY

No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior, nor shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unauthorised person, company or corporation without the written permission of the employer.

#### (7) EXCLUSIVE SERVICE

A workman shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the

establishment, which may adversely affect the interest of his employer.

## BONDS

1. Bond means a formal document by which a **person undertakes to perform a certain act**.
2. The bonds are of different types such as Surety Bond, bonds as financial instruments, judicial bonds, Guarantee bonds, saving bonds etc.
3. The purpose of issuance of bonds also differs according to the requirements. For example: Surety Bonds are undertaken for the purpose of providing security if a certain act agreed has not been done. Financial Instruments bonds are evidence of a debt due on the organisation. A bail bond is an undertaking by an accused to appear for trial or to pay a sum of money stated therein on non-compliance.
4. The **purpose of undertaking a bond is secure the act or omission for which the bond is issued as a security**.

## SPECIMEN BOND AND BAIL-BOND

### BOND AND BAIL BOND FOR ATTENDANCE BEFORE COURT

I \_\_\_\_\_ of \_\_\_\_\_ having been arrested without warrant by officer in charge of police station, charged with the offence of \_\_\_\_\_ and required to give security for my attendance before such officer of court on condition that I shall attend such officer or court every day on which investigation or trial is held and in case of default I bind myself liable to pay to govt. sum of rupees \_\_\_\_\_.

Dated, this day \_\_\_\_\_ of \_\_\_\_\_, 2023.

(Signature)

## CHAPTER 2 - GENERAL PRINCIPLES OF DRAFTING

### DRAFTING - MEANING

Drafting may be defined as the synthesis of **law** and **fact** in a **language form**.

The process of drafting operates in two planes:

- **Conceptual**
- **Verbal**

Besides seeking the right words, the draftsman seeks the right concepts. Drafting, therefore, is **first thinking and second composing**.

It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc. Drafting of legal documents requires the skills of a draftsman, the knowledge of facts and law so as to put facts in a systematised sequence to give a correct presentation of legal status, privileges, rights and duties of the parties, and obligations arising out of mutual understanding or prevalent customs or usages or social norms or business conventions, terms and conditions, breaches and remedies etc in a self-contained and self-explanatory form without any patent or latent ambiguity or doubtful connotation.

### CONVEYANCING - ITS MEANING

Conveyancing is the art of drafting of deeds and documents whereby **land or interest in land** i.e. **immovable property**, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

According to Section 2(10) of the Indian Stamp Act, 1899, Conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided by Schedule 1 of the Act.

As such, deed of transfer is a conveyance deed which could be for movable or immovable property and according to the Transfer of Property Act, 1882, **transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathment**. But acquisition of property by inheritance does not amount to transfer under the strict sense of legal meaning.

### DISTINCTION BETWEEN DRAFTING AND CONVEYANCING

Sr. No.	Drafting	Conveyancing
1.	Drafting gives a general meaning synonymous to preparation of drafting of documents.	Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another.

### DISTINCTION BETWEEN CONVEYANCING AND CONTRACT

Sr. No.	Conveyancing	Contract
1.	Conveyance does not create any right of any action but at the same time it alters the ownership of existing right.	Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person.
2.	Transfer of immovable property is governed by the Transfer of Property Act, 1882.	Contracts are governed by provisions of the Indian Contract Act, 1872.
3.	The deed of mortgage or sale would operate as conveyance of such interest.	A mere contract to mortgage or sale would not amount to actual transfer of interest in the property.

## GENERAL PRINCIPLES OF DRAFTING

1. A draftsman must ascertain the **names, description and addresses** of the parties to the instrument.
2. He must obtain **particulars about all necessary matters** which are required to form part of the instrument.
3. He must also note down with provision **any particular directions** which are to be kept in view and to be incorporated in the instrument.
4. The duty of a draftsman is to **express the intention of the parties** clearly and concisely in technical language.
5. **Validity of document in the eye of law cannot be ignored** and at the same time the facts cannot be suppressed. Nothing is to be omitted or admitted at random.
6. **Knowledge of law of the land** in general and knowledge of the special enactments applicable in a particular situation is an essential requirement for a draftsman to ensure that the provisions of the applicable law are not violated or avoided.
7. It is also to be ensured that the **format of documents adopted adheres to the customs and conventions** in vogue in the business community or in the ordinary course of legal transactions.
8. The **order of the draft should be strictly logical**. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to laymen.
9. Document should be **supported by the schedules, enclosures or annexures** in case any reference to such material has been made in that.

## RULES RELATED TO DRAFTING

### 1. **Fowlers' five rules of drafting**

According to Fowler, "anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid."

His rules states as follows:

- (a) Prefer the **familiar word** to the far fetched (familiar words are readily understood).

- (b) Prefer the **concrete word** to the abstract (concrete words make meaning more clear and precise).
- (c) Prefer the **single word** to the circumlocution (single word gives direct meaning avoiding adverb and adjective).
- (d) Prefer the **short word** to the long (short word is easily grasped).
- (e) Prefer the **Saxon word** to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).
- (f) Always prefer **active voice** to the passive voice in the drafting of documents.

## 2. Sketch or scheme of the draft document

The first rule on which a draftsman must act is that before his draft is commenced, **the whole design of it should be conceived**, for if he proceeds without any settled design, his draft will be confused and incoherent, many things will be done which ought to be done and many left undone which ought to be done.

## 3. Skelton draft and its self-appraisal

Once the draft of the document is ready, the draftsman should **fill it with available facts, law applicable, logical presentation of the facts, use of simple language understandable to layman, avoidance of repetition and conceivable mis-interpretation, elimination of ambiguity of facts, and adherence to the use of Fowlers' Rules**.

## 4. Special attention to be given to certain documents

Certain documents require extra care before taking up the drafting. For example, it must be ensured that **contractual obligations are not contrary to the law in the document**, where the facts so warrant to ensure.

## 5. Expert's opinion

If the draft document has been prepared for the first time to be used again and again with suitable modification depending upon the requirements of each case **it should be vetted by the experts** to ensure its suitability and legal fitness if the corporate executive feels it so necessary.

### Some do's

1. Reduce the group of words to single word;
2. Use simple verb for a group of words;
3. Avoid round-about construction;
4. Avoid unnecessary repetition;
5. Write shorter sentences;
6. Express the ideas in fewer words;
7. Prefer the active to the passive voice sentences;
8. Choose the right word;
9. Know exactly the meaning of the words and sentences you are writing; and
10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

### Some don't's

The following things should be avoided while drafting the documents:

- (a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee";
- (b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in clause 2 above" and so on.
- (c) Negative in successive phrases should be very carefully employed.
- (d) Draftsman should avoid the use of words "less than" or "more than", instead, he must use "not exceeding".
- (e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write "either or both" or express the meaning of the two in other clauses.

## BASIC COMPONENTS OF DEEDS

### Deed

A deed is a writing -

- (a) on paper, vallum or parchment
- (b) sealed, and

(c) **delivered**, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmation of some act whereby an interest, right or property has been passed.

Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability.

Example: Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed etc.

### Document

As per section 3(18) of the General Clauses Act, 1897, document means and include any **matter written, expressed or described upon any substance by means of letters, figures or mark**, which is intended to be used for the purpose of recording that matter.

For example, for a banker the document would mean loan agreement, deed of mortgage, charge, pledge, guarantee, etc.

### Kinds of deeds

A **good deed** is one which conveys a **good title**, not one which is good merely in form.

A **good and sufficient deed** is **marketable deed**; one that will pass a good title to the land it purports to convey.

An **inclusive deed** is one which contains within the **designated boundaries** lands which are expected from the operation of the deed.

A **latent deed** is a deed **kept for twenty years** or more in man's escritoire or strong box. A **lawful deed** is a deed conveying a good or lawful title.

A **pretended deed** is a deed apparently or **prima facie valid**.

**Deed Pool** is a deed between two or more parties where **as many copies are made as there are parties**, so that each may be in a possession of a copy.

**Deed Poll** is a deed made and **executed by a single party** e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge.

**Indenture** are those deeds in which there are two or more parties. It was **written in duplicate** upon one piece of parchment and **two parts were severed** so as to leave an indented or vary edge, forging being then, rendered very difficult.

**Cyrographum** was another type of indenture in olden times. The word "**Cyrographum**" was **written between two or more copies of the document and the parchment was cut in a jugged line through this word**. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original.

**Deed Escrow** is a deed **signed by one party will be delivered to another** as an "escrow" for it is not a perfect deed. It is only a mere writing (**Scriptum**) unless signed by all the parties and dated when the last party signs it.

### COMPONENTS / PARTS OF A DEED

Following are the components or parts of a document or an instrument or a deed :

- I) Non-operative Part.
- II) Operative Part
- III) Formal Part.

#### Non-Operative Part

##### I) Description or Name of the Deed :

It is usual, but not necessary, to begin a Deed by giving it a name. The **name should be indicative of the true contents** of the Deed. E.g. Sale Deed, Lease Deed, Partnership Deed.

## 2) Date and Place of the execution of the Deed :

It is usual to give the date and place on which and where respectively a deed is executed, either after the name of the deed or at the end before the signatures.

The date and place are state in the following manner :

This Deed of Sale made at New Delhi on the Sixteenth day of October, Two Thousand and Five (16.10.2005) between .....”

## 3) Parties to the Deed :

The names and particulars of the parties to the deed shall be given and they shall be given in such detail so that parties to the deed can be easily identified. It is usual to describe parties by their name, age, parentage, occupation and residence. In the case of artificial persons, the particulars such as name of the organization, the law under which it has been formed and the address of its place of business should be provided.

In case where it is intended that the successors of the parties will also be bound by the deed, it is usual to add a clause after the description of the parties stating the following :

“The parties shall include their heirs, successors, assigns and legal representatives.”

## 4) Recitals :

They contain a brief history or in short form the motive for making the deed, Recitals begin with the familiar words, such as “Whereas the parties are desirous of or have agreed on some particular course of action, etc. ....”

Where the operative part of a deed is unambiguous, the recitals have no effect on the construction of the deed. However, if the operative part is ambiguous, the recitals govern the construction of the deed.

Recitals carry evidentiary importance in the deed. (Ram Charan V. Girija Nandini)

### Operative Part:

After the recitals, the operative part of the deed generally begins with the words : "NOW THIS DEED WITNESSES THAT .....

#### 1) Testatum or Premises :

This part **gives effect to the intention of the parties** and sets out in detail the transaction between the parties. It sets out the capacity in which the parties are acting and the payment and receipt of the consideration.

#### 2) Habendum :

The purpose of the Habendum is to **define the interest conveyed and to set out the limitations on the property involved**. It shows whether transfer is of a life interest or absolute sale. It mentions whether the property is encumbered or not.

#### 3) Exceptions and reservations :

In this part, all the exceptions and reservations **which are intended to be attached to the transfer should be clearly stated**. For e.g. where in a transaction of lease of a piece of land, if the lessor desires to retain the right to extract the minerals there from, then it should be specifically provided under the Lease Deed.

#### 4) Covenants :

Every deed must **contains the terms and condition by which the parties bind themselves**. However, it is not necessary to mention such covenants which are implied by law, but if any special terms and conditions are desired which are at variance with the implied covenants, then these must be clearly stated. For instance, a lease under the Transfer of Property Act implies the right to sub-let but the parties may impose conditions against sub-letting.

### Formal Part :

#### 1) Testimonium :

This clause sets forth the **fact that the parties have signed the deed**. It usually begins with the words : "In witness whereof, the parties aforesaid, namely, ..... Have on the day and year just above mentioned put their signatures in the presence of the witnesses.

#### 2) Signature and Attestation :

**Immediately after the Testimonium, the parties put their signatures.** Thereafter the witnesses put their signatures.

Where a deed requires attestation, then the executants must sign in the presence of the witnesses and the witnesses must sign in the presence of the executants. In such a case, after the signatures of the executants, the following words are written :

"Signed by the above named parties in our presence and we have signed in their presence." Then follows the signatures of the witnesses.

e.g. Gift Deed pertaining to an immovable property requires mandatory attestation.

Where a document consists of more than one page, the parties and witnesses must sign on each page.

#### 3) Parcels or Description of the Property :

The property is described in details accurately and correctly in this part **either by way of a footnote or by way of a Schedule**. The object of the description is to make the property easily identifiable. For e.g., in the case of documents relating to immovable property, it is mandatory that there should be a parcel or description of the property in the document.

## DRAFTING OF AGREEMENTS

An agreement which is enforceable by law is called a contract. Generally, when a contract is reduced to writing, the document itself is called an agreement.

Important points regarding drafting of contracts

1. Description of Parties to the Contract
2. Legal Nature of the Contract
3. Licences and Permits
4. Taxes, Duties and Charges
5. Quality, Quantity and Inspection of Goods
6. Packing
7. Shipment of the Goods
8. Insurance
9. Documentation
10. Guarantee
11. Passing of the Property and Passing of the Risks
12. Amount, Mode and Currency of Payment
13. Force Majeure
14. Proper Law of Contract
15. Settlement of Disputes and Arbitration

## IMPORTANT TERMS IN AN AGREEMENT TO SELL/PURCHASE CONTRACT

### 1. Contracting Parties:

The vendor and the purchaser must be sufficiently described, irrespective of the fact that the parties know each other. A stranger to the agreement has no enforceable claim, and as such, no court shall entertain his claim for specific performance. 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, usual to have a clause in a deed specifically stating that the parties shall include their executors, administrations, heirs, legal representatives and assigns.

## 2. Consideration:

The price is an essential ingredient and where it is neither ascertained nor rendered, 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.

## 3. Subject Matter:

The property, i.e., the 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.

## 4. 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.

## IMPORTANT CONCEPTS RELATING TO DEEDS AND DOCUMENTS

### Interpretation of Deeds and Documents :

In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.

There is no law in India on the interpretation of documents also. However, some of the relevant principles of interpretation of deeds and documents are discussed below :

**Informal Agreements :** In interpretation of informal agreements, the rule to be applied is that of reasonable expectation; that is to say, the agreement is to be interpreted in the sense in which the party who used the words in question should reasonably have apprehended that the other party may apprehend them.

**Formal Agreements :** Where the agreement is formal and written, the following rules of interpretation may be applied :

1. Any form of written document carries **highest evidentiary value in law**. Hence formal agreements play a great role in the courts.
2. In case if the documented evidence is not clear, **circumstantial evidence shall be adopted** by the courts.
3. **Clear and unambiguous words prevail** over hypothetical meanings.
4. Sometimes a contract is in two parts. At first an executory contract is executed and later on an executed contract. In case of any difference between the preliminary contract and final contract, **the terms of the final must prevail**.
5. **Later clause in an agreement always prevails over an earlier clause**.
6. The court must interpret the words in their **popular, natural and ordinary sense**.
7. If certain words employed in business, or in a **particular locality**, have been used in particular sense, they must be construed in **technical sense**.
8. **The ordinary grammatical interpretation is not to be followed, if it doesn't fit with the general context**.
9. **Evidence of acts done under a deed can, in case of doubt as to its true meaning, be a guide to the intention of the parties**, particularly when acts are done shortly after the date of the instrument.
10. As a general rule of construction of documents, the **recitals are not looked into, if the terms of the deed are otherwise clear**. If in a deed the operative part is clear, or the intention of the parties is clearly made out, whether consistent with the recitals or not, the recitals have to be disregarded.

11. Sometimes a **standard form** is used, particularly in contracts with government departments or big corporations. In these standard printed forms, words not applicable are deleted according to the requirements of individual transactions.

### ENDORSEMENT AND SUPPLEMENTAL DEED

**Endorsement** means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term 'endorsement' is used with reference to negotiable document like cheques, bill of exchange, etc. For example, on the back of the cheque to sign one's name as Payee to obtain cash is an endorsement on the cheque. Thus, to inscribe one's signature on the cheque, bill of exchange or promissory note is endorsement within the meaning of the term with reference to the Negotiable Instruments Act, 1881.

**Supplemental Deed** is a document which is entered into between the parties on the same subject on which there is a prior document, existing and operative, for adding new facts to the document on which the parties to the document have agreed, which otherwise cannot be done by way of endorsement. Thus, supplemental deed is executed to give effect to the new facts in the deed.

### STAMPING OF THE DEEDS

1. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Indian Stamp Act.
2. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.
3. **E-stamping** is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA).

4. E-stamping is beneficial for varied reasons such as E-stamps are **less time-consuming**, they are very **easily accessible**; they **save cost**, e-Stamp Certificate generated is **tamper proof**, e-Stamp Certificate generated **has a Unique Identification Number**, they are easily accessible, they are **secure and user friendly**.

## CHAPTER 3 - LAWS RELATING TO DRAFTING AND CONVEYANCING

### PART A - INDIAN CONTRACT ACT, 1872

#### PROPOSALS

As per section 2(a) of the Indian Contract Act, 1872, when **one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.**

A proposal is also known as an offer. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance. The person making the proposal or offer is called the proposer or offeror and the person to whom the proposal is made is called the offeree.

#### ESSENTIALS OF A PROPOSAL

1. There should be **at least 2 persons.**
2. One person should **express his willingness to do or abstain from doing an Act or abstinence.**
3. The purpose should be **to obtain the assent of the other on the same thing.**

#### KINDS OF OFFERS

- Particular/Specific Offer
- General Offer
- Cross Offer
- Open/Continuing/Standing Offer
- Counter Offer
- Offers by Post/Email
- Contracts over the Telephone

## RULES GOVERNING OFFERS

A valid offer must comply with the following rules:

- (a) An offer must be **clear, definite, complete and final**. It must not be vague. For example, a promise to pay an increased price for a horse if it proves lucky to promisor, is too vague and is not binding.
- (b) An offer must be **communicated to the offeree**. An offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the same.
- (c) The communication of an offer may be made by **express words-oral or written**-or it may be **implied by conduct**.
- (d) The communication of the offer may be **general or specific**. Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals i.e. the world at large, it is a general offer.

## HOW AN OFFER GETS REVOKED?

by the communication of notice of revocation by the proposer to the other party

by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance

by the failure of the acceptor to fulfil a condition precedent to acceptance

by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance

## OFFER AND INVITATION TO OFFER

Invitation to offer is a communication to invite certain person(s) or public for making offer.

- An invitation to treat or an **invitation to make an offer**: e.g., an auctioneers request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self- service store or a shopkeepers catalogue of prices are invitations to an offer.
- A **mere statement of intention**: e.g., an announcement of a coming auction sale.
- A **mere communication of information in the course of negotiation**: e.g., a statement of the price at which one is prepared to consider negotiating the sale of piece of land.

An offer that has been communicated properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

## COMMUNICATION

According to section 3 of the Indian Contract Act, 1872, the **communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances**, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

### Essentials

- The purpose of section 3 is to provide the provision relating to four incidents:
  - Communication of the Proposal,
  - Acceptance of the Proposal,
  - Revocation of the Proposal, and
  - Revocation of the Acceptance.
- There must be an **act or omission** of the maker for acceptance and revocation.
- The **Act or Omission** should intend to communicate such proposal, acceptance or revocation, or should have the effect of communicating it.

## COMPLETION OF COMMUNICATION

1. **Proposal:** The communication of a proposal is complete when it *comes to the knowledge* of the person to whom it is made i.e. the offeree.
2. **Acceptance:** The acceptance completes for the Offeror and Offeree at different times. The communication of an acceptance is complete, –
  - i) As against the *proposer*, when it is put in a course of transmission to him, so as to be out of the power of the acceptor.
  - ii) As against the *acceptor*, when it *comes to the knowledge of the proposer*.
3. **Revocation:** The revocation also takes place for the Offeror and offeree at different times. The communication of a revocation is complete, –
  - i) As against the *person who makes it*, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;
  - ii) As against the *person to whom it is made*, when it *comes to his knowledge*.

## BY WHEN AN ACCEPTANCE OR PROPOSAL BE REVOKED?

A proposal may be revoked *at any time before the communication of its acceptance is complete as against the proposer*.

An acceptance may be revoked *at any time before the communication of the acceptance is complete as against the acceptor*.

**Example:** Ankush send an email proposing to sell his factory to Baman. Baman accepted the proposal by a letter sent by post. Ankush may revoke his proposal at any time before or at the moment when Baman posts his letter of acceptance, but not afterwards. Baman may revoke his acceptance at any time before or at the moment when the letter communicating it reaches Ankush, but not afterwards.

## ACCEPTANCE

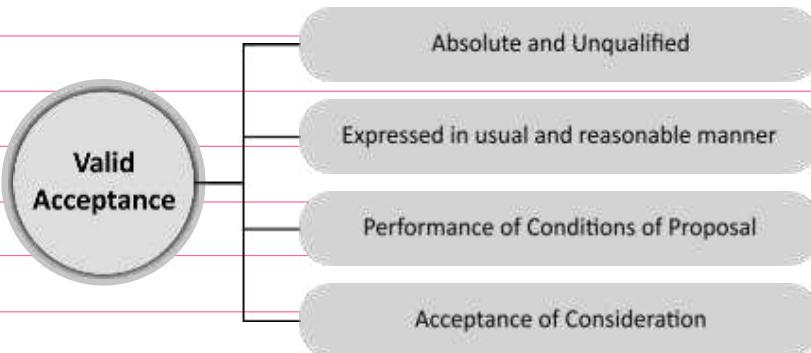
A proposal on acceptance becomes a promise. Every promise or set of promises forming consideration for each other become agreement. Therefore, special relevance should be given to acceptance.

According to section 7 of Indian Contract Act, 1872, in order to convert a proposal into a promise, the acceptance must—

- (1) be *absolute and unqualified*;
- (2) be *expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted*. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

According to section 8 of Indian Contract Act, 1872, performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

The below clarify the rules relating to a valid acceptance:



## CONSIDERATION

According to Section 2(d) of ICA, consideration is: when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

### Essentials of Consideration

1. Consideration should be at the **desire of the person making promise**. He may be the offeror or the Offeree.
2. The promisee or any other person on his/her behalf has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing an act or abstinence or promise. It is clear that the **consideration may be Executory/Future or Executed /Present or Past Act/Forbearance**.
3. It should be noted that in **English law**, **consideration must move from the promisee**, so that a stranger to the consideration cannot sue on the contract but according to Indian Laws consideration may move from stranger also.

### Privity of consideration

It means that consideration **may be paid by parties or any other person**. The doctrine of privity of contract provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. It is applicable in India with certain exception like trust, covenant running with land, family settlements etc.

### Rules Governing Consideration

- (a) Every contract must be **supported by valuable consideration** otherwise it is formally void subject to some exceptions.
- (b) Consideration may be by an **act of abstinence or promise**.

- (c) There must be **mutuality** i.e., each party must do or agree to do something.
- (d) Consideration must be **real, and not vague, indefinite, or illusory**, e.g., a son's promise to "stop being a nuisance" to his father, being vague, is no consideration.
- (e) Although consideration must have some value, **it need not be adequate**.
- (f) Consideration must be **lawful**.
- (g) If the consideration is **unlawful, the agreement is void**.
- (h) Consideration must be something more than the promisee is already bound to do for the promisor. Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration.

### Exceptions to consideration

According to section 25 of ICA, an agreement **made without consideration is void, unless**—

- (1) it is expressed in **writing** and **registered** under the law for the time being in force for the registration of documents, and is made on account of **natural love and affection** between parties standing in a **near relation to each other**; or unless
- (2) it is a promise to compensate, wholly or in part, a person **who has already voluntarily done something for the promisor**, or something which the promisor was legally compellable to do; or unless
- (3) it is a promise, **made in writing and signed by the person to be charged therewith, or by his agent** generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

### ESSENTIALS OF CONTRACTS

According to section 10 of the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Therefore, the essentials of valid contracts are:

1. Valid Agreement
2. Free Consent of the parties
3. Competence of Parties
4. Valid Consideration
5. Lawful Object
6. Agreement not declared Void.

### FREE CONSENT OF THE PARTIES (SECTION 13)

Two or more persons are said to consent when they agree upon the same thing in the same sense. Consent is said to be free when it is not caused by—

1. Coercion
2. Undue influence
3. Fraud
4. Misrepresentation
5. Mistake

### COERCION (SECTION 15)

Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

#### Example

A threatens B to inflict grievous hurt to B's son if he does not enter into Contract for giving performance at A's restaurant. A has applied coercion for the purpose of entering into contract.

## UNDUE INFLUENCE (SECTION 16)

A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

### Example

Ajith has given a loan of Rs. 10,00,000/- (Ten Lakh Rupees) to his son Binay, during his minority. When Binay attained majority, Ajith by misuse of parental influence took a bond from Binay for Rs. 1,00,00,000 (One Crore) than the sum due in respect of that Loan. Here, relations subsisting Ajith and Binay are such that one of the parties is in a position to dominate the will of the other. Therefore, Ajith employs undue influence.

Section 16(2) provides the situation in which it is deemed that one has dominated the will of other. It provides that in particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another:

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

### Example

Amantha, being in debt to Bikrant, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on Bikrant to prove that the contract was not induced by undue influence.

## FRAUD (SECTION 17)

Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:

- (1) Suggestion of False Fact by the Believer
- (2) Active concealment by person having knowledge of belief
- (3) False Promise
- (4) Deceptive Act
- (5) Any other act or omission declared as fraud by any Law

### MISREPRESENTATION (SECTION 18)

Misrepresentation means and includes:

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

### MISTAKE

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. It should be noted that an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.

## COMPETENCE OF PARTIES

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Accordingly, there may be three categories which are not competent to contract:

1. Persons who have not attained the majority
2. Person of Unsound Mind
3. Persons who are disqualified by any law.

## WHO HAS ATTAINED MAJORITY?

According to the Indian Majority Act, 1875, a minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the Court of Wards, the person continues to be a minor until he completes his age of 21 years.

## WHO IS PERSON OF SOUND MIND?

A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

It should be noted that a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind and a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

## WHO ARE DISQUALIFIED BY THE LAW?

1. **Alien Enemies:** A person who is not an Indian citizen is an alien. An alien may be either an alien friend or a foreigner whose sovereign or State is at peace with India, has usually contractual capacity of an Indian citizen. On the declaration of war between his country and India he becomes an alien enemy. A contract with an alien enemy becomes unenforceable on the outbreak of war.
2. **Foreign Sovereigns and Ambassadors:** Foreign sovereigns and accredited representatives of foreign states, i.e., Ambassadors, High Commissioners, enjoy a special privilege in that they cannot be sued in Indian Courts, unless they voluntarily submit to the jurisdiction of the Indian Courts. Foreign Sovereign Governments can enter into contracts through agents residing in India. In such cases the agent becomes personally responsible for the performance of the contracts.
3. Oudh Land Revenue Act provides that where a person in Oudh is declared as a 'disqualified proprietor under the Act, he is incompetent to alienate his property.

## LAWFUL OBJECT (section 23)

The consideration or object of an agreement is lawful, unless:

1. it is forbidden by law; or
2. is of such a nature that if permitted, it would defeat the provisions of any law; or
3. is fraudulent; or
4. involves or implies injury to the person or property of another; or
5. the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful and every agreement of which the object or consideration is unlawful is void.

## CONTINGENT CONTRACTS (section 31)

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen—such goods are known as contingent goods. Contingent goods fall in the class of future goods.

A agrees to sell a certain TV set provided he is able to get it from its present owner. This is an agreement to sell contingent goods. In such a case, if the contingency does not happen for no fault of the seller, he will not be liable for damages.

Actual sale can take place only of specific goods and property in goods passes from the seller to buyer at the time of the contract, provided the goods are in a deliverable state and the contract is unconditional. There can be an agreement to sell only in respect of future or contingent goods.

## PART B - SPECIFIC RELIEF ACT, 1963

### RECOVERY OF SPECIFIC IMMOVABLE PROPERTY

According to section 5 of Specific Relief Act, 1963, a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908. Therefore, a civil suit may be filled by a party for recovering the possession of Immovable Property.

Section 6 provides the provisions related to suit by person dispossessed of immovable property. It says that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

However, no suit under section 6 should be brought:

- after the expiry of six months from the date of dispossession; or
- against the Government.

Appeal or review is not allowed from any order or decree passed in any suit instituted under section 6. However, suit to establish his title to such property and to recover possession thereof is not barred.

### RECOVERY OF SPECIFIC MOVABLE PROPERTY

According to section 7, a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908. The provision is similar to section of SRA which provides for the provision for Recovery of specific immovable property.

Further, section 8 of SRA provides for the Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession.

It provides that any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases: -

- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- (b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

### SPECIFIC PERFORMANCE OF CONTRACTS

The court may direct the specific performance of a part of a contract only as per the provisions provided under section 12 of SRA which are as follows:

1. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed be a only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.
2. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—
  - (a) forms a considerable part of the whole, though admitting of compensation in money; or
  - (b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

  - (i) in a case falling under clause

(b) pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause;

(c) pays or has paid the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

3. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

#### Example

X and Y entered into the contract in which X will provide 500 printers to Y. X had to shut down his manufacturing unit due to the local conditions out of his control. X has only 475 printers in his warehouse. X or Y may file a civil suit and the court may direct to deliver 475 printers and award compensation.

#### RIGHTS OF PURCHASER OR LESSEE AGAINST PERSON WITH NO TITLE OR IMPERFECT TITLE

Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee has the following rights, namely:

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to

redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor **sues for specific performance** of the contract and the suit is **dismissed on the ground of his want of title or imperfect title**, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

### CONTRACTS NOT SPECIFICALLY ENFORCEABLE

According to section 14, the following contracts cannot be specifically enforced, namely:

- (a) where a party to the contract has **obtained substituted performance of contract** in accordance with the provisions of section 20;
- (b) a contract, the **performance of which involves the performance of a continuous duty** which the court cannot supervise;
- (c) a contract which is so **dependent on the personal qualifications of the parties** that the court cannot enforce specific performance of its material terms; and
- (d) a contract which is in its **nature determinable**.

### WHO MAY OBTAIN SPECIFIC PERFORMANCE

- (a) any party thereto;
- (b) the representative in interest or the principal, of any party thereto. Where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach. When a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.
- (g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

#### NON AVAILABILITY OF SPECIFIC PERFORMANCE OF A CONTRACT IN FAVOUR OF CERTAIN PERSONS

Specific performance of a contract cannot be enforced in favour of a person—

- (a) who has obtained substituted performance of contract under section 20; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

### CONTRACT TO SELL OR LET PROPERTY BY ONE WHO HAS NO TITLE, NOT SPECIFICALLY ENFORCEABLE (SECTION 17)

A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor:

- i) who, knowing himself *not to have any title to the property*, has contracted to sell or let the property;
- ii) who, though he entered into the contract believing that he had a good title to the property, *cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt*.

### NON-ENFORCEMENT EXCEPT WITH VARIATION (SECTION 18)

Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:

- (a) where by *fraud, mistake of fact or mis-representation*, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contact;
- (b) where *the object of the parties was to produce a certain legal result* which the contract as framed is not calculated to produce;
- (c) where the parties have, *subsequently to the execution of the contract, varied its terms*.

### RELIEF AGAINST PARTIES AND PERSONS CLAIMING UNDER THEM BY SUBSEQUENT TITLE (SECTION 19)

Specific performance of a contract may be enforced against -

- (a) either party thereto;

- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant. When a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

#### SUBSTITUTED PERFORMANCE OF CONTRACTS, ETC.

Where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

No substituted performance of contract under section 20(1) of SRA shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency.

However, the party who suffers such breach shall not be entitled to recover the expenses and costs under section 20(1) unless he has got the contract performed through a third party or by his own agency.

Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under section 20(1), he shall not be entitled to claim relief of specific performance against the party in breach. Nothing in section 20 shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

According to section 20A(1) of SRA, no injunction shall be granted by a court in a suit under SRA involving a contract relating to an infrastructure project specified in the Schedule to the Act, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

#### POWER TO AWARD COMPENSATION IN CERTAIN CASES (SECTION 21)

If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

In determining the amount of any compensation awarded under section 21, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

No compensation shall be awarded under section 21 unless the plaintiff has claimed such compensation in his plaint. Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

**POWER TO GRANT RELIEF FOR POSSESSION, PARTITION, REFUND OF EARNEST MONEY, ETC. (SECTION 22)**

Any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for –

- possession, or partition and separate possession, of the property, in addition to such performance; or
- any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

**LIQUIDATION OF DAMAGES NOT A BAR TO SPECIFIC PERFORMANCE (SECTION 23)**

A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

**BAR OF SUIT FOR COMPENSATION FOR BREACH AFTER DISMISSAL OF SUIT FOR SPECIFIC PERFORMANCE (SECTION 24)**

The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

### DECLARATORY DECREES (SECTION 34 & 35)

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

However, no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

A declaration made is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

**PART C - TRANSFER OF PROPERTY ACT, 1882****SALE (SECTION 54)**

It is a **transfer of ownership in exchange for a price paid or promised or part-paid and part-promised**. In order a document be treated as Sale Document, ownership must be transferred from one person to the other person and the transaction must be supported by consideration paid or promised or partly paid and partly promised.

**HOW SALE IS EFFECTED?**

Transfer of Property Act, 1882 primarily deals with the transfer of immoveable property. A transfer of property may be effected in two ways i.e. when the value of the property is equal to more than 100 rupees and where the value of the property is less than 100 rupees.

**Value of the Property equal to and more than 100 rupees:**

Such transfer can be made only by a **registered instrument**. The first essential is that the property must be **tangible immoveable property** and value of property should be equal to or **exceed 100 rupees**. If both the conditions are satisfied than transfer should be by way of registered instrument only.

**Value of the property is less than 100 rupees:**

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer **may be made either by a registered instrument or by delivery of the property**. If the value is less than 100 rupees than it is dependent on the parties to decide to mode of transfer.

## MORTGAGE (SECTION 58)

A mortgage is defined as the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a **mortgagor**, the transferee a **mortgagee**; the principal money and interest of which payment is secured for the time being are called the **mortgage-money**, and the instrument (if any) by which the transfer is effected is called a **mortgage-deed**.

### Kinds of Mortgage

#### Simple Mortgage

- The mortgagor **undertakes personal liability for repayment**.
- The mortgaged property is **not required to be delivered** to the mortgagee,
- On mortgagor's default in making payment, mortgagee is entitled to **cause mortgaged property to be sold**, after obtaining a **decree from the Court**.
- There is **no foreclosure** of the mortgaged property.

#### Mortgage by Conditional Sale

- The mortgagor **ostensibly sells** the mortgaged property.
- Here the condition being that the **sale shall be absolute in default of payment** by a particular date or that the sale shall be void on payment by a particular date and the property retransferred.
- The **possession** of the mortgaged property is required to be **delivered**.
- The remedy to the mortgagee is by way of **foreclosure and not by way of sale**.

#### English Mortgage (It is a combination of Simple Mortgage and Mortgage by Conditional Sale)

- The mortgaged **property is transferred absolutely** by the mortgagor to the mortgagee.
- There is a **personal covenant to repay** on a certain date.

c) The remedy to the mortgagee is by way of **sale** and not by way of **foreclosure**.

### Usufructuary Mortgage

a) The **profit of the property** is appropriated by the mortgagee **towards discharge** of the advance.

b) There is **delivery of possession** of the mortgaged property to the mortgagee.

c) The **property** is returned when the amount due is personally paid or is discharged by rents and profits received.

d) There is **no remedy** to the mortgagee either by way of **sale** or by way of **foreclosure**.

### Mortgage by deposit of Title Deeds / Equitable Mortgage

a) It is created by **delivery of the material Title Deeds** in respect of the mortgaged property to the mortgagee.

b) **All the provisions relating to Simple Mortgage shall apply** to this kind of mortgage.

### Anomalous Mortgage

a) This mortgage is the **combination of two or more other kinds** of mortgages.

b) The remedy to the mortgagee may be by way of **sale** or by way of **foreclosure**, depending on the terms of the Deed.

## LEASE & LICENCES

A lease of immoveable property is a **transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity**, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the **lessor**, the transferee is called the **lessee**, the price is called the **premium**, and the money, share, service or other thing to be so rendered is called the **rent**.

A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

### DIFFERENCE BETWEEN LEASE AND LICENCE

1. A licence does not transfer any interest in the property and the licensee has no right to possession.
2. A licence can be revoked by the grantor at any time, whereas a lease cannot be revoked. If, I sell the fruits of my garden to you, you are given permission or licence to enter my garden and take away the fruits.
3. A lease involves a transfer of interest followed by possession of the property for a specified period. The real test is the intention of the parties. If the document creates an interest in the property, it is a lease but if it only permits another to make use of the property of which the legal possession continues with the owner, it is a licence because it does not create any interest in that property.
4. The question is not of words but of substance and the label which the parties choose to put upon the transaction though relevant is not decisive.

### GIFT

Section 122 of Transfer of Property Act, 1882 states that 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, this gift is void.

For the purpose of making gift of **immovable property**, the transfer **must be affected by a registered instrument** signed by or on behalf of the donor and attested by at least two witnesses.

For the purpose of making gift of **movable property**, the transfer **may be affected either by a registered instrument signed as aforesaid or by delivery**. Such delivery may be made in the same way as goods sold may be delivered.

**Gift should be made only for the existing property as gift of future property is void** because gift of future property is mere promise and cannot be enforced. Section 125 provides that the gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted. The intention conveyed under this Section is that a gift is personal to the donee and therefore if a gift made to two persons jointly and one of them does not accept it, the other cannot accept the whole.

### **Onerous Gifts**

Where a gift is in the form of a **single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation**, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of **two or more separate and independent transfers to the same person of several things**, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

### Actionable Claims

The transfer of an actionable claim whether with or without consideration **shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent**. It shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not.

**The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.**

The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

However, nothing in the sections 130 to 136 of Transfer of Property Act, 1882, applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

## PART D - REGISTRATION ACT, 1908

### DOCUMENTS OF WHICH REGISTRATION IS COMPULSORY (SECTION 17)

The following documents shall be registered compulsorily:

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

### Exemptions from section 17

The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17(1) is subject to the exceptions provided in Section 17(2). These are as follows:

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document other than the documents specified in sub-section 17(1A) not itself creating declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) any grant of immovable property by Government; or
- (viii) any instrument of partition made by a Revenue-Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or
- (xa) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

#### DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL (SECTION 18)

The following documents are optionally registered under the Registration Act, 1908, namely:-

- (a) **Instruments** (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a **value less than one hundred rupees**, to or in immovable property;

- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;
- (d) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (e) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (f) wills; and
- (g) all other documents not required by section 17 to be registered.

#### TIME AND PLACE OF REGISTRATION

1. No document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.
2. However, a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.
3. If a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefore registration of documents, shall apply to such re-registration; and

such document, if duly re-registered in accordance with the provisions of section 23A, shall be deemed to have been duly registered for all purposes from the date of its original registration.

4. Where there are several persons executing a document at **different times**, such document may be presented for registration and re-registration within **four months from the date of each execution**.

5. However, if, owing to urgent necessity or unavoidable accident, **any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.** Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

6. When a document purporting to have been executed by all or any of the parties out of India is not presented for registration till after the expiration of the prescribed time, the registering officer, if satisfied:

(a) that the instrument was so executed, and  
 (b) that it has been presented for registration within four months after its arrival in India, may, on payment of the proper registration-fee accept such document for registration.

7. A WILL may at any time be presented for registration or deposited.

### PLACE OF REGISTRATION

According to section 28, every document mentioned shall be presented for registration in the office of a Sub- Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Every document not being a document referred to in section 28 or **a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.**

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

Any Registrar may in his discretion receive and register any document which might be registered by any Sub- Registrar subordinate to him.

In ordinary cases the registration or deposit of documents under Registration Act shall be made only at the office of the officer authorised to accept the same for registration or deposit. However, such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

#### EFFECTS OF REGISTRATION AND NON-REGISTRATION OF DOCUMENTS

No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall:

- (a) affect any immovable property, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

However, an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

**CASE STUDY**

XYZ Pvt. Ltd and DEF Co. LLP have entered into a contract of sale of plant and machinery.

The Managing Director of the XYZ Pvt. Ltd. signed the contract in Mumbai and send the same to the office of DEF Co. LLP in Delhi and its partner has signed the document. The consideration for the transaction is Rs. 50 Crore. A dispute arose between the parties over the identification of this property. Identify the following.

1. Whether the registration of this contract is compulsory.
2. Where the contract can be registered?
3. What is the time period for getting the contract registered?
4. What is effect of non-registration of this document?

## PART E - INDIAN STAMP ACT, 1899

### INSTRUMENTS CHARGEABLE WITH DUTY (SECTION 3)

- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
- (c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of -

- (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894.

### SEVERAL INSTRUMENTS USED IN SINGLE TRANSACTION OF SALE, MORTGAGE OR SETTLEMENT (SECTION 4)

- (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule 1, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument. However, the duty chargeable on the instrument so determined shall be the **highest duty which would be chargeable in respect of any of the said instruments employed**.

In the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction.

### INSTRUMENTS RELATING TO SEVERAL DISTINCT MATTERS (SECTION 5)

Any instrument comprising or relating to several distinct matters shall be chargeable with the **aggregate amount of the duties with which separate instruments**, each comprising or relating to one of such matters, would be chargeable under Indian Stamp Act, 1899.

### INSTRUMENTS COMING WITHIN SEVERAL DESCRIPTIONS IN SCHEDULE I (SECTION 6)

An instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, **be chargeable only with the highest of such duties**. However, nothing in Indian Stamp Act contained can render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

### ADJUDICATION OF STAMP DUTY

#### Adjudication as to proper stamp (Section 31)

(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and **the person bringing it applies to have the opinion of that officer as to the duty with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty naye paise)** as the Collector may in each case direct, the

Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

#### CERTIFICATE BY COLLECTOR (SECTION 32)

(1) When an instrument brought to the Collector under section 31 is one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or  
 (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped.

However, nothing in this section authorizes the Collector to endorse—

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;  
 (b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or

(c) any instrument chargeable with a duty not exceeding ten naye paise, or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

### INSTRUMENTS NOT DULY STAMPED INADMISSIBLE IN EVIDENCE, ETC. (SECTION 35)

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Provided that -

- (a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

### ADMISSION OF INSTRUMENT WHERE NOT TO BE QUESTIONED (SECTION 36)

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

### ADMISSION OF IMPROPERLY STAMPED INSTRUMENTS (SECTION 37)

The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

### PAYMENT OF STAMP DUTY

#### Duties how to be paid

- (1) Except as otherwise expressly provided in Indian Stamp Act, 1899, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps:
  - (a) according to the provisions herein contained; or
  - (b) when no such provision is applicable thereto – as the State Government may be rule direct.
- (2) The rules made under sub-section (1) may, among other matters, regulate, –
  - (a) in the case of each kind of instrument – the description of stamps which may be used;
  - (b) in the case of instruments stamped with impressed stamps – the number of stamps which may be used;
  - (c) in the case of bills of exchange or promissory notes the size of the paper on which they are written.

## USE OF ADHESIVE STAMPS (SECTION 11)

The following instruments can be stamped with adhesive stamps, namely:

- (a) instruments chargeable with a duty not exceeding ten naye paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, and promissory notes drawn or made out of India;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

## HOW TRANSFER IN CONSIDERATION OF DEBT, OR SUBJECT TO FUTURE PAYMENT, ETC., TO BE CHARGED (SECTION 24)

Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty.

## PART F - THE POWERS-OF-ATTORNEY ACT, 1882

### EXECUTION UNDER POWER-OF-ATTORNEY

1. The person assigning the authority is called **donor** and the in whose favour the power-of-attorney has been made is called the **donee**.
2. The donee of a power-of-attorney can execute any instrument or do anything in and with his own name and signature, and his own seal, wherever required by the authority of the donor of the power.
3. Every instrument and thing so executed and done is as effectual in law as if it had been executed or done by the donee in the name and with the signature and seal of the **donor** thereof.
4. The Act provides for the protection of action taken by donee in good faith. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney cannot be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become of unsound mind, or insolvent, or had revoked the power, if the fact of death, unsoundness of mind, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.
5. However, this does not affect any right against the "payee of any person" i.e. receiver, interested in any money so paid. That person has the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

### PROCEDURE FOR DEPOSIT OF ORIGINAL INSTRUMENTS CREATING POWERS-OF-ATTORNEY PROVIDED UNDER SECTION 4

(a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court or District Court.

(e) The High Court may, from time to time, make rules for the purposes of section 4, and prescribing, with the concurrence of the State Government, the fees to be taken under clauses (a), (b) and (c).

#### POWER-OF-ATTORNEY OF MARRIED WOMEN

According to section 5, a married woman of full age shall, by virtue of Powers-of-Attorney Act, have power, as if she were unmarried, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do.

## CHAPTER 4 - DRAFTING OF AGREEMENTS, DEEDS & DOCUMENTS

### DOCUMENT - MEANING

1. *Section 3 of the Indian Evidence Act, 1872* states that a “Document” means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.
  - a. A writing is a document;
  - b. Words printed, lithographed or photographed are document;
  - c. A map or plan is a document;
  - d. An inscription on a metal plate or stone is a document;
  - e. A caricature is a document.
2. *Section 3(18) of the General Clauses Act, 1897*, states that a “Document” shall include any matter written, expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter.
3. *Section 29 of the Indian Penal Code, 1860*, the word ‘Document’ denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used as evidence of that matter.

Thus the word “Document” has been used in a wide sense and it includes instruments, deeds, agreements etc. Documents will also include Electronic records.

### HOW TO DRAFT A DOCUMENT?

The following ten easy and important steps can be followed for drafting a document:

1. Ascertain a *proper title* of the document, which describes the nature of transaction in brief.
2. Ascertain the *parties to the transaction*/agreement or the persons executing the document. The particulars of identity like father's/husband's name, residential/official address, age, date of incorporation in case of company etc should also be mentioned.

3. Note down the **transaction/agreement** and the **consideration** involved.
4. State the **mode and manner of payment of consideration**.
5. Note down the various **terms and conditions** of the agreement. These terms actually state the **rights and liabilities of each party** under the agreement. These terms should be drafted in very clear and precise language and should be unambiguous.
6. At the end, the document should **bear signatures and stamp/seal** where necessary of the executing parties. The date and place of execution should also be mentioned.
7. Some documents also require to be **witnessed by some independent person** who is not party to the document.
8. Where a document is required to be **executed on stamp paper**, then the stamp paper should be of prescribed value as applicable in the concerned state.
9. If a document is required to be registered, it should **be presented for registration** before the appropriate authority, within a reasonable time after execution.
10. Necessary number of **copies of the document** should also be prepared on stamp paper of appropriate value, if so required.

### POWER OF ATTORNEY

A Power of Attorney ("PoA") is an instrument whereby a **specified person or persons** are **empowered to act for and in the name of the person executing the instrument** ("donor"). It is a type of agency, and law relating to the powers of attorney forms part of the general law of agency.

#### General Power of Attorney

Where the instrument is executed **generally for certain acts**, it is called "General Power of Attorney", i.e. if the Power of Attorney authorizes the agent to **act generally on in more than one transaction** in the name of the principal, it is known as general power-of-attorney. However, the word "general" means that the power must be general in respect to the subject-matter.

### Special Power of Attorney

If an instrument is executed for specified act or acts, it is called a "Special Power of Attorney".

In other words, a Power of Attorney conferring on the agent the authority to act in single or specified transactions in the name of the principal is known as special power-of-attorney.

### SPECIMEN MODEL OF GENERAL POWER OF ATTORNEY

#### GENERAL POWER OF ATTORNEY

#### KNOW ALL MEN BY THESE PRESENTS

WHEREAS I, age \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_ do hereby appoint Mr. B to act as my Power of Attorney holder and do all the activities as enlisted below.

AND WHEREAS I own certain properties, as well as hold directorships, memberships, and partnerships, and consequential acts thereto for which, I authorise Mr. B to do the following:

#### NOW THIS POWER OF ATTORNEY WITNESSETH AS UNDER

That Mr. B be authorised to carry out the following:

1. To administer and manage all my properties situated as described in schedule 1, to further make investments out of the income received from this properties, to collect rentals, to make necessary alterations, to give properties on lease or licence, to pay utility and maintenance charges, to construct or reconstruct, to supervise the properties at regular intervals, to sell the property, to pay necessary taxes, to sell the property if the need be, and reinvest the said amount out of sale proceeds.
2. To administer all the companies and its performance, where I hold shares or any other securities or to purchase further securities, to book profits, pay applicable taxes, to receive allotment and dividend advice to exercise my rights as a shareholder including but not limited to appointing

proxies, participating in general meetings, voting, receiving notices and copies of annual report, receiving benefits by way of rights and bonus or subscribe to any offer made by the investee companies, if found appropriate.

3. To consent to act as a director, where I have been appointed, to receive notices from various companies where I hold directorship and inform the same to me in order to facilitate my participation, to submit disclosure of interest as and when applicable and ensure compliances under the act.
4. To look after all my interests in various firms where I hold partnership, to call for copies of the agreement, ensure compliances and participate in decision making and if the need be retired from the firm if not beneficial.
5. To buy, hold, sell, lease, license or dispose of all or any of the properties, if found appropriate.
6. To file or defend various cases before any court, tribunal, regulatory body or any adjudicating body, to appoint advocates, practicing professionals or indulge an arbitrator or file plaints or complaints or written statements or affidavit and execute the same, to deposit court fees, to pay legal costs and appear on my behalf before these authorities and collect Certified copy of the order or decree or its execution thereof.
7. To operate all of my bank accounts, to open new bank accounts or close if not required, to create FDs out of surplus cash or borrow or lend money.
8. To employ people, big agents or any other persons in order to look after all my businesses or investments.
9. To do all such acts and deeds and all consequential activities, sign papers or documents or submit documents and carry out such other activities in order to fulfill the responsibilities stated above.



IN WITNESS WHEREOF I HAVE SIGNED THIS POWER OF ATTORNEY DATED \_\_\_\_\_ AT \_\_\_\_\_

sdl-

A

sdl-

NOTARY PUBLIC

### WITNESSES

1. Name

Address

Signature

2. Name

Address

Signature

### SCHEDULE I

#### SPECIMEN MODEL OF SPECIAL POWER OF ATTORNEY

#### SPECIAL POWER OF ATTORNEY

#### KNOW ALL MEN BY THIS POWER OF ATTORNEY

WHEREAS I, X, age \_\_\_\_\_ son of \_\_\_\_\_, resident of \_\_\_\_\_.

AND WHEREAS out of my own savings, I purchased house at Pune, India.

AND WHEREAS I have been holding this property for almost 8 years and now I wish to sell this property.

AND WHEREAS I authorized Mr. Y, son of \_\_\_\_\_ age \_\_\_\_\_, resident of \_\_\_\_\_ as my power of Attorney to act on my behalf and do all such acts specified below with reference to above referred property.

**NOW THIS POWER OF ATTORNEY WITNESSETH AS UNDER**

That Mr. Y be and is hereby authorized to act on my behalf to carry out the following:

1. To appoint real estate agent or give a newspaper advertisement in leading newspapers to identify the potential buyer.
2. To negotiate terms with the potential buyer and to arrive at a conclusive consideration.
3. To receive earnest money for the said property.
4. To secure the sale transaction
5. To execute sale deed for sale of the property upon the terms agreeable to both the parties.
6. To appoint an advocate for carrying out registration work for the said transaction.
7. To pay all the necessary costs including broker's commission, if any, utility charges, maintenance cost and other local taxes including legal charges.
8. To transfer clean and clear title over the said property to the buyer including clear possession of agreed property.
9. To receive consideration either in my account or may be to the attorney holder's account and deposit the same to my account after deducting all local taxes
10. To do all such acts and deeds as may be required to complete the said transaction.

IN WITNESS WHEREOF I HAVE EXECUTED THIS POWER OF ATTORNEY DATED \_\_\_\_\_ AT \_\_\_\_\_

Sd/-

X

### WITNESSES

1. Name .....Signature

Address

2. Name .....Signature

Address

### LEASE DEED & LICENSE DEED

### LEASE - MEANING

According to Section 105 of the Transfer of Property act, 1882, a lease of immovable property is a transfer of a **right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.**

### ESSENTIAL ELEMENTS OF LEASE

- 1) **Parties:** The parties to a lease are the **lessor and the lessee**. The lessor is also called the **landlord** and the lessee the **tenant**.
- 2) **Subject matter of lease:** The subject matter of lease must be **immovable property**. The word "immovable property" may not be only house, land but also benefits to arise out of land, right to collect fruit of a garden, right to extract coal or minerals, rights of ferries, fisheries or

market dues. The contract for right for grazing is not lease. A mining lease is lease and not a sale of minerals.

3) **Duration of lease:** The right to enjoy the property must be transferred for a **certain time**, **express or implied or in perpetuity**. The lease should commence either in the present or on **some date in future or on the happening of some contingency**, which is bound to happen. Though the lease can commence from a past day, but that is for the purpose of computation of lease period, as the interest of the lessee begins from the date of execution. No interest passes to the lessee before execution. In India, the lease may be in perpetuity.

4) **Consideration:** The consideration for lease is either **premium or rent**, which is the price paid or promised in consideration of the demise. The **premium** is the consideration paid of being let in possession, such as **Salami**, even if it is to be paid in instalments.

5) **Sub-lease:** A lessee can transfer the whole or any part of his interest in the property by sub-lease. However, this **right is subject to the contract and he can be restrained by the contract from transferring his lease** by sub-letting. The lessee can create sub-leases for different parts of the demised premises. The sub-lessee gets the rights, subject to the covenants, terms and conditions in the lease deed.

### SPECIMEN MODEL OF GENERAL LEASE DEED

#### LEASE DEED

This Agreement of lease is executed on **Tuesday, 17<sup>th</sup> day of October 2023** at Pune.

#### BY AND BETWEEN

A (Hereinafter referred to as the 'Lessor' or 'Transferor' or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

#### AND

B (Hereinafter referred to as the 'Lessee' or 'Transferee' or 'party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**WHERAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of**

**AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of**

**AND WHEREAS A owns a piece of land, which is situated at \_\_\_\_\_, details of which are described elsewhere in this Agreement.**

**AND WHEREAS A was desirous of letting this property on lease basis.**

**AND WHEREAS A approached B and he gave the proposal of the said land to be given to B on lease basis.**

**AND WHEREAS B expressed his interest in taking the said property upon the terms as stated below and hence this Agreement**

**NOW THIS LEASE AGREEMENT WITNESSETH AS UNDER:**

#### **1. DESCRIPTION OF THE PROPERTY**

That the property is a plot of land rightfully situated at \_\_\_\_\_ admeasuring 10000 sq. ft. details of which are described in the schedule 2 of the Agreement.

#### **2. POSSESSION OF THE PROPERTY**

That the property as described above shall be given on lease to Mr B. The parties confirm that its only the possession of the property along with interest, which is getting transferred to the lessee. In no way and shall at no point in time the title of the property be in anyway be transferred to the lessee.

That the lessor further confirms that the property is free from any charges and no prior encumbrance has been created over the said property.

### 3. TERM

That the said lease deed is for a period of 11 (eleven) months from the date of this Agreement.

The said term may be further extended with the consent of both the parties.

### 4. CONSIDERATION

That the lessee agrees to pay a monthly rental of Rs. 50000 (Rupees fifty thousand only) to the lessor by the 7<sup>th</sup> day of succeeding month by way of bank transfer.

That the lessee shall pay to the lessor security deposit of Rs 3,00,000 (Rupees Three lakhs only), which shall be interest free and shall be returned to the lessee on conclusion of this agreement.

### 5. TERMS AND CONDITIONS

That the lessee agrees to the following.

- The said plot of land shall be used strictly for agricultural activities only and no other commercial activity.
- The property shall not be sublet to any third party under any circumstances.
- Apart from what is essential for carrying out agricultural activities, no permanent construction shall be done on the said plot.
- The lessor at every time reserves an easement right over the said plot of land.

### 6. COST & CHARGES

That the municipal taxes over the said property shall be borne by the lessor. Legal cost to execute this Agreement shall also be borne by the lessee.

## 7. TERMINATION

That in case if either of the parties to the agreement intends to terminate this agreement at any time before the conclusion of this Agreement, the same shall be done by serving a three month notice in writing to other party at the address as specified elsewhere in this agreement.

## 8. DEFAULT

That in case if the lessee defaults in payment of monthly rentals or any of the terms of this deed the lessor shall have a right to terminate this agreement by giving three months notice in writing to the lessee and the amount due towards rent and any loss to the property shall be adjusted against the deposit amount.

## 9. DISPUTE

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

### SCHEDULE TO THE AGREEMENT

The property as described in the agreement is a plot of land admeasuring about 10000 sq.ft. having plot no \_\_\_\_\_ gat no \_\_\_\_\_ and is surrounded by the following properties:

Towards North

Towards South

Towards East

Towards West

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Party of the first part

\_\_\_\_\_  
Name

Signature

Party of the second part

Name

**WITNESSES**

1. Name

Signature

Address

2. Name

Signature

Address

**LEAVE AND LICENCE**

From the legal point of view, while a **lease agreement** is the safest for tenants, landlords prefer a **leave-and- licence agreement**. This is because a **licence does not create any interest** in the property for the licensee. The **licensee merely gets the right to enter, occupy and use the premises**.

The Transfer of Property Act creates an interest in the property for the lessee for the duration of the lease. This enhances a lessee's chances of holding on to the property even after the expiry of the lease term. On the other hand, the Indian Easement Act creates no titles or interest for the licensee. The licensee merely gets the right to enter and use the premises for a limited period without acquiring any interest in it for even the duration of the licence agreement. The licence can be terminated at will at the discretion of the licensor.

A Licence is defined under Section of 52 of the Indian Easements Act, 1882, which reads as under:

“Where one person grants to another, or to a definite number of other persons, right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in

the absence of such right be unlawful and such right does not amount to an easement or an interest in property, the right is called Licence".

Licence is a grant of a right to do something upon an immovable without creating interest in the property. It is therefore, distinguishable from an allied grant such as a lease or an easement.

**Both lease and easement create an interest in the property. Licence is only a permission to do something on an immovable property like occupation, or enjoying fruit thereof, or using it for some other purpose.**

### CASE LAWS

In the matter of **Chandulal vs. Delhi Municipal Corporation**, the Full Bench of the Delhi High Court in a Judgement reported in AIR 1978 Delhi Page 174 has inter alia held that:

"A lease is not a mere contract but envisages and transfers an interest in the demised property creating a right in favour of the lessee in rem. A licence only makes an action lawful which without it would be unlawful but does not transfer any interest in favour of the licensee in respect of the property.

In the case of a licence there is something less than a right to enjoy the property in the licensee. It cannot be exercised by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer of a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property but is only a personal privilege to the licensee. After the termination of the licence, the licensor is entitled to deal with the property as he likes. The right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser.

If however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. No doubt a person in exclusive

possession of the property is *prima facie* to be considered to be a tenant; nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy."

### SPECIMEN MODEL OF GENERAL LEAVE AND LICENCE AGREEMENT

#### LEAVE AND LICENCE AGREEMENT

This Agreement of Leave and Licence is executed on **Monday, 16th day of October 2023** at **Pune**.

#### BY AND BETWEEN

A (Hereinafter referred to as the 'Licensor' or 'Transferor' or 'Party of the first part' and unless the text otherwise expresses, shall include its legal heirs, administrators etc.)

#### AND

B (Hereinafter referred to as the 'licensee' or 'transferee' or 'Party of the second part' and unless the text otherwise expresses, shall include its legal heirs, administrators etc.)

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS A owns a property, which is a residential flat rightfully situated at \_\_\_\_\_, details of which are described elsewhere in this agreement.

AND WHEREAS A was desirous of letting this property on leave and licence basis.

AND WHEREAS A approached B and he gave the proposal of the said flat to be given to B on licence basis.

AND WHEREAS B expressed his interest in taking the said property upon the terms as stated below and hence this agreement

NOW THIS LEAVE AND LICENCE AGREEMENT WITNESSETH AS UNDER:

#### 1. Description of the Property

That the property is a residential flat rightfully situated at Plot No. \_\_\_\_\_, Scheme No. \_\_\_\_\_ admeasuring about 3000 sq. ft comprising of 4 bedrooms, hall, kitchen and terrace area and is surrounded by the following:

Towards North \_\_\_\_\_

Towards South \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

#### 2. Right to use of the Property

That the licensor has agreed to give the said property to the licensee on a leave and licence basis. The licensor confirms that with this agreement, he neither transfers the title of the property nor the possession. It is simply on usage basis. The licensor confirms that no prior charge or interest has been created to the said property and it is absolutely free from any prior encumbrances.

#### 3. Term

That the said licence deed is for a period of 11 (Eleven) months from the date of this Agreement. The said term may be further extended with the consent of both the parties.

#### 4. Consideration

That the licensee agrees to pay a monthly rental of Rs. 50,000 (Rupees Fifty Thousand only) to the licensor by the 7<sup>th</sup> day of succeeding month by way of bank transfer

That the licensee shall pay to the licensor security deposit of Rs 3,00,000 (Rupees Three lakhs only), which shall be interest free and shall be returned to the licensee on conclusion of this agreement.

#### 5. Terms & Conditions

That the licensee agrees to the following:

- The said property shall be used for residential purpose only.
- No material alteration in the property shall be done without prior written consent of licensor.
- The property shall not be sublet to any third party.
- All the utility charges shall be borne by the licensee.

#### 6. Cost and charges

That the municipal taxes over the said property shall be borne by the licensor, while maintenance cost of the apartment shall be borne by the licensee. Legal cost to execute this Agreement shall also be borne by the licensee.

#### 7. Default

That in case if the licensee commits any default in payment of monthly rentals, he shall be liable to pay interest @ 24% per annum for the delayed period and the deposit amount in such case shall be forfeited.

#### 8. Dispute

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT

\_\_\_\_\_  
Signature

Name

Party of the first part

Signature

Name

Party of the second part

Witnesses

1. Name

Signature

Address

2. Name

Signature

Address

### MORTGAGE- MEANING

Mortgage is a **transfer of an interest in a specific immovable property for the purpose of securing the payment of money advanced** or to be advanced by way of loan, an existing or future debt or the performance of an agreement, which may give rise to a pecuniary liability.

The person borrowing and transferring his interest in an immovable property to the lender is the **mortgagor**. The lender is the **mortgagee**. The funds lent against which the property is used as security is the **mortgage money**. The instrument by which the transfer is effected is called a **mortgage-deed**.

### SPECIMEN MODEL OF SIMPLE MORTGAGE DEED

#### SIMPLE MORTGAGE DEED

This simple mortgage deed is executed on **Wednesday, 18<sup>th</sup> day of October 2023** at Pune.

BY AND BETWEEN

A Ltd (Hereinafter referred to as the 'mortagor' or 'company' or 'transferor' or 'Party of the first part' and unless the text otherwise expresses shall include its administrators, liquidators, etc.)

AND

B Bank Ltd (Hereinafter referred to as the 'mortgagee' or 'transferee' or 'Party of the second Part' and unless the text otherwise expresses shall include its administrators, liquidators, etc.)

WHEREAS A Ltd is a company formed and registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. C. Managing Director of company.

AND WHEREAS B Bank Ltd is a bank registered under the provisions of Banking Regulations Act, 1949 and has its registered office situated at \_\_\_\_\_ represented through Mr. D, Manager of the Bank.

AND WHEREAS A Ltd in order to expand its current operations was looking to raise funds to the extent of Rupees 100 crores (Rupees hundred crores only).

AND WHEREAS it approached B Bank Ltd to discuss all the terms and accordingly B Bank Ltd agreed to extend the said credit Facility by creation of a simple mortgage deed.

AND WHEREAS the Board of Directors of the company at its meeting held on \_\_\_\_\_ agreed to borrow an amount of Rs. 100 crores (Rupees hundred crores only) from B Bank Ltd upon the following terms and conditions:

**NOW THIS SIMPLE MORTGAGE DEED WITNESSETH AS UNDER:**

### 1. Description of the property

That the subject property is a commercial building having 30 (thirty) floors admeasuring about 3.00.000 sq. ft. and is rightfully situated at \_\_\_\_\_ and is surrounded by the following:

Towards North \_\_\_\_\_

Towards South \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

### 2. Mortgage Money

That the said loan transaction shall be for a loan amount of Re 100 crores (Rupees hundred crores only), which shall carry interest at the rate of 10% per annum to be repaid by equated monthly instalments of Rs. \_\_\_\_\_ spread over the entire tenure of the loan by the seventh day of every succeeding month.

### 3. Term

That the term of this transaction shall be for a period of 5 years beginning from the date of this agreement.

### 4. Status of the property

That the both the parties to the agreement confirm that it is neither the possession nor the ownership of the property which is getting transferred to the mortgagee. The mortgagor simply undertakes to repay the amount of loan as per the schedule specified above.

### 5. Creation & Satisfaction of charge

That the mortgagor undertake to file form CHG-1 with the concerned ROC within 30 days on creation of this mortgage transaction and further agrees to file form CHG-4 towards satisfaction of charge within 30 days of repayment of loan.

### 6. Cost and charges

That the entire cost of stamp duty, registration and other legal charges for creation of this mortgage deed shall be borne by the mortgagor.

### 7. Default

That in case if any of the clause of this agreement is breached by the mortgagor, the mortgagee shall have a right to obtain a decree from the court in order to recover the amount of loan.

### 8. Dispute

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT

For A Ltd

Sd/-

C

Party of the first part

Managing Director

For B Bank Ltd

Sd/-

D

Manager

Party of the second part

Witnesses

1. Name

Address

Signature

2. Name

Address

Signature

**SPECIMEN MODEL OF MORTGAGE BY CONDITIONAL SALE**
**MORTGAGE BY CONDITIONAL SALE**

This deed of mortgage by conditional sale is executed on **Wednesday, 18<sup>th</sup> day of October 2023** at Pune.

**BY AND BETWEEN**

A (Hereinafter referred to as the 'Mortgagor' or 'Transferor' or 'Party of the or first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**AND**

B (Hereinafter referred to as the 'mortgagee' or 'Transferee' or 'Party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**WHEREAS** A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident \_\_\_\_\_

**AND WHEREAS** B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** A was in need of funds and decided to borrow the requisite amount by creation of a mortgage over one of his properties.

**AND WHEREAS** A approached B to discuss all the terms and accordingly B agreed to extend the said credit facility by creation of mortgage by conditional sale upon the following terms and conditions.

**NOW THIS DEED OF MORTGAGE BY CONDITIONAL SALE WITNESSETH AS UNDER:**

### 1. Description of the Property

That the subject property is a commercial building having 30 (thirty) floors admeasuring about 3,00,000 sq. ft. is rightfully situated at \_\_\_\_\_ and is surrounded by the following:

Towards North \_\_\_\_\_

Towards South \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

### 2. Mortgage Money

That the said loan transaction shall be for a loan amount of Rs. 100 crores (Rupees hundred crores only), which shall carry interest at the rate of 10% per annum to be repaid by equated monthly instalments of Rs. \_\_\_\_\_ spread over the entire tenure of the loan by the seventh day of every month.

### 3. Term

That the term of this transaction shall be for a period of 5 years beginning from the date of this agreement.

### 4. Status of the Property

That the mortgagor agrees to transfer the possession of the property to the mortgagee at the time of execution of this deed. In case of failure to repay the amount of loan as per the conditions stated above, the present mortgage deed shall be treated as sale deed.

### 5. Cost and Charges

That the entire cost of stamp duty, registration and other legal charges for creation of this mortgage deed shall be borne by the mortgagor.

### 6. Default

That in case if the mortgagor defaults in repayment of loan, the mortgagee shall have a right to foreclose the property and transfer the ownership of the property in its own name.

### 7. Dispute

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

**IN WITNESS WHEREOF BOTH THE PARTEES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

Name

Party of the first part

Signature

Name

Party of the second part

### Witnesses

3. Name

Signature

Address

4. Name

Signature

Address

### GIFT- MEANING

According to Section 122 of The Transfer of Property Act, 1882, "Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

The essential elements of a gift are -

1. **Voluntary:** The transfer of movable or immovable property should be **voluntary**. The gift of property by undue influence makes the gift voidable and a suit to set it aside can be brought within three years prescribed by the Limitation Act, 1963.
2. **Without consideration:** A gift is a transfer without any element of consideration. Complete absence of monetary consideration is an important prerequisite. Where there is any equivalent of benefit measured in terms of money in respect of a gift, the transaction ceases to be a gift.
3. **Donor:** The person transferring the property is called the donor and everyone who is *Sui juris* (legally competent) can dispose by way of gift, any property or any estate or interest into which he is absolutely entitled.
4. **Donee:** The person accepting the gift is the **Donee**. All persons whether *sui juris* or not are competent to receive gifts. A minor can accept the gift, other than where gift is onerous.
5. **Competence to gift:** Any person who is **competent to contract** can make a gift of his property. A minor, being incompetent to contract is incompetent to transfer. A gift by a minor is void. Competence to contract is an important qualification required for making a gift.
6. **Subject matter of gift:** All property, **real and personal, corporeal and incorporeal** may be the subject of gift. A future property or mere expectancy, such as an expectation of succession to property, as the possible heir or one of the possible next of kin of a living person cannot be transferred by gift.
7. **Transfer:** The donor should transfer the property **voluntarily and without consideration**.
8. **Acceptance:** The acceptance of gift should be made by the **Donee**. The acceptance may be express or may be inferred by the donee's possession of the property or even the donee's possession of the deed of gift, and therefore the gift became effectual, subject to registration and it is immaterial that the deed was not stamped. The guardian of a minor can accept the gift for him, although he cannot incur an obligation. The acceptance of gift must be during the lifetime of the donor and if the donor dies before acceptance, there cannot be a gift.

However, if the donor dies after acceptance of the gift, but before the deed is registered, the transfer may be completed by registration after the death of the donor. In **N.M Thakker v.**

P.M Thakker it was held that the execution of a registered gift deed, acceptance of the gift and delivery of the property together make the gift complete.

### HOW GIFT OF TRANSFER IS EFFECTED?

For the purpose of making a gift of **immoveable property**, the transfer should be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of **moveable property**, the transfer may be effected either by a registered instrument signed as aforesaid or by **delivery**.

### GIFT OF MOVEABLE PROPERTY

Gift of movable property can be made by alternative modes of transfer namely, registered deed and delivery of possession. In case of delivery, the donor should have done all that he can, to put the subject matter of the gift within the power of the donee to obtain possession. A valid gift must ordinarily be followed by possession.

Gift deeds transferring actionable claims like shares, insurance policies have been held to be valid. Mere entries in accounts books in favour of the wife or where money is deposited in bank but the certificate is retained by the donor is not gift as there is no delivery of the subject matter of gift, but a transfer from the account of the donor to that of the donees will make it a valid gift.

### SPECIMEN MODEL OF GIFT OF MOVEABLE PROPERTY

#### DEED OF GIFT OF MOVEABLE PROPERTY

I, Mr/Mrs. \_\_\_\_\_ residing at \_\_\_\_\_ do hereby make a gift of the ornaments and jewellery specified in the schedule herein under written to my daughter Miss \_\_\_\_\_ in consideration of natural love and affection on the occasion of her marriage.

Signed by the DONOR

Accepted by the DONEE

Witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

### SPECIMEN MODEL OF GIFT OF IMMOVEABLE PROPERTY

#### GIFT DEED OF AN IMMOVEABLE PROPERTY

This gift deed of an immovable property is executed on Thursday, 19<sup>th</sup> day of October 2023 at Pune.

BY AND BETWEEN

A (Hereinafter referred to as the 'Donor' or 'Transferor' or 'Party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

AND

B (Hereinafter referred to as the 'Donee' or 'Transferee' or 'Party of the second part' and unless the text otherwise expresses shall include its legal heirs, or administrators, etc.)

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS A owns a residential house situated at \_\_\_\_\_ more particularly described elsewhere in this agreement

AND WHEREAS out of natural love & affection A is desirous of giving the above referred immovable property by way of gift to B, being his immediate relative.

AND WHEREAS Mr. B consented to accept this gift upon the following:

**NOW THIS GIFT DEED WITNESSETH AS UNDER**

#### 1. Description of Property

That the subject property is residential house admeasuring about \_\_\_\_\_ and is situated at \_\_\_\_\_ enclosed by the following

Towards north \_\_\_\_\_

Towards south \_\_\_\_\_

Towards east \_\_\_\_\_

Toward west \_\_\_\_\_

#### 2. Transfer of title and Possession

That by virtue of this gift deed, the donor consents to transfer the above referred immovable property to the donee including its title, possessory rights, any benefits or entitlements thereto.

#### 3. Consideration

That the subject transfer being the gift of specified immovable property shall be transferred to the donee without any consideration out of natural love & affection.

#### 4. No other Claims

That with effect from date of this agreement, no other party including any legal heirs shall have any claim over the subject property.

### 5. Encumbrances

That the donor on the date of this agreement confirms that no prior charge or interest over the said property has been created by him in the past and no dues over the same are pending in any form.

### 6. Cost & Charges

That of all the legal cost including the registration and stamp duty over this deed shall be borne by the donor.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

Party of the first part

Name

Signature

Party of the second part

Name

**Witnesses**

1. Name

Signature

Address

2. Name

Signature

Address

## SALE DEED AND AGREEMENT TO SELL

1. A sale deed acts as the main **legal document for evidencing sale and transfer of ownership of property in favour of the buyer, from the seller.**
2. The sale deed is **executed subsequent to the execution of the sale agreement**, and after compliance of various terms and conditions detailed in the sale agreement.
3. A seller **transfers his right on the property to the purchaser**, who then acquires absolute ownership of the property. It is also referred to as the conveyance deed.
4. It should be checked by the buyer whether there is any **charge or encumbrance** on the property and whether the purchaser is purchasing the property subject to such encumbrance.
5. Further, subject to the agreement between the parties, all **statutory payments** like cess, property tax, water charges, electricity charges, society charges, maintenance charges etc should be paid by the seller before the execution of the sale deed.
6. On completion of all formalities, a sale deed is prepared. All pages of the **deed are to be signed**. The deed should be **witnessed by at least two witnesses** giving their full names, signatures and addresses. The sale deed of immovable property needs compulsory registration at the jurisdictional sub registrar office.

## SPECIMEN FORMATS OF SALE DEED

### SALE DEED

This sale deed is executed on 21<sup>st</sup> day of October, 2023 at Pune.

### BY AND BETWEEN

A (Hereinafter referred to as the 'seller' or 'transferor' or 'Party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

### AND

B (Hereinafter referred to as the 'buyer' or 'transferee" or 'Party at the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**WHEREAS** A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** A owns a property, which is rightfully situated at \_\_\_\_\_ described elsewhere in this agreement.

**AND WHEREAS** A was desirous of selling this property and accordingly gave an advertisement in the newspaper dated \_\_\_\_\_ to sell the same.

**AND WHEREAS** B referring to the said advertisement approached A and expressed his interest to buy the said property.

**AND WHEREAS** both the parties negotiated and decided all the terms and hence this agreement.

**NOW THIS DEED OF SALE WITNESSETH AS UNDER**

#### **I. DESCRIPTION OF PROPERTY**

That the subject property is a flat admeasuring about \_\_\_\_\_ and is situated at \_\_\_\_\_ enclosed by the following:

Towards North \_\_\_\_\_

Towards south \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

## 2. CONSIDERATION

That the buyer has agreed to pay an amount of Rs.2 crores (Rupees two crores only) as full and final consideration against purchase of the said property by way of bank transfer at the time of execution of this sale deed. The seller confirms that subject to this amount, the buyer shall not be obligated to pay any further amount towards the sale of said property.

## 3. STATUS OF THE PROPERTY

That the seller agrees to transfer a clean & clear title of the property to the buyer along with the lawful possession of the property at the time of execution of this agreement.

That the seller further confirms that no prior encumbrance has been created over the said property by him at any time in the past.

## 4. COST & CHARGES

That the buyer shall be obligated to bear all the legal charges including the stamp duty and cost of registration. All municipal taxes till the date of this agreement have been paid by the buyer till date.

## 5. INDEMNITY

That in case if any dispute arises over the title or possession of the said property at any time in future, the seller undertakes to compensate the buyer with the total consideration along with interest at 18% p.a. for a period beginning from date of this agreement.

## 6. DISPUTE

That in case if any dispute arises between the parties with respect to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both the parties and governed by Arbitration and Conciliation Act, 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

...party of the first part

Name

Signature

...party of the second part

Name

**WITNESSES**

1. Name

Signature

Address

2. Name

Signature

Address

**SPECIMEN FORMATS OF AGREEMENT TO SELL****AGREEMENT TO SELL***This Agreement to sell is executed on Friday, 20<sup>th</sup> day of October 2023 at Pune.***BY AND BETWEEN***A (Hereinafter referred to as the 'seller' or 'transferor' or the 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)***AND***B (Hereinafter referred to as the 'buyer' or 'transferee' or 'Party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)*

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS A owns a flat situated at \_\_\_\_\_ more particularly described elsewhere in the agreement.

AND WHEREAS A was intending to sell the said flat and it accordingly approached B.

AND WHEREAS B expressed his interest to buy the \_\_\_\_\_ after 2 months and he further agreed to execute an agreement to sell at the present date and hence this agreement.

#### **NOW THIS AGREEMENT TO SELL WITNESSETH AS UNDER**

##### **1. DESCRIPTION OF PROPERTY**

That the subject property is a flat admeasuring about \_\_\_\_\_ and is situated \_\_\_\_\_ at enclosed by the following:

Towards South \_\_\_\_\_

Towards North \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

##### **2. CONSIDERATION**

That both the parties have agreed to execute the said transaction at a price of Rs. 2 crores [Rupees two crores only] out of which, the buyer has agreed to pay amount of Re. 25,00,000 (Rupees twenty five lakhs only) on execution of this agreement to sell by way of earnest money deposit. The balance shall be paid at the time of execution of sale deed.

### 3. EXECUTION OF SALE DEED

That both the parties have agreed to execute a sale deed within 3 months from the date of this agreement.

### 4. STATUS OF PROPERTY

That at the time of execution of this agreement to sell, neither the possession nor the title of the property is getting transferred to the buyer. Both the title as well as the possession shall be transferred at the time of execution of sale deed.

The seller confirms that no prior charge or interest over the said property has been created by the seller and the property is free from all possible encumbrances.

### 5. INSPECTION OF DOCUMENTS

That the seller has agreed to handover all the title documents relating to the said property to the buyer for carrying out inspection and title search. At the time of execution of sale deed, all the property related documents shall be handed over to the buyer.

### 6. COST & CHARGES

That the buyer has agreed to pay the requisite stamp duty on the total agreement value at the time of the execution of this agreement to sell. Registration and other legal charges shall be paid by the buyer at the time of execution of sale deed. The seller confirms that all applicable taxes & duties till the date of this agreement have been paid by him.

### 7. INDEMNITY

That in case if buyer defaults in executing the sale deed within 3 months, the deposit amount paid by him to the seller shall be forfeited and the seller will be under no obligation to execute the deed in future. In case if the title is found to be not clear on inspection, the seller shall return the deposit amount immediately to the buyer.

### 8. DISPUTE

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

...Party of the first part

Name

Signature

...Party of the second part

Name

### WITNESSES

1. Name

Signature

Address

2. Name

Signature

Address

### SPECIMEN AGREEMENT TO SELL PATENT RIGHTS

### ASSIGNMENT OF PATENT

This assignment of patent deed is executed on. 23<sup>rd</sup> day of October 2023 at Pune.

### BY AND BETWEEN

A (Hereinafter referred to as the 'Assignor' or 'transferor' or the 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

AND

B (Hereinafter referred to as the 'Assignee' or 'transferee' or Party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B Ltd is a company formed and registered under the provisions of Companies Act 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. C, Managing Director of company.

AND WHEREAS A is the original inventor of the patent having description \_\_\_\_\_ registration no \_\_\_\_\_

AND WHEREAS B Ltd. is in the business of manufacture of \_\_\_\_\_

AND WHEREAS B Ltd. was in need of the patent referred above for its business activities and it accordingly approached A for assignment of the said patent.

AND WHEREAS both the parties negotiated upon the terms of assignment and hence this agreement.

**NOW THIS DEED ASSIGNMENT OF PATENT WITNESSETH AS UNDER:**

#### **I. ASSIGNMENT OF PATENT**

That the assignor agrees to assign the above referred patent that is its right to use on an exclusive basis to the assignee. The assignee agrees that the said patent shall be used only

for its business activity and no alterations or modifications shall be made to it. The said patent shall not be sub-assigned to anyone by the assignee.

## 2. TERM

That the said patent shall be assigned to the assignee for a period of 5 years from the date of this agreement. If both the parties to the agreement decides to extend the term, it may be further extended for the agreed term.

## 3. CONSIDERATION

That the total consideration for the said assignment shall be Rs.10 crores (rupees ten crores only), out of which Rs.5 crores (rupees five crores only) shall be paid immediately at the time of execution of this agreement and the balance shall be disbursed to the assignor by issue of 50,00,000 (fifty lakhs only) equity shares of Rs 10 (rupees ten only) each.

## 4. REGISTRATION OF PATENT

That the assignee shall be obligated to register the said assignment of patent with the Controller of Patents any time within 6 months from the date of this agreement under Patents Act, 1970.

## 5. ASSIGNMENT OF IMPROVEMENTS

That the assignor agrees that to the said patent, if there is any improvement or modification, the assignee shall have right over those improvements as well as without any further consideration.

## 6. COST OF CHARGES

That all the costs associated with assignment of this patent including any legal charges shall be borne by the assignee.

## 7. NON - DISCLOSURE

That the assignee, its directors, employees, promoters or associates who have access to the usage of this patent shall at all times keep all the patent related information confidential and

the scope of this clause shall not be restricted just to the tenure of the agreement but also any time thereafter.

#### 8. INDEMNITY

That the company, its officers, directors, promoters or associates shall at all times agree to indemnity the assignor in case if there is any infringement with respect to usage or confidentiality of this assignment and at the same time, the assignor agrees to indemnify the assignee if the said patent is shared with any other party. The compensation amount may be upto Rs. 50 crores (rupees fifty crores only).

#### 9. DISPUTE

That in case of any dispute arising between the parties with reference to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both the parties governed by Arbitration and Conciliation Act, 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

...Party of the first part

Name

Signature

...Party of the second part

Name

#### WITNESSES

1. Name

Signature

Address

2. Name

Signature

Address

### ALTERNATE DISPUTE RESOLUTION (ADR) AGREEMENTS

1. The process by which disputes between the parties are settled or brought to an amicable result without the intervention of Judicial Institutions and without any trial is known as Alternative Dispute Resolution (ADR).
2. ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach the settlement. Generally, ADR uses neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute.

### ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS

ADR is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone. ADR can be instrumental in reducing the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved.

### TYPES OF ADR

#### Arbitration

The dispute is submitted to an arbitral tribunal which makes a decision (an award) on the dispute that is mostly binding on the parties. It is less formal than a trial, and the rules of evidence are often relaxed. Generally, there is no right to appeal an arbitrator's decision. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

### Conciliation

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute. Conciliation is a less formal form of arbitration. The parties are free to accept or reject the recommendations of the conciliator. However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

### Mediation

In mediation, an impartial person called a Mediator helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

## SPECIMEN AGREEMENTS FOR ADR PROCEEDINGS

### APPOINTMENT OF SOLE ARBITRATOR

This appointment of sole arbitrator deed is executed on 26<sup>th</sup> day of October 2023 at Pune.

#### BY AND BETWEEN

A (Hereinafter referred to as the 'partner 1' or 'Party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

#### AND

B (Hereinafter referred to as the 'partner 2' or 'Party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS the partnership deed was executed between Mr. A and Mr. B dated \_\_\_\_\_

AND WHEREAS with respect to the said partnership deed, certain disputes arose between the parties

AND WHEREAS the partners decided to submit the said dispute from resolution by appointment of a sole arbitrator and hence this agreement.

**NOW THIS AGREEMENT FOR APPOINTMENT OF ARBITRATOR WITNESSETH AS UNDER**

1. That both the parties have agreed to appoint Mr. C as the arbitrator to resolve the disputes between the parties to the agreement.
2. That the scope of the arbitral proceedings shall be confined to the said partnership deed only and the arbitrator will conduct hearings only on the disputed matters as highlighted by the partners.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THE AGREEMENT HAVE JOINED THEIR HANDS TO GIVE EFFECT TO THIS SAID AGREEMENT ON THE DATE AS MENTIONED ABOVE**

\_\_\_\_\_  
Signature

...Party of the first part

Name

\_\_\_\_\_  
Signature

...Party of the second part

Name.

**Witnesses**

1. Name \_\_\_\_\_ Signature \_\_\_\_\_

Address \_\_\_\_\_

2. Name \_\_\_\_\_ Signature \_\_\_\_\_

Address \_\_\_\_\_

**AGREEMENT OF REFERENCE TO COMMON ARBITRATOR****ARBITRATION AGREEMENT**

This arbitration agreement is executed on 25<sup>th</sup> day of October 2023 at Pune.

**BY AND BETWEEN**

A (Hereinafter referred to as the 'owner' or 'Party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators etc.)

**AND**

B (Hereinafter referred to as the 'builder' or 'Party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS A and B entered into the original agreement as on dated \_\_\_\_\_

AND WHEREAS Builder commenced the construction.

**AND WHEREAS** Builder could only construct upto 10% of the project and also demanding an additional payment of Rs 75,00,000 (Rupees Seventy five lakhs only.)

**AND WHEREAS** the owner claims that no additional cost is required to be paid and project should have been completed by now.

**AND WHEREAS** the dispute arose between the parties upon the grounds mentioned under.

**AND WHEREAS** the parties have decided to resolve the dispute by appointment of arbitrator and hence this agreement.

### **NOW THIS DEED OF ARBITRATION AGREEMENT WITNESSETH AS UNDER**

#### **1. APPOINTMENT OF ARBITRATOR**

That both the parties to the agreement have mutually consented to appoint Mr. C as the arbitrator to resolve the below mentioned disputes. The parties agree that he isn't related directly or indirectly with any of them.

#### **2. GROUNDS OF DISPUTE**

That the following points of dispute stand before the parties

- I. Whether the completed structure is as per plans approved.
- II. Whether the construction activity should have been completed or not
- III. Whether there exists a clause in the original agreement to claim additional cost.

#### **3. TIME PERIOD**

That the arbitrator shall at his discretion call upon the parties for hearing and shall give his final award within 6 months from the date of the agreement.

#### **4. PLACE OF ARBITRATION**

That the entire arbitration proceedings shall take place at Pune.

### 5. COST

That the entire cost to the proceedings shall be borne equally by both the parties.

### 6. CO-OPERATION

That both the parties agree to co-operate with the arbitrator and provide all the documents as may be necessary in this regard.

### 7. APPLICABILITY OF LAWS

That the proceedings shall be governed by Arbitration and Conciliation Act, 1996.

### 8. AWARD

That the award of the arbitrator shall be final and binding upon the parties to the dispute.

IN WITNESS WHEREOF BOTH THE PARTIES TO THE AGREEMENT HAVE JOINED THEIR HANDS TO GIVE EFFECT TO THIS AGREEMENT ON THE DATE AS MENTIONED ABOVE

Signature

...Party of the first part

Name

Signature

...Party of the second part

Name

### WITNESSES

1. Name

Signature

Address

2. Name

Signature

Address

### MODEL ARBITRATION CLAUSES IN AN AGREEMENT

- i. Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitration of XY, etc. or if he shall be unable or unwilling to act, to another arbitrator to be agreed upon between the parties or failing agreement to be nominated by \_\_\_\_\_ or, failing agreement to two arbitrators one to be appointed by each party to the difference (whether consisting of one or more than one person) and in case of difference of opinion between them to an umpire appointed by the said two arbitrators before entering on the reference and the decision of the arbitrator ( or such arbitrators, or umpire as the case may be) shall be final and binding on the parties.
- ii. In the event of any dispute, difference or question arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable thereof or in any manner whatsoever in connection with it, the same shall be referred to the Chamber of Commerce \_\_\_\_\_ (or the Association of \_\_\_\_\_) for arbitration as provided in Rules framed by the said Chamber (or Association) for the purpose. The decision or award so given shall be binding on the parties hereto.
- iii. All disputes arising between the partners as to the interpretation, operation, or effect of any clause in this deed or any other difference arising between the partners, which cannot be mutually resolved, shall be referred to the arbitration of \_\_\_\_\_ failing him to any other arbitrator chosen by the partners in writing. The decision of such an arbitrator shall be binding on the partners.

### MODEL CONCILIATION CLAUSES

1. "Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Arbitration and Conciliation Act, 1996 as at present in force."
2. "If any dispute arises between the parties out of or relating to this contract, or in respect of any defined legal relationship associated therewith, the parties agree to refer the same to sole

conciliator for amicable settlement. The conciliator shall be appointed by the parties by mutual consent. If the parties shall fail to arrive at an agreement, the conciliator shall be appointed by \_\_\_\_\_ (the name of any person or institution).

The conciliation shall be conducted in accordance with the Rules of Conciliation under the Arbitration and Conciliation Act, 1996.

### CONCILIATION CLAUSE

That in case of any dispute or disengagement between the parties to the agreement over this agreement, the said matter shall be referred to the conciliator, who shall be Mr. C or any other person as mutually agreed upon by the parties. The conciliator shall propose various applicable settlements and whatever is agreed upon be registered by way of a settlement deed, signed by the parties and he shall obtain a decree from the court thereof.

### MODEL MEDIATION CLAUSES

#### Where Mediator has already been identified

Agreement to Mediate Disputes - In the event a dispute shall arise between the parties to this [contract, agreement, transaction, etc.], the parties agree to participate in mediation in accordance with the mediation procedures of \_\_\_\_\_ before pursuing other remedies. The parties agree to share equally in the costs of the mediation. The mediation shall be administered by the offices of. Mediation involves both sides of a dispute meeting with each other and an impartial mediator to attempt to reach a voluntary and mutually satisfactory agreement that resolves the dispute. In mediation, the mediator(s) will facilitate discussions, negotiations and procedures but will not offer independent analyses, opinions or judgments. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

### Where Mediator has not been identified in advance of dispute

Agreement to Mediate Disputes - In the event that any dispute arises between the parties in relation to this Agreement, or out of this Agreement, and the dispute is not resolved by negotiation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute. Any party to the dispute may give written notice to the other party of his or her desire to commence mediation, and a mediation session must take place within [30] days after the date that such notice is given. The parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within [7] days after a party has given notice of a desire to mediate the dispute, any party may apply to the (an organisation for mediation) or person agreed to by the parties in writing, for appointment of a mediator. The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

### MEDIATION AGREEMENT

#### MEDIATION AGREEMENT

This mediation agreement is executed on 27<sup>th</sup> October 2023 at Pune.

#### BY AND BETWEEN

A (Hereinafter referred to as the 'first party' and unless the text otherwise expresses shall include its legal heirs, administrators etc.)

#### AND

B (Hereinafter referred to as the 'second party' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

AND

C (Hereinafter referred to as the 'third party' or 'mediator' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

Both First Party and Second Party are jointly referred to as disputing parties.

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS C, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS first two parties entered into a partnership agreement dated \_\_\_\_\_

AND WHEREAS certain disputes arose with respect to the said partnership deed which the partners agreed to resolve through mediation.

AND WHEREAS the disputing parties approach Mr. C and he agreed to act as mediator upon the following terms and conditions.

**NOW THIS MEDIATION AGREEMENT WITNESSETH AS UNDER**

### I. GROUNDS OF DISPUTES

That the following disputes arose between the parties.

- A) Excessive drawings by Mr. B
- B) Non - involvement into day-to-day affairs and activities by Mr. B.

## 2. TERM

That the mediator as well as the parties shall try to conclude the mediation proceedings within 6 months from the date of this agreement or such time as may be mutually agreed between the parties.

## 3. PLACE

That the entire mediation proceedings shall take place at Pune.

## 4. COST

That any cost associated with the said mediation proceeding including mediator's fees shall be borne by both the parties.

## 5. SETTLEMENT DEED

That the parties understand and agree that dispute resolution through mediation is an informal way of resolving the dispute. Mediation proceedings shall in no way bar the right of parties to any alternate dispute resolution machinery. The parties shall fully cooperate with the mediator and during the proceedings the parties shall restrain themselves from seeking any advice from the mediator.

## 6. WITHDRAWAL OF PROCEEDINGS

That the parties understand that mediation is an informal method of resorting to disputes and therefore either of the parties i.e. the disputing parties or the mediator at any time may withdraw from the said proceedings if they are of the view that the proceedings may not lead to any conclusion.

IN WITNESS WHEREOF BOTH THE PARTIES TO THE AGREEMENT HAVE JOINED THEIR HANDS TO GIVE EFFECT TO THIS AGREEMENT ON THE DATE AS MENTIONED ABOVE

\_\_\_\_\_  
Signature

...Party of the first part

\_\_\_\_\_  
Name

Signature

...Party of the second part

Name

**WITNESSES**

1. Name

Signature

Address

2. Name

Signature

Address

**EMPLOYMENT CONTRACTS**

Employment agreement is an agreement that is entered into between two parties, i.e. the **employer and employee**. It is a document that describes the responsibilities and duties expected of an employee. It also describes the profile of the job and the title.

Employment agreements should be created in a way that is just and fair for all the employees. If this is followed, employees will do their tasks and responsibilities well and without any negative emotions toward their employers.

**EMPLOYMENT AGREEMENT**

Certain important issues that need to be taken care of before finalizing the employment agreement are given hereunder:

1. Identify the **long term requirement** of employees.
2. Identify the **workmen and employees not covered under definition of workmen**, respectively.
3. **Local laws of the State** should be borne in mind while drawing up the contracts.
4. **Issue appointment letters** which clearly define the employment terms and conditions.
5. Employment contracts, where necessary, should be **put in place with clauses for wages, benefits, non-compete, confidentiality, term, termination etc.**
6. Depending on the requirement, **use fixed term contracts** for workmen.

7. The terms and conditions of the employment should be clearly explained to employees before execution and should be drafted without any ambiguity.

### SPECIMEN FORMAT OF EMPLOYMENT AGREEMENT

#### EMPLOYMENT CONTRACT

This employment contract is executed on Thursday, 2<sup>nd</sup> day of November 2023 at Pune.

#### BY AND BETWEEN

A Ltd. (Hereinafter referred to as 'employer' or 'Party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

#### AND

B (Hereinafter referred to as 'employee' or 'Party of the second part' and unless expresses the text otherwise shall include its legal heirs, administrators, etc.)

WHEREAS A Ltd. is a company formed & registered under the provisions Companies Act, 2013 and has its registered office situated \_\_\_\_\_ represented through Mr. C. Managing Director of the company

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ and is a resident of \_\_\_\_\_

AND WHEREAS the company was looking to hire an additional company secretary and accordingly gave an advertisement in a leading newspaper for the said role.

AND WHEREAS Mr. B referring to the said advertisement applied for the said vacancy, his application was then shortlisted, subsequently interviewed and he was then selected for the said position.

AND WHEREAS both the parties agreed to pen down all the terms of employment and hence this Agreement.

**NOW THIS EMPLOYMENT CONTRACT WITNESSETH AS UNDER**

**1. APPOINTMENT**

That the Board of directors of the company at its meeting held on \_\_\_\_\_ passed a resolution to appoint Mr B as a Company Secretary upon the terms as stated in this Agreement.

**2. PROBATION PERIOD**

That the appointment of Mr. B shall be subject to a probation period of 3 months, during which either of the parties shall have the option to terminate this Agreement by serving a seven day notice to the other party in writing at the address mentioned elsewhere in the Agreement.

**3. TENURE**

That subject to completion of probation period and after offering a letter of employment, the appointment of Mr. B shall be for a period of 5 years from that date or such further term as may be mutually agreed upon between the parties.

**4. CONSIDERATION**

That the employee shall be paid as follows on monthly basis.

Basic salary \_\_\_\_\_

Dearness Allowance \_\_\_\_\_

Perquisites \_\_\_\_\_

Retirals \_\_\_\_\_

That the salary as stated above shall be subject to review each year and suitable changes be made to it as per company's policy.

## 5. LEAVE

That the employee shall be subject to annual leave of 40 days, which includes 20 casual leave and 20 sick leaves. It shall not be carried forward nor it can be encashed. At the end of the year, if not claimed it shall lapse.

## 6. ROLES & RESPONSIBILITIES

That the office of Company secretary shall include but not limited to:

- a. To conduct board & general meetings of the company.
- b. To maintain all the statutory records & registers of the company.
- c. To implement the best corporate governance practices in the company.
- d. To look after all the filing related activities with various government departments.
- e. Such other duties as prescribed by the board from time to time.

## 7. ADHERENCE TO FACTS

That the Company Secretary of shall at all times ensure that,

- a. He acts in the interests of the company
- b. Ensure integrity in all his decisions and acts
- c. He shall not pursue any act which is contrary to the interest of shareholder and general public.
- d. He shall abide by the code of conduct as applicable to the directors of the company and senior management personnel of the company.

## 8. NON-DISCLOSURE

That the Company Secretary understands that any information obtained during the course of this employment may have certain information which may be highly confidential. He commits not to share any such information with any third party during the course of his employment or any time thereafter.

## 9. NON-COMPETE

That the company secretary shall after the conclusion of this contract not join the office of any company or body corporate or any other entity which is in the business similar to that of the company for a period of 6 months.

## 10. TERMINATION

That either of the parties to this Agreement shall have the opportunity to terminate this Agreement by giving a 6 month notice in writing to the other party at the address provided elsewhere in this Agreement.

## 11. INDEMNITY

That the employee agrees to indemnify the company its promoters, directors its officers or employees at all times for the breach of this agreement to the extent of actual losses suffered or an amt. of Rs. \_\_\_\_\_ in case if the quantum of loss is not determinable. The effect of this clause shall not be restricted only till the conclusion of this agreement but also in future.

## 12. DISPUTE

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

...Party of the first part

Name

Signature

...Party of the second part

Name

## WITNESSES

1. Name

Signature

Address

2. Name

Signature

Address

## SETTLEMENT AGREEMENTS

A settlement agreement is a legal contract that **resolves the disputes among all parties by coming to an agreement**. It is a legal document where all parties in a court case, in civil law, agree to an outcome of any judgment being made in advance.

**Settlement agreements are formed through mediation rather than through a trial.** However, the judge will ultimately make the decision to approve the settlement after one is reached. Settlement agreements allow all parties to be hard and be satisfied with the outcome.

## WHAT IS THE PURPOSE OF A SETTLEMENT AGREEMENT?

Here are some situations in which a settlement agreement can apply:

1. Any property damage claim;
2. Mediation/Conciliation Settlement Agreements;
3. Corporate Settlement Agreements;
4. Family Business Settlement; and
5. Employment disputes.

With any settlement agreement, there first needs to be negotiations in order to agree on certain provisions. A mediator is useful to agree on a factual account of the situation if necessary. In some corporate settlements, one party may only agree to settle if no wrongdoing or liability must be admitted. Some settlement agreements may also have conditions, such as how long a party has to fulfill his or her contractual obligations. Therefore, you must agree on whether all current and future claims are resolved by this agreement or whether it fulfills only a single claim or lawsuit.

## HOW CAN YOU PREPARE FOR A SUCCESSFUL SETTLEMENT AGREEMENT?

1. Understanding the **potential terms and researching them** will get you ahead in the settlement agreement process.
2. You can start by looking at any terms that would **assist the case in the mediation process**.
3. For these cases, **a minimum of preparation requires consideration of whether payment will be made as a lump sum or in a series of payments**. In addition, the scope of the claims being asserted and any releases must be considered.

### SPECIMEN OF SETTLEMENT OF FAMILY BUSINESS

#### FAMILY SETTLEMENT DEED

This Deed of family settlement is executed on **Friday 3<sup>rd</sup> day of November 2023** at Pune.

#### BY AND BETWEEN

A (Hereinafter referred to as 'elder brother' or 'Party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

#### AND

B (Hereinafter referred to as 'younger brothers' or 'Party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

WHEREAS A, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS B, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS both brothers started to carry on the business of textile Mills jointly in partnership form by equal capital contribution.

AND WHEREAS between both the parties to this Agreement, certain disputes arose and they decided to separate the ancestral property amongst themselves as directed hereto.

**NOW THIS DEED OF FAMILY SETTLEMENT WITNESSETH AS UNDER**

That A shall keep the shop situated at \_\_\_\_\_ along with all assets it comprises of without any claim from the second party.

That B shall keep the house situated at \_\_\_\_\_ along with all assets it comprises of without any claim from the first party.

That the all the residual property including a bungalow situated at \_\_\_\_\_ be reserved by younger brother without any claim from first party.

That any other asset not mentioned under the Agreement shall be divided and distributed equally between both the brothers.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THE SAID DEED**

\_\_\_\_\_  
Signature

...Party of the first part

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

...Party of the second part.

\_\_\_\_\_  
Name

**WITNESSES**

1. Name

\_\_\_\_\_  
Signature

Address

2. Name

Signature

Address

## DRAFTING OF BYE-LAWS OF SOCIETIES

### Society

1. A society may be defined as an **association of persons united together by mutual consent to deliberate, determine and act jointly for same common purpose.**
2. When a charitable organisation **intends to have an open participation of large number of people in its functioning and decision making**, it must be registered as a Society.
3. Societies have been envisaged as **welfare and charitable associations** of people having a broad based membership and comparatively more democratic and transparent set up as compared to such set ups as public charitable trusts.
4. According to Section 20 of the Societies Registration Act, 1860, the following societies can be registered under the Act: 'charitable societies, military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.'
5. The main instrument of any society is the **memorandum of association and rules and regulations**. All promoters should sign each page of the memorandum and the signature should be witnessed by competent officers/professionals with their rubber/official stamp and complete address.
6. The Memorandum should contain **name, registered office, area of operation, objects, name of members of governing body and names of promoters**.
7. The Rules and Regulations should **include all the provisions that would regulate functioning of the proposed Society**; it should comprise membership, powers and responsibilities of office-bearers, meetings, quorum of meetings, termination of membership, operation of bank account

and financial year, procedure of dissolution or merger of Society if so required, and other general rules required to manage the society.

8. According to the provisions of Societies Registration Act, 1860, **minimum seven or more adult persons** can form a Society. For a national level Society eight persons from seven different states would be required as promoters.
9. An authorised person from among the promoters **must apply to the concerned Registrar with preferably three alternative names** of the proposed Society so as to avoid any inconvenience if the envisaged name has already been allotted to some other Society. Individuals (excluding minors but including foreigners), partnership firms, companies and registered societies are eligible to form a Society.
10. Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the **district level** (in the office of the District Magistrate or the local office of the Registrar of Societies).
11. A society registered under the Act enjoys the **status of a legal entity apart from the members** constituting it. A society so registered is a legal person just as an individual but with no physical existence.
12. As such it can **acquire and hold property and can sue and be sued**. The society should be registered under the Act to acquire the status of juridical person.
13. When the **society is registered, it and its members become bound to the same extent, as if each member had signed the memorandum**. A society, registered under this Act, must confine its activities to the sphere embraced by its objects. An unregistered society cannot claim benefits under the Income-tax act.
14. **All societies in India have to be registered under the Societies Registration Act 1860.** By and large, the registration and filing procedures are similar in all the states. The only difference is that in some states there is a little more paperwork than the others.

### DRAFTING OF STANDING ORDERS

The Act makes it obligatory for employers of an **industrial establishment where 100 or more workers are employed to clearly define the conditions of employment**, by way of standing orders/services rules and to make them known to the workmen employed. However in the **N.C.T.**

of Delhi, the Act applies to an industrial establishment where 50 or more workmen are employed or were employed in the preceding 12 months.

The employer is required to prepare draft standing order, which he propose to adopt and submit the same to the Certifying Officers for certification. The employer is required to act in conformity with the certified standing orders in dealing with the day today affairs of the workmen. Certified standing orders have the force of the law like any other enactment.

### ADMINISTRATIVE MACHINERY

All Deputy Labour Commissioners of the Labour Department have been appointed Certifying Officers for the purpose of certification of the proposed standing orders of the respective areas under their control. Industrial Tribunal-I is the Appellate authority under the Act.

### PENALTY

The Act provides that in case the employer fails to submit the draft standing orders, a fine up to Rs. 5,000/- can be imposed and in case of contravention of the standing orders, a fine up to Rs. 100/- and in case of continuance of the offence, further fine up to Rs. 25/- for each such day can be imposed.

### REPLY OF SHOW CAUSE NOTICES

#### Show Cause Notice by Court (Reply)

If the Court sends a Show Cause Notice, the person to whom such notice is given must give it the highest priority. The reason being that by sending a reply to the show cause notice, he/she can avoid criminal charges put on him and also the liabilities which arise from them.

Points to be kept in mind while writing a reply to show cause notice:

1. A proper explanation has to be provided at the earliest.
2. It should be kept as brief as possible.

3. It must be written in such a manner that the **Court is satisfied with the fact** that he/she is aware of the gravity of the situation.

### Some more points to be kept in mind

1. Any individual must draft his/her reply in such a way that if any **layman would read it he should find the same as reasonable**.
2. Always sound **humble** in your reply and also sound sorry for the same.
3. Be always very careful to file the reply within the **specified time limit** mentioned in the notice.

In case of **Meenakshi v. State of Haryana**, Considering the chain of facts and highlighting the reply filed by the petitioner to the notice under Section 340, the Court clarified that there was nothing illegal in it and did not amount to miscarriage of justice at all, for the opportunity of being heard was given to the petitioner as she was allowed to file reply to the show-cause notice. It is the non-acceptance of the forgiveness sought that has led to the filing of the complaint in the Court. Inderjit Singh, I accordingly held that there is no merit in the case and accordingly, dismissed the petition.

### NOTICES UNDER THE NEGOTIABLE INSTRUMENTS ACT

According to Section 138 of Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, **be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.**

Provided that nothing contained in section 143 shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

### NOTICE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT

Name of the Advocate

Address

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

7 November 2023

To,

Mr. A

Address \_\_\_\_\_

Subject - Notice under Section 138 of Negotiable Instruments Act, 1881

Dear Sir,

I have been instructed by my client Shri. \_\_\_\_\_ to serve this legal notice to you with reference to the above referred subject.

I have been informed that you and my client have been engaged into multiple commercial transactions for more than a decade. Considering the past reputation, my client extended some credit period to you for sale of goods worth Rs. \_\_\_\_\_ vide invoice no. \_\_\_\_\_ amounting to Rs. \_\_\_\_\_.

That the credit period offered to you for making the said payment expired and hence my client sent multiple reminders to you dated \_\_\_\_\_ and \_\_\_\_\_, after which, you issued a cheque amounting to Rs. \_\_\_\_\_ dated \_\_\_\_\_ drawn on \_\_\_\_\_ bank

That my client deposited this cheque on \_\_\_\_\_ in his bank account and he was shocked to know that the said cheque was dishonoured with the remarks insufficient funds.

That in terms of Section 138 of Negotiable Instruments Act, 1881, you are instructed to pay the amount of cheque within 15 days from the date of this notice, failing which, you shall be liable to be prosecuted under the said Act as well as the provisions of Indian Penal Code, 1860.

If this is not acted upon, in addition to amount of cheque, you shall be liable to be prosecuted and also bare the legal cost.

Sd/-

Advocate

**REPLY TO LEGAL NOTICE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT**
**REPLY TO LEGAL NOTICE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881**

Name of the Advocate

Address

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

22 Nov 2023

Shri \_\_\_\_\_

Advocate

Address

**Subject: Reply to legal notice under section 138 Negotiable Instruments Act, 1881**

Dear Sir,

They says reference to the legal notice served upon us dated \_\_\_\_\_ on behalf of Shri \_\_\_\_\_ my client based upon whose instructions, I have been advised to submit as under:

That the notice served by you to my client contains false allegations, basis of which is explained below. In furtherance, we call for an apology letter for disreputing my client as no allegations made by you have any valid grounds.

The para 2 of your notice states that the goods are offered to my client on credit period and the credit period expired and no money was paid by my client to yours. However, in reality, your client requested my client to keep certain goods at my client's showroom and pay the necessary amount against it only when these goods were sold from my client's showroom.

That in addition to above, when my client tried selling these goods, goods were found to be defective and out dated and hence no question of payment arises to your client.

That if by mistake, based upon my client's reputation, if these goods were sold, it would have badly affected my client's reputation and hence you should be charged for cheating.

That para 4 of your notice states that we were served a couple of legal notices, they were not replied to. Since the goods were never sold, the question of payment does not arise.

That my client as a token of security handed over a blank cheque to you in trust that it will only be deposited with my client's permission and you deposited the same without it. Also, the handwriting on the cheque is not that of my client.

That we accordingly deny all the allegations said upon us on the ground stated above and you are further advised to withdraw the said Legal Notice in order to avoid any further litigations on grounds of defamation.

Sd/-

Advocate

## TIPS TO IMPROVE DRAFTING OF LEGAL DOCUMENTS

1. **Keep Readers In Mind:** What you write should resonate with what the recipients or readers want. For figuring out the exactness, you should get deep with their expectations. The tone & intent of the document should be based on the requirement of the audience.
2. **Jot Points Prior Writing:** Every legal document should be optimally organized. It is a key to its success. For it, create a layout by jotting all contextual points. Take those points as a guide for the effective legal document writing.
3. **Avoid Formal & Technical Terms:** The formal and technical terms is called Legalese in legal writing. These can be typical legal phrases and jargon. The inclusion of words like aforementioned, herein, wherein, and hereto etc. can make your writing offbeat, forced and detached. So, replace them with more concise, clear and simple words.
4. **Keep Writing To The Point:** Your every word should be comprehensively brief. Keep your sentences short and concise, contributing to the entire case. Avoid extraneous words. Complex sentences have a great scope for redundancies. So, try to make them short and simple.
5. **Active Voice Brings Clarity on Subject:** Passive voice creates confusion. It turns out more complicated when there is no mention of the subject of any doing. On the flip side, active voice makes it crystal clear who the doer or subject is. So, instead of writing "People were terminated", say, "XYZ terminated people".
6. **Be Careful When You Edit:** Impeccable writing needs merciless editing. Keep your heart aside when it comes to omitting unnecessary words. Don't hesitate to rewrite where the documents need more clarity on a specific point. Legal writing needs careful proofreading. You may lose your credibility as a legal professional if your documents are full of grammatical & punctuation errors or spelling mistakes. Even, your client may underrate your work.

## CHAPTER 5 - DRAFTING OF COMMERCIAL CONTRACTS

### IMPORTANT CLAUSES OF COMMERCIAL CONTRACTS

1. Details on the **court that will have jurisdiction** and the **governing law**, especially for domestic and international cross-border transactions.
2. **Liquidated damages** clause to specify damages upon breach of contract.
3. **Confidentiality clause** to prevent unauthorized disclosure of confidential information.
4. **Dispute resolution clause** stating how disputes arising from the transaction will be handled.
5. **Termination clause** detailing how any party can opt-out of the arrangement and conditions than will end the contract.
6. **Indemnity clause** to protect parties from liabilities caused by a breach of contract or negligent acts of third parties.
7. **Force majeure** clause to remove liability for failure to perform contractual obligation caused by unforeseen and unavoidable circumstances.

### LIMITED LIABILITY PARTNERSHIP AGREEMENT

1. Limited Liability Partnership is **governed by Limited Liability Partnership Act, 2008** which came into force on April 1, 2008.
2. LLP Agreement is a **written contract between the partners** of the LLP or between the LLP and its designated partners.
3. It establishes the **rights and duties of the designated partners** towards each other as well toward the LLP. It is **compulsory to execute and file the LLP agreement with MCA within 30 days of the incorporation of LLP**.

### CONTENT OF LLP AGREEMENT

#### 1. Name of the LLP

The name must end with LLP or Limited Liability Partnership as per the provisions of the LLP Act, 2008.

## 2. Date of the agreement and parties to the agreement

After incorporation, the agreement is to be executed within 30 days as per the LLP Act, 2008.

LLP agreement is between all the partners and designated partner. The agreement must contain the date and of entering into an agreement.

## 3. Introductory provisions

It includes all the definitions of terms used in the LLP agreement.

## 4. Place of business

The agreement must contain the place of business which is the registered office of the LLP.

## 5. Business activity

It must be in the same nature as approved by the MCA at the time of incorporation of LLP.

## 6. Duration

If the LLP is formed for the specific period, then such period must be mentioned after which the LLP must be dissolved. LLP can also be formed for certain object, after completion of such object; the LLP must be closed. In the absence of specific period or object, one can include the duration of LLP as up to the period until which, it is terminated with the consent of the partners of the LLP.

## 7. Accounting and Auditing

This includes how to maintain the books of accounts, whether it is cash basis or accrual basis. During which period a partner can access books of accounts, whether an audit is mandatory or will follow the rules mentioned in the LLP Act.

## 8. Partners' contribution and method of contribution

Represents the contribution ratio of partners in terms of capital invested, interest on contribution, Profit Sharing Ratio as well as the time period after which the capital can be withdrawn by any of the designated partners.

#### 9. Record keeping and bank arrangement

It includes the maintenance, storage, and recording of books and other related documents.

#### 10. Allocation and distribution

It clarifies the system of profit sharing among all partners and distribution including interim distribution or final distribution. It portrays the distribution of Profit between the partners as per the decided ratio.

#### 11. Disassociation of partner

Specifies the terms and conditions when partners can withdraw or disassociate from the LLP.

This is one of the vital clauses of the LLP Agreement. It states the rights of partners and rights on assets after disassociation.

#### 12. Partners' rights to records

Each partner has the right to check the records for avoiding misappropriation.

#### 13. Management and Fiduciary Duty

It takes into account the liability of the management of a LLP and the appointment of the person liable for taking care of confidential information of the LLP.

#### 14. Arbitration and General Provisions

In the case of conflict between parties, the parties may involve the third person known as an arbitrator who listens to both the parties and takes a decision, which is to be accepted by both the parties concerned and the final order must be applied on both parties.

**SPECIMEN MODEL LIMITED LIABILITY PARTNERSHIP AGREEMENT OR LLP AGREEMENT**
**LLP AGREEMENT**

This LLP agreement is executed on **Thursday, 23<sup>rd</sup> day of November 2023** at Pune.

**BY AND BETWEEN**

A (Hereinafter referred to as 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**AND**

B (Hereinafter referred to as 'party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**AND**

C (Hereinafter referred to as 'party of the third part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**WHEREAS** A age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** B age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** C age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

All the parties mentioned above are jointly and severally called as partner(s).

**AND WHEREAS** all the parties jointly decided to enter into an LLP agreement or carrying out the business of \_\_\_\_\_

AND WHEREAS all the partners decided to carry out the same upon the following terms & conditions:

**NOW THIS LLP AGREEMENT WITNESSETH AS UNDER**

**1. NAME OF THE LLP**

That the LLP has been incorporated in the name & style of \_\_\_\_\_ having registration no \_\_\_\_\_

**2. OBJECT OF THE LLP**

That the LLP shall be formed with the object of carrying on business of \_\_\_\_\_ or such other business as may be decided by all the partners.

**3. CAPITAL CONTRIBUTION**

That the partners shall contribute an amount of Rs. divided between them as follows:

Sr. no.	Amount
---------	--------

1	_____
---	-------

2	_____
---	-------

3	_____
---	-------

**4. PROFIT & LOSS SHARING RATIO**

That the partners agree to share the profit or losses of the LLP business in the ratio of capital contribution as stated above. The same may be altered in future on change in partners.

**5. DRAWINGS & LOAN BY OR TO PARTNERS**

That the partners shall be authorised to draw an amount not exceeding Rs. \_\_\_\_\_ with the consent of atleast 2 partners out of the profits shall carry interest @ rate of \_\_\_\_\_

That the firm may take loan from any of its partners if the need, at an int. rate of \_\_\_\_\_ %.

## 6. ADMISSION OF A PARTNER

That in future, if the existing partners induct any new partner, it shall happen only with the consent of all the existing partners. Capital contribution of the incoming partner or % stake shall be decided mutually by all the partners.

## 7. REMUNERATION

That the remuneration of a partner shall be decided by all the partners at the end of the financial year jointly. The criteria to determine remuneration shall be laid down by all the partners jointly.

## 8. RIGHTS & RESPONSIBILITIES

- i. That each partner shall have access to the books of a/c of the firm at all times
- ii. That each partner shall act in the interest of the firm, ensure integrity & fairness in all transactions.
- iii. That each partner shall have powers to employ people as & when considered necessary that 2 or more partners together shall make payment to creditors & make recovery from the debtors of the firm.

## 9. MEETINGS

That all the decision making of the firm shall be taken by majority of the partners done as & when required. A 7 day notice in writing shall be served upon all the partners at the registered addresses by the way of emails as informed by them. The partners shall have the opportunity to attend the meetings either physically or through video conferencing.

## 10. BOOKS OF A/C

That the books of a/c shall be maintained at the registered office of the firm or such other place as may be decided jointly by all the partners. Books of a/c shall be duly audited at the end of each financial year.

**11. BANK A/C**

That the bank a/c shall be opened with the bank as may be decided by atleast 2 partners & the same shall be operated with the signature of atleast 2 partners.

**12. RIGHT OF FIRST OFFER**

That in case any of the partners wish to exit from the firm, first opportunity to buy his stake shall be with the existing partners. In case if the existing partners do not respond to this offer within a period of 60 days of this offer, the outgoing partner in that case shall have the opportunity to sell his share to any third party & in that case the existing partners shall not have the right to object.

**13. NON - DISCLOSURE**

That each of the partners shall at all times ensure that all the information with respect to its business, process, trades, banking amongst others shall be kept confidential during the term of this agreement and any time thereafter. Any breach of this clause shall result into criminal prosecution.

**14. NON - COMPETE**

That all the partners agree during the term of this agreement and for 2 years after the expiry of the term that they shall not directly or indirectly be indulge in any activity which is similar or ancillary or related with the business of the firm.

**15. WINDING UP**

That if all the partners voluntarily decide to terminate the operations of the firm, it shall proceed to sell off all its assets, paying of all the liabilities & any surplus if left shall be distributed amongst the partners in their profit sharing ratio.

**16. TERMINATION**

That if any of the partner is desirous of vacating his office, he shall do so by serving a 30 day notice in writing to the firm. Disqualification as a partner shall lead to automatic termination of his partnership.

### 17. INDEMNITY

That in case if any partner of the firm is found to be involved in an act of fraud or misconduct or mismanagement, he shall at all times indemnify the firm, its partners or any third party to the extent of losses and if the damages are not determinable by an amt. of Rs. \_\_\_\_\_ or more.

### 18. DISPUTE

That in case of any dispute arising between the parties with reference to any of the clause of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both parties governed by Arbitration & Conciliation Act, 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THE SAID AGREEMENT**

Signature

...Party of the first part

Name

Signature

...party of the second part

Name

### WITNESSES

1. Name

Signature

Address

2. Name

Signature

Address

## JOINT VENTURE

1. A joint venture (JV) means a **strategic arrangement between two or more businesses, where resources are pooled, to work together on a specific project or an ongoing basis.**
2. Each of the participants in a JV is responsible for profits, losses, and costs associated with it. **However, the venture is its own entity, separate from the participants' other business interests.**
3. It is important that the parties to the joint venture define their respective roles and responsibilities.
4. It is important to note whether the deal is for a short or long-term arrangement, whether a **separate company should be set up for the purpose, whether it is purely a loose collaboration agreement** or whether there is a view to a merger or acquisition in the future.
5. Among the categories of JV Agreements, Contractual Joint Venture can take the form of **two or more parties coming together to collaborate on a specific project, share the costs of R&D act or share knowledge and expertise on an ongoing basis.**

## SPECIMEN JOINT VENTURE AGREEMENT

### JOINT VENTURE AGREEMENT

This agreement is executed on Saturday, 25<sup>th</sup> day of November 2023 at Pune.

#### BY AND BETWEEN

ABC Ltd. (Hereinafter referred to as 'Indian co' or 'Party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

#### AND

XYZ INC (Hereinafter referred to as 'Foreign co' 'Party of the second part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

**WHEREAS** ABC Ltd. is a company formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D. Managing Director of the company.

**AND WHEREAS** XYZ INC is a foreign co. formed under the laws of United States of America and has its office situated at \_\_\_\_\_.

**AND WHEREAS** the foreign co. had its expertise in the area of \_\_\_\_\_

**AND WHEREAS** in order to expand its business Operations in India, it decided to look for joint venture partner and accordingly approached the Indian co.

**AND WHEREAS** the Indian co. has its expertise in marketing & distribution activities & accordingly both the parties decided to enter into a joint venture agreement by formation of new co. upon following terms & conditions:

#### **NOW THIS JOINT VENTURE AGREEMENT WITNESSETH AS UNDER**

##### **1. NAME OF THE JV CO**

That the parties to the agreement have decided to carry out the business in Joint Venture by formation of a new co. in the name & style of \_\_\_\_\_ or such other name as may be suggested by the concerned ROC. The registered office of the co. shall be situated at \_\_\_\_\_

##### **2. CAPITAL CONTRIBUTION**

That both the parties shall bring in an amount of Rs.50,00,00,000 (Rupees Fifty crores only) divided into Rupees 5,00,00,000 (five crore only) equity shares of 10 (Rupees ten only) totalling to Rs.100,00,00,000 (Rupees hundred crores only) This capital may be altered in future with the consent of the present shareholders as per the provisions of Companies Act, 2013.

### 3. TERM

That the said JV shall operate for a period of 10 years from the date of this agreement. The said period may be further extended with the approval of both the parties.

### 4. NATURE OF BUSINESS

That the said JV Company shall carry out the business of \_\_\_\_\_ or the activities ancillary to this business. The object of JV co. may be altered in future depending upon the necessary sanctions /approvals.

### 5. ROLES & RESPONSIBILITIES

That it shall be the responsibility of

- a. Foreign partner to bring in the technology and necessary expertise to implement the same.
- b. Foreign partner to train the employees or officers of JV co to manufacture company's products.
- c. Of the Indian co. to market and distribute the co.'s products across the country.
- d. To hire employees depending upon the needs.
- e. Foreign co. shall appoint its representative as the MD to look after the production related activities.
- f. Indian co. to appoint its representative as an executive director to strategize marketing & sales.

### 6. PROTECTION OF INTELLECTUAL PROPERTY

That it shall be the responsibility of the Indian Co, all its directors, officers, promoters and employees or associates to protect the intellectual property as brought in by the foreign company. Also, the IP shall always have a proprietary right of the foreign company.

### 7. REPATRIATION

That the Indian partner understands that the funds brought in by the foreign co shall be in USD, however the same when brought back to India shall be converted into INR through an authorised dealer via normal banking channels. Dividend or any benefit given by JV co. shall be INR only.

**8. EXPORTS**

That the goods manufactured by JV co. shall also be eligible for exports as the goods are sold in India.

**9. PERMISSIONS**

That it shall be the responsibility of Indian co. to obtain all the necessary permissions or sanctions as may be required in order to carry out the said manufacturing activity foreign co. agrees that it shall extend its full cooperation in terms of information, documentation or liaisoning required for obtaining necessary licenses.

**10. NON-COMPETE**

That the parties to the agreement shall agree that during the course of this agreement or any time after the conclusion of this agreement for a period of 3 years neither of the parties shall start or become a party to any business similar to the business of JV co or any allied activities apart from the existing business pursued by each of the JV co.

**11. NON-DISCLOSURE**

That the Indian co. appreciates that the necessary technology required to carry out the JV business is a proprietary patent of foreign co. The Indian co. its promoters, directors, its officers or employees shall at all times agree to keep the registered information, confidential and shall not use them for any other purpose or for the JV business.

**12. TERMINATION**

That the either of the parties to agreement shall have a right to terminate the said agreement by giving 6 month notice in writing to other party and first offering the shares to other party or any other party as suggested by the noticed party.

**13. INDEMNITY**

That the Indian co. its officers, directors, employees, promoters shall at all times indemnify the foreign co, its directors, promoters, officers and employees as well as the foreign co. along with its directors, officers, promoters, employees indemnify the Indian co. along with its officers,



promoters, directors, employees against any risk of loss, damage that may have occurred or happened during course of business activity.

## 14. DISPUTE

That in case of any dispute arising between the parties with reference to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both parties governed by Arbitration & Conciliation Act, 1996.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR  
RESPECTIVE HANDS ON THIS DATE TO GIVE EFFECT TO THE SAID AGREEMENT

Signature

... party of the first part

Name \_\_\_\_\_

Signature

... party of the second part

Name \_\_\_\_\_

## WITNESSES

1. Name

Signature

## Address

2) Name

Signature

## Address

## FOREIGN 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.
- Indian entrepreneurs are seeking all possible avenues for obtaining technical know-how in the fields of agriculture, mining, oil exploration, power generation, 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.

**Example:** Mr. A is a plot owner and Mr. B is constructor, entered into a contract stating inter alia that Mr. B will construct 4 floors on the entire plot and Mr. A will take two floors and remaining two floors will be owned by Mr. B on account of construction cost. Here, Mr. B is not taking any construction cost from Mr. A and they are using each other's resources. Such contracts are named as Collaboration contracts.

### SPECIMEN FOREIGN COLLABORATION AGREEMENT

#### FOREIGN COLLABORATION AGREEMENT

This agreement is executed on Saturday, 25<sup>th</sup> day of November 2023 at Pune.

#### BY AND BETWEEN

ABC Ltd. (Hereinafter referred to as 'Indian co' or 'party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

AND

XYZ Ltd. (Hereinafter referred to as 'foreign co.' or 'party of the second part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

WHEREAS ABC Ltd. is a company formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D, Managing Director of the company.

AND WHEREAS the foreign co. formed under the laws of United states of America.

AND WHEREAS the Indian co. has already constructed factory buildings, installed plant & machinery and commenced manufacture and production of existing business.

AND WHEREAS India co. is desirous to improve the quality of commodities manufactured and to increase production is desirous of procuring latest technology and know-how for the said business.

AND WHEREAS Indian co has approached foreign co. that has considerable experience in manufacture in business of Indian co and requested the foreign co. to extend necessary technical assistance to Indian co.

AND WHEREAS foreign co has agreed to extend technical assistance and to furnish Indian co. requisite know-how in the form of designs, plans, drawings and technical advice to India co.

**NOW THIS FOREIGN COLLABORATION AGREEMENT WITNESSETH AS UNDER**

#### 1. Scope of Activities

That the foreign co.'s responsibility shall include but not limited to following:

i) To provide necessary technical know-how, latest research related to the co.'s existing technology.

- ii) To assist in setting up of a factory at the appropriate location & its commissioning.
- iii) To establish an R&D lab for constant upgradations in present technology
- iv) To assist Indian co. in procurement of plant & machinery for the new set up.
- v) Such other activities as may be mutually agreed upon between the parties.

## 2. Royalty

That Indian co. shall pay lump sum amount of Rs. \_\_\_\_\_ to foreign co. for technical know-how provided by foreign co. and phased as follows:

- a) fifty percent of amount at the time of agreement.
- b) balance fifty percent thereafter the completion of period of this agreement.

## 3. Termination

That either of the parties to agreement shall have right to terminate the said agreement by giving 6 months notice in writing to other party and first offering the shares to other party or any other party as suggested by the notice party.

## 4. Cost of Travel/Stay

That any of the cost incurred of travel/stay by technicians who may be deputed by foreign co. for providing technical assistance or advice under this agreement shall be paid their salary, travelling expenses and boarding & lodging by Indian co.

## 5. Improvements

That the parties understand that the present technology upgrades constantly. Foreign co. shall during the tenure of the agreement inform of such developments and its application to the Indian co. from time to time basis.

## 6. Exports

That the Indian co. may but not bound to use foreign brand names on their products on internal sale or the products to be exported. There shall be no restrictions on Indian co. exporting their product to foreign co.

## 7. Applicability of Laws

That the agreement shall be subject to Indian laws.

## 8. Non-Disclosure

That the Indian co. shall maintain utmost secrecy in connection with any technical data provided by foreign co. and in particular shall keep all data concerned with manufacturing process under lock & key.

## 9. Indemnity

That the Indian co. along with its officers, directors, promoters, employees shall at all times indemnify the foreign co., its directors, promoters, officers, employees as well as foreign Co. along with its officers, directors, promoters, employees shall at all indemnify the Indian co. its directors, promoters, officers, Employees against any risk of loss, damage that may have occurred or happened during course of business activity.

## 10. Dispute

That in case of any dispute arising between the parties with reference to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both parties governed by Arbitration & conciliation Act 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THE SAID AGREEMENT**

Signature

... party of the first part

Name

Signature

... party of the second part

Name

## Witnesses

1) Name Signature

Address

2) Name Signature

Address

### JOINT DEVELOPMENT RIGHTS AGREEMENT

1. In a Joint Development Agreement (JDA), a landowner contributes his land for the construction of a real estate project and the developer undertakes the responsibility for the development of property, obtaining approvals, launching, and marketing the project.
2. This agreement should be registered under Section 53A of the Transfer of Property Act.
3. The developer agrees to provide lump sum consideration, percentage of sales revenue, or a certain percentage of the newly constructed project on the said piece of land. This depends on the terms and conditions, mutually agreed upon by the parties.
4. The cost of land in a real estate project entails substantial part of total cost of the project. In such arrangement, developer is not required to make investment for acquiring land at the initial stage and he can utilize his expertise of project development with limited resources in a much efficient manner.
5. Land owner, who may not be having requisite experience and expertise for developing the project, gets better price for his land in comparison to what he would have got in the case of outright sale of land. Thus, it creates a win-win situation for both the parties.
6. The area of Joint development agreement is not restricted to Real Estate only. With the expansion of technology, a joint development agreement can be for a new product or technology. In these types of agreements, prominence is on the research and development of Intellectual Property Rights. A Joint development agreement is also called a strategic alliance agreement.

**SPECIMEN FORMAT OF JOINT DEVELOPMENT AGREEMENT****JOINT DEVELOPMENT AGREEMENT**

This joint development agreement is executed on 5<sup>th</sup> day of December 2023 at Pune.

**BY AND BETWEEN**

A (Hereinafter referred to as the 'owner' or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators etc.)

**AND**

B (Hereinafter referred to as the 'developer' or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators etc.)

**WHEREAS A** age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS B** age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS A** owns a plot of land which is rightfully situated at \_\_\_\_\_

**AND WHEREAS A** wanted to develop this plot into a residential project & he accordingly approached Mr. B for the same.

**AND WHEREAS Mr. B** after due consideration & negotiations agreed to develop this project jointly upon the following terms.

**NOW THIS JOINT DEVELOPMENT AGREEMENT WITNESSETH AS UNDER:**

### 1) Description of land

That the subject property is a plot of land admeasuring about \_\_\_\_\_ rightfully situated at \_\_\_\_\_ & is surrounded by the following:

Towards North \_\_\_\_\_

Towards South \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

### 2) Construction Activity

That the plot shall be developed into a residential building having each floor admeasuring about \_\_\_\_\_ total four floors. Each flat shall have four BHK apartments each admeasuring about \_\_\_\_\_ comprising of two terrace, four bathrooms, a servant area. As per the plan as place before Mr. A as approved by him.

### 3) Deposit

That the developer agrees to deposit a total of Rs. 2 crores (Rupees two crores only) with the owner as per the following:

- 25% of the total amount to be paid at the time of execution of this agreement via bank transfers.
- 25% to be paid at the time of completion of basement work via. bank transfer.
- 25% to be paid at the time of completion of two floors.
- balance 25%. to be paid at the time of handover of the complete project.

That the said deposit amount shall be considered as consideration towards 50% share in land as well as constructed 3<sup>rd</sup> & 4<sup>th</sup> floor towards the owner. This deposit money shall not carry any interest to be paid and is on a non-refundable basis

### 4) Construction cost

That the developer agrees to use the following construction material:

Steel \_\_\_\_\_

Sanitary \_\_\_\_\_

Wood \_\_\_\_\_

Iron \_\_\_\_\_

That it shall be the responsibility of the developer to bear the entire cost of construction including the cost of labour & their insurance.

### 5) Time period

That the entire project shall be completed within a period of 3 years from the last date of all the permissions & sanctions as applicable & as received by the developer for the project.

### 6) Allocation

That it is agreed by & between the parties that 50% of the share in total land shall be kept by the developer and the remaining 50%. shall be kept by the owner.

That the absolute & unconditional title rights for the first & second floor including the basement & parking area with parking slot no \_\_\_\_\_ to \_\_\_\_\_ shall belong to the owner while the absolute & unconditional title rights for the 3<sup>rd</sup> & 4<sup>th</sup> floor including the basement & parking area with parking slot no \_\_\_\_\_ to \_\_\_\_\_ shall belong to the developer.

That the deposit amount is treated as part of consideration in furtherance either of the parties shall not be obligated pay any sum of money to the other party.

### 7) No prior encumbrance

That the owner confirms that no present or future right over this plot of land has been created by him.

### 8) No adverse title

That the parties understand that the possession as well as the right to use to carry out construction shall be with the developer for the specified time period. He shall at no point in time create any adverse title over the sale. After completion of the constructed area, only the

land as well as constructed area as specified above shall belong to the developer and apart from that he shall have no title over the area allocated to the owner.

9) **Permission & sanctions**

That the developer shall take the responsibility to obtain all the necessary clearances or permissions for the proposed construction activity. The owner shall extend his full cooperation in providing necessary document.

10) **Status report**

That the developer has agreed to provide a report on a quarterly basis to the owner about the completion of work and if there is any delay, reasons for the same.

11) **Inspection**

That the owner of the property shall have a right to inspect the site any time without giving any prior notice to the developer or the site contractor.

12) **Water & electricity supply**

That the owner assumes the responsibility to ensure appropriate supply of water or electricity. However, the cost of the same shall be part of project cost & hence borne by developer.

13) **Cost & charges**

That the owner undertakes to bear property tax till the date of obtaining necessary sanctions and commencement of construction activity. After that such cost till the handover of the project shall be borne by the developer. Cost of registration, stamp duty or any other legal charges relating to development or transfer of the land as well as constructed area shall be borne equally by both the parties.

14) **Force majeure**

That in the event of any loss arising out of any act beyond the control of either of the parties to the agreement i.e. flood, earthquake, drought, covid or any act of god, such loss shall always be borne by the owner.

## 15) Default

That the developer shall at all times indemnify the owner in case if he does not complete the construction on time or use agreed quality materials or leaves the project incomplete, in such a case the deposit money kept by the developer shall be forfeited by the owner and in addition he shall be liable to compensate the owner by an amount of Rs. \_\_\_\_\_ to be paid on such default.

## 16) Dispute

That in case of any dispute arising between the parties with respect to any clauses of this agreement the same shall be subject to the jurisdiction of the court of Pune.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

\_\_\_\_\_  
Signature

.... Party of the first part

Name

\_\_\_\_\_  
Signature

.... Party of the second part

Name

**Witnesses:**

1) Name

Address

2) Name

Address

**SERVICE AGREEMENTS****SPECIMEN AGREEMENT OF EMPLOYMENT OF MANAGER OF A BUSINESS CONCERN****AGREEMENT OF EMPLOYMENT OF MANAGER OF BUSINESS CONCERN**

This agreement of employment of Manager of Business Concern is executed on **Wednesday, 22<sup>nd</sup> day of November, 2023** at Pune.

**BY AND BETWEEN**

ABC Ltd (Hereinafter referred to as 'employer' or 'Party of the first part' and unless the text otherwise expresses shall include its administrators, liquidators, etc.)

**AND**

Mr. X (Hereinafter referred to as 'employee' or 'party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**WHEREAS** ABC Ltd is a company formed and registered under the Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D, Managing Director of the company.

**AND WHEREAS** Mr. X, age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** in order to better supervise certain affairs of the company more particularly described elsewhere in this agreement, the company decided to hire at Manager level and it accordingly give an advertisement in the newspapers for the same.

AND WHEREAS Mr. X based upon the said advertisement applied for the position of the Manager and his application was shortlisted consequently interviewed and was appointed with the designation Manager (Administration) upon the following terms & conditions.

**NOW THIS AGREEMENT OF EMPLOYMENT OF MANAGER OF BUSINESS CONCERN  
WITNESSETH AS UNDER**

**1. PERIOD OF SERVICE**

That Mr. X shall be appointed for a period of 3 years from the date of this agreement and the same could be further extended upon the terms as agreed between parties.

**2. PROBATION PERIOD**

That the appointment of Mr. X shall be subject to a probation period of 3 months, which either of the parties shall have the option to terminate this agreement by serving 7 days notice at the address mentioned above or elsewhere in the agreement.

**3. REMUNERATION**

That the manager shall be entitled to the following:

Basic salary \_\_\_\_\_

Dearness Allowance \_\_\_\_\_

Perquisites \_\_\_\_\_

Allowances \_\_\_\_\_

Retirals \_\_\_\_\_

**4. ROLES & RESPONSIBILITIES**

That the office of Manager shall include and not limited to:

- The Manager shall give his whole time to the business and shall give his endeavour to improve and expand the business.
- The Manager shall keep proper of books of accounts of business concern at \_\_\_\_\_ or any other place as desired by the employer.

c. The manager shall attend any tour for business purpose and any expenses actually incurred during tour shall be paid by the employer.

#### 5. ADHERENCE TO RULES

That the Manager at any time shall ensure that:

- a. He acts in the interests of a company.
- b. Ensure integrity in all his acts and decisions towards business concern
- c. He shall abide by code of conduct as may be applicable to him.
- d. He shall not pursue any act which is contrary to the interests of business concern

#### 6. NON-DISCLOSURE

That any information obtained during the employment during his course of his employment may have certain information which may be highly confidential. He commits not to share any such information with any third party during his term of employment or any time thereafter.

#### 7. TERMINATION

That the both the parties have option to terminate this agreement by serving 7 days notice in writing at \_\_\_\_\_ or address provided elsewhere.

#### 8. DISPUTE

That any dispute between both the parties shall be referred to the sole arbitrator who shall be appointed jointly by both the parties.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

\_\_\_\_\_  
Signature

...Party of the first part

\_\_\_\_\_  
Name

---

 Signature

...Party of the second part.

Name

**WITNESSES**

1. Name

Signature

Address

2. Name

Signature

Address

**SPECIMEN RENEWAL AGREEMENT OF TERM OF SERVICE OF AN EMPLOYEE (EITHER ON  
OLD TERMS OR NEW TERMS)**
**SERVICE RENEWAL AGREEMENT**

This service renewal agreement is executed on Wednesday, 22<sup>nd</sup> day of November 2023, at  
Pune.

**BY AND BETWEEN**

ABC Ltd. (Hereinafter referred to as 'employer' or 'party of the first part' and unless the text  
otherwise expresses shall include its administrators, liquidators, etc.)

**AND**

Mr. X (Hereinafter referred to as 'employee' or 'party of the second part' and unless the text  
otherwise expresses shall include its administrators, legal heirs, etc.)

WHERE AS Mr. X age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS ABC Ltd is a company formed and registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D, Managing Director of the company.

AND WHEREAS an employment contract was executed between both the parties dated \_\_\_\_\_

AND WHEREAS both the parties mutually decided to extend the term of this service contract upon the following.

**NOW THIS SERVICE RENEWAL AGREEMENT WITNESSETH AS UNDER**

1. That clause 2 of the service contract dated \_\_\_\_\_ shall now be considered valid for another period of 3 years from the date of this contract.
2. That all the terms and conditions as specified in the original contract shall continue to be in effect upon the same term except the one stated above.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

Signature

...party of the first part

Name

Signature

...party of the second part

Name

## WITNESSES

1. Name Signature

Address

2. Name Signature

Address

## DEALERSHIP AGREEMENT, DISTRIBUTORSHIP AGREEMENT & FRANCHISE AGREEMENT

### DEALERSHIP AGREEMENT

1. A dealership agreement is a **legal document that outlines the terms of the contract between a distributor or a vendor and a dealer.**
2. A dealer agreement can also **govern the business relationship** between a general dealer and a vendor.
3. A dealership agreement with a larger manufacturer can include obligations of a dealer such as requirements of the facilities, rules around the dealer's employees and personnel selling and requirements for statements and sales reporting.

### DISTRIBUTORSHIP AGREEMENT

1. A distributorship agreement is a **legally binding contract** between a supplier and a distributor **in which the distributor purchases and sells items from the supplier in order to sell them to retailers and/or consumers directly.** As a result, the distributor does not hold any stock in the firm.
2. The distributorship agreement **describes the parties rights, expenses, area, and obligations in respect of product distribution.** The agreement confers on the distributor the right to supply the manufacturer's goods within a region or regions.
3. The **basic elements** of a distributorship agreement **include the term (time period for which the contract is in effect), terms and conditions of supply and the sales territories covered by the**

agreement. Matters such as **remuneration to be paid, insurance, transportation and related risk, duration of the distributorship, legal matters** are mentioned in a distributorship agreement.

4. The manufacturer or vendor must also determine whether the **distributorship agreement will be exclusive or nonexclusive**. In an exclusive agreement, the specified distributor will be the sole distributor with the right to sell the product within a particular geographic region or within multiple regions. If the arrangement is nonexclusive, the manufacturer or vendor may supply other distributors, sometimes competing in the same market.

### DIFFERENCE BETWEEN A DISTRIBUTION AGREEMENT AND A DEALER AGREEMENT

1. A distributor agreement involves the manufacturer and a distributor, while a dealership agreement is between a distributor or a vendor and a dealer.
2. Dealers, such as retailers or value-added resellers, buy products from distributors and resell them to their consumers. The distributor operates as an intermediary between a supplier and dealers in a distributor-dealer relationship.
3. The scope of both agreements also varies. Distributors are often assigned territorial rights, which may stretch across one or several states, while dealers typically limit their operations to the city or a local community.
4. The investment involved in Distributorship is considerably more than the Dealership. Both distributors and dealers rely on each other. The structure is such that distributors are wholesalers who buy from manufacturers and provide to dealers, whereas the dealers obtain products from the distributors and sell to the public.
5. A dealership agreement often outlines the conditions of sales for items acquired from the distributor, as well as the dealer's expected obligations and responsibilities and the circumstances under which the agreement may be cancelled.

### FRANCHISE AGREEMENT

1. A franchise agreement is a legally enforceable contract between a franchisor and a franchisee.
2. These agreements authorise a franchisee to open a franchise site while also granting the ability to use franchise-specific resources such as branding, business methods, and supplier sources.

3. Franchise agreements define the limitations within which franchisees can operate and clarify any financial commitments they have to their franchisors. They also often provide greater safeguards to franchisors than to franchisees.
4. Typically, these types of agreements are unilateral in nature. One of the primary goals of a franchise settlement is to protect the franchise system as a whole. This includes the brand, the integrity of the operating system, and the conduct of franchisees within the mix.

### DIFFERENCE BETWEEN A DISTRIBUTORSHIP AGREEMENT & A FRANCHISE AGREEMENT

BASIS	FRANCHISE AGREEMENT	DISTRIBUTORSHIP AGREEMENT
<b>The method of operation</b>	The franchisee is allowed and encouraged to use the franchisor's trademarks and brand name in ordinary business procedures under the terms of the franchise agreement. To aid the franchisee's success, the franchisor also gives advertising and training assistance. To retain the franchisor's brand identity, a franchisee must follow precise criteria while promoting and selling items.	A distributor is not allowed to use the company's trademarked name when distributing its items. Instead, the distributor does business under its own identity. It serves as a product reseller, but it does not conduct business on behalf of the firm that manufactures the things.
<b>The degree of control</b>	Franchisor has far more influence over the franchisee and the franchisee's management of the franchised firm. An excellent example is a franchisor maintaining continuous quality control over its franchisees, frequently through an operations manual, marketing strategies, inspections, and other processes to	The supplier has less influence over the operations of a distributor.

	guarantee brand standards are maintained across the network.	
Payments	A franchisee pays an initial fee and a continuing royalty to the franchisor in exchange for the right to operate the business under the franchisor's name.	A distributor pays for the items purchased from the supplier.

### SPECIMEN OF A DEALERSHIP CONTRACT

#### DEALERSHIP AGREEMENT

This agreement is executed on Saturday, 25<sup>th</sup> day of November 2023 at Pune.

#### BY AND BETWEEN

Mr. X (Hereinafter referred to as 'distributor' or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrator, etc.)

#### AND

Mr. Y (Hereinafter referred to as 'dealer' or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrator, etc.)

WHEREAS Mr. X age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS Mr. Y age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS Mr X in order to expand its business operations in the state of Maharashtra decided to appoint a dealer on an exclusive basis and accordingly approached Mr. Y for the same & after due course of negotiations agreed to carry out the same upon the following terms & conditions:

**NOW THIS DEALERSHIP AGREEMENT WITNESS AS UNDER:**

**1) Area**

That the dealer shall be responsible for selling the goods of the firm in the State of Maharashtra. This dealership agreement shall be on exclusive basis i.e. dealer shall not promote the goods of any other competitor & at the same time distributor shall not appoint any other dealer for the same area.

**2) Products**

That the dealer shall be responsible for selling the following goods:

SR. NO.	PARTICULARS	MRP
---------	-------------	-----

That the dealer confirms that he shall not sell the goods supplied by distributor at the price less than what stated above.

**3) Term**

That this agreement continue to be in force for the period for 3 years from date of this agreement or such term as may be mutually decided between the parties.

**4) Sub - agency**

That the dealer shall be authorised to appoint selling agents at its own cost for selling the goods supplied by the distributor. Any loss on such default made by any of these parties shall be borne by dealer and not the distributor.

**5) Commission**

That the dealer shall be entitled to a commission at 3% of total goods brought from the co. the rate of commission may be altered in future with the mutual consent of both the parties.

**6) Supply of material**

That the dealer shall raise a purchase order with the distributor and the distributor shall ensure that the goods are supplied to the dealer within 3 days of purchase order & subject to full & final payment based upon the invoice raised by distributor in advance.

**7) Risk of loss**

That the goods till the time they reach buyer's godown any risk of loss or damage to those goods shall be borne by the seller. Once the inspection of goods is complete in buyer's godown and goods are in proper condition as acknowledged by the buyer, any liability thereafter shall be borne by a buyer.

**8) Accounting & records**

That both the Parties shall properly maintain records of all transactions between them and any payment thereof shall be settled at quarterly dates.

**9) Termination**

That either of the parties to this agreement shall have right to terminate this agreement by giving a 6 months notice in writing to other party & first offering share to other party or any other party as suggested by the notice party.

**10) Indemnity**

That the dealer shall at all times indemnify the distributor against in default in payment as against invoice raised by the distributor as well as distributor shall indemnify dealer against any wrong supply of goods if goods does not match the purchase order that happened during the course of this agreement.

## 11) Dispute

That in case of any of the dispute arising between parties with reference to any of the clauses mentioned in this agreement shall be referred to the sole arbitrator who shall be appointed jointly by both the parties, governed by Arbitration & Conciliation Act, 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THE AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THIS DEALERSHIP AGREEMENT.**

.... Party of the first part

Signature

Name

.... Party of the second part

Signature

Name

**Witnesses**

1) Name: *signature*

Address:

2) Name: *signature*

Address:

**SPECIMEN OF A DISTRIBUTORSHIP AGREEMENT**

**DISTRIBUTION AGREEMENT**

This distributorship agreement is executed on Saturday, 25<sup>th</sup> day of November 2023 at Pune.

**BY AND BETWEEN**

ABC Ltd. (Hereinafter referred to as 'supplier' or 'party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

AND

Mr. X (Hereinafter referred to as 'distributor' or 'party of the second part' and unless the text otherwise expresses shall be include its legal heirs, administrators, etc.)

WHEREAS ABC Ltd. is a co. formed and registered under the provisions of companies Act 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D Managing Director of a company.

AND WHEREAS Mr. X age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS the co. in order to expand its business operations in the state of Maharashtra decided to appoint a distributor on an exclusive basis.

AND WHEREAS co. accordingly approached Mr. X for the same & after due course of negotiations agreed to carry out the same.

AND WHEREAS the board of directors of A Ltd. at its meeting held on \_\_\_\_\_ decided to appoint Mr. X as an exclusive distributor for the state of Maharashtra upon the following terms & conditions:

#### NOW THIS DISTRIBUTORSHIP AGREEMENT WITNESSETH AS UNDER:

##### 1. Area

That the agent shall be responsible for selling the goods of the firm in the state of Maharashtra. This distributorship agreement shall be on an exclusive basis i.e. agent shall not promote the goods of any of co.'s competitor & at the same time co. shall not appoint any other distributor for the same area.

## 2. Products

That the distributor shall be responsible for selling the following goods of the co.

SR. NO	PARTICULARS	MRP
--------	-------------	-----

That the distributor confirms that he shall not sell the goods of the co. at the prices less than what is stated above.

## 3. Term

That this agreement shall continue to be in force for a period of 3 years from the date of this agreement or such other term as may be mutually agreed between the parties.

## 4. Sub-agent

That the distributor shall be authorised to appoint distributors, dealers or selling agent at its own cost in order to sell the goods of the co. any loss on such default made by any of these parties shall be borne by the distributor and not the co.

## 5. Commission

That the distributor shall be entitled to a commission at 4% of total goods brought from the company. The rate of commission may be altered in future with the mutual consent of both the parties.

## 6. Supply of Material

That the distributor shall raise a purchase order with the co. & accordingly the co. shall ensure that the goods are supplied to the distributor within 3 days of the purchase order & subject to full & final payment based upon the invoice raised by co. in advance.

## 7. Risk of loss

That the goods till the time they reach buyer's godown, any risk of loss or damage to those goods shall be borne by the seller. Once the inspection of goods is complete at the buyer's godown & goods are in proper condition, the buyer shall acknowledge the same to the company.

## 8. Marketing

That the co. at its own cost market about its products at national level. The distributor also is authorised to market products of the co. within its jurisdiction to promote co.'s goods, cost of which shall be borne by the distributor himself. However any sales or promotional activity shall 1<sup>st</sup> be approved by the company.

## 9. Accounting & Records

That both the parties shall properly maintain record of all the transactions between them & any payment thereof shall be settled at quarterly rests.

## 10. Non - Compete

That the distributor confirms that while dealing with the goods of the co. he shall not promote the products of any other co. which is in competing business. At the same time co. also confirms that for the designated area, it shall not appoint any other distributor, breach of which may provoke indemnity clause.

## 11. Non-Disclosure

That the distributor confirms that any info obtained during the course of this agreement about the co. shall always be kept confidential not only during this term but even after its conclusion.

## 12. Termination

That either of the parties to agreement shall have right to terminate the said agreement by giving 6 month notice in writing to other party & first offering the shares to other party or any other party as suggested by the notice party.

## 13. Indemnity

That the distributor shall at all times indemnify the supplier against any non-payment as against invoice raised by co. as well as the supplier shall at all times indemnify the distributor against any wrong supply of goods if the goods do not match the purchase order or that happened during the course of this agreement.

#### 14. Dispute

That in case of any of the dispute arising between the parties with reference to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both parties governed by Arbitration & Conciliation Act 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THE SAID AGREEMENT**

Signature

... party of the first part

Name

Signature

... party of the second part

Name

**Witnesses**

1) Name

Signature

Address

2) Name

Signature

Address

#### **SPECIMEN OF A FRANCHISE AGREEMENT**

#### **FRANCHISE AGREEMENT**

This franchise agreement is executed on 30<sup>th</sup> day of November 2024 at Pune

**BY AND BETWEEN**

A Ltd. (Hereinafter referred to as "seller" or 'franchiser' or 'the party of the first part' and unless the text otherwise expresses shall include its liquidators, administrator, etc.)

AND

B (Hereinafter referred to as 'buyer' or 'franchisee' or 'the party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrator, etc.)

WHEREAS A Ltd. is a company formed and registered under the provisions of Companies Act, 2013 has its registered office situated at \_\_\_\_\_ and represented through Mr. C, Managing Director of the company.

AND WHEREAS B age \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_

AND WHEREAS A Ltd. is in the business of \_\_\_\_\_ & it wanted to expand its business operations in the state of \_\_\_\_\_ & it decide to expand the same through franchise model.

AND WHEREAS Mr. B was looking to invest in same business and accordingly approached A Ltd to seek franchise opportunity.

AND WHEREAS A Ltd. sent a proposal to B along with its terms & accordingly Mr. B agreed and both of them decide to put it in writing & hence this agreement.

**NOW THIS FRANCHISE AGREEMENT WITNESSETH AS UNDER:**

**1) Investment**

That the 2<sup>nd</sup> party understands that the cost of setting up this franchise is Rs. \_\_\_\_\_. In addition to this, the cost of deposit to be kept with the franchiser shall be Rs \_\_\_\_\_ which shall be on non refundable basis. Apart from this, the franchise shall also bear all the recurring cost more specifically rentals, utility charges, salaries, taxes, cost of inventory, etc.

## 2) Area

That the franchisee shall open an exclusive store of the brand at \_\_\_\_\_. B assures that only the goods of franchiser shall be sold through this store. The franchisor also commits this franchisee to be its only store in area specified. The template of store format, min area required & its interiors shall be as per the design given by the franchiser. The cost of the design shall be borne by franchiser.

## 3) Term

That this franchise agreement shall continue to be in force for a period of 5 years & the same term could be extended further with mutual consent of both the parties.

## 4) Products

That the franchisee shall procure goods from the co. at the least price as stated below:

SR. NO.	PARTICULARS	LIST PRICE	MRP
1			
2			
3			
4			

That the retail price of these products shall also be given by the franchiser. No discounts over these prices shall be offered by the franchiser without prior written consent of franchiser.

## 5) Royalty

That on the total sale value, the franchisee shall pay royalty on net of sales (sales value (-) taxes) @ 5%. The royalty shall be paid within 7 days from the end of month.

## 6) Logistics

That considering the reputation of brand, it is expected that goods will be transported quite frequently. Cost of logistics till it reaches the store of franchisee shall be borne by the franchisor himself.

## 7) Software

That the supply chain management tools, point of sale tool, inventory management tool shall be provided by franchisor himself & the same tools & software shall be used by the franchisee. The franchisee shall pay no additional cost for the same.

## 8) Risk of loss

That the parties understand & accept clarity over the goods been transported from one location to another & the primary risk involved in transit. It shall be the franchisor who shall bear this risk of loss in transit till it reaches franchises godown.

## 9) Insurance

That as soon as goods are loaded, it shall be the responsibility of franchisee to secure the loss of goods by obtaining necessary insurance. The cost of insurance shall be borne by the franchisee.

## 10) Advertising

That the franchisor has PAN India presence & accordingly any advertising campaign run by the franchiser & its associated cost shall be borne by the franchisor. If any marketing & advertising is done at local level, this cost shall be borne by the franchisee. However, the advertising material or content shall be fixed at approval by the franchisor.

## 11) Accounting

That the parties agree to settle the royalty amount on a monthly basis however cost of the goods less goods returned shall be settled on quarterly basis based upon the invoice raised by franchisor.

## 12) Termination

That either of the parties to this agreement shall have right to terminate this agreement by giving a 6 months notice in writing to the other party & first offering shares to the other party or any other party as suggested by the noticee party.

## 13) Default

That in case if the franchisee at anytime commits any breach in any of the terms of this agreement, the franchisee shall be liable to compensate the franchisor by an amount of Rs \_\_\_\_\_ and this agreement in that event shall automatically stand terminated.

## 14) Dispute

That in case of any dispute arising between the parties with reference to any terms of this deed, the same shall be subject to jurisdiction of court at Pune.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

For A Ltd

.... Party of the first part.

Name

Managing director

.... Party of the second part.

signature

Name

Witnesses:

1) Name

Address

signature

2) Name

Address

signature

## OUTSOURCING AGREEMENTS

1. Outsourcing is the contracting out of a **company's 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.
2. Two common types of outsourcing are **Information Technology (IT) outsourcing** and **Business Process Outsourcing (BPO)**.
3. **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**.
4. 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.
5. 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 professional before finalizing any outsourcing agreement.

### SPECIMEN OF OUTSOURCING AGREEMENT FOR CONVERTING HARD COPIES OF A BOOK IN A COMPACT DISC (CD)

#### OUTSOURCING AGREEMENT

This outsourcing agreement is executed on the 2<sup>nd</sup> day of December 2023.

#### BY AND BETWEEN

A Ltd (Hereinafter referred to as 'company' or 'party of the first part' and unless the text otherwise expresses shall include its administrators, liquidators, etc.)

#### AND

B Ltd (Hereinafter referred to as 'company 2' or 'party of the second part' and unless the text otherwise expresses shall include its administrators, liquidators, etc.)

WHEREAS A Ltd is a company formed & registered under the provisions of Companies Act, 2013 having its registered office situated at \_\_\_\_\_ & is being represented through Mr. C.

AND WHEREAS B Ltd is a company formed & registered under the provisions of Companies Act, 2013 having its registered office situated at \_\_\_\_\_ & is being represented through Mr. D

AND WHEREAS A Ltd published a book titled \_\_\_\_\_ in physical form and it wanted to digitize this book & also obtain a search engine of the same.

AND WHEREAS B Ltd holds its expertise in digitisation process.

AND WHEREAS A Ltd approached B Ltd to carry out the said work which B Ltd agreed upon the following term & conditions.

#### NOW THIS OUTSOURCING AGREEMENT WITNESSETH AS UNDER:

##### 1) Digitisation

That the outsourcee shall digitize the book titled \_\_\_\_\_ into digital form along with its active tagging. Along with this, it shall also create a search engine tool as instructed by A Ltd will be at liberty to use this search tool in the way it wants.

##### 2) Training of employees

That the outsourcee after completing the digitisation process undertake to train the employees for effective usage of digital book. It shall also provide a manual on how material changes could be done to this digital book. If the outsourcee improvises the process of digitisation in

next 3 years from the date of this agreement, it shall be its responsibility to apply such improvements to this digital creation.

### 3) Term

That the outsourcee undertakes to complete the said digitisation process within a span of 6 months from date of this agreement.

### 4) Consideration

That the parties have agreed upon a total sum of Rs. \_\_\_\_\_ out of which 50% shall be paid at the time of execution of this agreement & the balance to be paid on handover of the digital book.

### 5) Proprietary rights

That the outsourcee understands that this digital book shall be the proprietary right of A Ltd and A Ltd will be free to use or market the book in the way it deems appropriate & in no way it shall create any adverse title over the same. The physical book shall be kept in the safe custody of outsourcee & the relevant portions of the same be marked to create appropriate search tool.

### 6) Force Majeure

That in the event of any loss arising out of any act beyond the control of either of parties to the agreement i.e. flood, earthquake, drought or any act of God, such loss shall always be borne by A Ltd.

### 7) Termination

That either of the parties may terminate this agreement after giving a notice of 30 days to the other party at the address mentioned earlier.

### 8) Indemnity

That A Ltd agrees to indemnify B Ltd & its officers, directors, employees, promoters to the extent of loss suffered. As well as B Ltd along with its officers, directors, employees shall at

all times indemnify A Ltd its directors, officers, employees, promoters against any risk of loss, damage that may have occurred or happened during course of business activity.

#### 9) Dispute

That in case of any of the dispute arising between the parties with reference to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both parties governed by Arbitration & Conciliation Act 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THIS AGREEMENT.**

For A Ltd

sd/-

C

.... Party of the first part

For B Ltd

sd/-

D

.... Party of the second part

**Witnesses:**

1) Name

Address

2) Name

Address

## NON-DISCLOSURE AGREEMENT

1. A non-disclosure agreement (NDA) which is sometimes also referred to as a "Confidentiality Agreement" is a **legally binding contract that establishes a confidential relationship**.
2. The party or parties signing the agreement agree that **confidential/sensitive information they may obtain will not be made available to any others**.
3. The NDA serves a purpose in a variety of situations e.g. NDAs are generally required when two **companies enter into discussions about doing business together but want to protect their own interests** and the details of any potential deal.
4. In this case, the language of the NDA forbids all involved from releasing information regarding any business processes or plans of the other party or parties.

## SPECIMEN OF NON-DISCLOSURE AGREEMENT

### NON-DISCLOSURE AGREEMENT

This Non-disclosure agreement is executed on 8<sup>th</sup> day of December, 2023 at Pune.

### BY AND BETWEEN

A Ltd (Hereinafter referred to as 'party of the first part' or 'company' and unless the text otherwise expresses shall include its liquidators, administrator, etc)

### AND

B Ltd (Hereinafter referred to as 'party of the second part' or 'corporation' and unless the text otherwise expresses shall include its liquidators, administrators, etc)

WHEREAS A Ltd is a company formed & registered under the Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D, Managing Director of the company.

AND WHEREAS B Ltd is a corporation registered under the Companies Act, 2013 and has its registered office situated at \_\_\_\_\_

AND WHEREAS both the parties engaged into a business arrangement to be carried out over a period of 5 years and both the parties shall during the course of this arrangement will be sharing certain confidential information with each other.

AND WHEREAS in order to secure their respective rights, the parties decided to engage and bind themselves into a confidentiality agreement upon the following terms:

#### NOW THIS NON-DISCLOSURE AGREEMENT WITNESSETH AS UNDER:

##### 1) Proprietary information

That the proprietary or confidential information shall include but not limited to any trademark, secrets, marketing plan, business approach, patent board discussions or any operational or financial information relating to its proposed or present business plans either directly from the subject company or any of their office & associate. This may be shared orally or in writing, in physical or electronic form by one party (referred to as disclosing party) to the other party (referred to as receiving party).

##### 2) Secrecy

That the party shall at all times keep all the information as referred above confidential and only with the designated officer or third party with prior written permission from the disclosing party.

That both the parties shall endeavour to take all possible steps to avoid any misuse of this information & maintain the same confidentially as if its theirs.

### 3) Need to know basis

That both the parties depending upon the nature of transaction shall identify the officers and employees or any third party with whom such information shall be shared and also undertake to take all possible steps to ensure that these parties do not share the information further.

### 4) Non-confidential information

That the following shall not amount to confidential Information:

- a) Information available in public domain.
- b) Information already with the receiving party, which has no restriction.
- c) Information specifically made permissible to be disclosed by the disclosing party.

### 5) Right to use

That the parties understand that proprietary information is centric to both the business & hence shall only be used for the purpose as made permissible by disclosing party.

### 6) Term

That this agreement for exchange of info shall be for a period of 5 years. However, the confidentiality of the information shall apply even after the conclusion of this agreement.

### 7) Right to reproduce

That no copies of the info disclosed by disclosing party shall be obtained by the receiving party without prior written consent from disclosing party.

### 8) Disruption of information

That in order to prevent ill use of the proprietary info in whatever form it is received by the receiving parties, the same shall be destroyed immediately after its usage or after the term specified by the disclosing party. After disrupting the same, receiving party shall certify in writing the same to disclosing party

9) **Summons**

That it may so happen that the parties may be summoned to share the confidential information before any judicial or quasi-judicial body. The receiving party shall intimate about such summons to disclosing party immediately and shall share only that part of information which is essentially asked for and not the entire set of the information.

10) **Termination**

That either of the parties to agreement shall have right to terminate the said agreement by giving 6 month notice in writing to other party.

13. **Indemnity**

That the defaulting party, shall at all times indemnify the suffering party, its directors, officers or employees of the company to the extent of losses suffered at actuals.

14. **Dispute**

That in case of any of the dispute arising between the parties with reference to any of the clauses of this agreement, the same shall be referred to the sole arbitrator who shall be appointed jointly by both parties governed by Arbitration & Conciliation Act 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THE AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THIS AGREEMENT ON THE DATE MENTIONED ABOVE**

Signature

.... Party of the first part

Name

Signature

.... Party of the second part

Name

**Witnesses:**

1) Name

Address

2) Name

Address

**ELECTRONIC CONTRACTS (E-CONTRACTS)**

1. E-Commerce is the **selling and purchasing of goods and services using technology**.
2. E-contract (contract that is not paper based but rather in electronic form) is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.
3. Electronic contracts are **born out of the need for speed, convenience and efficiency**. For example, a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet somewhere and sign the contract.
4. In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a scenario.
5. In India, **Information Technology Act, 2000** governs the law relating to e-contracts substantially.
6. The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per the **Indian Contract Act, 1872**.
7. The **Information Technology Act (IT Act)** solves some of the peculiar issues that arise in the formation and authentication of electronic contracts. **The Indian Evidence Act, 1872** deals with the presumption as to e-records. Providing the electronic records as evidence in the disputed matter.

## ESSENTIALS OF E-CONTRACT

As per the Indian Contract Act, the essentials of a e-contract are:

- (i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement *consensus-ad- idem*.
- (ii) An intention to create legal relations or intent to have legal consequences.
- (iii) The agreement is supported by lawful consideration.
- (iv) The parties to contract are legally capable of contracting.
- (v) Genuine consent between the parties.
- (vi) The object and consideration of the contract is legal and is not opposed to public policy.
- (vii) The terms of the contract are certain.
- (viii) The agreement is capable of being performed, i.e., it is not impossible of being performed.

## TYPES OF E-CONTRACTS

### Click-wrap or Web-wrap Agreements

These are the agreements which we generally come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a “click through” agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. *Type and Click* where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. *Icon Clicking* where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a “take-it-or-leave-it” type of contract that lacks bargaining power.

### The Shrink-wrap Agreements

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

### 15. Electronic Data Interchange or EDI

These contracts, used in trade transactions which enable the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods), can be processed with virtually no paperwork. Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.

### On-Line Shopping Agreement

Suppose 'X' Ltd. wants to offer online shopping services to its customers. 'X' would tie-up with manufacturers of books, toys, clothes, etc., and offers their products for sale through its website. Some of the products could be stocked in Y's warehouses while others could be stocked with the manufacturers.

Additionally, visitors can post reviews, comments, photos etc on the 'X' website. 'X' would need to enter into a contract with all its potential customers "before" they place an order for a product using 'X' services.

### **IMPORTANT POINTS IN REGARD TO E-CONTRACTS**

The important points relating to e-contracts are as under:

### Customer's relationship with 'X'

The contract must specify that **by using the 'X' website, the customer becomes subject to the terms of a legal agreement** between the customer and Y. Customers must be informed that they must be of legal age to enter into the contract.

### Acceptance of the terms of the contract

The contract must clearly lay down that **a customer cannot use the 'X' website unless he agrees with the terms of the contract**. The customer can usually indicate his acceptance by clicking on an "I Accept" link or checking an "I Accept" checkbox.

### Copyright

The contract should clearly state that all content included on the 'X' website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of 'X' Ltd.

### Customers duties and obligations

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

- i. Not overload Y's systems.
- ii. Not download or modify the 'X' website.
- iii. Collect and use any product listings, descriptions, or prices.
- iv. Download or copy account information by data gathering and extraction tools.
- v. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
- vi. Not use any meta tags or any other "hidden text" utilizing Y's name or trademarks.
- vii. License from Y

### License from Y

The contract should specify that 'X' is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of 'X' so long as the link does not portray Y, or its products or services in a false, misleading, derogatory, or otherwise offensive matter. The

contract must also specify that 'X' is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided as part of the 'X' website. The contract must clarify that this licence is for the sole purpose of enabling the customer to use the 'X' website.

### Reviews and comments

The contract should clearly mention that the reviews, comments, photos etc posted by customers **should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.** It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." It should also be stated that a customer who posts content grants to 'X' Ltd. non-exclusive, royalty-free, perpetual, irrevocable, and fully sub licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media. **The contract must also state that the customer posting the content indemnifies 'X' against all legal action and claims resulting from the said content.**

### Risk of loss

'X' has a shipping contract with various courier companies to deliver the products to the customers. **The contract should clearly state that once the products are handed over to the courier company, 'X's liability ends.**

### Pricing

The contract should clarify how the prices listed on the 'X's website are computed. The various options could be:

- i. The listed price represents the full retail price listed on the product itself,
- ii. The listed price is suggested by the manufacturer or supplier,
- iii. The listed price is estimated in accordance with standard industry practice, or
- iv. The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

### Applicable Law

The contract should mention the **city / state and country whose law will prevail in this contract**.

The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.

### Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "as is" and "as available".

### Ending the relationship between 'X' and the customer

The contract must lay down that the customer can terminate the contract by closing his accounts with Y.

## CHAPTER 6 - DOCUMENTS UNDER COMPANIES ACT, 2013

### SALE OF IMMOVEABLE PROPERTY

Sale of immovable property is governed by the provisions of Transfer of Property Act, 1882.

**Sale defined** - "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

#### Essentials of a Sale of Immoveable Property

- (1) Transfer of ownership in exchange of price.
- (2) Parties to transaction of sale are known as **seller** and **buyer**.
- (3) Subject-matter of sale is **immovable property**.
- (4) Delivery of possession of property to the buyer by seller may be made as under:
  - (i) Property of the value of **less than Rs. 100/-** may be transferred merely by delivery of physical possession;
  - (ii) Property of the value **exceeding Rs. 100/-** may be transferred under a written instrument known as 'Sale Deed' which should be registered under the Registration Act, 1908.
- (5) Sale of immovable property **attracts stamp duty**.
- (6)
  - (i) **Clearance certificate from the Income-tax Officer** is required to be obtained by the seller where the sale consideration of immovable property exceeds Rs. 5,00,000/- as a pre-requisite for registration.
  - (ii) In all cases where the consideration money of the property exceeds Rs. 10 lakhs, it is obligatory for the parties to enter into an agreement in writing, at least three months before the intended date of transfer.
  - (iii) **Permission of Income-tax Officer**
  - (iv) **Requisite permission or exemption under the provisions of Urban Land (Ceiling and Regulation) Act, 1976.**
  - (v) **General permission of RBI** if the property acquired is owned by **Non-resident**.

## DOCUMENTATION

Usually a transaction of a sale of immovable property involves two documents, e.g., **Agreement to sell and the sale deed**. But with only a Sale Deed, the transaction of sale can be completed.

In **Suraj Lamp & Industries Pvt Ltd. v. State of Haryana** the Supreme Court of India observed that it has become common practice to effect transfers of immovable property by way of either general power of attorney (GPA) sales or sale agreement, GPA or will transfers in order to evade, inter-alia, the payment of duties, taxes and other fees payable on transfer and registration (eg, stamp duty or registration fees).

The Apex Court held that such transactions are illegal and cannot be recognized as valid under law. Hon'ble Court further sought to distinguish these illegal transactions from genuine transactions entered into by parties in good faith. While referring to Sections 53A and 54 of the Transfer of Property Act and its decisions in earlier cases, it further observed that a transfer of immovable property by way of sale can be effected only by a deed of conveyance. In the absence of a deed of conveyance, duly stamped and registered, no right, title or interest in an immovable property can be transferred.

## ACQUISITION OF IMMOVEABLE PROPERTY BY THE COMPANY

A draftsman must bear in mind all these things, before buying a property in the company's name:

### 1. Lawful Consideration and Object

The property must be purchased for consideration. Also, the objectives for which the property is being purchased by the buyer should be lawful i.e., not forbidden by law or opposed to public policy.

### 2. Competence of Person to Transfer

For a company to enter into a transaction of sale or purchase, the authority should be the Board of Directors and by the Memorandum and Articles of Association. In case the other

party is an individual, such individual should be considered competent to enter into a contract.

### 3. Transfer of All Interest - in the Property

All interests which a transferor is capable of passing in the property should be explained in the document

### 4. Absolute Transfer

The transfer should be free of any conditions or limitations.

### 5. Absolute Interest

The interest being transferred in the property should not be conditional.

### 6. Justification for Transfer

Cogent reasons for the transfer be given so as to establish bona fide base for the transaction.

### 7. Protection of Creditors' Interest

Law protects creditors' interest in the transferred property.

### 8. Property to be Free from Conditions

The property being transferred should be free from any rights or obligations.

### 9. Transfer in Good Faith and with Full Authority

Where the property is transferred by a person not to be the real owner, it is necessary to make such transfer valid for the transferor should have the authority to transfer and he must exercise this authority in good faith.

### 10. Protection for Defective Title

Law protects the transferee who acquires the immovable property under good faith and for bona fide consideration.

## TRANSFER OF UNDERTAKINGS: AMALGAMATION

Amalgamation means *merging of two corporations, destroying both in the process and creating an entirely new entity i.e. a new financial organization*. This emergence allows the newly formed company to inherit the assets and liabilities of its constituent parties to incorporate within as a sort of successor to both of them being bigger and better than both as well.

The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings.

There may be amalgamation either by:

- (i) the transfer of two or more undertakings to a new company, or
- (ii) the transfer of one or more undertakings to an existing company.

### CASE LAW

In the matter of Speed line Agencies Vs. T Stanes & Co. Ltd- Supreme Court decided that, with effect from the effective date, all proceedings in which Transferor Company was a party be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made.

In other words, when a transferor company stands dissolved (with or without winding up) due to amalgamation, its right under the decree for eviction devolves on the transferee company.

Sections 230 to 240 of the Companies Act, 2013 provide various methods of company re-organisation or reconstruction. The various terms used for reorganisation are arrangement, reconstruction, amalgamation, merger, take-over, etc. They are distinct terms but they have many common features and to a great extent they overlap. The expression "arrangement" is of wider import and include reconstruction and amalgamation.

**“Arrangement”** has been defined in explanation to section 230(1) of the Companies Act, 2013 as including a reorganisation of the company’s share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods.

**“Arrangement”** has a wider interpretation and includes reconstructions and amalgamations.

**“Reconstruction”** has not been defined in the Companies Act. A reconstruction normally entails the transfer of an undertaking to another company, consisting substantially of the same shareholders with a view to its being continued by the transferee company, and usually resorted to for achieving one or more of the following objects:

- For the purpose of raising fresh capital by issuing partly paid shares in the new company in exchange for fully shares in the old company, and calling up the balance on new shares as and when required;
- For extending the company’s objects;
- For reorganising or rearranging the capital structure and the rights of members as between themselves; and
- For effecting a compromise with creditors, or the allotment to them of shares or debentures in settlement of their claims.

A reconstruction may, however, take place, without the promotion and incorporation of new company, by compromise with members involving alterations of various rights between each class, usually also involving the writing down of the amount of share capital (as in a reduction of capital, which is a special form of reconstruction) and by a compromise with creditors (including debenture holders).

Amalgamation usually covers a situation where two or more companies join forces either under the name of one of them or in a new company formed for the purpose. This is a blending of two or more existing undertakings into one, the shareholders of each company becoming substantially the shareholders in the company which is to carry on the blended undertakings.

**DEED OF AMALGAMATION & TRANSFER OF UNDERTAKINGS OF COMPANIES****AGREEMENT FOR AMALGAMATION**

This agreement of amalgamation is executed on Monday, 18<sup>th</sup> day of December 2023, at Pune.

**BY AND BETWEEN**

A Ltd (Hereinafter referred to as 'transferor' or 'party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

**AND**

B Ltd (Hereinafter referred to as 'transferee' or 'party of the second part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

**WHEREAS** A Ltd is a company formed and registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_, represented through Mr. C, Managing Director of the company.

**AND WHEREAS** B Ltd is a company formed and registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_, represented through Mr. D, Managing Director of the company.

**AND WHEREAS** both transferor as well as transferee company decided to amalgamate with each other.

**AND WHEREAS** the said amalgamation shall take place according to the terms specified as per the scheme of arrangement (scheme).

**AND WHEREAS** both the companies being in the same business line poses multiple advantages in terms of synergy to the resulting company.

**AND WHEREAS** the parties subject to statutory approvals agree to this amalgamation upon the following terms & conditions.

**NOW THIS DEED OF AMALGAMATION WITNESSETH AS UNDER:**

**1) Appointed date**

That the valuation of assets & liabilities of both the companies shall be obtained. The date of valuation shall be 1<sup>st</sup> of April 2023 & this date shall be considered as the appointed date towards the said scheme. All the assets & liabilities of the transferor company shall be transferred to the transferee company on effective date upon the valuation as on the appointed date.

**2) Effective date**

That the scheme after receiving all the necessary sanctions & receipt of the tribunal's order, the same be filed in Form INC-28 with the registrar of companies within 30 days of receipt of the order. The date of filing tribunal's order shall be considered to be the effective date. The scheme shall be effective from the effective date & the transferor company shall be dissolved without any winding up order.

**3) Transfer of assets**

That all the assets as appearing in the books of transferor co. as on appointed date including but not limited to all the furniture, fixtures, Int. property, goodwill, land, building machinery, debtors, cash & bank balance, stock be transferred to the transferee co. on effective date subject to various sanctions received during the course of amalgamation.

#### 4) Transfer of liabilities

That all the liabilities as appearing in the books of transferor Co. as on the appointed date including but not limited to secured & unsecured loans, creditors, payables be transferred to the transferee co. on effective date.

#### 5) Transactions between transferor & transferee co

That this amalgamation is based upon the presumption that the amalgamation is complete as on the appointed date itself & it is a mere formality till the effective date to complete all statutory approvals & sanctions. i.e. between both the companies, there shall be trustee, beneficiary relationship wherein transferor co. shall act as a trustee on behalf of transferee co. Any inter party transactions between transferor & transferee co. shall be treated as intra party transactions between appointed date & effective date.

#### 6) Increase in authorised share capital

That with the scheme becoming effective, authorised share capital of the transferor company shall be transferred to the transferee company without any further compliances.

#### 7) Share exchange ratio

That on the assets and liabilities getting transferred from transferor co. to the transferee co. the resulting company shall issue its shares to the shareholders of the transferor co. in the ratio of 1:1 i.e. 1 share of resulting co. for every share held in the transferor co.

#### 8) Value of assets and liabilities

That for the purpose of valuation and identification of swap ratio, the book value of assets and liabilities of both the companies shall be considered.

#### 9) Pending litigations

That all the pending cases filed by or against the transferor co. shall with effect from the effective date be transferred to the transferee co.

### 10) Contracts

That all the contracts executed by the transferor co. shall with effect from the effective date be transferred to the transferee co. and it shall have the same effect as if they were executed by the transferor company.

### 11) Services of employees

That the service of all the employees of the transferor co. with effect from the effective date shall be transferred to the transferee co. upon the same terms & conditions as that of transferor co.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS IN ORDER TO GIVE EFFECT TO THIS AGREEMENT**

For A Ltd

sdl-

.... Party of the first part

Name

Designation

For B Ltd

sdl-

.... Party of the second part

Name

Designation

**Witnesses:**

1) Name signature

Address

2) Name signature

Address

## MORTGAGE DEEDS FOR COMPANIES

Section 58 of the Transfer of Property Act, 1882 defines Mortgage as the **transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.**

## TYPES OF MORTGAGE

### Simple mortgage

In a simple mortgage, the mortgagor **without delivering possession** of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he **fails to pay the debt** and interest in terms of the mortgage deed, the **property may be sold** and the proceeds applied in payment of the mortgaged money.

### Characteristics of a simple Mortgage:

- i. That the **mortgagor must have bound himself** personally to repay the loan.
- ii. That to secure the loan he has **transferred to the mortgagee the right to have the specific immovable property sold** in the event of his having failed to repay.
- iii. That the **possession of the property is not delivered** to the lender.
- iv. In a simple mortgage, the security for the debt is two-fold:
  - (a) the personal obligation; and
  - (b) The property.

### CASE LAW

In *Ram Narayan Singh v. AdhindraNath*, AIR (1916) PC 119 the Court held that the fact that some immovable property has been mentioned as security for its repayment does not displace the personal liability of mortgagor to repay the loan with interest.

### SIMPLE MORTGAGE DEED IS ALREADY DONE IN CHAPTER 4

### Mortgage by conditional sale

Where the **mortgagor** **ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date, the sale shall become absolute**, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a **mortgage by conditional sale** and the **mortgagee** a **mortgagee by conditional sale**. **Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.**

### Characteristics of Mortgage by Conditional Sale:

- i. There is an **ostensible sale** of immovable property.
- ii. It is a **conditional sale**. The sale is subject to any of the following conditions:
  - (a) On **non-payment** of mortgage-money (price) the sale would become absolute or,
  - (b) On **payment of mortgage money the sale shall become void** or the buyer shall re-transfer the said property to the seller.
- iii. The condition must be embodied in the same document.

### CASE LAW

In **Rama v Samiyappa** ILR (1881) 4 Mad 179 183 184 case, the High Court held that the essential of this form of mortgage is that with the default of payment the transaction is closed and the mortgage security becomes the absolute property of the mortgagee. There is no personal liability on the part of the mortgagor to repay the debt. The mortgagor's right of redemption will be lost only by a decree for foreclosure.

### DEED ON MORTGAGE BY CONDITIONAL SALE IS ALREADY DONE IN CHAPTER 4

### Usufructuary mortgage

Where the **mortgagor** **delivers possession** or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and **authorises him to retain such possession until payment of the mortgage-money**, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of

interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called a usufructuary mortgage and the mortgagee an usufructuary mortgagee.

### Characteristics of Usufructuary Mortgage:

- i. **Delivery of possession of the mortgage-property** or, an express or implied undertaking by the mortgagor to deliver such possession.
- ii. **Enjoyment or use of the property by mortgagee** until his dues are paid off.
- iii. There is a **transfer to the mortgagee of one of the incidents of ownership**, namely, the right of possession and enjoyment of the usufruct.
- iv. **No personal liability of the mortgagor**.
- v. **The mortgagee cannot foreclose or sue for sale of mortgage-property**.
- vi. In this form of mortgage, **no time-limit is fixed** for the payment.

### CASE LAWS

Harminder Singh (D) THR. LRS. Appellant(S) Vs. Surjit Kaur(D) THR. LRS. & Ors. Respondent(S), Supreme Court of India, dated 27<sup>th</sup> April, 2022

#### Fact of the Case

The plaintiff is in appeal before this Court against the Judgment and decree passed by the High Court in Second Appeal on 21.12.2007 whereby the mortgagor's appeal was allowed holding that the mortgagor has a right to redeem the land in question.

Gulab Singh - mortgaged his share of land in favour of Rajinder Singh on 02.05.1921 with possession. The defendants inherited the estate of Gulab Singh whereas Rajinder Singh - mortgagee died issueless and his rights were inherited by his wife - Rajinder Kaur. Rajinder Kaur sold her mortgagee rights to the plaintiff vide sale deed dated 18.06.1979.

Since the mortgage was not redeemed by the mortgagor within a period of 30 years, the plaintiff filed a suit for declaration that she had become the owner after the extinguishment of the mortgage rights and for permanent injunction.

### Decision

The Court held that once a usufructuary mortgage is created, the mortgagor has a right to redeem the mortgage at any point of time on the principle that once a mortgage always a mortgage.

Such judgment was affirmed by Supreme Court in 'Singh Ram (Dead) Through Legal Representatives Vs. Sheo Ram & Ors.' In view of the aforesaid judgment, we do not find any merit in the present appeal and the same is dismissed.

### DEED OF USUFRUCTUARY MORTGAGE

#### DEED OF USUFRUCTUARY MORTGAGE

This deed of Usufructuary Mortgage is executed on Monday, 11<sup>th</sup> day of December 2023, at Pune.

#### BY AND BETWEEN

ABC Ltd (Hereinafter referred to as "Mortgagor" or 'party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

#### AND

XYZ Ltd (Hereinafter referred to as 'Mortgagee' or 'party of the second part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

WHEREAS ABC Ltd is a Co. formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D Managing Director of the company.

AND WHEREAS XY2 Ltd is a co. formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. V, Managing Director of the company.

AND WHEREAS ABC Ltd in order to expand its current operations was looking to raise funds.

AND WHEREAS ABC Ltd approached XYZ Ltd and XYZ Ltd agreed to extend the said credit facility by creation of usufructuary mortgage.

AND WHEREAS the Board of Directors of the company at its meeting held on \_\_\_\_\_ agreed to borrow an amt. of Rs. \_\_\_\_\_ from XYZ Ltd. upon the following terms & conditions:

**NOW THIS USUFRUCTUARY MORTGAGE DEED WITNESSETH AS UNDER:**

**1) Description of property**

That the said property is an agricultural land admeasuring about \_\_\_\_\_ sq. ft. is rightfully situated at \_\_\_\_\_ and is surrounded by the following

Towards North \_\_\_\_\_

Towards South \_\_\_\_\_

Toward East \_\_\_\_\_

Towards West \_\_\_\_\_

**2) Mortgage Money & rate of interest**

That the loan transaction shall be for a loan amt. of Rs. \_\_\_\_\_ which shall carry rate of interest @10% per annum to be repaid that in every financial year.

**3) Status of property**

That this transaction being a usufructuary mortgage, which shall involve transfer of possession of the property along with the right to use the said Property to the mortgagee on an absolute basis. The mortgagee shall at no time create any adverse title over the said property and it shall at all times belong to the mortgagor.

4) **Repayment & redemption of property:**

That the repayment of the said loan shall be recovered from the utilisation of the said property and this mortgage shall be concluded only when the entire amt. of loan has been recovered from the use of the said property.

5) **Creation & satisfaction of charge**

That the mortgagor undertakes to file form CHG-1 with the concerned ROC within 30 days on creation of this mortgage transaction and further agrees to file form CHG-4 towards satisfaction of charge within 30 days of repayment.

6) **Cost & charges**

That the entire cost of stamp duty, registration and other legal charges for creation of this mortgage deed shall be borne by the mortgagor.

7) **Dispute**

That in case of any dispute arising between the parties with reference to any term of this deed, shall be subject to jurisdiction of court at Pune.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS IN ORDER TO GIVE EFFECT TO THIS AGREEMENT**

For ABC Ltd

sdl-

Name

.... party of the first part

Designation

For XYZ Ltd

sdl-

Name

.... party of the second part

Designation

Witnesses:

1) Name

Address

2) Name

Address

### English mortgage

In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed.

In this mortgage the borrower promises to repay the borrowed money on a certain date. The borrower transfers the property to the lender. The lender will re-transfer the property when the money is repaid. The mortgaged property is absolutely transferred to the mortgagee.

### Characteristics of English Mortgage:

1. The mortgagor binds himself to repay the mortgage money (debt) on a certain date.
2. The mortgage-property is transferred absolutely to the mortgagee.
3. The absolute transfer is subject to a proviso that mortgagee will re-transfer the property to mortgagor on payment of mortgage-money on the said date.
4. It is known to mortgagee with certainty when the mortgagor is to redeem or he to proceed to foreclose or sell.

### CASE LAW

In *Narayana v. Venkataramana*, ILR (1902) 25 Madras 220 (235) (FB) case the court opined that the English Mortgage has three essential ingredients. First, the mortgagor has to bind himself to repay the mortgage money on a certain day. Secondly, the property mortgaged is transferred "absolutely" to the mortgagee. Thirdly, this transfer is subject to a proviso that

the mortgagee will reconvey the property to the mortgagor upon payment of the mortgage - money on the date fixed for repayment.

The statutory power of sale by an English mortgagee arises when the mortgagor and the mortgagee are not Hindus, Muhammadans or Buddhists or members of any other race, sect, tribe or class from time to time specified in this behalf by the State Government in the Official Gazette. This means that majority of people in India, though entitled to go in for English mortgage, cannot have the statutory power of sale due to confinement of this power only to certain communities such as Christians, people of English origin only.

### DEED OF ENGLISH MORTGAGE

#### DEED OF ENGLISH MORTGAGE

This English Mortgage deed is executed on Monday 11<sup>th</sup> day of December 2023, at Pune.

#### BY AND BETWEEN

ABC Ltd (Hereinafter referred to as 'Mortgagor' or 'Transferor' or 'Party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

#### AND

XYZ Ltd (Hereinafter referred to as 'Mortgagee' or 'transferee' or 'party of the second part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

WHEREAS ABC Ltd is a co. formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D Managing Director of the company.

AND WHEREAS XYZ Ltd is a co. formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. V, Managing Director of the company.

AND WHEREAS ABC Ltd. in order to expand its current operations was looking to raise funds.

AND WHEREAS ABC Ltd approached XYZ Ltd and XYZ Ltd agreed to extend the said credit facility by creation of English mortgage.

AND WHEREAS the Board of directors of the company at its meeting held on \_\_\_\_\_ agreed to borrow an amt. of Rs. \_\_\_\_\_ from XYZ Ltd upon the following terms & conditions:

NOW THIS ENGLIGH MORTGAGE DEED WITNESSETH AS UNDER:

1) Description of property

That the said property is a commercial building having 30 (thirty) floors admeasuring about 3,00,000 (three lakh) sq. ft. and is rightfully situated at \_\_\_\_\_ and is surrounded by the following:

Towards North \_\_\_\_\_

Towards South \_\_\_\_\_

Towards East \_\_\_\_\_

Towards West \_\_\_\_\_

2) Mortgage Money

That the loan transaction shall be for a loan amt. of Rs. \_\_\_\_\_, which shall carry rate of interest @10% per annum to be repaid by equated monthly instalments of Rs. \_\_\_\_\_ spread over the entire tenure of the loan by the seventh day of every month.

3) Term

That the term of this agreement shall be for a period of 5 years beginning from the date this agreement or such term as may be mutually extended by both the parties.

**4) Status of the property**

That the title rights of the property along with its possession and right to use be transferred to the mortgagee by this deed.

That on completion of repayment of loan amount at the end of the term or any time before, the property shall come back to the mortgagor and the sale may be effected as mortgage.

**5) Cost & charges**

That the entire cost of stamp duty, registration and other legal charges for creation of this mortgage deed shall be borne by the mortgagor.

**6) Default**

That in case if any of the clauses of this agreement is breached by the mortgagor, the mortgagee shall have a right to obtain a decree from the court in order to recover the amount of loan by foreclosure or sale of the property.

**7) Dispute**

That in case if any dispute arises between the parties with reference to any of the terms of this deed, the same shall be subject to jurisdiction of court at Pune.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THIS AGREEMENT ON THE DATE MENTIONED ABOVE**

For ABC Ltd

sdl-

.... Party of the first part

Name

Designation

For XYZ Ltd

sdl-

.... Party of the second port.

Name

Designation

**Witnesses:**

1) Name

Address

2) Name

Address

### **Mortgage by deposit of title-deeds**

Mortgage by deposit of title deeds is called in English law as equitable mortgage. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage. It is however, prudent to have a record of transaction to avoid difficulties to establish the creation of the mortgage. In this case, a Memorandum of Mortgage by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money.

The main characteristics of this type of mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.
2. Delivery of title deeds is required to be made in Mumbai, Chennai and Kolkata and other specified towns to which the facility is extended by State Government from time to time through Gazette notification. It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.
3. This deposit can be made by the company through its nominee or agent duly authorised.

4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.
5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Equitable mortgage is preferred by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages viz.

- (a) to save time and avoid inconvenience of documentation, and registration;
- (b) to minimise cost of creating mortgage and cost of borrowed funds by saving stamp duty;
- (c) to maintain secrecy of the debt transaction;
- (d) section 180 of the Companies Act, 2013.

### CASE LAW

In K.J. Nathan, S. Maruthi, AIR (1965) SC 430 case, the physical delivery of the title-deeds had taken place outside the towns specified. But the intention to create equitable mortgage by these deeds was formed after delivery of the deeds and in a town which was within the notified area. The Supreme Court held that an equitable mortgage was created under section 58 (f) of the Transfer of Property Act. The Court opined that there must be a bona fide intention that possession of title-deeds with the creditor is by way of security for the money advanced by him. However, the intention to create security by the deposit of title-deeds is a question of fact and not of law.

### DEED OF DEPOSIT OF TITLE DEEDS

### MORTGAGE BY DEPOSIT OF TITLE DEEDS

This mortgage deed by deposit of title deeds is executed on Monday, 11<sup>th</sup> day of December, 2023, at Pune.

BY

ABC Ltd (Hereinafter referred to as 'mortgagor' or 'party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

WHEREAS ABC Ltd. is a company formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D. Managing Director of the company.

AND WHEREAS B Ltd is company formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. E, Managing director of the company.

AND WHEREAS ABC Ltd was desirous of obtaining loan from B Ltd and it undertook the following:

- i) It has obtained an amount of Rs. \_\_\_\_\_ by way of loan from B Ltd by deposit of title deeds of the property situated at \_\_\_\_\_.
- ii) It shall repay the said loan in a span of 5 years along with interest at the rate of 10% p.a. to be paid annually.
- iii) The mortgagee shall continue to hold the title deeds till the loan amount is recovered fully and shall return it back on full repayment.
- vi) The mortgagor confirms that no prior charge or interest over the subject property has been created in the past.

IN WITNESS WHEREOF THE MORTGAGOR HAS EXECUTED THIS DOCUMENT ON THE DATE AS REFERRED ABOVE

For ABC Ltd

sd/-

C

Managing Director

**Witnesses:**

1) Name

Address

2) Name

Address

**Anomalous mortgage**

A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

**CASE LAW**

In *Madho Rao v Gulam Mohiuddin AIR 1919 PC 121* case, the Court held that while considering an anomalous mortgage, the intention of the parties must be gathered from the terms of the instrument as controlled by the provisions of the Act.

**DEED OF REDEMPTION OR RE-CONVEYANCE OF MORTGAGE PROPERTY BY THE MORTGAGEE****IN FAVOUR OF THE MORTGAGOR****REDEMPTION / RECONVEYANCE DEED**

This Reconveyance deed is executed on Monday 11<sup>th</sup> day of December 2023, at Pune.

**BY AND BETWEEN**

A Ltd (Hereinafter referred to as 'Mortgagor' or 'Transferor' or 'party of the first part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

AND

B Ltd (Hereinafter referred to as 'Mortgagee' or 'transferee' or 'party of the second part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

WHEREAS a mortgage deed was executed between the subject parties dated \_\_\_\_\_ and now since the entire amount of loan has been repaid, the parties have decided to release each other from their respective obligations & hence this agreement.

NOW THIS DEED OF REDEMPTION WITNESSETH AS UNDER:

That B Ltd confirms receipt of an amt. of Rs. \_\_\_\_\_ along with interest paid in entirety by A Ltd and hence no dues.

That B Ltd releases the property mortgaged to it by A Ltd absolutely along with its title deeds and hence releases A Ltd of all the obligations towards this mortgage.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS TO GIVE EFFECT TO THIS AGREEMENT ON THE DATE MENTIONED ABOVE

For A Ltd

sdl-

.... Party of the first part

Name

Designation

For B Ltd

sdl-

.... Party of the second port

Name

Designation

Witnesses:

3) Name

Address

4) Name

Address

### DEBENTURE TRUST DEED

### WHAT IS DEBENTURE?

A debenture is an **instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and also carrying an interest**. It is one of the methods of raising the loan capital of the company. A debenture is thus **like a certificate of loan** or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company's capital structure, it does not become share capital.

### WHO IS DEBENTURE TRUSTEE?

A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate. A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as prescribed.

The company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

### INGREDIENTS OF DEBENTURE TRUST DEED

Debenture Trust deed is a **written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage**. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders.

A trust deed in Form No. SH. 12 and shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer.

A trust deed shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and a copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

### SPECIMEN DEBENTURE TRUST DEED

#### DEBENTURE TRUST DEED

This debenture trust deed is executed on Wednesday, 22<sup>nd</sup> day of December 2023 at Pune.

BY AND BETHEEN

ABC Ltd (Hereinafter referred to as 'company' or 'party of the first part' and unless the text otherwise expresser shall include its liquidators, administrators, etc.)

AND

XYZ Ltd (Hereinafter referred to as 'debenture trustee' or 'party of the second part' and unless the text otherwise expresses shall include its liquidators, administrates, etc.)

WHEREAS ABC Ltd is a co. formed and registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ represented through Mr. D. Managing Director of the company.

AND WHEREAS XYZ Ltd is a co. formed and registered under the provisions of Companies Act, 2013 & has its registered office situated at \_\_\_\_\_ and has obtained the Registration to act as a Debenture trustee.

AND WHEREAS the Board of directors of the company at its meeting held on \_\_\_\_\_ decided to raise money by way of an issue of secured debentures of Rs. \_\_\_\_\_ divided into no. of debenture holders of Rs. \_\_\_\_\_ each.

AND WHEREAS any public issue of debentures would require appointment of debenture trustee in terms of the provisions of Companies Act, 2013.

AND WHEREAS the Board of Directors of co. at its meeting held on \_\_\_\_\_ and shareholders of the co. at its meeting held on \_\_\_\_\_ confirmed the appointment of XYZ Ltd to act as debenture trustee for the said debenture issue.

AND WHEREAS a trust deed was to be executed between the co. and the debenture trustee upon the following terms & conditions:

**NOW THIS DEBENTURE TRUST DEED WITNESSETH AS UNDER:**

### 1. Issue of debentures

That the company be authorised to issue \_\_\_\_\_ debentures of Rs. \_\_\_\_\_ each aggregating to Rs. \_\_\_\_\_ by creation of charge on company's certain immovable property described elsewhere in this agreement. The said debentures shall rank pari-passu and shall carry equal rights.

### 2. Redemption of debentures

That the said debentures have been issued for a period of 5 years with effect from \_\_\_\_\_ which shall be due for redemption on \_\_\_\_\_. They shall carry interest at the rate of \_\_\_\_\_ %, which shall be paid at the end of financial year by \_\_\_\_\_ redemption of debentures as well as payment of interest shall be paid only through Bank ECS by issuance of company's cheque.

### 3. Creation of charge

That the board of directors of the co. shall be authorised to register a charge in favour of the debenture trustee of the property that is co.'s building situated at \_\_\_\_\_ having 15 floors, constructed area of \_\_\_\_\_. The said charge be appropriately registered with the concerned registrar by filing form CHG-9 within 30 days of such creation.

### 4. Usage of secured property

That the above referred property shall be free for use by the co. for its ordinary business activity that is its possession and right to use shall always be with the company itself. In the event of the company's failure to paid timely interest or redeem debentures, the custody of the said property shall be taken up by the debenture trustee. Till such time the debentures are fully repaid, the co. shall not create any further charge or create any further interest or sell the property, which may adversely affect the interests of debenture holders.

### 5. Circumstances for redemption

That in the following cases, the amount due on debentures shall be liable to be paid immediately.

- a) In case if there is a default in payment of interest as per the schedule be whether co. ceases to carry out its business activities
- b) In the event of winding up of co. under any circumstances.
- c) Any non-compliance which may affect the rights of debenture holders
- d) Inability of co. to repay its debts where value of liabilities surpass that of the assets
- e) Creation of any additional charge on the secured property without prior permission of the debenture holders.
- f) Whether trustees deem reasonable depending upon the circumstances.

#### 6. No intervention of debenture trustee

That unless the circumstances so warrant, the debenture trustee shall in no way intervene in the regular business operations of the company.

#### 7. Schedule of payment

That in case if the secured asset is sold to pay off the value of debentures, the sale proceeds shall be distributed in a following manner.

- a) Cost of operations of the trust including trustee's remuneration
- b) Interest on debentures
- c) Principal amt. due on debentures.
- d) Surplus, if any, shall be given to the co.

That in case if an additional charges created on the said property debenture holders shall enjoy first right till their debts are paid off fully.

#### 8. Maintenance of property

That the trustees shall ensure that the secured property is maintained in the rightful condition, free from any further encumbrances. The wage of this property shall only be for the purpose of business unless the permission of debenture holders is obtained thereof.

#### 9. Remuneration of trustees

That the trustee shall be paid an annual remuneration of Rs. \_\_\_\_\_ which shall be paid by 31st March for the year it is charged to. Any out of pocket expenses incurred by the debenture trustee shall be reimbursed at actuals whether it be at the cost of travel, employees deputed for maintaining the co.'s assets. Taxes if any, shall also be reimbursed at actuals.

#### 10. Vacation of office of debenture trustee

That if the debenture trustee so wants, he may tender his resignation 3 months in advance to the board of directors of the company and handover all the documents to the newly appointed trustee. In case if, the debenture trustee loses the licence to act as a debenture trustee its office shall stand vacated. The proposal to remove the debenture trustee may also be moved by the debenture holders at a meeting called upon the requisition of 1/10<sup>th</sup> of debenture holders and voted upon by majority of debenture holders at this meeting.

#### 11. Modification of debenture trust deed

That as approved by debenture holders of the co. the terms of trust deed may be suitably altered by the debenture trustee with the permission of board of directors of the co.

#### 12. Responsibility of the company

That the co. hereby consents to:

- carry on business in proper & efficient manner.
- to maintain proper books of Alas of the co. & keep it open for inspection to the debenture trustee during business hours
- To take all possible steps to ensure right value of secured property to not create any additional charge without obtaining prior permission of debenture holders upon secured asset.

#### 13. Dispute

That in case of any dispute arising between any of the parties with reference to terms of this deed shall be referred to sole arbitrator who shall be appointed by both the parties, governed by Arbitration & Conciliation Act, 1996.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT

For A Ltd

Sd/-

.... Party of the first part

Name

Designation

For B Ltd

.... Party of the second part

Sd/-

Name

Designation

Witnesses:

1. Name

Address

2. Name

Address

### SHARE PURCHASE AGREEMENT

A share purchase agreement is defined as a **legal contract between a seller and a buyer of shares**. They may be referred to as the vendor and purchaser in the contract. The specific number of shares are listed in the contract at the stated price. This agreement proves that the sale and the terms of it were agreed upon mutually.

Share Purchase Agreement is an agreement entered into between the buyer and seller(s) of shares of a target company. Usually Share Purchase Agreements entail that the buyer would be taking over whole or significantly whole of the undertaking of the company. In such a scenario, the buyer would not only be taking over the assets but also the liabilities of a company.

Prior to drafting a Share Purchase Agreement, the parties should negotiate and draw up a term sheet which would address the key terms of the Share Purchase Agreement. This would help ease the drafting and negotiations of the Share Purchase Agreement as all the material terms would already be agreed to between the parties.

Usually a share purchase agreement would be typically used in the mergers and acquisitions processes. A particular entity would purchase about 50% or more of the share capital of the target company.

### ADVANTAGES OF SHARE PURCHASE AGREEMENT

1. **Shares Specified**- By entering into this form of agreement, there is a specific proportion of shares allocated to the buyer or the entity.
2. **Rights and Liabilities**- The rights and liabilities of the parties are specifically drawn from this form of agreement. This would ensure that all the parties' rights and liabilities arising out of the agreement are covered. In case of any breaches, the parties' first point of reference would be the SPA.
3. **Warranties**- By entering into such an agreement the parties would be covered by specific warranties. Any party cannot escape the amount of any warranty which is arising from the share purchase agreement. All the parties would equally be covered by specific amount of warranties of the share purchase agreement.
4. **No Third-Party Involvement**- As the contract has only specific amount of parties, there is no involvement of any other party or third-party.

**SPECIMEN SHARE PURCHASE AGREEMENT****SHARE PURCHASE AGREEMENT**

This Share Purchase Agreement is executed on Thursday, 4<sup>th</sup> day of January 2024, at Pune.

**BY AND BETWEEN**

Mr. A (Hereinafter referred to as 'seller' or 'transferor' or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**AND**

Mr. B (Hereinafter referred to as 'buyer' or 'transferee' or 'party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

**AND**

XYZ Ltd (Hereinafter referred to as 'company' or 'party of the third part' and unless the text otherwise expresses shall include its liquidators, administrators, etc.)

**WHEREAS** A age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** B age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** XYZ Ltd is a co. formed & registered under the provisions of Companies Act, 2013 and has its registered office situated at \_\_\_\_\_ and represented through Mr. X, Managing Director of the company.

AND WHEREAS XYZ Ltd is in the business of manufacture of \_\_\_\_\_ having a total of \_\_\_\_\_ issued & paid up share capital of Rs. \_\_\_\_\_ divided into \_\_\_\_\_ equity shares of Rs. \_\_\_\_\_ each.

AND WHEREAS Mr. A is an existing shareholder of the co. holding \_\_\_\_\_ equity shares constituting 60% of the total voting power.

AND WHEREAS Mr. A was intending to sell his shares.

AND WHEREAS Mr. B expressed his interest in buying the complete stake of Mr. A

AND WHEREAS both the parties after detailed discussions followed by an executed term sheet and decided to put the terms into writing by execution of a share purchase agreement upon the following.

#### **NOW THIS SHARE-PURCHASE AGREEMENT WITNESSETH AS UNDER:**

##### **1. PURCHASE & SALE OF SHARES**

That subject to all the formalities being completed prior to this Share Purchase Agreement, the seller agrees to sell and the purchaser agrees to purchase all the shares of the seller without any other condition free from all encumbrances transferring the rights, benefits, interests, present or future as regards these shares to the buyer.

##### **2. EXECUTION OF TRANSACTION DOCUMENTS**

That in regard to the said share transfer, the Co. shall provide a valid share transfer in form SH-4 along with the details of stamp duty required to be paid. The company through its director shall provide a certified copy of resolution passed at its board meeting approving the execution of all transaction documents. All the parties undertake to execute all the documents as may be required to complete this transaction.

### 3. SELLER'S CONDITIONS PRECEDENT

That the purchaser agrees to purchase these shares upon the seller fulfilling following conditions:

- That the seller and the company obtains all the necessary permissions or sanctions to complete this share-purchase transaction.
- There shall not be any change in the shareholding pattern significantly from the execution of this agreement till the closure of the transaction.
- There shall not be any change in circumstance or conditions that may have some material adverse effect on this proposed transaction.
- No understanding by and between co. & the seller may result into alteration of the terms of the share-purchase agreement

### 4. PURCHASER'S CONDITIONS PRECEDENT

That the seller agrees to sell these shares upon the purchaser fulfilling following conditions:

- That the acquirer shall have obtained all the necessary permissions or sanctions to complete this share-purchase transaction
- That the acquirer shall have obtained all the statutory approvals or the permissions as may have been required under any applicable law to complete this transaction.

### 5. CO-OPERATION

That both the parties shall subject to the fulfilment of conditions precedent as stated above fulfil all of their responsibilities and extend their full cooperation with respect to any document as may have been required to complete this transaction.

### 6. PRE CLOSING ACTIONS

That after the execution of this agreement & before its closing i.e. the actual date of transfer of shares:

- No party to the agreement shall enter into any contract / transaction with any third party which may have an adverse impact on this transaction.
- The seller shall not create any encumbrance on these shares nor shall be do any act which may enhance or reduce its shareholding in the co.

- c. The co. shall not pass any resolution in its board or general meeting which may hinder the completion of this transaction.
- d. The co shall continue to carry out its business on going concern basis & ensure compliance with all the applicable laws.
- e. No alteration to the co.'s MOA & AOA shall be made.
- f. Any material change in co.'s overall structure shall be promptly reported to the purchaser in advance.
- g. The purchaser be authorised to have access to all the documents & records of the co. including board meeting minutes.

## 7. CLOSING PAYMENT & ACTIONS

That as on date of actual transfer of shares valid share-transfer deed shall be executed between seller & the buyer along with the share certificate being handed over to co. for registration & the co. shall register the same in favour of buyer.

That the stamp duty over this transfer shall be paid by the acquirer & as soon as the transfer deed is registered, the co. shall be obligated to make necessary entries in its register of members and provide an extract of this register to the seller and the buyer.

## 8. RESPONSIBILITY OF THE CO.

That it shall be the co.'s responsibility to provide the following at the time of closing:

- a. Certified copy of board's resolution approving the transfer.
- b. A valid certificate in favour of the buyer.
- c. Extract of a copy of register of members of the co.
- d. A certificate confirming that all the formalities with respect to this transfer has been complete.
- e. Confirmation that at the time of closing, the purchaser holds \_\_\_\_\_ no. of eq. shares representing \_\_\_\_\_ % of Equity share capital of company

## 9. REPRESENTATION & WARRANTIES

That the seller confirms that all the representations made by seller to the buyer and those made by the buyer to the seller are absolutely true and accurate and no false claims have

been made by either of them. Both the parties also confirm that no permissions or approvals are pending for them in order to conclude this transaction.

#### 10. NON-DISCLOSURE

That both the parties confirm that from the date of execution of this agreement and till the closing of the transaction, no public announcement with respect to subject matter shall be made or no part of this information shall be shared with any other party except on a need to know basis. Prior written concept of the other party shall be obtained before sharing any part of the information.

#### 11. INDEMNITY

That the seller along with all its officers, employees, or associates holds themselves indemnified and the buyer along with all its officers, employees or associates holds themselves indemnified against any risk of loss, liability or obligation that may arise on sharing any part of the information with any third party or breach of any of the terms of this contract to the extent of losses suffered on account of default by the defaulting party or Rs. 10,00,00,000 (Rupees ten crores only) whichever is higher.

#### 12. DISPUTE

That in case of any of the dispute arising between the parties shall be referred to the sole arbitrator appointed by both the parties governed by Arbitration & Conciliation Act, 1996.

**IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT**

.... Party of the first part

Signature

Name

.... Party of the second part

Signature

Name

### WITNESSES

1. Name

Signature

Address

2. Name

Signature

Address

### SHAREHOLDERS AGREEMENT

A shareholders' agreement is a contract between the shareholders of a company and the company itself. A shareholders' agreement mentions the shareholders' rights and obligations, regulates the ownership of shares, privileges, the management of the company, voting and various other insulative provisions for shareholders.

It is a known fact that the Articles of Association (hereinafter 'AoA') act as the Constitution for a company and thus they are mandatory and standard in nature. AoA ties a company and its shareholders in their capacity as shareholders and further mentions the responsibilities of the directors, the means by which the shareholders exert control over the board of directors and the kind of business to be undertaken.

While AoA is a public document, the shareholders' agreement is a private document because it contains confidential internal information of a company. A shareholders' agreement is an affordable option to reduce the risk of possible business disputes because it specifies how decisions must be made regarding certain disputes including the provision of a framework and procedures for dispute resolution.

The AoA and a shareholders' agreement must be complementary to each other. However, a shareholders' agreement may contain a supremacy clause to ensure that it overrides the AoA in case there is any inconsistency so that the shareholders can amend the AoA as required.

### SPECIMEN SHAREHOLDERS AGREEMENT

#### SHAREHOLDERS AGREEMENT

This Shareholders agreement is executed on 22<sup>nd</sup> day of December 2023, at Pune.

#### BY AND BETWEEN

Mr. A (Hereinafter referred to as "1<sup>st</sup> shareholder" or 'party of the first part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

#### AND

Mr. B (Hereinafter referred to a '2<sup>nd</sup> shareholder' or 'party of the second part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

#### AND

Mr. C (Hereinafter referred to as '3<sup>rd</sup> shareholder or 'party of the third part' and unless the text otherwise expresses shall include its legal heirs, administrators, etc.)

Hereinafter all the partners mentioned above are jointly and severally liable as shareholders.

WHEREAS Mr. A age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

AND WHEREAS Mr. B age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** Mr. C age \_\_\_\_\_ son of \_\_\_\_\_ is a resident of \_\_\_\_\_

**AND WHEREAS** all the proposed shareholders were desirous of starting a new business of \_\_\_\_\_ by setting up a manufacturing unit at \_\_\_\_\_

**AND WHEREAS** all the shareholders decided to carry out the said business by formation of a company and accordingly submitted an application to the concerned registrar for checking the availability of proposed name.

**AND WHEREAS** the proposed shareholders decided to enter into a shareholders agreement finalising all the terms between them.

**AND WHEREAS** it is understood and agreed between the shareholders that the terms of this shareholders agreement shall be incorporated in the proposed company's memorandum & articles of association and hence this agreement.

#### **NOW THIS SHAREHOLDERS AGREEMENT WITNESSETH AS UNDER:**

##### **1. FORMATION OF A COMPANY**

That the shareholders have agreed to form a Pvt Ltd Company in the name & style of \_\_\_\_\_ or such other name as may be approved by the concerned registrar.

The said entity shall carry out the business of \_\_\_\_\_ or such other business as may be decided by the special majority. The registered office of the proposed entity shall be at \_\_\_\_\_

##### **2. SHAREHOLDING**

That the said shareholders shall contribute an amt. as specified against their respective names by subscription to the equity shares of proposed co. of Rs.10 each. Each share shall carry one vote.

Sr. No.	Name of shareholders	No. of shares
1	Mr. A	_____
2	Mr. B	_____
3	Mr. C	_____

### 3. ROLES & RESPONSIBILITIES

- That the first shareholder shall look after the sales & procurement activities for the company.
- That the second shareholder shall be responsible for looking after R&D, Marketing & supply chain management of the co.
- That the third shareholder shall be responsible for all the admin functions including legal, finance & communications.
- Any other activity not specified above shall be looked after by third shareholder.

### 4. MANAGEMENT

- That all the shareholders shall hold directorships on the board of the company.
- That the 1<sup>st</sup> shareholder shall be appointed as chairman & managing director on the board and as specifically authorised by company's articles of association.
- That all the decisions relating to change in mgt. or capital structure shall be taken by all the shareholders who are present and voted.
- Any board meeting called upon shall require 10 days prior notice and can be attended either in person or through video conference.

### 5. TERM

That the co. shall continue to remain in operations for a period of 10 years or till the time the project is complete. The said term may be further extended with the mutual consent of all the existing shareholders then.

### 6. VALIDITY OF SHAREHOLDERS AGREEMENT

That the shareholders understand that the terms of this document are principal to the understanding of all the existing shareholders and co.'s memorandum & Articles of Association

shall be drawn based upon this Shareholders Agreement. However, if there is no harmony between the terms of the Shareholders agreement & articles of association, the terms of this Shareholders agreement shall prevail.

## 7. RIGHT OF FIRST OFFER

That in case if any of the existing shareholder is desirous of selling his shares at any time in future, he shall first give an opportunity to the other existing shareholders of the company. The shareholders shall have a right but not an obligation to purchase the shares of selling shareholder within 60 days from the date of the notice intending to sell his shares. If within the stipulated time period, the other shareholders do not express their right to buy, then in that case the selling shareholder shall have the opportunity to sell the same to any third party.

## 8. VALUATION OF SHARES

That the determination of the fair price shall be done by an independent valuer and shall be done on an arms-length basis. The valuer shall be appointed jointly by all the parties.

## 9. COST & CHARGES

That any legal cost incurred by any of the parties including any pre-incorporation expenses shall be borne by the partners and same be reimbursed at actuals by the proposed co. after the incorporation.

## 10. NON-DISCLOSURE

That the parties appreciate that during the course of this agreement, they shall obtain confidential information about the company, their business as well as various processes. All the existing shareholders commit to keep this information confidential during the course of this agreement & any time thereafter in the interest of the company. The said information shall be shared or used purely on a need to know basis.

## 11. NON-COMPETE

That the existing shareholders shall not engage into any business activity, which is similar to the business of the company or any business which is ancillary to the company's business.

Any time during the tenancy of this agreement & 2 years from a date on which any of the shareholders leave the company.

## 12. DISPUTE

That in case of any of the dispute arising between the parties shall be referred to the sole arbitrator appointed by the parties who shall be appointed by the parties governed by Arbitration & Conciliation Act, 1996.

## 13. DEFAULT

That in case of breach of any of the clauses of this agreement, the defaulting party should compensate the suffering party to the extent of such amount of such losses at actuals.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT.

..... party of the first part

Signature

Name

..... party of the second part

Signature

Name

## WITNESSES

1. Name

Address

2. Name

Address

## UNDERWRITING AND BROKERAGE AGREEMENTS

The nomenclature underwriting came about from the practice of having risk takers to write their name below the total risk that she/he undertakes in return for a specified premium in the early stages of the industrial revolution.

In the securities market, underwriting involves determining the risk and price of a particular security. It is a process seen most commonly during initial public offerings, wherein investment banks first buy or underwrite the securities of the issuing entity and then sell them in the market. This ensures that the issuers of the security can raise the full amount of capital while earning the underwriters a premium in return for the service.

Underwriters in the banking sector perform the critical operation of appraising the creditworthiness of a potential customer and whether or not to offer it a loan. They appraise the credit history of the customer through their past financial record, statements, and value of collaterals provided, among other parameters.

In the insurance world, underwriters determine whether an insurance agency should undertake the risk of insuring a client. They determine the risk and exposure of clients and also how much insurance should be granted to a client, how much they should pay for it and whether or not to offer an insurance policy to the client in the first place.

### SPECIMEN UNDERWRITING AGREEMENT

#### UNDERWRITING AGREEMENT

NAME OF THE BROKER

REGISTERED OFFICE:

CIN:

TELEPHONE:      FAX:      EMAIL:

19 December 2023

The Board of Directors

A Ltd

Address:

**Sub: Underwriting of proposed public issue of equity shares**

Dear Sir,

With reference to the captioned subject and our previous meetings dated \_\_\_\_\_ and \_\_\_\_\_, we hereby consent to act as the underwriters for a total of \_\_\_\_\_ equity shares of the company out of the proposed equity issue of \_\_\_\_\_ equity shares upon the following terms & conditions:

**a. FILING OF COPY OF PROSPECTUS**

That the company undertakes to file a copy of the approved prospectus with the registrar for registration as per Companies Act, 2013.

**b. PRINTED COPIES OF PROSPECTUS & APPLICATION FORM**

That at least 3 days before the issue opens, the company shall facilitate providing printed copies of the prospectus & the application forms at the offices of associated brokers, underwriters and the members.

**c. APPOINTMENT OF SUB- UNDERWRITERS**

That the underwriters shall be authorised to appoint as many sub underwriters as they deem fit depending upon the subscription level of the public issue.

**d. SUBSCRIPTION OF SHARES**

That as soon as the public issue is closed, the company shall within a period of 7 days from the closure, intimate the lead underwriter regarding the unsubscribed portion. The underwriter

shall within a period of 10 days proceed to subscribe to unsubscribed portion of the public issue and pay necessary money thereof. As soon as the application is received by the company, the company shall proceed to allot the requisite number of shares to the underwriter on an immediate basis.

#### e. CONDITIONS

That the underwriter shall underwrite provided the following factors are taken into consideration:

- a. That the underwriter shall be obligated to subscribe only those no. of equity shares as are specified in this letter.
- b. Any previous applications bearing the rubber stamp of the underwriter shall be considered as part of the underwriting activity only.
- c. Proportionate underwriting bringing the contributions equal shall first be done by all the underwriters in proportion to the underwriting commitment by them.
- d. On proportions being identified, any underwriter who has contributed in excess, his contribution shall be passed on to the underwriter who is short of his contribution.

#### f. COMMISSION

That for taking up the said underwriting activity, the underwriter shall be entitled to commission at the rate of 2% on the total applications bearing his rubber stamp. The said commission shall be paid within 7 days from the receipt of application money received from the underwriter.

#### g. VALIDITY

That the terms of this letter shall continue to be in force only if the issue opens on or before

In case, if all the terms stated above are acceptable to you, kindly send us a signed and scanned copy of this letter at the earliest, which is sent to you in duplicate.

Thanking you,

Yours faithfully,

For \_\_\_\_\_

Sd/-

D

Managing Director

### COLLECTIVE DECISION MAKING PROCESS IN COMPANIES- “RESOLUTION”

Resolution as per Cambridge Dictionary means “an official decision that is made after a group or organization has voted”.

It is a decision or agreement made by the directors and shareholders of the company. When a resolution is proposed it is called motion. After passing a resolution company is bound to act according to it.

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 (A document in writing created by Board of Directors certifying a binding corporate action is called a Resolution), and
- (ii) General body of members – who ultimately own the company.

### TYPES OF RESOLUTIONS

#### Board Resolution

Any important decisions taken by the Board of Directors of the Company in Board Meeting and in writing is known as Board Resolution. It's a Formal and a Legal document binding on the Company.

#### Ordinary Resolution

According to Section 114(1) of the Companies Act, 2013, a resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be

passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting. Ordinary Resolutions are required to be passed by simple majority.

### Special Resolution

According to Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when—

- the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- the notice required under this Act has been duly given; and
- the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Thus, Special Resolutions are required to be passed by three-fourth (3/4<sup>th</sup>) majority.

### Unanimous Resolution

It requires the approval of all the members present and voting without a single vote cast against it.

### Passing of Resolution by Circulation

As per Section 175(1) of the Companies Act, 2013, a Company may pass resolution through circulation. The said resolution may be circulated in draft, together with necessary papers, if any, to all the directors or members of the Committee at their address registered with the Company in India by hand delivery or courier/ post or through e-mail/fax. The same must be approved by majority of directors or members, who are entitled to vote on the resolution.

A resolution passed through circulation shall be noted at a subsequent meeting and made part of minutes of such meeting.

Further, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

### PRACTICAL ASPECTS ON DRAFTING OF RESOLUTION

The following points should be remembered while drafting resolutions, both for Board and general meetings:

- (a) All essential facts are to be included in the resolution.
- (b) Surplus and meaningless words or phrases should not be included in resolutions.
- (c) Reference to documents approved at a meeting should be clearly identified, e.g., the re-appointment of a managing director should indicate that such appointment is on the terms and conditions contained in the draft agreement, a copy of which was placed before the meeting and initialed by the chairman for the purpose of identification.
- (d) Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.
- (e) If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.
- (f) A resolution must indicate when it will become effective.
- (g) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.
- (h) A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.
- (i) Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.
- (j) A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.

## HOW TO DRAFT A RESOLUTION?

- a) Resolutions are written within quotes.
- b) Resolutions begin with "**RESOLVED THAT**".
- c) Mention the sections of Companies Act 2013, rules made thereunder or provisions of any other law pursuant to which decision is made. E.g. RESOLVED THAT pursuant to the provisions of section 161 of the Companies Act, 2013 and rules there under, and other applicable provisions of law for the time being in force.
- d) If resolution further requires approval of Central Govt. or general meeting or any other authority, it shall specifically specify the authority whose approval is required e.g. RESOLVED THAT subject to approval of Central Govt under section of Companies Act 2013 or rules made thereunder or any other law for the time being in force, \_\_\_\_\_.
- e) In case of resolution passed at general meeting, it shall be specifically mentioned in the notice convening the meeting that whether it is Ordinary resolution or Special resolution.
- f) For filing forms with RoC and other authorities, authorize a person e.g. FURTHER RESOLVED THAT Mr \_\_\_\_\_, director (DIN.) is authorized to execute, sign and do all other acts and deeds as may be required to give effect to this resolution.

## SPECIMEN RESOLUTIONS

### BOARD RESOLUTIONS FOR APPOINTMENT OF MANAGING DIRECTOR/CEO

**"RESOLVED THAT** pursuant to the provisions of Section 196, 197, 203, Schedule V and any other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and other applicable provisions, if any, of the Companies Act, 2013, as amended or re-enacted from time to time, Mr \_\_\_\_\_, be and is hereby appointed as Managing Director/Chief Executive Officer (CEO) (Whole time Key Managerial Personnel) of the Company w.e.f \_\_\_\_\_ at a monthly remuneration of Rs \_\_\_\_\_ to perform the duties assigned to him by the Board of Directors from time to time for a period not exceeding five years commencing from the date of his joining.

**RESOLVED FURTHER THAT** the remuneration payable to Mr \_\_\_\_\_ may be revised from time to time by the Board of Directors or any Remuneration Committee that may be formed for this purpose.

**RESOLVED FURTHER THAT** any Director of the Company be and is hereby authorized to sign and execute all such documents and papers (including appointment letter etc.) as may be required for the purpose and file necessary e-form with the Registrar of Companies and to do all such acts, deeds and things as may be considered expedient and necessary in this regard."

#### **BOARD RESOLUTIONS FOR APPOINTMENT OF CHIEF FINANCIAL OFFICER (CFO)**

**"RESOLVED THAT** pursuant to the provisions of Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and other applicable provisions, if any, of the Companies Act, 2013, as amended or re-enacted from time to time, Mr. \_\_\_\_\_ be and is hereby appointed as Chief Financial Officer and be designated as Whole- Time Key Managerial Personnel of the Company w.e.f. \_\_\_\_\_ at such remuneration and other terms and conditions as may be finalized by Directors of the Company.

**RESOLVED FURTHER THAT** Director(s) of the Company be and is hereby authorised to file necessary forms and returns with the Registrar of Companies and to take all further necessary action in this regard."

#### **BOARD RESOLUTIONS FOR APPOINTMENT OF WHOLE-TIME COMPANY SECRETARY OF THE COMPANY**

**"RESOLVED THAT** pursuant to the provisions of Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and other applicable provisions, if any, of the Companies Act, 2013, as amended or re-enacted from time to time, Mr. \_\_\_\_\_, an \_\_\_\_\_ (Associate/Fellow Member of the Institute of Company Secretaries of India (ICSI) holding Membership No: \_\_\_\_\_, who possesses the requisite qualification and being eligible for appointment, be and is hereby appointed as Company Secretary of the

Company w.e.f. \_\_\_\_\_ at such remuneration and other terms and conditions as may be finalized by Directors of the Company.

**RESOLVED FURTHER THAT** the Company Secretary be and is hereby authorized to sign various documents on behalf of the Company, and do all necessary acts & deeds incidental to the position under proper instructions/authorization from the management of the Company;

**RESOLVED FURTHER THAT** Director(s) of the Company be and is hereby authorised to file necessary forms and returns with the Registrar of Companies and to take all further necessary action in this regard."

**BOARD RESOLUTION FOR APPROVAL OF ANNUAL FINANCIAL STATEMENT OF THE COMPANY FOR THE FINANCIAL YEAR ENDED 31<sup>ST</sup> MARCH \_\_\_\_\_**

"**RESOLVED THAT** the Annual Financial Statements of the Company for the financial year ended 31<sup>st</sup> March, \_\_\_, comprising the Balance Sheet as on 31<sup>st</sup> March, , Statement of Profit & Loss and the Cash Flow Statement for the year ended on that date, together with the Schedules and Notes to Accounts thereon as required under Schedule III of the Companies Act, 2013, be and are hereby approved.

**RESOLVED FURTHER THAT** Mr \_\_\_\_\_ and Mr \_\_\_\_\_, Director of the Company and Mr \_\_\_, Company Secretary, be and are hereby authorized on behalf of the Board of Directors to sign the Audited Annual Financial Statements of the Company for the financial year ended 31<sup>st</sup> March, \_\_\_\_\_ and thereafter the same be forwarded to the Statutory Auditors of the Company for their report thereon."

**ADOPTION OF THE DIRECTORS' REPORT AND THE AUDITED BALANCE SHEET OF THE COMPANY AS ON 31<sup>ST</sup> MARCH \_\_\_\_\_ AND THE STATEMENT OF PROFIT & LOSS FOR THE YEAR ENDED 31<sup>ST</sup> MARCH \_\_\_\_\_ WITH THE AUDITORS REPORT THEREON**

"**RESOLVED THAT** the Financial Statements for the year ended 31st March \_\_\_\_\_ comprising Balance Sheet as at 31st March, \_\_\_, the Statement of Profit & Loss for the year ended 31st

March, and Cash Flow Statement for the year ended 31st March, including the Consolidated Financial Statements of the Company and its subsidiaries, along with Notes thereto, and the Auditor's Reports thereon, as well as the Director's Report along with its Annexures including the CSR & Sustainable Development Report, Management Discussion and Analysis Report, and Corporate Governance Report, as circulated and as laid before the meeting, be and are hereby approved and adopted."

**BOARD RESOLUTION RECOMMENDING PAYMENT OF DIVIDEND ON EQUITY SHARES OUT  
OF PROFITS**

"**RESOLVED THAT** in accordance with the provisions of Section 123 and other applicable provisions of the Companies Act, 2013 and Rules made thereunder, the Board of Directors of the Company hereby recommends a Dividend of Rs \_\_\_\_\_ (at the rate of \_\_\_\_\_ percent) per equity share out of the profits of the Company for the year ended on 31st March \_\_\_\_\_, on the \_\_\_\_\_ fully paid up equity shares of the Company absorbing Rs. \_\_\_\_\_ out of the profits.

**RESOLVED FURTHER THAT** subject to declaration by the Members of the Company at the ensuing Annual General Meeting, the Dividend be paid to the registered holders of the equity shares whose names would appear on the Register of Members on \_\_\_\_\_ day of 20 \_\_\_\_\_ being the Record date for payment of Dividend.

**RESOLVED FURTHER THAT** subject to the declaration by the Members of the Company at the ensuing Annual General Meeting, Mr \_\_\_\_\_, Director, and Mr \_\_\_\_\_, Company Secretary be and are hereby jointly authorised to take necessary steps including opening of the bank account with the \_\_\_\_\_ Bank at its Branch at \_\_\_\_\_ by signing the account opening form and by furnishing to the said bank the required papers, documents and information, and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the Dividend within thirty days from the date of declaration of Dividend by the members at the Annual General Meeting.

**RESOLVED FURTHER THAT** Mr.\_\_\_\_, Director and Mr.\_\_\_\_, Company Secretary of the company, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.”

**ORDINARY RESOLUTION FOR DECLARATION OF DIVIDEND BY MEMBERS AT AN AGM**

“**RESOLVED THAT** a Dividend of Rs.\_\_\_\_/- (at the rate of \_\_\_\_ percent) per equity share of Rs.\_\_\_\_/- each fully paid up, of the Company, be and is hereby declared for the financial year ended 31st March \_\_\_\_\_ and that the same be paid as recommended by the Board of Directors, out of the profits of the Company for the financial year ended 31st March \_\_\_\_\_.”

**BOARD RESOLUTION FOR DECLARATION OF INTERIM DIVIDEND ON EQUITY SHARES**

“**RESOLVED THAT** an Interim Dividend of Rs.\_\_\_\_ (at the rate of \_\_\_\_ percent) on each fully paid- up equity share of Rs. of the Company amounting to Rs.\_\_\_\_ be paid out of the profits of the Company for the half year ended \_\_\_\_\_ 20 \_\_\_\_ to those Members of the Company whose names would appear on the Register of Members of the Company on the day of, 20 being the Record date for payment of Interim Dividend.

**RESOLVED FURTHER THAT** a separate bank account be opened in the name of the Company with \_\_\_\_\_ Bank at its Branch at \_\_\_\_\_ and a sum of Rs.\_\_\_\_, being the total Interim Dividend amount, be deposited in the said account within five days from the date of declaration.

**RESOLVED FURTHER THAT** Mr.\_\_\_\_, Director and Mr.\_\_\_\_, Company Secretary be and are hereby jointly authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents and information and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the Interim Dividend within thirty days from the date of declaration.

**RESOLVED FURTHER THAT** Mr. \_\_\_\_\_, Director and Mr. \_\_\_\_\_, Company Secretary of the company, be and are hereby authorised to jointly sign the Dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Interim Dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment."

**BOARD RESOLUTION FOR APPROVAL FOR FILING OF FORM CSR -I**

**In cases where Implementing Agency is a corporate entity**

**"RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time, the approval of the Board of Directors of the [name of the section 8 company], be and is hereby accorded for filing e-form CSR-1 on behalf of the company on the portal of the Ministry of Corporate Affairs, Government of India.

**RESOLVED FURTHER THAT** Board of Directors of [name of the section 8 company], do hereby take on record the valid registration certificates granted under section 12A and section 80G of the Income Tax Act, 1961 for the purposes of receiving CSR funds and for filing of e-form CSR-1.

**RESOLVED FURTHER THAT** Board of Directors of the [name of the section 8 company], be and are hereby authorized severally to take necessary steps to give effect to the above resolution and do all such acts, deeds and things as may be required to ensure filing of e-form CSR-1."

**IB. In cases where Implementing Agency is a Non-Corporate entity**

**"RESOLVED THAT** in accordance with the requirements of the section 135 of the Companies Act, 2013 and the relevant rules thereunder as applicable to the Trust/Association, application be made in Form No.CSR-1 with the Ministry of Corporate Affairs, Government of India, for registration of the [name of the entity] and that any one of the Trustees be and are hereby authorized to finalise the application, file the same on MCA portal and to attend to all matters incidental thereto.

**RESOLVED FURTHER THAT** Board of Trustees/Governor of the {name of the entity} do hereby take on record the valid registration certificates granted under section 12A and section 80G of the Income Tax Act, 1961 for the purposes of receiving CSR funds and for filing e-form CSR-1."

**RESOLUTION FOR APPROVAL AND ADOPTION OF CSR POLICY**

**"RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR committee, the Board of Directors of the company do and hereby approve and adopt a CSR Policy.

**RESOLVED FURTHER THAT** the CSR Policy be and is hereby approved and signed by Mr./Ms. \_\_\_\_\_, Director.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of policy on the website of the company."

**TO IDENTIFY IMPLEMENTING AGENCIES AND TO APPROVE ALLOCATION OF CSR AMOUNT**

**"RESOLVED THAT** pursuant to section 135 and other applicable provisions, if any, of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR Committee, the Board of Directors do and hereby identify and approve following implementing agencies for the purpose of implementing the CSR projects of the company as outlined below with allocation of amount of [Rs. \_\_\_\_\_] as CSR expenditure for the Financial Year \_\_\_\_\_.

**RESOLVED FURTHER THAT** Mr. / Ms. \_\_\_\_\_ (Director/KMP/CSR Head/ Officer) of the company be and is hereby authorized to convey the approval to the identified implementing agencies and to take all necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be incidental to the above.”

**TO APPROVE THE ANNUAL ACTION PLAN FOR THE FINANCIAL YEAR \_\_\_\_\_**

Sl. No.	Implementing Agency	Purpose	Nature of Project (One time / multi-year)	CSR allocated (Rs.)	spend
<b>Total</b>					

“**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with rule 5(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and based on the recommendations of the CSR Committee, the Board of Directors of the company do and hereby approve the annual action plan to be implemented by the company for the financial year \_\_\_\_\_.

**RESOLVED FURTHER THAT** the annual action plan be and is hereby signed by Mr./Ms. \_\_\_\_\_, Director.

**RESOLVED FURTHER THAT** the Board of Directors do and hereby take note of, *inter alia*, the following specific matters included in the annual action plan in pursuance of CSR Policy of the company:

- the list of approved CSR projects or programmes
- the manner of execution of such projects or programmes
- the modalities of utilisation of funds and implementation schedules
- monitoring and reporting mechanism for the projects or programmes
- details of need and impact assessment, if any, for the projects undertaken by the company.

**RESOLVED FURTHER THAT** the said annual action plan shall stand valid until altered by the Board of Directors during the financial year \_\_\_\_\_ on such grounds as it may deem appropriate, subject to the recommendation of the CSR Committee.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and to do all such acts, deeds and things as may be required to ensure implementation of the annual action plan."

**TO APPROVE OPENING OF A BANK A/C FOR UNSPENT CSR AMOUNT**

**"RESOLVED THAT** a bank account under the name and style of "Unspent CSR Account of M/s \_\_\_\_\_" be opened with \_\_\_\_\_ Bank, \_\_\_\_\_ Branch and the below named signatories be and are hereby authorized to open and operate the said account:

**List of Authorized Signatories :**

Limit	Signatories

**RESOLVED FURTHER THAT** the \_\_\_\_\_ (name of the bank) be and is hereby authorized to accept, honour and pass all cheques, hundis, bills of exchange, promissory notes, indemnities, guarantees, agreement for letter of credit, trust receipt for monies, received and any other commercial documents whatsoever drawn, made, accepted endorsed by the aforementioned signatories and to act upon all such instructions given by them in the manner provided herein below including Internet Banking Facility:

**RESOLVED FURTHER THAT** the abovementioned authorized signatories be and are hereby authorized to apply for and avail the Internet Banking facility offered by the bank, receive login and password and operate the account in the manner provided herein above.

**RESOLVED FURTHER THAT** this resolution shall remain in force until a superseding resolution is passed by the Board of Directors to this effect.

**RESOLVED FURTHER THAT** the Directors of company be and are hereby authorized severally to do all such acts, matters, deeds and things as may be necessary and incidental to give effect to this resolution including issuing extracts of the resolution passed to the Banker."

**TO APPROVE ONGOING PROJECT AND TRANSFER TO THE 'UNSPENT CSR A/C'**

**"RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and in terms of the approved annual action plan for the financial year [-], the Board of Directors do and hereby take on record and approve the following CSR projects (which were not approved originally as multi-year projects but whose duration is more than one year but less than three years) as ongoing projects on account of extension in their scope:

Sl. No.	Name of Project	Implementing Agency	Duration (excluding FY in which it commenced)	Justification	Amount allocated for the project

**RESOLVED FURTHER THAT** an amount of Rs. \_\_\_\_\_ remaining unspent for the Financial Year \_\_\_\_\_ in respect of the above ongoing projects be and is hereby transferred to the "Unspent CSR Account" of the company, maintained with \_\_\_\_\_ Bank and approval of the Board be and is hereby accorded to spend out of the said Account over a period of 3 years from the end of the Financial Year to which it relates, such amounts as may be determined by the Board from time to time, as part of CSR obligations of the company.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required."

**TO APPROVE TRANSFER OF UNSPENT CSR AMOUNT TO SPECIFIED FUND UNDER SCHEDULE VII TO THE COMPANIES ACT, 2013**

**"RESOLVED THAT** pursuant to section 135 (5) of the Companies Act, 2013 read with rule 10 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 and such other provisions as may be applicable and in terms of the CSR Policy of the company and as recommended by the CSR Committee, the Board of Directors of the company do and hereby approve the transfer of Rs. \_\_\_\_\_ being the unspent CSR amount for the financial year \_\_\_\_\_, not being an amount relating to any ongoing project, to any of the funds specified in Schedule VII to the Companies Act, 2013 as listed below within a period of 6 months of expiry of Financial Year \_\_\_\_\_.

Description of the Fund specified in Schedule VII	Amount to be transferred (in INR)

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required."

**TO APPROVE APPOINTMENT OF INDEPENDENT AGENCY FOR UNDERTAKING IMPACT ASSESSMENT**

Sl. No.	Implementing Agency	Purpose	Project Outlay(Rs.)	Date of Completion

**“RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 and other applicable provisions read with rule 8(3) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and based on the recommendation of the CSR Committee, the Board of Directors do and hereby approve appointment of M/s \_\_\_\_\_ as an Independent Agency to conduct impact assessment in respect of the following CSR projects undertaken by the company during the Financial Year \_\_\_\_\_ and which have an outlay of Rs. 1 crore or more and which have been completed not less than one year before undertaken the impact assessment.

**RESOLVED FURTHER THAT** Mr. / Ms. \_\_\_\_\_ (Director/KMP/CSR Head/ Officer) of the company be and is hereby authorized to finalize the terms and conditions of the appointment including the remuneration and out of pocket expenses payable to the impact assessment agency, subject to the condition that the same shall not exceed 2% of the total CSR expenditure for that financial year or Rs. 50 lakhs, whichever is higher.

**RESOLVED FURTHER THAT** Mr. / Ms. \_\_\_\_\_ (Director/KMP/CSR Head/ Officer) of the company be and is hereby authorized to do all such acts, deeds and things as may be required including signing and execution of documents in this regard and take all necessary steps to give effect to the above resolutions.”

**BORROWING OF FUNDS UNDER SECTION 180(1)(C) OF THE COMPANIES ACT, 2013**

**“RESOLVED THAT** pursuant to the provisions of section 180(1)(c) and all other applicable provisions, if any, of the Companies Act, 2013 and the rules made there under (including any

statutory modification(s) or re-enactment(s) thereof, for the time being in force), consent of the members of the company be and is hereby accorded to the Board of Directors of the company to borrow any sum or sums of moneys from time to time notwithstanding that the money or moneys to be borrowed, together with the moneys already borrowed by the Company, may exceed the aggregate of the paid up share capital, free reserves and securities premium of the company, apart from temporary loans obtained from the company's bankers in the ordinary course of business, provided however that the total amount so borrowed by the Board of directors shall not exceed Rs. 1000.00 Crore (Rupees One Thousand Crore only).

**RESOLVED FURTHER THAT** the Board be and is hereby authorised to do all such acts, deeds, matters and things as may be deemed necessary to give effect to the above resolution."

**TO MAKE INVESTMENTS, GIVE LOANS, GUARANTEES AND PROVIDE SECURITIES UNDER SECTION 186 OF THE COMPANIES ACT, 2013**

**“RESOLVED THAT** pursuant to the provisions of section 186 and all other applicable provisions, if any, of the Companies Act, 2013 and Companies (Meeting of Board and its Powers) Rules, 2014, (including any Statutory modification or re-enactment thereof, for the time being in force), consent of the members of the company be and is hereby accorded to the Board of Directors of the company (Hereinafter referred to as “Board” which term shall include any committee constituted by the Board or any person(s) authorized by the Board to exercise the power conferred on the Board by this resolution) to make loans or investments, in one or more tranches by subscription, purchase or otherwise in subsidiary(ies)/ any body/ bodies Corporate in India or abroad (existing or which may be promoted/ incorporated), in any kind of securities, or by providing of guarantee or security in connection with a loan made by any other person to any subsidiary(ies)/ any body/ Body corporate in India or abroad (existing or which may be promoted or incorporated) in excess of limit prescribed in section 186 of Companies Act, 2013 but subject to a maximum limit of Rs.1000 Crore (Rupees One Thousand Crore Only).

**RESOLVED FURTHER THAT** Board be and is hereby authorised to negotiate and finalize the terms and conditions of the said investments, loan, guarantees and provision of security on

behalf of the Company as it may deem fit in the interest of the Company, to take all such actions and to settle all matters arising out of and incidental thereto, and to sign and execute all deeds, applications, documents and such investments, loan, guarantees and provisions of security and generally to do all such acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to this resolution.

**CREATION OF SECURITY ON THE PROPERTIES OF THE COMPANY IN FAVOUR OF THE  
LENDERS**

**"RESOLVED THAT** pursuant to the provisions of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013, as amended from time to time and the Articles of Association of the company, consent of the shareholders be and is hereby accorded to the Board of Directors for creation of /security in any form or manner on the movable or immovable properties of the company whether tangible, intangible or otherwise both present and future of the whole or substantially the whole of the undertaking(s) of the Company in such form and manner as the Board of Directors may deem fit, in favour of such lenders from time to time, together with interest or further interest thereon, compound interest in the event of default, accumulated interest, liquidated damages, all other charges, expenses and costs payable by the company in respect of such borrowings, made by the Board in accordance with the authorizations given to it by the company, from time to time.

**RESOLVED FURTHER THAT** for the purpose of giving effect to this Resolution, the Board of Directors be and are hereby authorised, subject to the applicable provisions of the Act and the Articles of Association of the Company, to negotiate and settle the terms and conditions of the securities, finalize and execute all agreements, deeds and documents as may be necessary, desirable or expedient, settle any question, doubt or difficulties that may arise in this regard, do all such acts, deeds, things or matters, as they may in their absolute discretion deem proper, necessary or desirable and to delegate all or any of these powers to any Committee of Directors or to the Managing Director or Wholetime Director or any officer of the company."

### APPROVAL OF RELATED PARTY TRANSACTIONS

**“RESOLVED THAT** pursuant to the provisions of Section 188 of the Companies Act, 2013 (“Act”) and other applicable provisions, if any, read with Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, as amended till date, and the Company’s policy on Related Party transaction(s), approval of Shareholders be and is hereby accorded to the Board of Directors of the Company to enter into contract(s)/ arrangement(s)/ transaction(s) with M/s ABC Ltd., a related party within the meaning of Section 2(76) of the Act for purchase of \_\_\_\_\_, on such terms and conditions as the Board of Directors may deem fit, up to a maximum aggregate value of Rs.500 Crore (amounting to 15% of turnover of the company) for the financial year \_\_\_\_\_, provided that the said contract(s)/ arrangement(s)/ transaction(s) so carried out shall be at arm’s length basis.

**RESOLVED FURTHER THAT** the Board of Directors be and is hereby authorised to delegate all or any of the powers conferred on it by or under this resolution to any Committee of Directors of the Company and to do all acts and take such steps as may be considered necessary or expedient to give effect to the aforesaid resolution.

### OMNIBUS APPROVAL OF RELATED PARTY TRANSACTIONS FOR F.Y. \_\_\_\_\_

**“RESOLVED THAT** pursuant to the provisions of Section 2(76), 177 and Section 188 of the Companies Act, 2013, read with rules made thereunder and subject to approval of the Board and Shareholders wherever applicable, the omnibus approval of the committee be and is hereby accorded for the following transaction(s) related to purchase, sale, loans, interest, remuneration / professional charges, rentals, reimbursement of expenses etc. proposed to be entered into by the company with related parties as per respective agreements as detailed below.

Name of the related party	Maximum amount per transaction as below, with overall limits of Rs... in a year per Company / firm


**RESOLVED FURTHER THAT** Board of Directors of the Company be and are hereby authorized to approve such transactions on case to case basis within the approved limit and do all such acts, deeds, matters and things as may be necessary to give effect to the foregoing resolution."

## CHAPTER 7 - ART OF OPINION WRITING

### PURPOSE OF OPINION WRITING

Some of the common purposes for which legal opinion are sought are as follows:

1. **Lawfulness of an action:** Opinion letters are given when one wants to know **if an action is lawful**.
2. **Legal consequences:** Sometimes a party entering into a transaction obtains legal opinion to ascertain **if the action will lead to desired legal consequences**.
3. **Answer questions:** A client may be **confused about an issue** and they want professional guidance in the area. For example, an opinion regarding local law provided to foreign counsel.
4. **Regulatory requirements:** Sometimes legal opinion has to be sought because it is **mandated by law** to get the opinion of outside legal expert.
5. **Compliance:** A legal opinion can be sought for **assessing the requirements of the regulatory regime** so that the querist can meet the compliance requirement.
6. **Protective shield:** Clients sometimes **desire the protection of an expert's legal opinion** to be used as evidence of lack of mens rea in certain proceedings.
7. **Designed to mislead:** Sometimes **promoters of unscrupulous schemes** obtain as many opinions from different experts as is possible and **use the one which is favourable** to their scheme of things.
8. **To satisfy contractual requirements:** Sometimes a clause in commercial contracts **require the opinion of an expert**. E.g.: an opinion given by issuer's counsel to investors in connection with the sale of securities or by borrower's counsel to the lender pursuant to a loan agreement.
9. **Due Diligence:** Professionals and clients often cite **due diligence as the principal reason** for requesting opinion letters in business transactions.

### TYPES OF LEGAL OPINIONS

1. **Advices on Transaction:** An opinion letter may be one component of a party's due diligence, but **it is not normally a substitute for due diligence performed by the opinion recipient and its counsel**.

2. **Advices on Law:** Sometimes the client would want to know how the law will apply to a given situation. Without in-depth knowledge of law and legal research, one cannot give an opinion to the satisfaction of the client. The proper way is to start with the cases and work through to reach a deduction as to the principle of law that covers the situation. Quite often, however, one forms a value judgment as to what the conclusion ought to be from first principles and moral feelings and then searches for the authorities to support this conclusion. This is top down reasoning should be avoided.
  
3. **Opinions on Facts:** One is given a series of statements and documents and asked whether on that material there are reasonable prospects of prosecuting or defending the claim. The matter may be a simple personal injury case in which the law is well settled. The real question is whether one's side's witnesses will be believed or not. The first problem about this sort of opinion is that seldom does one have any real knowledge of what the other side's witnesses are going to say. One often has little idea of the quality of one's own witnesses and none at all of that of the opposition's. Here one has to search relevant material from the material one is provided with and then arrive at the probabilities of success or failure.
  
4. **Advices on Evidence:** When advising on fact or law one should not be too positive. In relation to advices on quantum of damages one can never be sure so it is advisable to not give a precise figure but a range. Where the law is in a state of flux or doubtful, the legal expert should always draw attention to this explaining why one cannot be more positive.

### QUALITY OF WRITING

1. The primary purpose of a legal opinion is communication of advice to either a layman or professional client. It is therefore of the utmost importance that it is clear and in plain, understandable English.
  
2. It is important to write in plain English wherever possible. A good legal opinion will avoid archaic language and legalese. The use of plain English simply involves saying what needs to be said in the clearest way possible and avoiding unnecessary verbosity. There are times where technical terms will have to be used if they carry the precise meaning of the advice being

delivered. This should not be shied away from. Perfect grammar, punctuation and precision of language are essential.

3. Clarity of expression can only be achieved through thorough planning and thought. Any legal opinion will be conveying a particular point, but that point will inevitably need to be broken down into sections.
4. Clarity of legal writing also requires conciseness. This does not necessarily imply brevity, but once the point has been made, nothing more need be said. Having said that, completeness and total accuracy is vital and conciseness should not come above giving full and precise advice.

### FORM AND ELEMENTS OF THE OPINION LETTER

There is likely to be some resistance to a high fee charged for a short opinion. The work that the legal expert has done may not be obvious and therefore very short legal opinions are rare to find. Therefore, the form and essential elements can be as follows:

#### I. Introductory Matters

- i. **Title:** It should be entitled OPINION or ADVICE and contain the title of the case in the heading.
- ii. **Date:** The opinion speaks as of the date mentioned on the opinion letter and need not state separately the effective date of the opinion.
- iii. **Addressee:** The opinion is normally addressed to a specified party in an individual capacity, to a party as representative of a larger group, or to an identified class of persons. In all cases, it is customary practice for the opinion recipient to be clearly identified in the opinion letter.

As a matter of prudence, however, many professionals include a sentence at the conclusion of the opinion letter to the following effect:

*The opinions set forth herein are rendered solely for your use in connection with the above transaction and may not be relied upon, delivered to or quoted by any other person or for any other purpose without our prior written consent.*

## 2. Introduction

The first paragraph should serve as an introduction to the legal opinion, laying out the salient facts and what the expert has been asked to advise about.

If the Querist (a person who seeks the opinion) is himself confused, his questions will be equally mindless. Of course, these must resemble the original questions, because otherwise the Querist will feel that you have not answered him, however stupid his questions might have been.

If the querist is not very clear about the subject matter on which he/ she seeks the opinion, then once the expert has formed the queries based on the briefing, it is always advisable to check with the querist if the expert has correctly formed the questions and proceed only after he/ she has received a go-ahead from the querist. If it's not done there is a possibility that after the opinion is delivered, the querist might get around and say that the expert did not form the queries as per his briefing.

## 3. Definitions

For purposes of brevity and clarity, it is advisable to define the principal terms used in the opinion. Whenever a term utilized in an opinion letter is derived from statutory law, the opinion customarily uses that term or provides an express definition.

## 4. Understanding Facts of the Case

The first rule is always to commence the opinion by setting out the facts that have been given or have been presumed from the instructions given. Any inference or presumption one has made from the facts must be included. Facts should be stated in a manner which brings out the materials that will become material for answering questions, whether with a "yes" or a "no".

The advantage of listing down the facts is that if the ultimate conclusion is wrong, or inapposite, because the facts are wrong, the fault will be that of the client for giving the wrong data or at least the error may be veiled by the failure of the client or solicitor to adapt opinion to the true facts.

The opinion giver must be satisfied that he has reviewed or assumed (expressly or implicitly) sufficient facts to support each of the legal conclusions expressed in the opinion letter.

Other opinion givers prefer to deliver opinion letters that merely set forth language to the following effect:

We have been furnished with and have examined originals or copies, certified or otherwise identified to our satisfaction, of all such records of the Company, agreements and other instruments, certificates of officers and representatives of the Company, certificates of public officials and other documents as we have considered necessary to provide a basis for the opinions hereinafter expressed. We have not independently established the facts stated therein.

If the opinion giver intends to limit the scope of the opinion to the documents and certificates listed, it should include an express statement to that effect in the opinion.

#### a. Reliance on Certificates of Public Officials

Usually opinions include legal conclusions concerning the corporate nature and existence of the Company and its ability to transact business. They also often include legal conclusions concerning the good standing and ability of the Company to transact business in other jurisdictions. These opinions customarily are based on certificates of public officials in the various jurisdictions involved.

Certain certificates may be required from various state agencies. For example, in loans backed by mortgage of immovable property, certificates showing the title to the property may be required. Many states have implemented websites on which such information can be accessed at any time. The information on any particular website can only be relied upon as current to the extent specified by the state agency responsible for that website.

#### b. Officers' Certificates

In business transactions, opinion preparers typically obtain two somewhat analogous types of officers' certificates:

- (i) certificates verifying the authenticity of referenced documents; and

(2) certificates relating to **factual matters not readily verifiable by the opinion preparers or only verifiable at considerable cost.**

**A common example of the first type of certificate is a certificate of the secretary of the Company certifying that, attached to the certificate, is a true copy of the articles, bylaws and corporate minutes or resolutions pertaining to the transaction.**

**The second type of officers' certificate relates to factual matters not readily verifiable or only verifiable at considerable cost by the opinion giver when preparing the opinion. These certificates are used as factual support for legal conclusions expressed in the opinion. The need for them arises, for example, when an opinion giver renders an opinion that the transaction will not cause a breach of the terms of any loan agreement to which the client is a party. The opinion giver is competent to review the loan agreements but may need an officers' certificate to identify the loan agreements to which the client is a party since, typically, the opinion giver is not in a position to know what agreements to review.**

#### **c. Documentary Examination Assumptions**

Opinion givers customarily assume that the **signatures on all documents examined are genuine, that copies of documents examined conform to the originals, and that such documents are binding on the other parties.**

#### **5. Research on Relevant Case Laws**

**It is important to prioritise the authorities cited in a legal opinion in order of importance to the point being addressed. If a particular case is central to the reasoning, the basis on which the case was decided should be set out fully in the legal opinion. It may even be appropriate to quote directly from the judgment although often paraphrasing the effect of the decision will usually suffice. The case being cited must always be referred back to the facts being dealt with in the legal opinion. The most authoritative case on the point of law being dealt with must always be cited. For example, there is no point citing a High Court judgment which has been overruled by a subsequent judgement of the Supreme Court.**

With regard to statute, much of the same advice will apply. If there is a statutory provision which deals directly with the subject of the legal opinion then this should be clearly stated and its effects fully explained. Care must be taken to ensure that any statutory provision being cited is in force at the time of writing the legal opinion.

## 6. Expression of the Opinion

The substantive portion of the opinion normally begins with an introductory statement referring to matters upon which the opinion giver has relied. *This introductory statement is generally phrased in a manner that does not limit the opinion giver's investigation to the matters specifically described, but rather indicates that the opinion giver has made such further investigation as it considers appropriate under the circumstances.* An example of such an introductory statement reads as follows:

Based on the foregoing and upon such further investigation as we have considered necessary, it is our opinion that:

The opinion can be in the form of summary statement of conclusions or, where a series of discrete questions have been asked, precise answers to the particular questions asked. If the argument has been properly conducted these answers may well be monosyllabic. "Yes", "no", or "does not arise". However, when the monosyllabic answers cannot apply, the answers must be kept short and to the point. Where the querist has asked "Is the transaction a valid mortgage", the answer can be "Yes" or "No", followed by "in view of what has been said in paragraphs such and such of the facts and paragraphs such and such of the analysis". However, where the question is "Why is this not a valid mortgage" the opinion giver cannot answer with 'yes' or 'no' but must explain, though with reference to what has been written in the analysis sections.

## 7. Qualifications

In practice, opinions are frequently subject to qualifications that narrow their apparent scope. Some opinions may be qualified by assumptions or exceptions. Opinions also may be qualified as to scope, particularly when the opinion covers a specialized area of the law. Qualifications take various forms, depending upon the opinion giver's preference and the length of the

qualification. If the qualification is short and applies only to one portion of the opinion letter, it often will be included in the operative language of the specific opinion by the reference "subject to   " or "except "

If the qualification pertains to more than one portion of the opinion letter or is lengthy, it will usually appear separately from the operative opinion clauses. Typical clauses introducing such qualifications include the following: "our opinion in paragraph    is subject to;" or "we express no opinion on the effect of;" or "in rendering our opinion in paragraph we have assumed that." To simplify the analysis process, number all previous paragraphs. This will relieve you of the burden of repeating previously written information.

## 8. Special Matters

### a. Foreign Law and Reliance on Local Counsel

The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country. Unless the limited nature of the review of another jurisdiction's law is described in the opinion, because the opinion giver would likely be held to the same standard as a lawyer licensed or otherwise competent to give advice on the law of the other jurisdiction, the opinion giver will, in most instances, seek the advice and opinion of local counsel.

The retention of local counsel to furnish an opinion raises different questions with respect to the principal opinion giver's responsibility for the opinions expressed in the local lawyer's opinion. If the principal opinion giver renders an opinion on the same matters as the local lawyer, the opinion giver customarily expresses its reliance on the local counsel's opinion (an example of recommended language is included below) rather than simply restating the local counsel's opinion in the body of its opinion:

In rendering the opinions expressed in paragraphs, and   , we have relied [solely] on the opinion of   , in so far as such opinions relate to the laws of   , and we have made no independent examination of the laws of that jurisdiction.

### b. Reliance on Opinion of 'Special' Counsel

A lawyer who has no expertise in a specialized matter should not render an opinion in the specialized area, and should refer the matter to a lawyer qualified in that field. The principal opinion giver normally does not furnish an opinion on the same matters as the specialist, even an opinion rendered solely in reliance on the specialist's opinion. The specialist customarily is retained specifically because the principal opinion giver does not have sufficient expertise to render the opinion in question.

### 9. Signature

The procedure typically followed by most law firms is for the opinion letter to be manually signed in the name of the firm. Some law firms follow different practices, such as "XY&Z by A, a partner" or "A on behalf of XY&Z."

### 10. Usual disclaimers

Disclaimers can save the opinion giver from being reported for malpractice if the opinion is wrong. Under the disclaimer, it is written that the opinions provided are based on the law as per the time of drafting the opinion. Moreover, it is also indicated that the opinion is also based on the documents and facts provided. All the documents that the clients provided for the sake of drafting the legal opinion can also be listed.

### THINGS TO BE KEPT IN MIND WHILE PREPARING FOR OPINION

Differences between opinion givers and opinion recipients generally arise over:

- (1) the time and expense required to render an opinion,
- (2) the appropriate scope of a particular opinion,
- (3) whether the opinion will cover matters that are essentially factual in nature,
- (4) whether the opinion will cover matters about which there is some recognized legal uncertainty,
- (5) requests for what historically were referred to as "comfort opinions" but are more properly referred to as "negative assurances."

### 1. Opinions that are not Cost-Effective

Although the nature and extent of the applicable standards of care are not defined, the opinion giver is obligated to avoid misleading opinion recipients about the scope and depth of any investigation undertaken. Rendering an opinion letter is a costly process, even in the context of a relatively straightforward matter or business transaction. In determining whether a particular opinion is appropriate under the circumstances and, if so, what the nature and scope of that opinion should be, the opinion giver must consider the costs of giving the opinion relative to the benefits to the client of satisfying the request of the opinion recipient.

### 2. Inappropriate Scope

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified. Examples of such opinions include the following:

- i. the client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;
- ii. the client is not in material violation of any central, state or local law, regulation or administrative ruling; and
- iii. the client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

### 3. Confirmations of Fact; Negative Assurance

Opinion givers should take care that the opinion letter makes a clear distinction between those portions that constitute actual opinions on matters of law and other portions (including confirmations of a purely factual nature) that do not.

The function of a legal opinion is to provide informed judgments on matters of law, not assurance regarding factual statements that the parties to a transaction are in a better position to verify. An opinion giver normally should not be asked to state that it lacks knowledge of particular factual matters. Opinion givers generally should not be asked for opinions on the outcome of pending or threatened claims or legal actions.

#### 4. Opinions Regarding Issues of Significant Legal Uncertainty

If the uncertainty extends only to one of the opinions expressed, the question is frequently resolved by a “qualification” to that opinion. The “qualification” may be a statement that the particular opinion does not cover the effect of a certain law or may identify the uncertainty.

An opinion giver should not render an unqualified opinion on an issue as to which there is significant uncertainty. If there is disagreement regarding the existence or degree of the legal uncertainty, a compromise is sometimes reached in the form of a “reasoned” opinion. In that situation, the opinion giver does not simply express a legal conclusion but also presents a discussion of relevant statutory and judicial authorities, often (but not always) indicating that the matter is uncertain or “not free from doubt,” and stating a prediction of the likely judicial resolution of the matter if the issue were appropriately presented to a court of competent jurisdiction.

#### 5. Fraudulent or Misleading Opinions and the Limits of Professional Competence

A professional should not render an opinion based on factual assumptions if he/ she knows that the assumptions are false or that reliance on those facts is unreasonable. In addition, a professional should not be asked to render opinions on matters that are outside his or her area of professional competence.

#### 6. The Time to prepare Opinion Letter

Sometimes one may be faced with the necessity of giving an urgent opinion or one when the time is not available to allow one to perform the depth of research one would wish. This may occur because the matter is truly urgent or more often because the client has delayed moving for advice until the last possible moment. In such a case one should qualify the opinion with a disclaimer.

## STANDARDS APPLICABLE TO PREPARATION OF AN OPINION

### 1. Generally

A professional is **expected to be well informed and to exercise such skill, prudence and diligence as professionals of ordinary skill and capacity commonly possess** and exercise in the performance of the tasks which they undertake.

### 2. Customary Practice

An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary principles of law which are commonly known by well informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.

### 3. Fraudulent or Misleading Opinions

An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A professional owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a professional should not render an opinion that he recognizes would be misleading to the opinion recipient.

### 4. Ethical Issues Relating to the Provision of Opinions to Non-clients

A professional delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

## COMPANY SECRETARY AUDITING STANDARD ON OPINION WRITING

The Company Secretaries Auditing Standard (CSAS-3) is applicable to the Auditor undertaking Audit under any statute. The objective of CSAS-3 is to enable the Auditor to lay down the

basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

### PROCESS OF FORMING AN OPINION UNDER CSAS-3

#### Step 1: Materiality

The Auditor shall consider Materiality while forming his opinion and adhere to:

- a. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;
- b. The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner.
- c. The principle of timeliness that implies preparing the report in due time; and
- d. The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

#### Step 2: Precedence and Practices

The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit.

#### Step 3: Third Party Report or Opinion

The Auditor shall adhere to the following while forming an opinion based on Third Party reports or opinions:

- (a) The Auditor shall indicate the fact of use of Third Party report or opinion and shall also record the circumstances necessitating the use of third party report or opinion;
- (b) The Auditor shall indicate the fact if Third Party report or opinion is provided by the Auditee;
- (c) The Auditor shall consider the important findings/ observation of Third Party;
- (d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third Party report or opinion.

## Step 4: Form of an Opinion

### 1. Unmodified Opinion

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

- a. there is **due compliance with the applicable laws** in terms of timelines and process; and
- b. the **Records as relevant for the audit verified by him as a whole are free from Misstatement** and maintained in accordance with the applicable laws.

### 2. Modified Opinion

The Auditor shall express modified opinion when the Auditor concludes that:

- (a) based on the Audit Evidence obtained, **there is non-compliance with the applicable laws in terms of timelines or process**; or
- (b) based on the Audit Evidence obtained, the **Records as a whole are not free from Misstatement**; or are not maintained in accordance with applicable laws; or
- (c) he is **unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process**; or
- (d) he is **unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement**; or are maintained in accordance with applicable laws.

Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

### 3. Limitation

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence. If the Auditor is

unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

- a. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be non-material, the Auditor shall modify the opinion; or
- b. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

### Step 5: Auditor's Responsibility

Auditor's Report shall state that the responsibility of the Auditor is **to express opinion on the compliance with the applicable laws and maintenance of records based on audit**. The Auditor's Report shall also state that the audit was **conducted in accordance with applicable Standards**. The Auditor's Report shall also explain that those Standards require that the Auditor **comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of Records**.

Auditor's Report shall also state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some Misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

### Step 6: Format of the Report

The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose. Where specific formats are prescribed, those formats shall be followed for reporting. If any information cannot be appropriately placed within the paragraphs of the report, it shall be given in form of annexure(s).

Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable. The Auditor shall clearly

mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

### SAMPLE FORMAT OF OPINIONS

A few sample opinion pieces can give a better understanding of the practical aspects of opinion writing. Professionals have to keep in mind that they need to focus on the structure and the presentation of the opinion and not the opinion per say.

#### SAMPLE 1

#### OPINION

Date:

To,

\_\_\_\_\_.

On the basis of the reference received by, the following question has been framed for legal opinion:

Question: Is the appointment of a person as a sole arbitrator by one party barred in law even if the same be provided in the arbitration agreement between the parties?

1. The Arbitration and Conciliation Act, 1996 does not bar the appointment of a person as a sole arbitrator by one party. However, it places certain fetters on such appointments and these have further been elaborated by the Supreme Court and various High Courts in a number of judgments. Having said that, there are still certain areas that need to be ironed out.
2. According to section 12(3) of the Arbitration and Conciliation Act, 1996, An arbitrator may be challenged only if-
  - a. circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

b. he does not possess the qualifications agreed to by the parties.

3. Clause (a) of section 12(3) is clear in its language that the appointment of an arbitrator can be challenged if there are circumstances that give rise to justifiable doubts as to his independence or impartiality. Appointment of a sole arbitrator by one of the parties raises justifiable doubts as to the arbitrator's independence or impartiality. Thus the other party can always challenge the appointment of such an arbitrator in Court and the appointment of the arbitrator is most likely to be struck down.

4. The Supreme Court in the matter of *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377 ruled against unilateral appointments of arbitrators and further clarified it in *Perkins Eastman Architects DPC v. HSCC (India) Limited* 2019 (9) SCC OnLine SC 1517, where it held that a party to an arbitration agreement can neither appoint oneself or any other person unilaterally as the sole arbitrator. In both these cases the arbitration clause provided that only the officer at a specified rank or someone nominated by that officer could act as the sole arbitrator.

5. The reason for holding it so is because a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course of the dispute resolution by having the power to appoint an arbitrator. In a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution.

6. If the arbitration clause provides for appointment of sole arbitrator by one of the parties, such arbitrator should be appointed with the consent of the other party. However, if one party appoints a sole arbitrator and the other party does not object to it, it would be considered as a waiver and that appointment would be considered valid. A point to be kept in mind is that such an appointment should not be made by a person who himself is disentitled to act as an arbitrator under the provisions of the Arbitration and Conciliation Act, 1996.

Disclaimer: The opinions expressed herein are given to you solely for your use and may not be relied upon by any other person or entity or for any purpose whatsoever without our prior written consent. The opinions herein are provided as legal opinions only, and not as representations of fact. The opinions expressed herein are as of the date of this letter and we have no obligation to update these opinions for any period following the date of this letter.

I advice accordingly.

Sincerely yours,

(Name & signature)

### CASE STUDIES ON OPINION WRITING

#### CASE STUDY 1

Mr. X was acting as a director on the Board of Directors of a company, going by the name of CSCM Private Ltd., between 2006 and 2008. Mr. X is also a shareholder in the said company, and owns approximately 25.66% equity shares. He drew a salary of Rs. 1.50 Lakh per month.

Commissioner of Central Taxes GST, based on the information received, that CSCM Private Ltd. was availing Input Tax Credit (ITC) against fake/ineligible invoices, commenced investigation, under section 67 of the Central Goods and Services Tax Act, 2017, against CSCM Private Ltd.

Mr. X, as per the commissioner, in her statement made to the concerned officer, inter alia, admitted to the fact that he had acted as a director of the company, between 2006 and 2008, and since then, he has been working in the company in the capacity of a mentor/advisor.

Furthermore, Mr. X is also said to have stated that, it is in her capacity as the mentor/advisor to company, that he received Rs. 18 Lakh in the concerned FY i.e. 2019-2020, from the

company. According to Mr. X, this money was given as she had been providing "strategic guidance" to the Company.

The Bank accounts of the Mr. X have also been attached. Mr. X has requested to give opinion in this matter.

### OPINION

Date: \_\_\_\_\_.

To,

\_\_\_\_\_,  
\_\_\_\_\_,

On the basis of the reference received by, the following question has been framed for legal opinion:

Question: Whether the attachment of Bank Account of director is sustainable merely on the ground of allegation against Company.

1. Section 83 of the Central Goods and Services Act, 2017

#### Provisional attachment to protect revenue in certain cases

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

2. The Delhi High Court in the case of *Roshni Sana Jaiswal v. Commissioner of Central Taxes GST Delhi (East) W.P.(C) NO. 2348 OF 2021 CM NO. 6860 OF 2021* has inter alia decided as under:

The petitioner claimed, in her voluntary statement, that she was paid Rs. 1.50 crores in the FY 2019- 2020 for rendering services in her capacity as a mentor/advisor to Milkfood Ltd. Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices. In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

### Analysis

In view of the above quoted provisions and the case decided by the Hon'ble High Court of Delhi, attachment of the petitioner's bank accounts may be unsustainable.

**Disclaimer:** The opinions expressed herein are given to you solely for your use and may not be relied upon by any other person or entity or for any purpose whatsoever without our prior written consent. The opinions herein are provided as legal opinions only, and not as representations of fact. The opinions expressed herein are as of the date of this letter and we have no obligation to update these opinions for any period following the date of this letter.

I advise accordingly.

Sincerely yours,

(Name & Signature)

## CASE STUDY 2

A foreign garment brand outsources production to a number of factories in India. Subscribed to the concept of 'Living Wage', the brand wants the factories to pay its workers some extra allowance so that the workers cash in hand is more than minimum wages set by the Government. The Brand intends to pay to factory this extra amount but wants all of it to go into workers hands. The brand had entered into a discussion with its suppliers regarding paying this additional 'Living wage allowance' on a monthly basis to workers but there was some hesitancy on the part of the factories.

The Brand wants to understand the financial implications of paying this extra allowance for the factories and how should the Brand move forward on this.

### OPINION

Date: \_\_\_\_\_

Dear \_\_\_\_\_

On the basis of the reference received by, the following question has been framed for legal opinion:

Question: What could be the possible reason for factories'/ employers' reluctance to pay the 'Living wage allowance' to its workers when the Company (Querist) will be paying that amount to the factory/ employer?

1. The reluctance of factories to pay additional living wage allowance stems from the increased financial liability for the factories that the Querist did not factor in while coming up with the additional allocation for living wage allowance.
  
2. To get the employer on board for payment of living wage, the Brand must ensure that the financial burden on the employer does not increase because of the payment of living wage. The financial burden on employer can increase in atleast four ways:

a. Through employer's contribution to PF that is currently fixed at 12 percent of basic wages, dearness allowance and retaining allowance.

b. Through employer's contribution to ESI that is currently fixed at 3.25 percent of wages. Through payment of gratuity that is contingent on last drawn salary/ wages.

c. Through payment of bonus that is fixed as a certain per cent of annual salary or wage.

3. Except in rare cases where the employer is willing to bear the additional financial responsibility, the Brand must either ensure that the employer's contributions/ payments remain unchanged.

The problem with optimising the payment of additional amount becomes complicated because the contributions of the employer and bonus and gratuity payments by him are dependent on different definitions of wages/ salary. Moreover, in States that have Professional Tax in India, the brand might also want to structure the payment of additional amount so that the employee does not get caught in its net.

4. Provident Fund:

According to section 6 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the contribution which shall be paid by the employer to the Fund shall be ten per cent. of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him (a proviso empowers the Central Government to increase this contribution to 12 per cent.). Explanation to the section says that for the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Thus the contribution of the employer and the employee is based on basic wages, dearness allowance and retaining allowance and dearness allowance includes cash value of any food concession allowed to the employee.

According to section 2(b) of the Act:

“basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

- (i) the cash value of any food concession;
- (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- (iii) any presents made by the employer.

Therefore, the PF contribution is not dependent on house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment or any presents made by the employer.’

#### S. Employee's State Insurance:

Under the ESI Act, the contribution to ESIC is fixed as a certain percent of ‘wages’. Section 2(22) of the ESI Act defines wages as:

“wages” means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and] other additional remuneration, if any, paid at intervals not exceeding two months, but does not include—

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (d) any gratuity payable on discharge;

The definition of ‘wages’ under the ESI Act is wide but it excludes any remuneration that is paid at an interval exceeding two months. Therefore, if the living wage allowance is paid at a quarterly frequency, it would keep that amount outside the ambit of wages and no ESI contribution on that extra amount will have to be made.

## 6. Payment of Gratuity:

The relevant part of the Act says that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned [section 4(2)].

Section 2(s) defines wages as:

"wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Thus the definition of wages for the purpose of gratuity is restricted and gives the Brand the freedom to pay living wage allowance without increasing the financial burden on the employer in case the worker retires after the applicable period.

## 7. Payment of Bonus:

The Payment of Bonus Act requires that a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher must be paid, whether or not the employer has any allocable surplus in the accounting year:

As per section 2(21) of the Act:

"salary or wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-

- (i) any other allowance which the employee is for the time being entitled to;
- (ii) the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii) any traveling concession;
- (iv) any bonus (including incentive, production and attendance bonus);

- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;
- (vii) any commission payable to the employee.

**Explanation.** – Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;

The definition under the Act excludes a number of items and gives Brand the freedom to pay Living Wage allowance without increasing the Bonus Payment by the employer.

8. Any additional payment to workers should be made after considering the above four contributions/ payments by the employer and operating under the presumption that the objective of the whole exercise is to increase payment to workers (so that they achieve 'living wage') without increasing the financial burden on the employer and to avoid incidence of tax on workers through legally permissible means.
9. It must be clear that PF contribution depends on basic wages, dearness allowance and retaining allowance. PF contribution by employers is an additional financial burden for the employers and they try to keep it to the legal minimum. Believing (genuinely or not, is a separate matter) that the definition of 'basic wages' in the PF Act allowed certain allowances to be excluded from the definition of basic wages, the employers started paying workers a number of different allowances like canteen allowance, leave allowance, dress allowance etc. This allowed them to give workers a wage hike without increasing their (or workers') PF contribution. The Government authority that ensures compliance with the PF Act and has wide ranging powers believed that exempting allowances apart from the ones specifically excluded in the definition as per the Act was nothing but an attempt to camouflage basic wage as allowances to avoid PF contribution and initiated action. The matter went to the Courts and was finally settled in the Supreme

Court of India in 2019 (The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and Others) which ruled in favour of the PF authority.

10. After the said ruling, the legal position is as follows:

- Those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage.
- Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage.

The second point would cover things like overtime allowance, leave encashment etc.

11. After this ruling by the Supreme Court the proliferation of various types of allowances by employers has stopped. The factories/ employers believe that if living wage allowance is paid to workers under whatever head, for the purpose of PF he will have to consider it as a part of basic wage and consequently its PF contribution will increase.

12. One can still pay an additional amount on a monthly basis and legitimately say that the payment does not fall under point 1 above. For example, paying only those workers that are involved in Brand's production and not across the board (non-universal), or ex-gratia (not necessarily) but the downside risk is that if the PF authorities consider it a part of the basic wage, the employer will have to pay the contribution for itself and the workers as well as interest and fine. The other option for the employer would be to challenge the action of the authority in the Courts. Both these scenarios involve additional financial expense on part of the employer and it is likely that the factories/ employers are unwilling to take on the additional financial burden.

**Disclaimer:** The opinions expressed herein are given to you solely for your use and may not be relied upon by any other person or entity or for any purpose whatsoever without our prior written consent. The opinions herein are provided as legal opinions only, and not as representations of fact. The opinions expressed herein are as of the date of this letter and we have no obligation to update these opinions for any period following the date of this letter.



I advice accordingly.

Sincerely yours,

(Name & signature)

## CHAPTER 8 - COMMERCIAL CONTRACT MANAGEMENT

### SIGNIFICANCE OF CONTRACT

#### Avoids Misunderstanding and legal disputes (Impact on business)

To avoid such cases, drafting a contract is important and it is required for both parties to read the consented rules and abide by them. It has a large impact on the business as **breaching the contract rules can lead to conflicts** between the parties and thereby affect the business overall.

#### Acts as a Record of the Business (Impact on business)

A written contract is a relevant record stating the mutual consent of the proceedings listed in the agreement. It **can be used for future reference and, comprises information regarding the stipulated delivery timeline** of any work assigned as per contract. The tenure of the contract is also highlighted in the agreement.

#### Evidence in Court of Law

The contract can act as legal evidence **if any of the party files a case against the other at times of contract breaching.**

#### Increases Operational Efficiency

Contracts are essentially binding agreements that state that one side will deliver goods and services for a certain consideration by the other side. A contract with the appropriate term will **help the business to operate efficiently.**

#### Proof of Details (Impact on business)

The prime purpose of creating a contract is related to the recording of details, which both parties have agreed with mutual consent. It **provides a precise knowledge of the services provided by the third party or monetary expectations to be met by the person.**

### Provides Security (Impact on business)

A contract document plays a pivotal role in making the parties secure as it **clearly specifies the tenure of the contract and set of responsibilities**. Here, an employer is lawfully responsible to pay the committed salary on time and the employee is responsible to perform his duties as designated. Any deviation is considered contract breaching and, either of them has the sole rights to take appropriate action.

### Provides Confidentiality

It includes a Non-disclosure agreement. According to this agreement, **concerned parties are not entitled to reveal the business and monetary transactions between them with any third person**. In case of disclosure, either of them will be subjected to suffering as per contract rules, enforced by the law legally.

### Prevents Conflicts and Minimizes Risk

Contracts detail down each party's responsibility. This leads to clarity between the parties and **better understanding among them regarding the deal**. Conflicts in a business are undesirable as they exploit resources that could have otherwise been used to increase productivity.

### Record of Commitment

Contracts represent the relationship one party enters with the other. **Each party has certain responsibilities and enjoys certain rights** towards the other. A contract is a visual record of this relationship.

## BUSINESS/COMMERCIAL CONTRACTS

Commercial contracts define and regulate business relationships, whether a standard employment agreement or more complex agreements like merger and acquisition contracts. Commercial contracts are most often written documents. **Commercial contracts spell out exactly what each party must do for the contract to remain legitimate, as well as the consequences of any of the terms and conditions are not followed**. It's for the companies and organizations,

and one of its main requirements is that legal agreements enable the contract's maximum benefits to be realized.

### NEGOTIATION OF BEST COMMERCIAL AND OPERATIONAL TERMS WITH VENDOR

Following are some major guidelines for creating best commercial and operational terms with the vendor:

#### 1. Make a plan

Before you reach out to the vendors, make a plan as to what you are going to ask. For example - **have a plan in place before you approach a vendor to negotiate new payment terms.** It's important to know what you can afford to pay now. **This plan will give you a starting point from which to negotiate.** Additionally, take the time to review what your rights are under your contract. Be sure to check for cancellation clauses and penalties in addition to late payment fees. You may want to speak to a lawyer about the specifics of your vendor agreement before exploring a renegotiation.

#### 2. Build a foundation of communication

Without clear and trustworthy communication, one never gets anywhere. **Take the time to mindfully commit to the conversation, and speak in person whenever possible.** Do your best to **respond to communications in a timely manner**, and show respect by saving communication for appropriate times. Consider a single point of contact for the vendor, so it's always the same person reaching out and getting to know one another. When there are issues, give your full attention to solving the problems and establishing trust.

#### 3. Be proactive in communication

Early communication is always more welcome than suddenly reaching out in an emergency. **Try to be proactive about your need to renegotiate.** Explore renegotiations and deadline extensions before you stop payment or cancel the agreement altogether.

#### 4. Research pricing

It is critical that one research about the pricing and market fluctuations. You will also need to understand variance in quality, since most vendors will try to justify higher prices with better quality. For most vendors, it is economical to keep existing customers and more expensive to find new business. If a vendor is worried, they might lose you, this could be used as leverage as they may be more willing to whittle down prices. Understanding what existing vs. new business costs them can aid in negotiation.

#### 5. Learn from them

Treat your vendors like the industry experts they are, and ask them to help you learn more about your field. Not only will you better understand your industry, but you will earn their respect. Do your best to understand where they are coming from and the issues they face in the industry. Demonstrate that you want to stay on the cutting edge of industry development and learn the details of the business and you will demonstrate that you are a company smart enough for partnership.

#### 6. Sell the vendor

Your vendor wants to be well-represented and sell as much of their product as possible. Demonstrate to the vendor how you can help them meet their goals and increase their sales. Will you get their product in front of key demographics? Is your sales team world-class? Maybe you can find ways to promote the vendor in your operations. Sell your operation to the vendor and they will be excited to work with you (and be open to negotiations).

#### 7. Get quotes

Even if you know which vendor you would prefer, always get multiple offers from potential vendors. Competition is key for driving down pricing and increasing the customer service of your vendor. Consider not only other products, but getting your own wholesale with transport and packaging (or any other steps the vendor would complete). Don't forget to get quotes for different quantities or tiers. The entire process of procurement is negotiable and presents multiple touch points for improvement and innovation.

## 8. Try a different angle

It may be that your vendor is unable or unwilling to negotiate price. That does not mean the contract negotiation is over. Try finding other areas where you can make a better deal, perhaps the down payment, interest, repayment terms and length, discounts in bulk, or other factors.

## 9. Talk to customers

If you want to establish a relationship with a supplier that will include the perks of price negotiation, it is a good idea to talk to their current customers. Ask the supplier for a list of client references and then reach out to them. You can determine if they are a reliable vendor and also come armed with the prices their existing customers are paying. The payment terms offered to these customers may give you a jumping off point for your negotiations.

## 10. Lead with a deposit

The vendor is the one taking a risk, and what they truly want is to get paid. If a vendor feels confident in your payment, they will be more willing to negotiate prices. Therefore, offering up a large deposit or down payment on an order can encourage the vendor to give you a better price.

## 11. Be Patient

It's a general rule of thumb that the "winner" is usually the party who wants it the least, because the party who wants it the most is more willing to bend. When you are ready to negotiate, have a Plan B and even a Plan C for other vendors. Stay confident and remember that you can always walk away. Typically, it is not a good idea to take the first offer—carefully consider and respond with a better counter offer. It is also important to leave plenty of time for negotiations and don't rush through.

## 12. Be Partners

A truly successful relationship between you and your vendors will look more like a partnership, not like an order fulfilment chore. Figure out what will make your vendor's life easier—how can you save them money or time? Offer your supplier something that is mutually beneficial and treat the relationship like a long-term partnership. Consider what other services and perks you

could offer them beyond your business order. In a partnership, you may log months or even years together, so know when to back off and let them “win” for the time being.

### 13. Start strong

Vendors are not likely to negotiate with a company who has missed a deadline or made late payments. Similarly, vendors don't want clients who are overly complicated or difficult to work with. By making your payments in full and on time you begin to build trust. Communicate promptly, treat all points of contact with respect, and represent yourself as the type of client they want to retain.

### 14. Find a win-win solution

When you come to the table, suggest ways that more generous terms could benefit them as well. For example: explain how more cash flexibility may allow you to increase your order volume, for example, or mention that you'd like to send peers in your industry their way if you can tell them how easy this vendor is to work with.

## CREATE, ANALYSE AND EXECUTE CONTRACTS

### GOOD CONTRACT: ANALYSIS

In general, a good contract is understandable and unambiguous. Contracts that clearly state their terms and conditions are preferred over contracts that don't. All relationships require clear communication for healthy continuation and so do business relations. Contracts serve as an efficient communication tool that ensures that the relationship is a healthy one.

By clearly stating the important clauses for the parties they lead to transparency which enhances communication. Further, well drafted contracts clearly capture the obligations of the parties. If a party tries to back out of its obligations, it can cause problems in the relationship. Hence, a good contract cuts down the likelihood of a breach.

A contract states the:

- a. The **goal or objectives** that the parties intend to achieve through the transaction.
- b. The **scope of work** to be performed by the contracting parties.
- c. In case of a specific purpose, the **description of specific purpose** to be achieved.
- d. The **consideration** agreed to be paid and terms of payment.
- e. The **indemnities** which each party would give the other as applicable.
- f. The **limit of the liability of each person** vis-a-vis the other party or a third party.
- g. **Grounds of termination** of the contract.

## GENERAL AND SPECIAL CONDITIONS OF A CONTRACT

### GENERAL CONDITIONS

#### 1. Legal Status of the Parties

This clause deals with the **legal status and nomenclature** of the parties entering into the contract.

#### 2. Definitions

It defines all the **important and capitalized terms** in a contract. It majorly aims to capture the intent of a capitalized term used in a contract.

#### 3. Interpretation Clause

A good contract always captures a general interpretation clause, which clarifies **the intention of some general terms** used in the agreement. For example, he includes she and alike.

#### 4. Object/ Scope of Work and/or Services

It captures the **scope of work/object** for which the contract is being entered upon between the parties.

#### 5. Representations and Warranties

In this clause, parties represent and warrants certain factual details, which forms the integral part of the contract and **basis** which parties are acting upon the contract.

## 6. Contractual Period

This clause defines the **term of the contract**. A good contract also captures the renewal of term and the conditions of such renewal.

## 7. Fees and Taxes

This clause captures **fees and taxes mutually decided** for the scope of work of that contract.

## 8. Payment Method

Apart from consideration for a contract, it is also vital to clearly capture **the method** vide which the fees and commercials of the contract shall be paid.

## 9. Commencement Date

This clause identifies the **effective date** of the contract on which the rights and obligations of the parties shall take effect.

## 10. Rights and Obligations of the Contractual Parties

This clause specifies the **rights and obligations** of the contractual parties.

## 11. Termination of Contract

This clause describes the **process of termination of contract**, in case party wishes to terminate the contract before it expires. It also identifies the **events which will cause** the contract to terminate by either of the parties.

## 12. The Right of Withdrawal from the Contract

This covered the **withdrawal rights** of the parties; in case they wish to withdraw from few obligations of the contract.

## 13. Disclaimer of Warranty

Vide this clause, parties **disclaim certain warranties**.

#### 14. Indemnification

This clause states the **obligations of the parties to indemnify other party, hold and safe harmless, and defend, at its own expense, from and against all suits, claims, demands, and liability of any nature or kind, arising out of acts of omission of the indemnifying party.**

#### 15. Limitation of Liability

This clause **limits the liabilities of the parties in case of any indemnity or liability required to be given/ bear under the contract.**

#### 16. Confidentiality

This provision should **prohibit all parties from disclosing any and all information exchanged during the transaction.** Of course, where valuable intellectual property is at stake, this is especially important.

#### 17. Force majeure/Mitigating Factors

The term **“Force Majeure” simply means “greater factor”.** This clause should be included in all commercial contracts because **it can shield parties from events that are beyond their control.**

For example a shipping schedule could be unavoidably interrupted in the event of a natural disaster such as an earthquake or hurricane. In general, the term **“force majeure” is very broad, and many contracts have clauses that cover items like terrorist attacks and even acts of God.**

This provision is necessary to ensure that any failure to perform as a result of an unforeseen interruption is not considered as breach of contract.

#### 18. Jurisdiction

When the parties to a contract are from different states, or even different countries, it can be difficult to determine which state's laws apply to the contract. As a result, commercial contracts **should always state which state will have authority over the deal, so that the relevant laws are crystal clear.**

### 19. Dispute Resolution

Parties are increasingly using an arbitration provision in their contracts, forcing the parties to agree to arbitration before or in lieu of finding a settlement through litigation. While some contracts do allow for conventional legal redress, this is usually a quicker and less expensive way to resolve contract-related issues.

### 20. Damages

Due to high level of contract violations and the need to prevent them, it is also common practice for commercial contracts to include damages clauses. Liquidated damages clauses, which are normally a fixed sum due if one party fails to perform, will be used in most contracts. Depending on the extent and effect of the violation, a court can award other forms of damages in addition to that amount.

### 21. Entire Contract and Precedence in case of inconsistency clause

#### Special Conditions

As the name suggests, special conditions are special as per the nature of the contract. These conditions cannot be common for all the contracts. Few instances of special conditions are as follows.

- a. Sub-Contracting
- b. Assignment
- c. Additional Scope of Work
- d. Alternative Dispute Resolution
- e. Data Deletion and/or Data Purging Clause
- f. Privilege and Immunities
- g. Tax Exemption
- h. Choice of Law.

## EXECUTION OF CONTRACTS

Executed contracts are agreements that have passed the signature stage and have been approved by all parties involved. An executed agreement establishes a contractual and enforceable relationship, and each party is now responsible for fulfilling the legal obligations stated in the agreement.

## SIGNIFICANCE OF EXECUTED CONTRACT

**Contract ambiguity:** If contract terms are unclear, litigation may ensue or the agreement may not be enforceable. In addition, it could frustrate business partners or cause costly delays.

**Unenforceable contracts:** If the contract isn't properly executed, all the hard work will be for nothing. Costly litigation can result in severe financial losses, lost value, and lost resources.

After a contract is executed, no changes can be made to the contract language.

## CONTRACT RELATED DOCUMENTS AND CORRESPONDENCE

Almost all the well drafted contracts keep the following clause in the contract:

“Documentation and Correspondence - All documentation and correspondence to be delivered between the Parties pursuant to this Agreement shall be in the English language.”

The clause itself confirms that there are plenty of correspondence and documents in a contract and each and every such documents and correspondence are vital to the contract. Hence this section deals with the common documents and correspondence related to a contract.

## CONTRACT DOCUMENTS: MEANING AND SIGNIFICANCE

The most common types of contract documents are:

1. **Contract Agreement:** A contract agreement defines the **agreement between the client and the contractor** in which the parties are specified and their responsibilities are defined in the construction process. A standard document contacts can be used for the agreement.
2. **Scope of work:** This document outlines the **specific work to be completed** under the contract. It may also include information on how the work will be performed, timelines, milestones, and other important details.
3. **Addendum:** An addendum is a **document attached to and executed with the original contract**, **making it a part of the original contract from the start**. It usually contains information or requirements of the parties that are not fully spelled out in the contract. An addendum should not be confused with an **amendment (or modification)**, which is a document that modifies an already signed contract.
4. **General Conditions:** General conditions define all general terms and items **such as utilities, vehicles, organizational structure, mobilization, and demobilization**. But these items are not directly related to the construction activities. Obligations of both parties, general conditions, overhead costs, bonuses, and some other conditions are included in this portion.
5. **Special Conditions:** Special conditions describe **specific requirements and instructions for the work**. Mostly they are addendums to the general conditions. Special conditions include details and conditions regarding the individual tasks or the whole project.
6. **Bill of Quantities:** Bill of Quantities is a document used for tendering that lists all work to **allow the contractor to price the work for which he or she is bidding**. It includes quantity and price for each work and after the bidding phase, it will be an attachment of the contract document.

7. **Schedule:** A project cannot be performed without a proper plan. A project schedule shows site delivery date, start and finish milestones, project duration, and other useful information. Tasks are listed and grouped under specific Work Breakdown Structure levels such as civil, electrical, and mechanical works within a project schedule. A work schedule can be created by using various project scheduling techniques.
  
8. **Budget:** The budget outlines the estimated costs for the project. This may include materials, labor, overhead, and other associated costs.
  
9. **Drawings and specifications:** Detailed drawings and specifications are often required for construction projects. These documents provide information on the materials to be used, dimensions, tolerances, and other important details.
  
10. **Insurance requirements:** Most contracts will require that certain insurance policies be in place before work can begin. This may include general liability insurance, workers' compensation insurance, or other specialized coverage.
  
11. **Bonding requirements:** Many public projects require that contractors obtain performance bonds or payment bonds before work can begin. These bonds protect the owner from financial loss if the contractor fails to perform as specified in the contract.
  
12. **Technical Specifications:** Technical Specifications describe the materials, workmanship, and equipment required for a task. Typically, technical specifications describe the end product, therefore, the client should describe them clearly before the tendering stage. Every little task should be specified and deviation limits should be determined in technical specifications.

### MAINTENANCE OF CONTRACT DOCUMENTS

It involves organizing and tracking documents. Maintenance of contract documents means creating and maintaining accurate records of all communications and correspondence with

contracting parties. It may or may not involve involves monitoring compliance with contract terms and keeping track of any changes or amendments that need to be made.

Briefly, **document management** is simply the process of organizing and storing documents. This can include scanned documents, electronic files, or even physical paperwork.

### TYPES OF MAINTAINING CONTRACT DOCUMENTS

When it comes to document management, there are two main types of systems:

- A **manual document management system** (DMS) is **controlled by humans**. This could involve a physical filing system where employees manually file documents or an online system where employees enter data into a database.
- An **electronic document management system** (EDMS), on the other hand, is a system that is **controlled by computers**. This could involve an online system where employees access files remotely or an offline system where employees download files to their computers.

### DOCUMENT MANAGEMENT VIS-À-VIS CONTRACT MANAGEMENT

DOCUMENT MANAGEMENT	CONTRACT MANAGEMENT
Document management includes maintaining, arranging and storing the documents for negotiation, better tracking and retrieval, when necessary, but it does not include features like negotiation, risk management, and compliance.	Contract management includes elements of risk management, and better tracking and retrieval, when necessary, compliance.
Document management is simply the process of organizing and storing documents.	Contract management is the process of negotiating, drafting, executing, and managing contracts.
Document management helps businesses find specific documents quickly and easily.	Contract management helps businesses manage their contractual obligations effectively.

Document management is a sketchy solution that helps businesses organize and track documents.

Contract management is a more comprehensive solution that includes risk management, compliance, and the negotiation of contracts.

Document management is more beneficial for businesses that need to find specific documents quickly and easily.

Contract management is more beneficial for businesses that need to manage contractual obligations.

### TRACKING OF CONTRACTS AND EXTEND, RENEW AND CLOSE

Contract tracking is the process whereby stakeholders in the contract lifecycle (particularly in legal or compliance) are able to know where a contract is alive or not, without having to investigate across multiple systems.

Contracts go through many stages to minimize an organization's financial, legal, and procurement risks. These stages include:

1. **Request and draft:** The parties decide to enter into an agreement, and **one party offers the initial draft with the necessary clauses, terms, and conditions.**
2. **Review and negotiations:** A **lawyer or business professional examines the contract provisions to identify any potential risks.** Both parties negotiate over the contract's terms and conditions and make any necessary adjustments to establish acceptable terms for both sides.
3. **Approval and execution:** If both parties **agree to the contract's wording, they approve it and execute the deal via their preferred signing method.**
4. **Storage:** Each party should **store the signed contract in a secure yet easily accessible location.**

5. **Performance:** Each party complies with its obligations and monitors the other's performance over several months or even years. This stage also usually requires quickly finding, searching, and reviewing contract provisions.
6. **Reporting and analytics:** Both parties can accumulate, filter, analyze, and report on contract data.
7. **Amendments:** Both parties can negotiate addendums to their contracts and use joinders to add a new party to the original contract.
8. **Extend, Expiration (Close) and Renewals:** When the parties reach the end of the contract, they may decide to renew their agreement, negotiate a new contract, or terminate it.

### GOLDEN RULES FOR TRACKING THE CONTRACT FOR RENEWALS, EXTENSION AND CLOSURE

#### Know the place/storage of contracts

The first thing you should do when preparing to track your contracts and their details is to be sure you know where all of your agreements are located. It might sound simple, but for far too many companies, contracts are not all stored in one location.

Wherever you choose to store your contracts - whether it's a filing cabinet, a shared drive, or using contract management software - establish a system for organizing your repository so you can quickly find any agreement when it needs to be referenced or reviewed.

#### Determine the requirement of tracking

Consider documenting every piece of important data that needs to be monitored. One need to create a strategy through the time know that contract is expired and archived. Some of the common pieces of information to track and monitor during the contract lifecycle include:

- a. Deliverables and obligations
- b. End dates
- c. Opt-out/renegotiation windows

- d. Termination notice requirements
- e. High-risk clauses
- f. Compliance requirements
- g. Contract performance.

### Be proactive, not reactive

Staying ahead of dates and deadlines and proactively looking for risks and opportunities during the contract monitoring process will help to remain in control of agreements and obligations.

By regularly reviewing agreements marked as important or critical areas and the specific areas outlined in the previous section, one will have the best chance of catching any changes needed or corrections early rather than having to react to issues after they happen.

### Keep stakeholders informed

Tracking and monitoring agreements is a critical part of the contract management process, but it has to be made sure that the information gets to the appropriate parties. Contract management is a collaborative process, and effective contract managers communicate openly with stakeholders throughout the organization.

### Streamline the process with contract management software

Tracking and monitoring corporate agreements becomes much simpler and more streamlined when you incorporate contract management software into your process. Here are some of the ways contract management software can help you accomplish the recommendations in the previous sections:

- a. A **contract repository** gives you a centralized place to store and organize your agreements so you can always find the documents you need quickly.
- b. **Custom reporting tools** allow you to report on any data points in your contract portfolio and automatically send those insights to various parties on a recurring basis.
- c. **Alerts and notifications** help you stay ahead of upcoming contract dates so you have plenty of time to take strategic action at the appropriate time.

## BUILD AND MAINTAIN RELATIONSHIP WITH VENDORS, CLIENTS

### 1. Choose suppliers that align with your values

If excellent customer service is important to you then choose suppliers for whom this is also paramount. It is vital for good customer relations that any products, materials or services you supply your clients have warranties or return policies that match your own. It is a bit like personal relationships. It is very difficult to maintain a relationship with a person who differs in core values. When selecting suppliers consider their ethics, values, positioning and reputation.

### 2. Understand Suppliers Needs

Respect their way of doing things and make it easy for them by following their processes and timelines. Provide the product as per the requirements of customer/supplier as the case may be. Stay on top of supplying things like insurance certificates, business information and purchase order numbers.

### 3. Be a great customer

Think about what you love about your customers and do the same for your suppliers. Pay on time and keep your records in order so you don't have to waste your suppliers' time by getting them to re-send things.

In the same way that you go the extra mile to look after a great customer, so will your suppliers if you are a great customer to them. Putting some deposits in the goodwill bank can be very helpful if you need a favor from your suppliers at a later stage.

### 4. Maintain regular communication

Keep in touch with your suppliers and try and schedule a time to get together over a coffee. Reflect on what's working well and talk through areas for improvement.

Having the opportunity for both parties to provide feedback on what's been helpful or difficult can be the spark to develop innovative ways to strengthen the relationship even further.

### 5. Give timely feedback

Don't ring up and yell at your supplier if stuff is not going right. Instead, **be calm and direct** so things do not fester and become the proverbial storm in a teacup.

Despite the very best preparation and planning, mistakes and miscommunication can happen. It is important to tackle them with your supplier quickly and in a professional manner. Always allow your supplier the opportunity to be part of a solution. In a good supplier relationship, it is essential to speak up when something is wrong.

### 6. Reward good service with loyalty

If your supplier has done the right thing by you, **reward them with your loyalty** and continue your business relations with them.

## CONTROL OVER ANY CHARGES FOR SERVICES OUT OF THE SCOPE OF THE CONTRACT

A change to an existing contract is a modification. **A contract modification could change the scope of the contract, the price of the contract, or both. A contract modification exists when the parties to the contract approve the modification either in writing, orally, or based on the parties' customary business practices.**

However, in cases where the parties to an arrangement have agreed to a change in scope, but not the corresponding change in price (for example, an unpriced change order), the reporting entity should estimate the change to the transaction price in accordance with the guidance on estimating variable consideration.

Management should assess all relevant facts and circumstances (for example, prior experience with similar modifications) to determine whether there is an expectation that the price will be approved. Below example illustrates a contract modification with an unpriced change order.

### Example: Contract modifications - unpriced change order

Contractor enters into a contract with a customer to construct a warehouse. Contractor discovers environmental issues during site preparation that must be remediated before construction can begin. Contractor obtains approval from the customer to perform the remediation efforts, but the price for the services will be agreed to in the future (that is, it is an unpriced change order). Contractor completes the remediation and invoices the customer \$2 million, based on the costs incurred plus a profit margin consistent with the overall expected margin on the project.

### Charges/Payment of Services - Outside the Scope of the Contract: Indian Legal Perspective

#### Quantum meruit compensation

A quantum meruit claim arises, where work is done or services rendered by the contractor for the employer or owner, in circumstances which entitle the contractor doing the work or rendering the services to receive a reasonable additional remuneration, the situation being one where either there is no construction contract or there is a contract but the particular situation is not covered under that construction contract.

The three conditions need to be fulfilled before the benefit of this section can be invoked by a person. The **three conditions** under section 70 of Indian Contract Act, 1872 are as follows:

1. The first condition is that the **claimant should either lawfully do something for another person or deliver something to him.**
2. The second condition is that while doing or delivering something, the **claimant must not be acting gratuitously** and
3. Thirdly, the **person for whom something is done or to whom something is delivered must enjoy the thing done for or delivered to him as the case may be.**

In the case, **Atopi Parshad and Sons Ltd. v. Union of India**, Hon'ble Supreme Court dealt with a compensation which consists of certain amount on the basis of quantum meruit and it was held that,

“Compensation under quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract. For work done or services rendered pursuant to the

terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable on that behalf. Quantum meruit is but reasonable compensation awarded on implication of a contract to remunerate, and an express stipulation governing the relations between the parties under a contract, cannot be displaced by assuming that the stipulation is not reasonable."

In the case of **Satyanarayan Construction Co. Ltd. v. Union of India**, the Hon'ble Supreme Court strictly followed the condition and rejected a grant of additional payment to the contractor for the cost of the work already mentioned in the construction contract notwithstanding the fact that the contractor incurred almost double the cost stipulated in the construction contract.

In the case of **Mulamchand v. State of M.P.**, the court held that, if a claim for compensation is made by one person against another person under Section 70 of the Indian Contract Act, 1872, it cannot be on the basis of any existing construction contract between the parties but on the basis different kinds of obligations.

### ACTION IN CASE OF BREACH OF CONTRACT (SECTION 73 TO 75) OF INDIAN CONTRACT ACT, 1872

#### Section 73 - deals with compensation for loss or damage caused by breach of contract

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him.

An uncommonly known fact is that Section 73 is based on a case law, i.e., **Hadley v. Baxendale (1854) 9 Ex. 354**. The well-known rule in this case was stated by the Court as follows:

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may reasonably and fairly be considered as arising naturally, i.e., according to usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have

been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it."

### Section 73 deals with remote and indirect loss or damage

It states that no compensation is payable for remote and indirect loss or damage arising out on account of breach of contract. **The indirect loss cannot be said to arise on usual course of things.** The aggrieved party can claim compensation for indirect loss or loss of profit, only where it is expressly made known to the other party or contemplated by contract that breach of non-performance of the contract would result in some indirect loss or loss of profit to the party term remoteness of damage refers to the legal test used for deciding which type of loss caused by the breach of contract may be compensated by the award of damage.

In **Madras Railway Company v. Govinda (1898) 21 Mad. 172**, the Plaintiff, who was a tailor, delivered a sewing machine and some clothes to the defendant railway company, to be sent to a place where he expected to carry on his business in an upcoming festival. Due to mistakes made by the company's employees, the goods were delayed and were not delivered until some days after the festival was over. The plaintiff had not given any notice to the railway company that the goods were required to be delivered within a fixed time for any special purpose. On a suit by the plaintiff to recover a sum of his estimated profits, the Court held that the damages claimed were too remote.

### Section 73 deals with breach of resembling contract

It confers a statutory right upon a party to get compensation from a party who has incurred a statutory obligation to pay compensation in case default even though there may be no contract to pay compensation. **The party in default is under obligation to pay compensation to the injured party as if there was a contract and has broken such contract.**

### Section 73 deals with mitigation of losses

It explains that the **means which existed of remedying the inconvenience caused by the non-performance of the contract must be considered while calculating the damage or loss for breach**

of the contract. **[M. Lachia Setty & Sons Ltd v. Coffee Board Bangalore, AIR 1981 SC 162, 168]**

### Section 74 - Penalties with regard to Breach of Contract

The party to the contract may agree at the time of contracting that, in the occurrence of breach, the party in default has to pay a stipulated sum of money to the other, or may agree that in the event of breach by one party any amount paid by him shall be forfeited. If this sum is genuine pre-estimate of damage likely to flow from the breach is called 'liquidated damages'. If it is not genuine pre-estimate of the loss, but an amount intended to secure performance of the contract, it may be called 'penalty'.

### Section 75 - Compensation to the Party Rightfully Rescinding the Contract

A person who rightfully rescinds the contract is entitled to compensation for any damage which he has sustained through non fulfillment of the contract. A party to a contract is entitled to rescind the contract.

### Damage can be claimed by

Only those parties can claim damages for breach of contract who have performed or is willing to perform his part of the obligations arising under the contract. Loss which is caused by the party's failure to fulfill his duty is not recoverable from the other party. A party to a Contract cannot be in a better position by reason of his own default, than if he had fulfilled his obligations.

### Can damage or loss suffered by a third party be claimed?

When it is contemplated by the contract that breach by any of the parties to the contract is likely to cause loss to an identified or identifiable stranger to the contract, rather than to the contracting party, a party not in default can claim damages for the loss caused to an identified or identifiable stranger to the contract. Thus, the party may recover substantial damages even though it does not personally bear the cost of correcting the defects or personally suffers the diminution in the value; provided this was intended or was within the contemplation of the parties; and if such intention or contemplation is shown it is immaterial that the true prayer

or suffered is stranger to the contract. **[Alfred McAlpine Constn Ltd. v. Panatown Ltd, (2001)]**.

### Can interest be claimed as damage?

Interest would be refused if the party fails to show that interest is being claimed under a contract or on account of usage or customs. The Supreme Court in **Mahavir Prasad Rungta v. Durga Dutta, 1961** has ruled that interest can be claimed only if it is payable by custom or there is express or implied provision in the agreement for payment of interest or under provisions of substantive law plaintiff is entitled to recover the interest.

### Nature of remedy of damage

The principle behind awarding damage for breach of contract to the party, who has suffered the loss, is to place that party in the same position in which it would have been had that contract not been broken. The damages must commensurate with the loss suffered. Where the contract is broken by one party, contract is discharged, and the obligations under the contract come to end; a new obligation arises for the payment of damages.

## DECREE FOR SPECIFIC PERFORMANCE

The situation where specific performance of contract may be allowed are as under:

### When there is no standard for ascertaining actual damage

When it is impossible to quantify the actual damage caused by the non-performance of the act agreed to be done, the Court may, in its discretion, grant a decree of Specific Performance of that act.

### **Duke of Somerset v. Cookson, 1935, 3 P Wins. 390**

Art, paintings, old furniture, antiques, etc. have a special value to the contracting party, although such articles may not have much monetary value. For example, an idol which has been passed down from generation to generation of a family has immense value to that family, even if it means nothing to someone else. No number of damages can compensate for the loss to the

members of the family, even if the Court makes an attempt to assess the damages payable instead of the idol. Therefore, an order will be passed for specific delivery of that idol, not for damages.

In **Vijaya Minerals v. Bikash AIR 1996 Cal. 67**, the Hon'ble Calcutta High Court has observed that since manganese and iron ore are not ordinary items of commerce, if a contract for sale of iron and manganese ore from a mine has been made, specific performance of such an act would be allowed.

#### **When monetary compensation would not afford adequate relief**

When the act agreed to be done is such that compensation offered in money for its non-performance would not afford adequate relief. However, until the contrary is proved, it is to be presumed that:

The breach of a contract to **transfer immovable property** cannot be adequately compensated by payment of money.

The breach of a contract to transfer movable property can be so compensated, except in the following cases:

- Where the **property is not an ordinary article of commerce or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market.**
- Where the **property is held by the defendant as the agent or trustee of the plaintiff.**
- Usually, the Courts are entitled to presume that in case of breach of contract to transfer of immovable property, mere compensation is not adequate relief, whereas specific performance is adequate relief, whereas in the case of movable property, compensation is the ordinary relief and specific performance is exceptional. However, it must be noted that these presumptions are rebuttable.

In **Bank of India v. Chinoy, AIR 1949 PC 90**, it was held that if shares are freely available in the market, then specific performance would not be granted. If shares of a particular company, for instance a private company are not readily available in the market, specific performance would be granted.

### Suits for Enforcement of a Contract to Execute a Mortgage

In a suit for the enforcement of a contract to execute a mortgage or furnish any other security for the repayment of any loan which the borrower is not willing to pay at once, specific performance may be allowed. However, where only part of the loan has been advanced by the lender, he must be willing to advance the full amount of the loan.

- Contracts for the purchase of any debentures of a company.
- Suits for the execution of a formal deed of partnership.
- Suits for the purchase of partner's share.

### INJUNCTION

Under Section 36 of Specific Relief Act 1963, an injunction is defined as an order of a competent court, which:

- Forbids the commission of a threatened wrong,
- Forbids the continuation of a wrong already begun, or
- Commands the restoration of the status quo (the former course of things).

Under Sections 36 & 37 of the Specific Relief Act 1963, there are two types of injunctions – temporary and perpetual, whereas Section 39 governs mandatory injunctions.

- Temporary or interim injunctions
- Permanent or perpetual injunctions

### WHEN ARE PERPETUAL INJUNCTIONS GRANTED?

Whenever the defendant invades, or even threatens to invade the plaintiff's right to enjoyment of property or right to property itself, the Court may grant to the plaintiff a perpetual or permanent injunction in the four cases as follows:

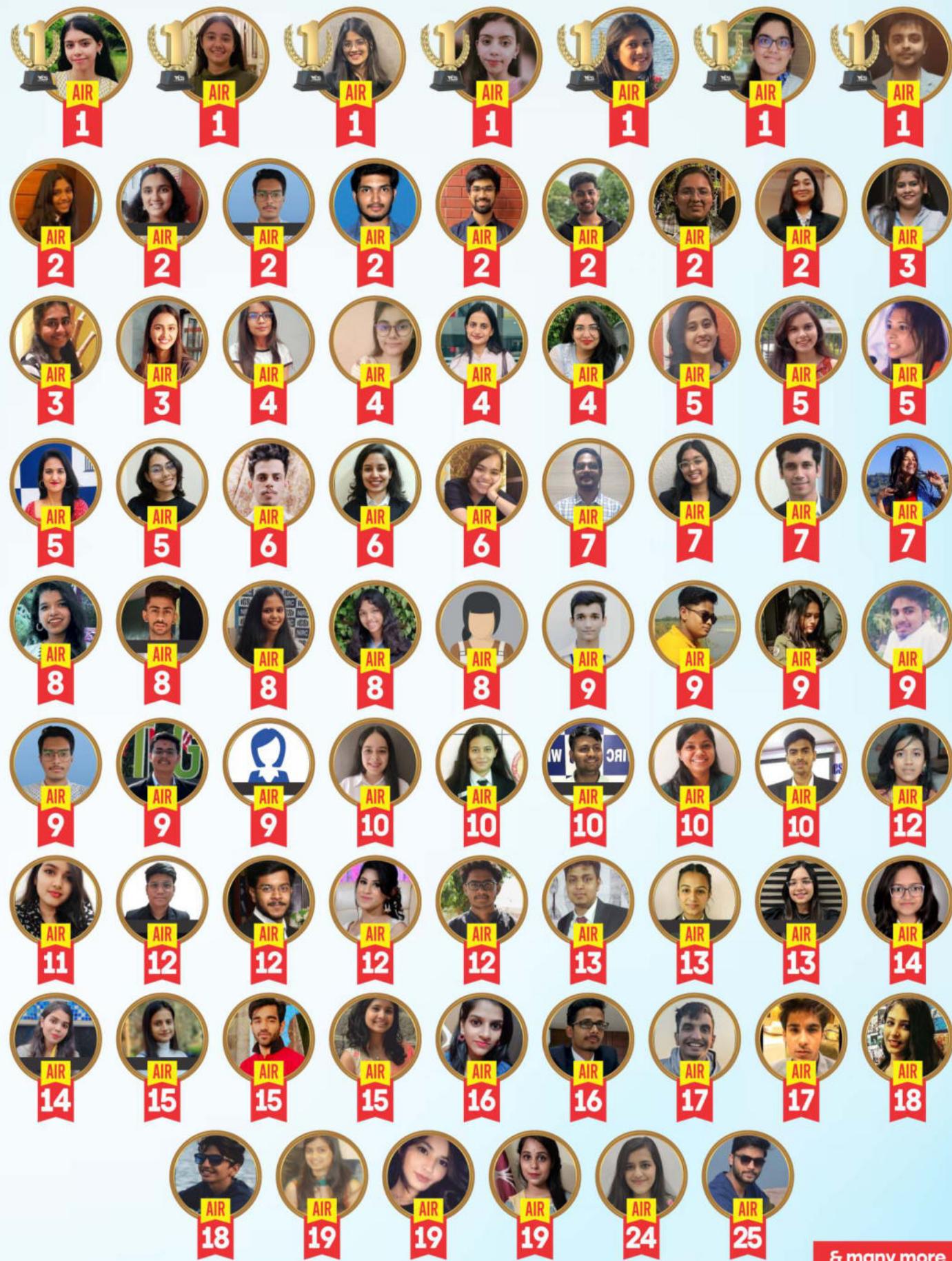
- Where there is no standard for quantifying the actual damages caused, or likely to be caused, to the plaintiff, by the invasion of his rights;
- Where invasion of the plaintiff's rights is such that any compensation in money would be inadequate relief;

- (iii) Where the defendant is a trustee of the property for the plaintiff;
- (iv) Where the injunction is necessary to prevent multiplicity of judicial proceedings.

### DAMAGES INSTEAD OF, OR IN ADDITION TO INJUNCTION

A plaintiff may claim damages either in addition to or in substitution for suing for perpetual or mandatory injunction, and if the Court deems fit, it may even grant such damages.

However, damages cannot be granted unless the plaintiff has claimed damages in the plaint. In the event that the plaintiff has not claimed damages in the plaint itself, he should be allowed to amend the plaint, at any stage of the proceedings, on such terms as may be just in the circumstances of the case.



& many more



**CS Vikas Vohra**  
**Founder – YES Academy**

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 50,000 students.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

Vikas is presently the Founder of YES Academy for CS, Pune. He is also a Co-Founder of PapaZapata (Mexican food chain) & GujuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.

