

# Drafting of Agreements, Deeds and Documents

## Lesson 4

### KEY CONCEPTS

- Business Agreements
- Alternate Dispute Resolution Clauses/Agreements
- General Power of Attorney
- Special Power of Attorney
- Leave and Licence Agreements
- Sale Deed and Agreement to Sell
- Gift Deed

### Learning Objectives

#### To understand:

- Essentials of Drafting of documents
- Types of Agreements / Contracts
- Drafting of Lease Deed & License Deed
- Purpose and drafting of Mortgage Deed
- Basics of Gift Deed and its drafting
- Alternate Dispute Resolution (ADR) Agreements
- Drafting of Bye-Laws of Societies
- Drafting of Standing Orders
- Response of Show Cause Notices
- The Strategies to Improve Drafting of Legal Documents

### Lesson Outline

- Introduction
- Document – Meaning
- How to draft a Document?
- Types of Agreements / Contracts
- Deeds of Power of Attorney i.e. General Power of Attorney and Special Power of Attorney
- Special Power of Attorney
- Lease Deed & License Deed
- Mortgage Deeds
- Gift Deed
- Sale Deed and Agreement to Sell
- Alternate Dispute Resolution (ADR) Agreements
- Employment Contracts
- Settlement Agreements
- Drafting of bye-laws of Societies
- Drafting of Standing Orders
- Reply of Show Cause Notices
- Notices under the Negotiable Instruments Act
- Tips to Improve Drafting of Legal Documents
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites / video link)

## REGULATORY FRAMEWORK

- Indian Evidence Act, 1872
- General Clauses Act, 1897
- Indian Contract Act, 1872
- Powers-Of-Attorney Act, 1882
- Income-tax Act, 1961
- Transfer of Property Act, 1882
- Limitation Act, 1963
- Registration Act, 1908
- Arbitration and Conciliation Act, 1996
- Negotiable Instruments Act, 1881

## INTRODUCTION

The skill of drafting is one's ability to express one's thought process in writing. Probably no other profession demands this ability more than the legal profession. A document is a voice of a sender. Every written word in a legal profession is precious, as it has the power to advocate, inform, instruct and persuade. Practically speaking, the language and tone of every commercial agreement must be clear and unambiguous. An agreement is not drafted for the academic pleasure of its author. An agreement is a living thing (almost) – it has to live and face the scrutiny of several interested parties (the client, other party, other party's lawyers, adjudicating authorities, etc.). Therefore, it has to be carefully crafted so as to protect your client's interest to the utmost, be legally compliant and understandable to all who come across the document.

Writing skills play a major role in the drafting of commercial agreements – negotiating skills are no less important but if you articulate and draft well, it leaves less scope for the other party to come up with any objections or counter your position. You can't take anything lightly as the contents of an agreement are legally binding between the parties.

Though, contracts, deeds etc. can be written, oral, or implied also. However, it is always preferable to enter into written contracts as it is always difficult to prove the terms of an oral or implied contract than those of a written one. Some of the benefits of having a written contract are:

- The process of writing down the contract's terms and signing the contract forces both parties to think about and be precise about the obligations they are undertaking. With an oral contract, it is too easy for both parties to say "yes" and then have second thoughts.
- With an oral contract, the parties may have different recollections of what they agreed on (just as two witnesses to a car accident will disagree over what happened).
- A written agreement eliminates disputes over who promised what.
- Some types of contracts must be in writing to be enforced. The Copyright Act, 1957 requires a copyright assignment or exclusive license to be in writing.
- If you have to go to court to enforce a contract or get damages, a written contract will mean less dispute about the contract's terms as the burden of proof lies with you.

In this lesson, an attempt has been made to explain and make students understand the drafting of various types of Agreements, Deeds and Documents.

### Points to be kept in mind while drafting agreements

- Prepare an outline.

- Establish a single principle of division and use that principle to divide the subject matter into major topics.
- Arrange the items in a logic sequence.
- Give appropriate headings.
- Remember the audience in mind when drafting a document.
- The text should be in clear writing.
- Use concrete words and be concise.
- Avoid gender-specific words as far as possible.
- Write in short sentences.
- Use proper punctuations.
- Avoid drafting in the passive voice and use active voice as it is more direct and vigorous than the passive voice.
- As far as possible put statements in a positive form and make definite assertions.
- Avoid unnecessary, hesitating and non-committal language.
- Express co-ordinate ideas in similar form.
- Keep related words together as the position of words in a sentence is the principal means of showing their relationship.
- In summaries, keep to one tense, especially the present tense.
- The emphatic words of a sentence should be placed at the end.

### DOCUMENT - MEANING

Ordinarily the word “document” denotes a textual record. Increasingly sophisticated attempts to provide access to the rapidly growing quantity of available documents raised questions about which should be considered a “document”.

Three Acts refer to the word “Document” in very similar terms:

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 writing is a document;
  - Words printed, lithographed or photographed are document;
  - A map or plan is a document;
  - An inscription on a metal plate or stone is a document;
  - 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?

A legal document is basically an enumeration of the transaction and all terms and conditions agreed to between the parties involved.

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

1. Ascertain a proper title of the document, which aptly describes the nature of transaction in brief.
2. Ascertain the parties to the transaction/agreement or the persons executing the document representing the parties. 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. The words used should be unambiguous so that only one meaning/interpretation is possible. It should be ensured that no condition is left out.
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.

### TYPES OF AGREEMENTS / CONTRACTS

A list of various agreements / contracts are enumerated hereunder –

1. **Business Agreements**
  - i. Acquisition Agreement
  - ii. Agency Agreement
  - iii. Advertising Agreements
  - iv. Consultancy Agreement
  - v. Construction Agreement
  - vi. Distribution Agreement
  - vii. Franchisee Agreement
  - viii. Foreign Collaboration Agreement
  - ix. Hire Purchase Agreement
  - x. Investment Agreement

- xi. Joint Venture Agreement
- xii. Service Agreement
- xiii. Shareholder Agreement
- xiv. Stock Purchase Agreement
- xv. Sale Agreement
- xvi. Technology Sharing Agreement
- xvii. Agreement to act as technical or management adviser
- xviii. Agreement to supply technical know-how
- xix. Technical collaboration agreement
- xx. Agreement between manufacturer and sole selling agents
- xxi. Appointment of sole selling agents by a foreign company
- xxii. Agreement for underwriting shares of a company
- xxiii. Agreement to Underwrite Debenture Stock
- xxiv. Agreement between a company and its manager
- xxv. Agreement between a company and security service company for providing security services to the company's property
- xxvi. Brokerage agreement
- xxvii. Agreement Between A Firm and A Broker for Agency
- xxviii. Agreement Between Manufacturer and Commission Agent
- xxix. Dealership Agreements
- xxx. Deed of indemnity by the partner retaining assets and liabilities to a partner on the dissolution of the partnership firm
- xxxi. Indemnity for Loss of Allotment Letter
- xxxii. Indemnity by Debtor to his Guarantor.

## **2. Documents for formation of an Entity**

- i. Memorandum of Association & Articles of Association
- ii. Partnership Deed
- iii. LLP Incorporation document and LLP Agreement
- iv. Trust Deed
- v. Conversion of Partnership into Limited company
- vi. Association of Persons agreement
- vii. Section 8 company - Memorandum and Articles of Association
- viii. Memorandum of Association and Rules and Regulations of Society.

## **3. Alternate Dispute Resolution**

- i. Agreement of reference to sole arbitrator
- ii. Agreement of reference to common arbitrator
- iii. Model Arbitration Clauses in an Agreement
- iv. Model Conciliation clauses

- v. Model Mediation clauses
- vi. Mediation Agreement
- vii. Appointment of Sole Arbitrator on Default of Other Party
- viii. Agreement For Reference To Arbitration Between Partners.

#### **4. Property related documents**

- i. Purchase of Flat/house/apartment (commercial/residential)
- ii. Purchase of Land
- iii. Leave and Licence Agreement
- iv. Licence authorizing the licensee to use the part of land of the licensor as way to the house of the licensee
- v. Development Agreement
- vi. Transfer Deed
- vii. Power of Attorney
- viii. Lease of building or office
- ix. Lease of agricultural land
- x. Lease of a furnished house for residential purposes
- xi. Deed of surrender of lease
- xii. Deed of renewal of lease
- xiii. Tripartite lease agreement between lessor, lessee and the guarantor
- xiv. Deed of Sub-Lease
- xv. Deed for Modification of the Terms of the Lease
- xvi. Gift Deed of Property
- xvii. Partition Deed
- xviii. Settlement Deed
- xix. Construction Agreement
- xx. Rent Agreement
- xxi. Sale/ Purchase Agreement
- xxii. Agreement to Sell
- xxiii. Deed of Mortgage of Property
- xxiv. Relinquishment Deed
- xxv. Surrender Deed in Cooperative Housing Society
- xxvi. Simple Mortgage Deed
- xxvii. Conveyance Deed
- xxviii. Deed of Mortgage by Conditional Sale

- xxix. Mortgage by deposit of Title deeds
- xxx. Deed Creating Charge on the Property.

#### **5. Intellectual Property Documents**

- i. Patent and High Technology Agreements
- ii. Licensing Agreements
- iii. Consulting and Know-How Agreements
- iv. Joint Development Agreements
- v. Software Development Agreements
- vi. Agreement for Sale of Technical Know-How
- vii. License of use of copy right
- viii. Agreements relating to protection of designs/ trademarks/ patents/ and know how
- ix. Agreement for use of Trade Mark.

#### **6. Documents relating to Cyber Law**

- i. Software Services Agreement
- ii. Internet services agreement
- iii. Privacy Policy and User Agreement
- iv. Software Escrow Agreement
- v. Website Development Agreement
- vi. Internet Gateway Merchant Legal Agreement
- vii. Technology related contracts.

#### **7. Banking / Financial Documents**

- i. Loan Agreements
- ii. Bank Guarantee
- iii. Promissory Note
- iv. Letter of Credit & Reimbursement Agreement
- v. Indemnity given to Bank for Issue of a Duplicate Bank Draft
- vi. Indemnity given to the bank by the natural guardian of minor children
- vii. Indemnity for Loss of Deposit Receipt .

#### **8. Documents related to Labour and Employment**

- i. Employment agreements
- ii. Non-disclosure Agreement
- iii. Compensation Agreement
- iv. Collective Bargaining Agreement

- v. Wage Agreement
- vi. Agreement between employer and employee going abroad
- vii. Agreement to refer disputes to arbitration
- viii. Contract Labour Agreement
- ix. Agreement for appointment of Managing Director
- x. On the Job Training Agreement.

#### 9. Documents for Private Equity Funding

- i. Business Plan
- ii. Term Sheet
- iii. Warranties and Indemnities
- iv. Disclosure Letter
- v. Shareholders' / Investors' Rights/ Subscription Agreement.

#### 10. Other legal documents

- i. Affidavit
- ii. Plaint
- iii. Written Statement
- iv. Notices.

### DEEDS OF POWER OF ATTORNEY i.e. GENERAL POWER OF ATTORNEY AND SPECIAL POWER OF ATTORNEY

#### 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"). Power of Attorneys are specifically or incidentally referred to in several statutes. It is a type of agency, and law relating to the powers of attorney forms part of the general law of agency. The law of agency in India is contained in Chapter X, sections 182 to 238 of the Indian Contract Act, 1872. The statutory provisions concerning Power of Attorneys are found in the Powers of Attorney Act, 1882.

#### 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.

#### Specimen Model of General Power of Attorney

##### GENERAL POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, \_\_\_\_\_ son of \_\_\_\_\_, resident of \_\_\_\_\_  
 \_\_\_\_\_ at present residing at \_\_\_\_\_ do hereby appoint

\_\_\_\_\_, s/o \_\_\_\_\_, residing at \_\_\_\_\_ to be my Attorney for me and in my name and on my behalf.

**WHEREAS** I own various movable and immovable properties in various parts of India described in the Schedule I hereto and I have interest in various firms, companies, association of persons, trusts, societies as partner, proprietor, shareholder, member, trustee, beneficiary, etc. and/or otherwise, described in the Schedule II hereto.

**AND WHEREAS** I am presently residing out of India as mentioned hereinabove for the time being, I am personally unable to attend to my day to day affairs and for reasons of convenience it is necessary that I should appoint an attorney and confer upon him the powers hereinafter stated.

**KNOW ALL BY THESE PRESENTS THAT**

I the said \_\_\_\_\_ do hereby nominate and constitute and appoint Shri \_\_\_\_\_ son of late \_\_\_\_\_ at present residing at \_\_\_\_\_ as my lawful Attorney for me in the name and on behalf of myself and/or my said Attorney and in any of my said capacities and in the name and on behalf of any partnership firm, association of persons, trustee, beneficiary or businesses in which I am now or may in future in any manner become interested to do exercise, execute and perform all or any of the following acts, deeds and things, namely:-

**1. Commercial**

- 1.1 To transact business:-** To commence, transact, manage, carry on, close down any of my business and to do all things requisite or necessary or connected therewith including correspondence with any person or authority.
- 1.2 To buy and sell:-** To buy, receive, store and hold and to sell, pledge, hypothecate, give on hire or otherwise deal with any goods, articles, things or movable property.
- 1.3 To open branches:-** To open, establish, conduct, shift and/or close any branch of any business at any place or places.
- 1.4 To contract:-** To enter into, sign, execute, vary, alter, terminate, suspend, and repudiate any contracts.
- 1.5 Partnership business:-** To act as a partner in the firm or firms in which I am a partner at present or become a partner in future and commence, carry on, close, dissolve or retire from any business of any partnership with any person and for the said purpose to do all acts as partner or partners therein including banking operations, execution of partnership, retirement, dissolution or other deeds and documents.

**2. Property**

- 2.1. To acquire and to transfer:-** To purchase, take on lease, to take charge or mortgage on and to acquire in any manner and to sell, mortgage, settle, charge, lease, grant tenancy or otherwise transfer and/or in any manner and/or on any terms deal with any immovable or real property or properties or any interest therein.
- 2.2. To manage and maintain:-** To hold, defend possession, manage and maintain movable, or immovable properties described in Schedule 1 herein and other immovable properties acquired by me hereafter.
- 2.3. To receive rents, etc.:-** To demand, recover and receive rents, *mesne* profits, licence fees, maintenance charges, electricity charges, corporation taxes and all other sums of moneys receivable in respect of my properties and to make all just and reasonable allowance therein in

respect of rates, taxes, repairs and other outgoings and to take all necessary steps whether by action, distress or otherwise to recover any property or sums of money in arrears.

- 2.4. To pay outgoings:-** To pay all taxes, rates, assessments, charges, expenses and other outgoings whatsoever payable for or on account of my properties or any part thereof and to insure any buildings thereon against loss or damage by fire and other risks as be deemed necessary and/or desirable and to pay all premiums for such insurances.
- 2.5. To serve notice on tenants:-** To sign and give any notice to any occupier of any property belonging to me to quit or to repair or to abate any nuisance or to remedy any breach of covenant or for any other purpose whatsoever.
- 2.6. To construct, repair and/or reconstruct:-** To take down, demolish, rebuild and/or repair any of my house, building or other structure of whatever nature.
- 2.7. To get utilities:** - To apply for and obtain electricity, gas, water, sewerage and/or connections of any utilities and/or to make alterations and/or close down and/or have disconnected the same in my properties.
- 2.8. To view the condition of any property:-** To enter upon any of my property or any part of it as often as be desired to view the state of repair thereof and to require any occupier as a result of such view to remedy any want of repair or abate any nuisance.
- 2.9. To enforce covenants:-** To enforce any covenant in any lease, licence or tenancy agreement or any other document affecting any of my property and if any right to re-enter arises in any manner under such covenants or under notice to quit, then to exercise such rights amongst others.
- 2.10. To deal with trespassers:-** To warn off and prohibit and if necessary proceed against in due form of law against all trespassers on any of my property and to take appropriate steps whether by action or otherwise and to abate all nuisances.
- 2.11. To prepare and have sanctioned the plans:** - To get prepared plans for construction of any building or structure and/or otherwise on any of my property and to have the same sanctioned, modified and/or altered by any Corporation, Municipality or other authority and in connection therewith or to make necessary applications, give undertakings, pay fees, obtain sanctions and such other orders and permissions as may be expedient.
- 2.12. To apply for obtaining building materials:-** To apply for and obtain such permission as may be necessary for obtaining steel, cement, bricks and other construction materials and construction equipments and to appoint architects and contractors for the construction of building or buildings to be constructed on the plots belonging to me.
- 2.13. To act in proceedings under rent control legislation:-** To appear and represent in any proceedings for fixation of fair rent and/or for any other purpose or purposes before any court, Rent Controller or other authority in connection with any matter relating to and/or arising out of any of my property.
- 2.14. To obtain any certificate:-** To apply for and obtain such certificate and other permissions and clearances including certificates and/or permission under any law relating to ceiling on urban land, or other law relating to land and/or buildings both urban and rural or under the Income-tax Act or any other law as may be required for execution and/or registration of any conveyance or other document and/or for transferring any rights in any land, building or other property belonging to me or acquired by me hereafter.
- 2.15. To file declarations:-** To prepare, sign, declare and file declarations, statements, applications and/or returns and otherwise in connection with holding, possessing, acquiring, transferring,

partitioning or otherwise dealing with any of my property before any appropriate or other authority as may be required under any law or laws now prevailing or as may in future become applicable and to do, exercise, execute and perform any or all the necessary acts, deeds and things required thereunder.

### 3. Companies

- 3.1. To promote company:-** To promote or form or cause to be promoted or formed or join with any other person in promoting or forming and to do all things necessary or proper to be done or causing to be formed and incorporated a company with limited or unlimited liability for any object and to settle and sign the memorandum and articles of association, prospectus, application forms, statement in lieu of prospectus and all other papers required for or in connection with incorporation, commencement of business of such company and other acts, relating thereto.
- 3.2. To spend money in promoting a company:-** To expend or agree to expend moneys for promoting and forming any such company as aforesaid and in taking up and paying for any shares in my name in any such company as aforesaid.
- 3.3. To contract to take shares:-** To sign and file with the Registrar of Companies or any other appropriate authorities contract in writing to take from and/or pay for any share or shares in any such company as aforesaid in my name.
- 3.4. To apply for, accept and deal with shares:-** To make application or applications for and take allotment or allotments or purchase or otherwise acquire or hold any share or shares in any company in my name and to sell, transfer, pledge, hypothecate and/or deal with any share or shares held by me or acquired by me hereafter and to execute and/or deliver all deeds and documents including transfer deeds in connection therewith and/or for registration of any transfer and/or transmission.
- 3.5. To consent to act as a director:-** To sign and file with the Registrar of Companies or any other appropriate authority in my name, consent in writing to act as a director of any company as aforesaid.
- 3.6. To exercise shareholder's privileges:-** To attend, vote and otherwise act in the meetings of any company or companies or to appoint or act as proxy or representative in respect of any shares, stock or debentures now held by me or which may hereafter be acquired by me and generally to exercise all rights and privileges and perform all duties in respect of any shares, stocks or debentures as the holder, owner and/or registered owner thereof or as otherwise being interested in any company including carrying on correspondence and making or consent in the making of any applications in connection therewith before the Central Government, court or other authority under the Companies Act or any other law for the time being in force.
- 3.7. To transfer securities:-** To transfer any share, stock, debenture or other securities held by me or to be acquired by me hereafter in any company and to execute transfer deeds, receipts and all other papers in connection therewith and also to transmit and/or apply for and/or to consent to the transmission of any share, stock, debenture and/or other securities and/or have the same registered and/or to have such registration altered and/or cancelled in any manner.
- 3.8. General:-** To do such acts and deeds and to execute such papers and documents as may be necessary in any capacity as shareholder, debtor, creditor or otherwise in relation to any company which may be required to be done by me.
- 3.9. To receive bonus shares and other benefits:-** To receive and to hold and to deal with bonus shares and all other benefits that may accrue as a shareholder or otherwise in relation to any company.

#### 4. Investments

- 4.1. To sell investments:-** To acquire or sell, transfer, assign or join in acquiring or selling, transferring or assigning all or any stocks, shares, annuities, debentures, stocks, bonds, obligations, government securities, units and other securities or investments of any nature whatever which do now or shall hereafter stand in my name or to which I am now or may at any time hereafter be entitled to and for that purpose to employ and pay brokers and other agents in that behalf and to receive and give receipts for the purchase money payable in respect of such sales and to transfer any investments so sold to the purchaser or purchasers thereof or as he or they direct and for these purposes to sign and execute all such contracts, transfer deeds and other writings and do all such other acts as may be necessary for effectually transferring or assigning the same.
- 4.2. Allotment of shares in companies:-** To apply for and accept allotments of shares in my name in any company, corporation or body corporate or any statutory body.
- 4.3. To receive dividends and repaid capital sums:-** To demand, sue for and receive from any company, corporation, government or other body politic or person all deposits, dividends, interest, bonuses or any other sums that may become due in respect of any investment and likewise any capital sum represented by or comprised in any investment held by me as and when the same shall be payable or repayable and for any such purpose to sign, indorse and execute all receipts, dividends and interest warrants, cheques, releases, discharges, reconveyances or other deeds, documents, instruments and other writings whatsoever that may be required or necessary for the purpose.
- 4.4. Investment in and dealing with provident funds:-** To operate, open, withdraw and deal with funds in the Public Provident Fund Account or any other provident fund accounts whatsoever in my name.
- 4.5. Investments in company deposits, shares, etc.:-** To invest my money in company deposits, shares, stocks, debentures, bonds, units or other corporate securities or securities of local authorities, any other statutory bodies or corporations, whether incorporated in India or in any other country, in such manner and upon such securities as my attorney shall in his absolute discretion think fit and from time to time withdraw any such moneys and apply the same to any purpose as he may think fit.
- 4.6. To initiate proceedings:-** To give notices, commence any legal proceedings or use any other lawful means that may appear to my attorney desirable or necessary in order to safeguard or enforce my rights in or in connection with any of the investments with full power to prosecute or discontinue any such proceeding and to compromise or submit to arbitration any matter in dispute or doubt.
- 4.7. To pay all calls:-** To pay all calls that may be lawfully made or other expenses that may be incurred in relation to any of my investments and to give security for the payment of the same.
- 4.8. To assent to arrangements:-** To assent (if it seems to my attorney necessary or desirable) to any arrangement modifying any rights, privileges or duties in relation to any of my investments and to agree to any scheme or arrangement for the increase or reduction of the value or amount of the same or of the capital of any company or corporation and for any such purpose to deposit, surrender or exchange any of the investments or the documents of title relating thereto and to pay any contribution or incur any other necessary expense in connection with any such scheme or arrangement.
- 4.9. To apply for and contract for investments:-** To tender, contract for, purchase, accept and sign the

transfer into my name any government securities, securities of local authorities or any statutory body, shares, stocks or debentures in any such company, corporation or body as aforesaid or other stocks, funds, debentures and securities of any and every description whatsoever or any other properties.

## 5. Banking

- 5.1. Banking operation:-** To open, operate, continue or close any account including any overdraft or other loan account and/or saving account, current, fixed or other accounts and also safe deposit lockers and all accounts whatsoever in my name and on my behalf with any bank or banks that may be existing or may in future be opened in my name or in the name of my firm or firms or business or businesses or in my capacity as trustee or beneficiary of any trust with any bank or banks including Postal Savings Bank.
- 5.2. Drawing and negotiations of cheques:** - To draw, sign, negotiate and/or endorse cheques, payment orders, drafts, dividend warrants and/or any other instruments and to execute, enter into, acknowledge, do and present all such deeds, instruments, contracts, agreements, acts, deeds and things as shall be requisite or deemed fit and proper for or in relation to all or any of the purposes, matters or things herein contained or others with any bank or banks.
- 5.3. To deal with bills of exchange:-** For all or any of the banking purposes to draw, accept, endorse, discount or otherwise deal with any bills of exchange, bills of lading, delivery orders, promissory notes or other mercantile instruments relating to money, goods, properties or otherwise.
- 5.4. To operate bank locker or safe deposit vault locker:** - To operate any bank locker or safe deposit vault locker and to deposit therein and withdraw therefrom any articles belonging to me.

## 6. Money

- 6.1. To realise loans or borrow money:-** To realise loans and/or borrow money from time to time from any bank, institution, or any person or persons, organisation whatsoever against the security or properties both movable and immovable belonging to me or any of my firm or firms of business or businesses in which I am now or may hereafter become interested and to execute, sign and register mortgage, charges, transfer and/or give other security or securities by any other deed or deeds on such terms and conditions as my said attorney or his substitute or substitutes may think fit and proper.
- 6.2. Loans and advances:-** To make and/or to receive any loan or advance from any bank, financial institution or other person to such extent and on such terms as the said attorney may deem expedient and also to secure the same by pledging, hypothecating, mortgaging, charging or any other manner encumbering any of my movable or immovable property.
- 6.3 Miscellaneous**
- 6.3.1. To agree to charge or pay any interest or other considerations for any loan and/or advance and to vary such rates of interests or consideration from time to time.
- 6.3.2. To remit, reduce or settle any claim of any moneys, losses and/or damages.
- 6.3.3. To draw, execute, negotiate, cancel, present for payment and/or make or receive payment of any promissory note, bill of exchange, bond or undertaking regarding any money receipt and/or advance.

## 7. Representations

- 7.1. To represent before bank or banks, insurance companies, etc:-** To represent me or any of my

firm or firms or business in any of the bank or banks, insurance companies, courts, registration offices, municipal offices, office of competent authority, urban land ceiling, post offices, sales tax offices, income-tax offices, customs offices, revenue offices or any co-operative society, Central or any other State Government or other authority, society, body corporate or other person for any purpose or purposes whatsoever and do all acts as may be expedient before the same or in connection therewith.

- 7.2. To prepare, sign and file tax returns:-** To prepare, sign, execute and/or file any of my and/or any of my firm or firms or business or businesses in my personal capacity or as trustee or beneficiary of any trust, sales tax returns, income-tax returns, or any other returns under the Income-tax Act, 1961, Wealth-tax Act, 1957, Gift-tax Act, 1958 and/or any other law for the time being in force or other returns, statements, papers, documents in connection with the aforesaid Acts, to sign and/or submit returns, statements of accounts, balance sheets, declaration forms, to receive refund orders or vouchers from any of the aforesaid authorities, to apply for and to sign and submit to necessary authorities and to represent me or any of the firm or firms or business or businesses, trusts, proprietary concerns in which I am now or may hereafter be interested as proprietor, partner, trustee or beneficiary with such authority or authorities concerned therewith.
- 7.3. Appear before Assessing Officer, etc.:-** To appear before any Assessing Officer, Deputy Commissioner and/or Assistant Commissioner and/or Commissioner and/or Central Board of Direct Taxes and/or tribunal and/or any other authority or authorities in connection with any matter or matters and to represent me or my proprietary concerns, firm or firms, business or businesses, trusts in which I am trustee or beneficiary and to produce, explain accounts, documents and papers as may be necessary and to pay taxes and other amounts to such authorities and to any other authority by virtue of these presents and to sign, execute and deliver all other papers, documents and deeds in connection therewith.
- 7.4. To appear before registrar, notary public, magistrate, etc.:-** To appear before any Notary Public, Registrar of Assurances, District Registrar, Sub-Registrar of Assurances, Metropolitan Magistrate and other officer or officers or authority having jurisdiction and to acknowledge and register or have registered and perfected all deeds, instruments and writings, executed, signed or made by me personally or as partner of any firm or firms or business or businesses or by my said attorneys or any of them by virtue of the powers herein conferred.

## 8. Trusts

- 8.1. To execute trusts:-** To do all acts, deeds relating to any matter in which I am a trustee and/or beneficiary and to exercise all powers and authorities elsewhere hereunder or otherwise as expedient.
- 8.2. To exercise powers:-** To execute and exercise in relation to any land or investment or property for the time being subject to any trust and all powers and description for the time being vested in me as such trustee or as beneficiary as aforesaid or under any deed of trust, settlement or other documents to the extent lawfully possible.

## 9. Execution and registration of documents

- 9.1. To execute documents (stocks, shares, annuities):-** To execute all deeds and other instruments necessary or proper for transferring any stock, shares, annuities, debentures, obligations and other securities held by me or to be acquired by me hereafter to the purchaser or purchasers thereof.
- 9.2. To execute and register deeds:-** To sign, execute, enter into, modify, cancel, alter, draw, approve,

present for registration and admit registration of all papers, documents, contracts, agreements, conveyances, mortgage deeds, leases, grants, assurances, applications, declarations, trust deeds and other documents as may in any way be required to be so done for or in connection with any movable or immovable property belonging to me or to be acquired by me hereafter or of any part thereof or any interest therein including those held by me as owner, lessor, lessee, partner, mortgagor, tenant, trustee or otherwise be interested for the time being including those connected with the management and development of any business and also in connection with the sale, purchase, lease, transfer and disposition or construction or sanction of plan or obtaining of clearances or permits from the Government or for any other purpose whatsoever.

## 10. Legal proceedings

- 10.1. To compound the debts and to submit claims to arbitration:-** To compound with or make allowances to any person for or in respect of any debt or demand whatsoever which now is or shall or may at any time hereafter become due or payable to me and to take or receive any composition or dividend thereof or thereupon and give receipts, releases or other discharges for the whole of the same debts, sums or demands or to settle, compromise or submit to arbitration every such debt or demand and every other claim, right, matter and thing due to or concerning me and for that purpose in my name to enter into, make, sign, execute such agreements as are necessary in like cases, execute such agreements for arbitration or other deeds or instruments as are necessary in like cases and to allow time for the payment of any such debt or demand (with or without security) upon such terms as the attorney may think fit.
- 10.2. To conduct and defend legal proceedings:-** To commence, prosecute, enforce, defend, answer or oppose all notices, suits, and other legal proceedings and demands touching any of the matters aforesaid or any other matters in which I am now or may hereafter be interested or concerned and also if thought fit with such consent as aforesaid to compromise, refer to arbitration, abandon, submit to judgment or become non-suited in any such action or proceeding as aforesaid before any court, civil, or criminal, or revenue including the Rent Controller, City Civil and Small Causes Courts.
- 10.3. To appoint advocates, etc.:-** To appoint any solicitor, advocate, pleader or counsel as may be necessary for prosecuting and defending any suit or proceedings, in the matters relating to my properties, business, firm, trusts, companies or organisations, in which I am interested or become interested hereafter in my name or in the name of my said attorney as he may think fit and proper and to sign vakalatnamas, warrant of attorney in favour of any solicitor, advocate, pleader or counsel engaged by him.
- 10.4. To sign plaints and other papers:-** To sign, declare and/or affirm any plaints, written statements, petitions, consent petition, affidavits, memorandum of appeal or any other document or paper in my name in any proceeding or in any way connected therewith.
- 10.5. To deposit and receive documents from court:-** To deposit and receive documents and money from any court or courts and/or any other person or authority in my name and give valid receipts and discharges therefor.

## 11. Receipts and discharges

- 11.1. Receive money and goods:-** To demand, collect, sue for, recover and receive from all and every person or persons, body or bodies, political or corporate, court or authority including government and/or local bodies whomsoever concerned or chargeable therewith all or every sum or sums of money including rent, documents, securities, goods, effects, dues, duties, interests, rents, profits, income, purchase consideration, dividends, compensation and/or any other money which shall

belong or be or become payable to me or to any of my firm or firms, business or businesses or companies in which I am interested.

- 11.2. To collect debts:-** To demand, collect, sue for, recover and receive in my name, from all and every person, body, political or municipal or corporate or firm or company wheresoever and whatsoever all sums of money, debts, dues, goods, wares, merchandise, chattels, effects and things of any nature or description whatsoever which now are or which at any time or times hereafter shall or may become due or owing or payable to or recoverable including those from or by the bank by virtue of any hypothecations, bonds, mortgages, pledges, agreements or other securities whatsoever or upon or by virtue of any bills of exchange, promissory notes, cheques, bills of lading or other mercantile or negotiable instruments whatever or otherwise.
- 11.3. To give receipts:-** To receive and give effectual receipts and discharges in my name for all monies, securities for monies, debts, goods, chattels and personal estate which are or may become due, owing, payable or transferable in or by any right, title, ways or means howsoever from any person or persons or corporation or other body or authority.
- 11.4. To receive debts, gifts, legacies, etc.:-** To receive and give good and valid receipts and discharges in my name for share of assets of any business or for the purchase money of any share therein or of any part of such share and all such other monies as may be payable to me in any manner whatsoever.

## 12. Agents

- 12.1. Agency:-** To act as agents for any person or to appoint any person as agent for any purpose in connection with any business or matter herein contained or otherwise and on such terms and with such powers and authorities as may be deemed by my said attorney to be expedient and to vary, modify and/or terminate such appointment and/or appointments and make other or others.
- 12.2. To employ persons in any capacity:-** To employ any person in any capacity for my business firm, trusts, companies in which I am interested and require to employ such person or become interested in future and require to employ such person and to suspend, dismiss or discharge any employee so employed as my said attorney may deem fit.
- 12.3. To employ professionals:-** For better and more effectually executing the powers or authorities aforesaid or any of them to retain and employ solicitors, advocates, chartered accountants, managers, consultants or any other professional persons and/or debt collecting or other agents.

## 13. Miscellaneous

- 13.1. To enter into bond and indemnities: -** For all or any purpose to give and execute all such bonds, guarantees, indemnities, covenants and obligations in my name.
- 14.** To substitute and appoint in his place (on such terms and conditions as my said attorney shall think fit and proper) one or more attorneys to exercise for me as my attorney or attorneys any or all of the powers and authorities hereby conferred and to revoke any such appointment from time to time and to substitute or appoint any other person or persons in the place of such attorney or attorneys as the said attorney shall from time to time think fit and proper.
- 15.** AND in case of death of the said attorney or inability or unwillingness to act through illness or any other reason to act as my said attorney in relation to all or any of the matters aforesaid, I hereby appoint Smt. \_\_\_\_\_ wife of \_\_\_\_\_ resident of \_\_\_\_\_ to act as my attorney in place of the said attorney after his death or

during such inability or unwillingness and in the latter case during the subsistence of any such inability or unwillingness as the name of Smt \_\_\_\_\_ had been inserted in this deed instead of the name of the said attorney.

- 16.** And generally my said attorney shall have the power to do all such acts, deeds and things on my behalf and I could have lawfully done, if personally present.

AND I do hereby for myself, my heirs, executors, administrators of acts done and legal representatives ratify and confirm and agree to ratify and by attorney confirm all and whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF:

I \_\_\_\_\_ have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Signed and delivered by the within named

\_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

Identified by me

( \_\_\_\_\_ )

Before me

Advocate and Notary Public

Schedule I above referred to

Schedule II above referred to

### 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 Special Power of Attorney

#### POWER OF ATTORNEY TO EXECUTE SALE DEED

BY THIS POWER OF ATTORNEY, I \_\_\_\_\_, s/o \_\_\_\_\_ residing at \_\_\_\_\_ do hereby appoint \_\_\_\_\_, s/o \_\_\_\_\_, residing at \_\_\_\_\_ to be my Attorney for me and in my name and on my behalf.

1. To negotiate and sell my property situated at \_\_\_\_\_ to any purchaser at such price and at such time as my said Attorney may in his absolute discretion think proper to agree upon and for such purpose to execute any document, deed or other papers and to present the same for registration and to admit the execution thereof.
2. To receive from the purchaser the consideration money for the said property and to give receipt and discharge therefore as may be required.

3. To deliver physical possession in the manner that is possible in the circumstances of the said property at \_\_\_\_\_ to the purchaser or to the nominee of the purchaser.
4. To apply to the Municipal Corporation of \_\_\_\_\_ for mutation of the said property in favour of and in the name of the purchaser or his nominee and to do and execute all deeds, assurances and to do all such acts as may be necessary to fully effectuate the sale of the said property.

I hereby agree and undertake to ratify all acts, deeds, assurances, done, given, executed or made by my said Attorney under the powers conferred by this Power of Attorney as if the same were done or made by me personally.

IN WITNESS WHEREOF, I \_\_\_\_\_ have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signed and delivered by the within named

\_\_\_\_\_

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

Identified by me

( \_\_\_\_\_ )

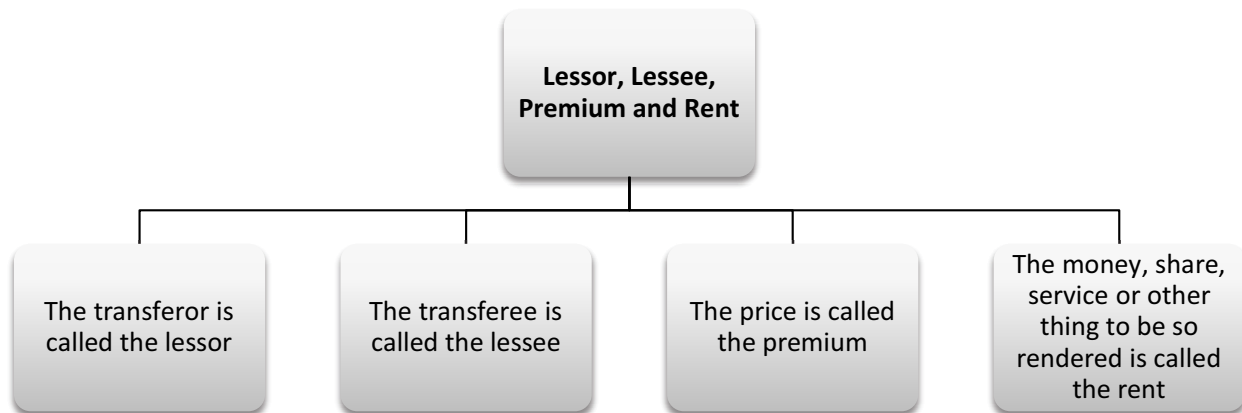
Before me

Advocate and Notary Public

## 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.



**Leases how made**

A lease of immovable 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 immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument binds both lessor and the lessee.

**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 Lease Deed made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_

**BETWEEN**

Shri \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_ (Hereinafter called “the LESSOR”, which expression shall, unless repugnant to the context and meaning include his heirs, successors, administrators and assigns) of the ONE PART;

**AND**

Shri \_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_ (Hereinafter called “the LESSEE”, which expression shall, unless be repugnant to the context and meaning, include his heirs, successors, administrators and assigns) of the OTHER PART.

**WHEREAS**

1. The Lessor is in complete possession of the building bearing Municipal No \_\_\_\_\_ Situated at \_\_\_\_\_ and more particularly described in the Schedule I given below.
2. On the request of the Lessee, the Lessor has agreed to grant lease in respect of the demised premises for a term of \_\_\_\_\_ years in the manner hereinafter stated.

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

1. In pursuance of the said agreement and in consideration of the rent hereby reserved and of the covenants, conditions and stipulations hereinafter contained and of the Lessee's part to be paid, observed and performed, THE LESSOR HEREBY DEMISES UNTO THE LESSEE ALL THAT the building bearing Municipal no \_\_\_\_\_ situated at \_\_\_\_\_ and hereinafter called as the demised premises, TOGETHER WITH ALL the fixtures and fittings therein, a complete list whereof is given in Schedule II, hereto TOGETHER WITH the electrical installations and together with the right for the Lessee, its employees, servants, agents, customers and persons authorised by the Lessee in common with the Lessor and all the persons authorised by the Lessor to use the entrances, doorways, entrance hall, stair cases, landings and passages in the demised premises for the purpose of ingress thereto. The Lessor and Lessee agree as follows:
  - i. The Lessee shall occupy the demised premises for the period of \_\_\_\_\_ years only commencing from the \_\_\_\_\_ and determining on \_\_\_\_\_.
  - ii. The Lessee shall pay to the Lessor during the said term monthly rent of Rs. \_\_\_\_\_ payable by seventh of each succeeding calendar month to which it relates.
  - iii. The Lessee has paid to the Lessor a sum of Rs \_\_\_\_\_ as security deposit and a sum of Rs \_\_\_\_\_ as advance rent, the receipt of which the Lessor acknowledges.
  - iv. The security deposit shall be returned on determination of the lease after deduction for damages if any to the property except reasonable wear and tear expected and the advance rent paid shall be adjusted by \_\_\_\_\_.
2. The Lessee hereby covenants with the Lessor as follows:
  - a. To pay the rent as aforesaid on the days and in the manner aforesaid.
  - b. To pay the electricity bills for the electricity consumed for lighting the demised premises and for operation of Air Conditioners, Fans, Computers and electrical appliances in the demised premises.
  - c. Not to make any structural alterations into or upon the demised premises or make any alterations or addition to the external appearance or any part of the demised premises without the previous consent of the Lessor in writing.
  - d. To use the demised premises for office purposes of the Lessee.
  - e. Not to place or keep or permit to be placed or kept on the demised premises any offensive, dangerous or highly inflammable or explosive material or any other article or things, which may constitute a danger, nuisance or annoyance to the demised or surrounding premises or the owners or occupiers thereof.
  - f. Not to sub-let, transfer, assign or part with the possession of the demised premises or any part thereof.
  - g. To permit the Lessor, his servants, employees or agents duly authorised by him to enter into and upon the demised premises at all reasonable times for viewing the condition of the demised

- premises or doing such works or things as may be requisite or necessary for any repairs, alteration, servicing or improvements to the demised premises.
- h. To hand over the peaceful possession of the demised premises at the end or the sooner determination of the said term together with all the Lessor's fixtures and fittings in as good condition as received.
  - i. Not to obstruct or suffer to be obstructed the entrance hall, entrances, doorways, passages, staircase or lifts.
  - j. To carry minor repairs in the demised premises not exceeding the extent of Rs \_\_\_\_\_ per year.
  - k. To replace all broken fittings and fixtures by equally good or better substitutes.
3. The Lessor hereby agrees with the Lessee as follows:
- a. That the Lessee shall peaceably and quietly hold, possess and enjoy the demised premises during the term without any interruption, disturbance, claim and demand by the Lessor or any person lawfully claiming under or trust for the Lessor.
  - b. To keep the interior, exterior of the demised premises, the drainage thereof and the water pump in good and tenable repair and condition.
  - c. To keep the entrance, doorways, entrance halls, staircases, lobbies and passages in the said building leading to demised premises well and sufficiently cleaned and lighted at his own expense.
  - d. To pay rates, taxes, assessment, duties, cess, impositions, outgoings and burdens whatsoever payable to local or other authority which may at any time or from time to time during the term hereby created be imposed or charged upon the demised premises.
4. It is hereby agreed that if the rent or any part thereof payable in respect of the demised premises shall be in arrears for a period of two months or if the Lessee shall omit to perform or observe any covenants or conditions on the Lessee's part herein contained, the Lessor may re-enter upon the demised premises after serving a notice to the Lessee.
5. If within a period of one month after the issue of such notice, the Lessee does not pay the rent or does not perform or observe the covenant or condition and thereupon all rights of the Lessee hereunder shall determine.
6. It is hereby expressly agreed between the parties as follows:
- a. The Lessee shall be entitled to erect temporary fittings, fixtures, wooden partitions, cabins or make any such addition or alteration, as may be necessary for its use by the Lessee;  
  
Provided that the Lessee shall remove the said fittings, fixtures, wooden partitions, cabins, additions or alterations and restore the demised premises to the Lessor on the expiry of the term or sooner determination of the lease in the same condition as existed before making such changes.
  - b. If the Lessor fails to pay the taxes, charges, assessment payable by him, or fails to carry out the necessary repairs and other work which he has to carry out as provided herein, the Lessee may after one month notice in writing, pay, discharge and carry out the same at its own cost and the Lessee may set off the same from the rent payable to the Lessor under these presents.

7. The stamp duty and all other expenses shall be borne and paid by the Lessee.

The Schedule I above referred to

The Schedule II above referred to

\_\_\_\_\_  
Signed by the above named Lessor

(Name, Signature and Details)

Witnesses

1. \_\_\_\_\_

(Name, Signature and Details)

2. \_\_\_\_\_

(Name, Signature and Details)

\_\_\_\_\_  
Signed by the above named Lessee

(Name, Signature and Details)

## LEAVE AND LICENCE

There are two ways in which one can rent out property: either execute a lease deed or make out a leave-and-licence agreement.

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. Technically, the right to occupy premises under a lease agreement is governed by the provisions of section 105 of the Transfer of Property Act, whereas the right to occupy licensed premises is governed by section 52 of the Indian Easement Act.

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”.

The essential distinction between a Lease and a Licence is that in a Lease, there is transfer of interest in the property while in the case of licence, there is no such transfer although the licensee acquires only a personal right to occupy the property. This principle has been confirmed by number of various High Courts and Supreme Court judgments.

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.

A licence is notionally created where a person is granted the right to use the premises without becoming entitled to the exclusive possession of them or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no legal interest.

If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control. A licence is a personal right given to the licensee and, therefore, Section 56 of the Easements Act, 1882 provides that licence cannot be transferred by the licensee or exercised by his servants and agents.

**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 degree 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 made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_

BETWEEN

Shri \_\_\_\_\_ son of \_\_\_\_\_ resident of \_\_\_\_\_ (Hereinafter called “the LICENSORS”, which expression shall, unless repugnant to the context and meaning include his heirs, successors, administrators and assigns) of the ONE PART;

AND

Shri \_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_ (Hereinafter called “the LICENCEE”, which expression shall, unless be repugnant to the context and meaning, include his heirs, successors, administrators and assigns) of the OTHER PART.

**WHEREAS** the Licensors are the sole directors of the company \_\_\_\_\_ which owns the office at \_\_\_\_\_

**AND WHEREAS** the Licensors are thus the absolute owners of the said office and accordingly absolutely entitled to use, occupy, possess and enjoy the said premises.

**AND WHEREAS** the Licensee has approached the Licensors and has requested the Licensors to let out to it, the Licensee, the said premises on leave and licence basis, which the Licensors have agreed to do on certain terms and conditions mutually agreed upon by and between them.

**AND WHEREAS** the parties hereto are desirous of recording the said terms and conditions.

**NOW THIS AGREEMENT TO LEAVE AND LICENCE WITNESSETH AND IT IS HEREBY AGREED BY THE PARTIES HERETO AS UNDER:**

1. The Licensors shall grant unto the Licensee and the Licensee hereby accepts from the Licensors a licence to use and occupy the office premises bearing No. \_\_\_\_ on the \_\_\_\_ floor of the building known as \_\_\_\_\_, save and except one cabin in the said premises (hereinafter called “the licensed premises”) situate lying and being at \_\_\_\_\_) Mumbai on leave and licence basis.
2. The duration of the licence hereby granted shall be for a period of two years only commencing from the date the Licensors puts the Licensee in possession of the licensed premises.
3. In consideration of the Licensors permitting the Licensee to use and occupy the licensed premises on leave and licence basis, the Licensee shall pay to the Licensors a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) per month as and by way of licence fee and/or compensation for the use and enjoyment of the licensed premises for the said period of two years. However, the Licensee shall pay to the Licensors the licence fee and/or compensation for the entire period of the licence amounting to Rs. \_\_\_\_\_ in advance simultaneously with the execution of this Agreement. The said licence fee shall be deemed to be standard licence fee or compensation payable in respect of the said premises. If the Licensee challenges the said licence fee payable in respect to the said premises as not being standard licence fee or compensation before any Court of or Forum, then and in that event, this Agreement shall come to an end and the Licensee shall forthwith quit, vacate and hand over quiet, vacant and peaceful possession of the said premises.
4. In addition to the aforesaid payment of the said sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) per month, the Licensee shall also be bound and liable to pay directly electricity charges for the electricity consumed in the licensed premises as per the separate meter installed for the purpose.
5. The Licensee hereby covenants with the Licensors as under:
  - a) To pay to the Licensors the licence fee and/or compensation payable under this Agreement at the time and in the manner provided hereinabove without any deduction and without challenging the same in any court of law or forum as not being standard licence fee and/or compensation payable in respect of the licensed premises;
  - b) To bear and pay electricity charges for the electricity consumed in the licensed premises;
  - c) All telephone and fax and other charges are actually used by the Licensee and bills are received from \_\_\_\_\_;
  - d) To use the licensed premises for the purpose of office purpose only and for no other purpose;
  - e) To keep the licensed premises in good and tenable order and condition (reasonable wear and tear excepted);
  - f) To hand over to the Licensors the possession of the said premises in the same order and condition as it was when the Licensee is put in possession of the Licensed premises but subject to what is stated hereinafter;
  - g) Not to hold the Licensors responsible for or liable for any loss or damage suffered by the Licensee on account of any theft, fire or other destruction caused to or in the said premises or to any property brought by the Licensee in the said premises or by any act or omission on the part of the occupants of the other premises or to their servants or agents or visitors;
  - h) Not to sub-let or give on leave and licence basis or on any other basis the said premises or any part portion thereof nor the Licensee permit any one to use and occupy the said premises or any part or portion thereof;

- i) Not to damage in any way the walls, partition, walls, flooring and ceiling of the said premises or any of the Licensors fixtures, fittings and articles installed lying and being in the said premises and to keep the same in good order and condition (reasonable wear and tear and loss or damage by fire, accident, irresistible force or act of God excepted);
  - j) Not to paint, affix or exhibit any name, sign, symbol or graph or writing or anything upon or outside the said premises save and except that the Licensee an it shall be at liberty to put the name board or name plate of itself on the outer wall of the said premises to indicate the location and address of the Licensee;
  - k) The Licensee shall not carry out any work of structural alteration in or about the said premises or any portion thereof.
  - l) To make good to the Licensors any loss or damage that may be caused to the said premises or any other fittings, fixtures, articles or property of the Licensors therein as a result of negligence on the part of the Licensee, its servants employees agents customers visitors and/or other persons calling at the said premises in connection with the business of the Licensee or otherwise howsoever and such loss or damage shall be ascertained by the Licensors and be binding on the Licensee;
  - m) Not to do or permit to be done upon the said premises anything which may be or become a nuisance to the Licensors or other occupants of the said building “\_\_\_\_\_” or any of the neighboring building;
  - o) Not to bring in or to store in the said premises any combustible materials or otherwise dangerous things that may imperil the safety of the building or may increase the premium of insurance of the building or vender void the insurance;
  - p) To perform and observe strictly the provisions hereof and also the provisions of law of the country for the time being and from time to time in force and also the rules and regulations any bye-laws of the society and/or the terms laid down by the builder and which may for the time being and from time to time be in force;
  - q) The Licensee shall be in possession of the licensed premises except one cabin and the juridical possession shall remain with the Licensors;
  - r) To indemnify the Licensors against any loss or damage that may be suffered as a result of breach of any of the provisions herein contained or otherwise due to any act or conduct of the Licensee its staff, employees, servants and agents to the said premises.
  - s) To remove itself from the said premises and all its staff and employees and all its belongings and to restore the said premises to its original condition (reasonable wear and tear and loss or damage by fire, accident, irresistible force or act of God excepted). Provided However that if the Licensee has carried out any additions and alternations to the said premises which are of a permanent or semi-permanent nature or if the Licensee has brought and installed any furniture fixtures and fittings in the said premises, the Licensee shall and at the time of the determination or earlier termination of the licence hereby granted remove the same from the said premises.
6. The Licensors hereby covenants with the Licensee as follows:-
- a) To observe and perform all the terms and conditions and stipulations of all documents under which the Licensors derive title to the office premises;
  - b) To permit the Licensee to use and occupy the licensed premises without any hindrance or obstruction of any nature whatsoever as long as the Licensee pays the licence fee and or compensation as hereinabove provided and observes and performs all the terms, conditions and covenants contained;

- c) To permit the Licensee to install further furniture and fixtures in the licensed premises in order to suit to its purpose;
  - d) To permit the Licensee to carry out all the requisite repairs to the licensed premises provided however that the Licensee obtains the consent in writing from the Licensors;
  - e) To comply with the conditions laid down by the owners and to indemnify the Licensee and keep the Licensee indemnified from and against any breach;
  - f) Not to create charge mortgage or encumbrance in respect of the said premises or any part of portion thereof;
  - g) Not to sell, transfer or assign the Licensor's ownership rights in respect of the licensed premises to any person or party so as to adversely affect the rights of the Licensee to the licensed premises and the Licensee's right to purchase the licensed premises as hereinafter provided;
  - h) To insure and keep insured the said premises except in case where the insurance has been taken out by the society;
7. If at any time during the said term the said premises are damaged or destroyed by fire, storm, flood, tempest, earthquake, enemies, war, riot, civil commotion or any other irresistible force, act beyond the control of the Licensee or act of God so as to make the same unfit for use, occupation as office, then in that event the Licence hereby created shall forthwith stand terminated and the Licensors shall refund to the Licensee the advance rent paid by the Licensee to the Licensors for the unexpired period of the licence.
  8. On expiry or sooner determination of this Licence, the Licensee shall remove its employees and servants and all its belongings, chattels, articles and things from the said premises and shall not claim any alternate accommodation and shall hand over vacant possession of the premises to the Licensors.
  9. The Licensee shall permit the Licensors and their agents at all times to enter upon the said premises in order to view, survey and examine the state and condition of the said premises.
  10. It is the express intention of the parties hereto that the Agreement shall be a mere Licence, the use and occupation by the Licensee being restricted for the purpose of using the said premises on the terms and conditions contained in the licence.
  11. It is hereby agreed by and between the parties hereto that in case if any of the terms and conditions herein contained shall not be observed or performed, then in that event, the Licensors shall give notice in writing to the Licensee calling upon the Licensee to rectify and/or remedy the breach and in case if the Licensee fails to remedy the breach within a period of four weeks from the date of the receipt of the notice in writing in that behalf from the Licensors, then in that event, the Licensors shall be entitled to terminate this Agreement and enter upon the licensed premises and take possession of the licensed premises. Provided further that before taking possession of the licensed premises if the licensee remedies the breach, then in that event, the Licensors, shall not be entitled to invoke the power given under this Agreement and take possession of the licensed premises.
  12. In the event of the Licensee failing to hand over to the Licensors possession of the licensed premises on the expiry or sooner determination of the licence hereby granted as hereinabove provided and continues to remain in occupation and possession of the licensed premises, then in that event, notwithstanding the right conferred upon the Licensors, the Licensors shall take such steps as may be advised to take physical possession of the licensed premises. The Licensors shall also be entitled to charge the Licensee compensation for the use and occupation of the licensed premises at the rate of Rs. \_\_\_\_\_ per day, which the Licensee agrees and undertakes to pay.

13. The Licensors hereby represent and declare that:
- a) The Licensors are absolutely entitled to the licensed premises;
  - b) The Licensors have not created any charge or encumbrance of whatsoever nature on the said licensed premises nor have they created any tenancy or leave and licence or any right in favour of any one in respect of the licensed premises nor shall they create or purport to create any such charge or encumbrance hereafter;
  - c) The Licensors have not entered into any Agreement for sale of the licensed premises in favour of any person or party;
  - d) The Licensors has not committed breach of any of the rules regulations.
14. Any notice required to be given hereunder shall be sufficiently served on the Licensors, if forwarded by Registered Post Acknowledgement Due to the Licensors aforementioned address and on the Licensee if forwarded by Registered Post Acknowledgement Due to the Licensee's aforementioned Office in \_\_\_\_\_ and notice sent by post as aforesaid shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

**IN WITNESS WHEREOF** the parties hereto have hereunto set and subscribed their respective hands and seals the day and year first hereinabove written.

\_\_\_\_\_  
Signed by the above named Licensor

(Name, Signature and Details)

\_\_\_\_\_  
Signed by the above named Licensee

(Name, Signature and Details)

Witnesses

1. \_\_\_\_\_

(Name, Signature and Details)

2. \_\_\_\_\_

(Name, Signature and Details)

## MORTGAGE DEEDS

### 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.

### Types of mortgages

#### 1) Simple Mortgage

Without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the Mortgagee shall have a right to cause the mortgaged property to be sold for satisfaction of the mortgaged debt.

**2) Conditional Mortgage**

The mortgagor presumably sells the mortgaged property on condition that on default of payment of 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.

**3) Usufructuary Mortgage**

The mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money. The mortgagee is allowed 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.

**4) English Mortgage**

The mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a provision that he will retransfer it to the mortgagor upon payment of the mortgage-money as agreed.

**5) Mortgage by deposit of Title deeds or Equitable Mortgage**

A person delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon. It can be conducted in a town where the state government concerned may, by notification in the Official Gazette, specify in this behalf.

**6) Anomalous Mortgage**

A mortgage, which is not any of the above, is called an anomalous mortgage.

**Specimen model of Simple Mortgage Deed****SIMPLE MORTGAGE DEED**

This Deed of Mortgage made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_.

BETWEEN

\_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_ hereinafter called as a MORTGAGOR of the ONE PART

AND

\_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_ hereinafter called as a MORTGAGEE of the OTHER PART.

**WHEREAS** the mortgagor is absolutely seized and possessed of or otherwise well and sufficiently entitled to the house bearing municipal no \_\_\_\_\_ situated on \_\_\_\_\_ Road, \_\_\_\_\_ more particularly described in the Schedule hereunder written;

**AND WHEREAS** the mortgagor has requested the mortgagee to lend him a sum of Rs. \_\_\_\_\_ which the mortgagee has agreed on the mortgagor mortgaging his property.

**NOW THIS DEED WITNESSETH THAT** in pursuance to the said agreement and in consideration of the sum of Rs. \_\_\_\_\_ at or before the execution of these presents paid by the mortgagee to the mortgagor (the receipt whereof, the mortgagor doth hereby admit and acknowledge and of and from the same hereby release and discharge the mortgagee), the mortgagor hereby covenants with the mortgagee that he

will pay on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (hereinafter called "the said date"), the said sum of Rs. \_\_\_\_\_ with interest @ \_\_\_\_\_ % per annum from the date of these presents till the repayment of the said sum in full, every quarter the first installment of interest to be paid on the \_\_\_\_ day of \_\_\_\_\_, 2023 and each subsequent installment on the \_\_\_\_ day of July, October, January and April of each succeeding year until the said sum is repaid in full.

**AND THIS DEED FURTHER WITNESSETH THAT** in consideration aforesaid, the mortgagor doth hereby transfer by way of mortgage his house bearing municipal no \_\_\_\_\_ situated at \_\_\_\_\_ and more particularly described in the Schedule hereunder written as a security for repayment of the said sum with interest @ \_\_\_\_\_ per annum with the condition that the mortgagor, his heirs, executors, administrators or assigns shall on the said day pay to the mortgagee, his heirs, executors, administrators or assigns the said sum of Rs \_\_\_\_\_ together with interest thereon at the rate mentioned above, the said mortgagee, his heirs, executors, administrators, or assigns shall at any time thereafter upon the request and at the cost of the mortgagor, his heirs, executors, administrators or assigns reconvey the said house, hereinbefore expressed to be mortgaged unto or to the use of the mortgagor, his heirs, executors, administrators or assigns or as he or they shall direct.

**AND IT IS HEREBY AGREED AND DECLARED** that if the mortgagor does not pay the said mortgage amount with interest when shall become due and payable under these presents, the mortgagee shall be entitled to sell the said house through any competent court and to realise and receive the said mortgage amount and interest, out of the sale proceeds of the house.

**AND IT IS FURTHER AGREED AND DECLARED** by the mortgagor that during the period, the mortgage amount is not paid and the said house remains as a security for the mortgage amount, the mortgagor shall insure the said house and take out an insurance policy in the joint names of the mortgagor and mortgagee and continue the said policy in full force and effect by paying premium and in case of default by the mortgagor to insure or to keep the insurance policy in full force and effect, the mortgagee can insure the said house and the premium paid by the mortgagee will be added to the mortgage amount, if not paid by the mortgagor on demand.

**AND IT IS FURTHER AGREED THAT** the mortgagor can grant lease of the said house with the consent of the mortgagee in writing.

**AND IT IS FURTHER AGREED BY THE MORTGAGOR** that he shall bear stamp duty, registration charges and other out of pocket expenses for the execution and registration of this deed and reconveyance deed but however each party will bear cost and professional charges of his Solicitor/Advocate.

**IN WITNESS WHEREOF** the parties have put their hands the day and year first hereunder written.

The Schedule above referred to

\_\_\_\_\_  
Signed by the above named Mortgagor  
(Name, Signature and Details)

\_\_\_\_\_  
Signed by the above named Mortgagee  
(Name, Signature and Details)

Witnesses

1. \_\_\_\_\_  
(Name, Signature and Details)

2. \_\_\_\_\_  
(Name, Signature and Details)

**Specimen of Deed of Mortgage by Conditional Sale****DEED OF MORTGAGE BY CONDITIONAL SALE**

**THIS DEED OF MORTGAGE BY CONDITIONAL SALE is executed** on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BETWEEN

\_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_ hereinafter called as a VENDOR of the ONE PART

AND

\_\_\_\_\_, son of \_\_\_\_\_ resident of \_\_\_\_\_ hereinafter called as a PURCHASER of the OTHER PART.

**WHEREAS** the Vendor is seized and possessed of or otherwise well or sufficiently entitled to the land and premises situated at \_\_\_\_\_ and more particularly described in the Schedule hereunder written.

**AND WHEREAS** the Vendor is in need of money and has requested the Purchaser to advance to him a sum of Rs \_\_\_\_\_ which the Purchaser has agreed to do on the Vendor agreeing to execute this deed of sale in favour of the Purchaser in respect of the said property in the manner following.

**NOW THIS DEED WITNESSETH AS UNDER**

1. Pursuant to the said agreement and in consideration of the said sum of Rs \_\_\_\_\_ paid by the Purchaser to the Vendor on the execution of these presents (receipt whereof the Vendor doth hereby admit), he the Vendor doth hereby grant and convey unto the Purchaser all the said piece of land with building thereon and situated at \_\_\_\_\_ and more particularly described in the Schedule hereunder written together with all things permanently attached thereto or standing thereon and all the liberties, easements, profits, privileges, rights and appurtenances whatsoever to the said piece of land and premises belonging or in anywise appertaining to or with the same or any part thereof and now or at any time hereafter usually held, used, occupied or enjoyed or reputed as part or member thereof or be appurtenant thereto And all the estate, right, title, claim and demand of the Vendor into and upon the said land and other the premises hereby granted TO HOLD the same unto and to the use of Purchaser subject to what is hereafter provided and subject to the payment of rates, taxes, assessments, dues and duties now chargeable upon the same or which may hereafter become payable in respect thereof to the Government or the Municipal Corporation or any other local authority.
2. And it is hereby agreed and declared that if the Vendor shall at any time hereafter repay to the Purchaser the said sum of Rs \_\_\_\_\_ within a period of \_\_\_\_\_ years that is on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ the grant and transfer of the said property as hereinbefore provided shall become void and in that event the Purchaser shall retransfer the said property to the Vendor or his heirs executors, administrators or assigns by executing a document of re-sale.
3. Provided however and it is agreed that, if the Vendor or his heirs, executors, administrators or assigns shall fail to repay the said amount of Rs \_\_\_\_\_ within the said period then the grant and transfer of the said property to the Purchaser hereby made shall become absolute in favour, of the Purchaser his heirs, executors, administrators or assigns.
4. And the Vendor doth hereby covenants with the Purchaser that –
  - a) The Vendor has good right and full power to grant the said land and building hereby granted or expressed so to be and every part thereof unto and to the use of the Purchaser in manner aforesaid.

- b) That the Purchaser shall quietly possess and enjoy the said property and receive the rents, Income and profits thereof without any lawful interruption or disturbance whatsoever by the Vendor or any person or persons lawfully claiming under from or through him and shall be at liberty to pay there out the Govt. revenue and all other charges of a public nature and all rents if any accruing due in respect of the said premises during such possession and any arrears of rent in default of payment of which the said land and premises may be summarily sold and all expenses incurred for the management of the said premises and the collection of rents, Income, profits and all other outgoing including costs of repairs of the said premises.
- c) That the said premises are free and clear and forever released and discharged or otherwise by the Vendor well and sufficiently saved, kept harmless and indemnified of and from and against all previous and other estates, title, charges and encumbrances whatsoever had made executed or suffered by the Vendor or any other person lawfully claiming under him.
- d) That the Vendor and all persons claiming any estate or interest in the said premises under him, shall and will from time to time and at all times hereafter upon the request of the Purchaser and at the costs of the Vendor do and execute or cause to be done or executed, all such acts, deeds and things whatsoever for further and more perfectly assuring all or any of the said premises unto and to the use of the Purchaser in such manner aforesaid as shall or may be reasonably required by the Purchaser.

**IN WITNESS WHEREOF** the Vendor has put his hand the day and year first hereinabove written.

**THE SCHEDULE ABOVE REFERRED TO**

\_\_\_\_\_  
Signed by the above named Vendor

(Name, Signature and Details)

\_\_\_\_\_  
Signed by the above named Purchaser

(Name, Signature and Details)

Witnesses

1. \_\_\_\_\_

(Name, Signature and Details)

2. \_\_\_\_\_

(Name, Signature and Details)

**GIFT DEED**

**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."

A gift is a common mode of transfer of property. It is the transfer of certain existing moveable or immoveable property by one person to another. The transfer should be made voluntarily and without consideration. The person transferring the property is called the donor. The person to whom the property is transferred is referred to as the donee. The donee must accept the property during the lifetime of the donor and while he is still capable of giving. In case the donee dies before acceptance, the gift is void.

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. In *Shakuntala v. State of Haryana* the Supreme Court stated that it is one of the essential requirements of a gift that it should be made by the donor 'without consideration'.
- 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 within the meaning of section 123, Transfer of Property Act, 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 immovable 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. Such delivery may be made in the same way as goods sold may be delivered. Hence gift of immovable property is compulsorily registerable under the Registration Act, 1908. In *Gomtibai v. Mattula* it was held that mere intention to give away the property is not enough to effect the transfer of gift. There has to be a registered gift deed in order for the gift to be complete in the eyes of law.

### Gift of movable 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 Models of Gift Deeds

#### DEED OF GIFT OF MOVABLE 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 \_\_\_\_\_

#### DEED OF GIFT OF IMMOVABLE PROPERTY

**THIS DEED OF GIFT** is made on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_

between

Mr. \_\_\_\_\_ s/o \_\_\_\_\_ residing at \_\_\_\_\_ hereinafter referred to as 'the DONOR' of the One Part

and

Mr. \_\_\_\_\_ s/o \_\_\_\_\_ residing at \_\_\_\_\_ hereinafter referred to as 'the DONEE', of the Other Part.

**WHEREAS the DONOR** is seized and possessed of the land and premises situated at \_\_\_\_\_ and more particularly described in the Schedule hereunder written.

**AND WHEREAS the DONEE** is related to the Donor as \_\_\_\_\_.

**AND WHEREAS** the Donor desires to grant the said land and premises to the DONEE as gift in consideration of natural love and affection as hereinafter mentioned.

**AND WHEREAS** the DONEE has agreed to accept the gift as is evidenced by his executing these presents.

**AND WHEREAS** the market value of the said property is estimated to be Rs \_\_\_\_\_.

**NOW THIS DEED WITNESSETH** that the DONOR without any monetary consideration and in consideration of natural love and affection, which the DONOR bears to the DONEE, doth hereby grant and transfer by way of gift the said land and premises situated at \_\_\_\_\_ and more particularly described in the Schedule hereunder written together with all the buildings, and structures thereon and all the things permanently attached thereto or standing thereon and all the liberties, privileges casements and advantages appurtenant thereto and all the estate, right, title, interest use, inheritance, possession, benefit, claims and demand whatsoever of the DONOR To Have And To Hold the same unto and to the use of the DONEE absolutely but subject to the payment of all taxes, rates, assessments, dues and duties now and hereafter chargeable thereon to the Government or Municipality or other Local Authority.

AND he the DONOR doth hereby covenants with the DONEE:

- a. That the DONOR now has in himself, good right, full power and absolute authority to grant the said piece of land and other the premises hereby granted as gift in the manner aforesaid.
- b. The DONEE may at all times hereafter peaceably and quietly enter upon have occupy, possess and enjoy the said piece of land and premises and receive the rents, issues and profits and rents thereof and every part thereof to and for his own use and benefit without any suit, lawful eviction, interruption, claim or demand whatsoever from or by the DONOR or his heirs, executors, administrators and assigns or any person or persons lawfully claiming or to claim by, from, under or in trust for the DONOR.
- c. That the said land and premises are free and clear and freely and clearly and absolutely and forever released and discharged or otherwise by the DONOR and well and sufficiently saved, kept harmless and indemnified of and from and against all former and other estate, titles, charges and encumbrances whatsoever, had made, executed, occasioned or suffered by the DONOR or by any other person or persons lawfully claiming or to claim by from, under or in trust for the Donor.
- d. AND FURTHER that the DONOR and all persons having or lawfully claiming any estate or interest whatsoever to the said land and premises or any part thereof from under or in trust for the DONOR or his heirs, executors, administrators and assigns or any of them shall and will from time to time and at all times hereafter at the request and cost of the DONEE do and execute or cause to be done and executed all such further and other acts, deeds, things, conveyances and assurances in law whatsoever for better and more perfectly assuring the said land and premises and every part thereof unto and to the use of the DONEE in the manner aforesaid as by the DONEE, his heirs, executors, administrators and assigns or counsel in law shall be reasonably required.

**IN WITNESS WHEREOF** the Donor as well as the Donee (by way of acceptance of the said gift) have put their respective hands the day and year first hereinabove written.

**THE SCHEDULE ABOVE REFERRED TO**

Signed and Delivered by the within named Donor \_\_\_\_\_

Signed by within named DONEE \_\_\_\_\_

Witnesses

1 \_\_\_\_\_

2 \_\_\_\_\_

**SALE DEED AND AGREEMENT TO SELL**

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. Further, it also acts as the main document for further sale by the buyer as it establishes his proof of ownership of the property.

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 as agreed upon between the buyer and the seller.

The sale deed is the main document by which 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.

The buyer should ensure the title of the seller before the execution of the sale deed. It should be checked whether there is any charge or encumbrance on the property and whether the purchaser is purchasing the property subject to such encumbrance. If not, then the seller needs to repay the loan and get the property papers cleared of the encumbrances. The purchaser should verify the encumbrance status from the registrar's office.

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. The seller should obtain the requisite clearances, approvals and permissions to transfer or sell the property prior to execution of the sale deed.

On completion of all formalities, a sale deed is prepared. This is the main document for transfer of ownership of property. The deed is executed by all the parties concerned. 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 Agreement for Sale and Sale Deed

#### SPECIMEN AGREEMENT FOR SALE OF HOUSE

This agreement made at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

between

\_\_\_\_\_, son of \_\_\_\_\_, and resident of \_\_\_\_\_ (hereinafter called the seller) of the one part

and

\_\_\_\_\_, son of \_\_\_\_\_, resident of \_\_\_\_\_ (hereinafter called the purchaser) of the other part:

#### NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. That the seller agrees to sell and the purchaser agrees to purchase for the sum of Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) House No \_\_\_\_ owned and possessed by the seller as an absolute owner and situated on \_\_\_\_\_ and bounded as follows:  
 North :  
 South :  
 East :  
 West :  
 containing by admeasurement \_\_\_\_\_ square metres of land together with all buildings, structures and outhouses and rights, easements and privileges enjoyed therewith.
2. That Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) have been paid as earnest money by the purchaser to the seller by means of Cheque/Demand Draft No. \_\_\_\_\_ dated drawn on \_\_\_\_\_ and the balance of Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) shall be paid at the time of the execution of the sale-deed (or before the Registering Officer).
3. That the sale-deed shall be executed on or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ whereupon the purchaser shall be entitled to immediate possession of the property sold to him.
4. That the seller shall guarantee his sole and absolute title in the property to be sold and shall enter into all the usual covenants.
5. That the property sold is free from encumbrances [or that the property is subject to the following encumbrances (details of encumbrances) and shall be sold subject to them, or which shall discharged by the seller before the completion of the sale in favour of the purchaser].

6. That within two days from to-day the seller shall produce all the title-deeds of the house for inspection of the purchaser or of his nominee at \_\_\_\_\_ [place] and that in case the seller is unable to prove the marketable title that he has agreed to sell to the purchaser in the property agreed to be sold, it shall be open to the purchaser to cancel this agreement and to demand the return of the earnest money paid by him, and which shall be immediately returned by the seller.
7. That all taxes and expenses relating to the property up to the date of the completion of the sale shall be paid by the seller, and thereafter by the purchaser, and that all rents, profits and income up to that date shall be taken by the seller and thereafter by the purchaser.
8. That if the seller makes default in the performance of any of the conditions of this agreement, he shall pay Rs \_\_\_\_\_ by way of compensation to the purchaser for such default; and if the purchaser makes default in the performance of any of the conditions to be performed by him under this agreement, then the seller shall be entitled to forfeit the whole of the earnest money of Rs \_\_\_\_\_ paid to him; and that the party not in default shall be further entitled at his discretion either to annul this agreement or to specifically enforce it, in addition to any remedy that may be open to him.
9. That the expenses of the sale shall be paid by the seller/ purchaser/by both parties in equal shares.
10. That the title deeds of the property shall be handed over to the purchaser by the seller at the time of the completion of the sale (or that the seller shall retain but will undertake to produce for inspection by the purchaser, whenever reasonably required to do so, the following title deeds which relate to the property sold along with the other property of the seller). (List of the title deeds \_\_\_\_\_)
11. That this agreement shall bind the above parties and their respective heirs, representatives and assigns.
12. That if there be any difference or dispute between the parties on any matter arising hereunder or claimed so to rise, the same shall be referred to the arbitration of whose award thereon shall be final and binding on the parties. In witness whereof the seller and the purchaser have here unto set and subscribed their respective hands /signatures in the presence of:

## WITNESSES

1 \_\_\_\_\_ Signature of the seller \_\_\_\_\_  
 2 \_\_\_\_\_ Signature of the purchaser \_\_\_\_\_

(Name, Signature and Details of the Signatories)

**SPECIMEN AGREEMENT TO SELL PATENT RIGHTS**

**THIS AGREEMENT** made on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

BETWEEN

\_\_\_\_\_ S/o \_\_\_\_\_ r/o \_\_\_\_\_ hereinafter referred to as “the patentee” (which expression shall unless contrary to the context or meaning thereof including his successors, executors, administrators, legal representatives and assigns) of the one part.

AND

\_\_\_\_\_ S/o \_\_\_\_\_ r/o \_\_\_\_\_ hereinafter referred to as “the assignee” (which expression shall unless contrary to the context or meaning thereof including his successors, executors, administrators, legal representatives and assigns) of the other part.

The patentee and the assignee hereinafter are collectively referred to as the “Parties”.

**WHEREAS**

1. The patentee being inventor of \_\_\_\_\_ and holding patent rights (more specifically stated in schedule I hereto) in exclusively manufacturing/marketing of products of several descriptions/sizes in using the patented process.
2. The assignee has approached the patentee in buying all rights/interests of the patentee relating to the said patent rights. The patentee has consented to vend those rights to the assignee on terms/conditions hereinafter appearing.

**NOW IT IS HEREBY CONSENTED AS FOLLOWS:****Agreement to Assign**

That in consideration of a sum of Rs. \_\_\_\_\_ (the patentee hereby acknowledges its receipt) to payable by the assignee to patentee and a further payment of Rs. \_\_\_\_\_, the inventor shall vend to assignee all his rights/interests with concerning the said patent rights.

**Deed of Assignment**

The patentee shall be executing an assignment deed and do all things as may be compulsory in vest owing said patent rights in the assignee.

**Patentee's Agreement**

The patentee hereby agrees that, as per assignment of patent rights to the assignee, he shall correspond all progress made by him in said invention to assignee and shall help assignee for doing all acts, deeds/things compulsory for procuring a patent for such progress which shall be bestowed in the assignee on the same term/conditions as if such progress had formed potion of original invention.

**Assignee's Agreement**

The assignee hereby agrees that, as per assignment of patent rights to him, he shall not do anything resulting in cancellation of said patent rights and shall, in the eventuality of such revocation, pay to patentee as liquidated compensation, the sum of Rs. \_\_\_\_\_, respectively.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement on the day and year first here-in-above written.

(The schedule I hereinafter referred to)

\_\_\_\_\_

The Patentee

(Name, Signature and Details)

\_\_\_\_\_

The Assignee

(Name, Signature and Details)

Witnesses

\_\_\_\_\_

(Name, Signature and Details)

\_\_\_\_\_

(Name, Signature and Details)

## ALTERNATE DISPUTE RESOLUTION (ADR) AGREEMENTS

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 trail is known as Alternative Dispute Resolution (ADR).

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.

It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility.

### 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.

It provides the opportunity to “expand the pie” through creative, collaborative bargaining, and fulfill the interests driving their demands.

### 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

#### AGREEMENT OF REFERENCE TO SOLE ARBITRATOR

This deed of agreement made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_  
between

1. \_\_\_\_\_, aged about \_\_ years s/o \_\_\_\_\_, r/o \_\_\_\_\_, hereinafter called the 1st party.
2. \_\_\_\_\_, aged about \_\_ years s/o \_\_\_\_\_, r/o \_\_\_\_\_, hereinafter called the 2nd party.

**WHEREAS** the first and second parties have some dispute regarding management of the partnership business, being run by the parties.

**AND WHEREAS** both the parties have agreed upon to refer the dispute to one arbitrator duly appointed by the both parties.

**NOW THIS DEED OF AGREEMENT WITNESSES AS UNDER: -**

1. That both the parties have agreed upon to appoint \_\_\_\_\_ s/o \_\_\_\_\_ r/o \_\_\_\_\_ as arbitrator.
2. That both the parties appoint \_\_\_\_\_ as arbitrator.
3. That the arbitrator will go through the partnership deed and decide the dispute between the parties under the provision of the partnership deed.
4. That this deed shall be confined only up to the dispute of the management of the firm.

\_\_\_\_\_  
1<sup>st</sup> Party

(Name, Signature and Details)

\_\_\_\_\_  
2<sup>nd</sup> Party

(Name, Signature and Details)

\_\_\_\_\_  
Witnesses

\_\_\_\_\_  
(Name, Signature and Details)

\_\_\_\_\_  
(Name, Signature and Details)

**AGREEMENT OF REFERENCE TO COMMON ARBITRATOR**

**THIS AGREEMENT** is made at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

BETWEEN

Mr. A \_\_\_\_\_ s/o \_\_\_\_\_ residing at \_\_\_\_\_ hereinafter referred to as the Party of the First Part

AND

Mr. B s/o \_\_\_\_\_ residing at \_\_\_\_\_ hereinafter referred to as the Party of the Second Part.

**WHEREAS** by an Agreement (Building contract) dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ entered into between the parties hereto the Party of the First Part entrusted the work of constructing a building on his plot of land situated at... to the Party of the Second Part on the terms and conditions therein mentioned.

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

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

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

**AND WHEREAS** the said agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon or otherwise to two Arbitrators and the Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

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

**NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:-**

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

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

SIGNED by the within named Signed by the within named

Mr. A \_\_\_\_\_

Mr. B \_\_\_\_\_

in the presence of:

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

### 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.

### MODEL MEDIATION CLAUSES

#### 1. 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.

## 2. 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

This is an Agreement between \_\_\_\_\_ and \_\_\_\_\_, (hereinafter refer to as parties) and hereinafter referred to as "Mediator", entered into on \_\_\_\_\_ (date)

**WHEREAS** the purpose of this agreement is to enter into mediation with the intent of resolving all issues regarding \_\_\_\_\_.

The parties and the mediator understand and agree as follows:

#### 1. Nature of Mediation

The Parties hereby appoint and retain \_\_\_\_\_ as Mediator for their negotiations. The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach an agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties understand that the mediator's objective is to facilitate the parties themselves reaching their best agreement. The parties also understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render remedy nor arbitrate within the mediation.

#### 2. Scope of Mediation

The parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

#### 3. Mediation is Voluntary

All parties here state their good intention to complete their mediation by an agreement. It is, however, understood that any party withdraw from or suspend the mediation process at any time, for any reason or no reason. The parties also understand that the mediator may suspend or terminate the mediation, if the mediator feels that the mediation will lead to an unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that he can no longer effectively perform his facilitative role.

\_\_\_\_\_  
1<sup>st</sup> Party

(Name, Signature and Details)

\_\_\_\_\_  
Mediator

(Name, Signature and Details)

2<sup>nd</sup> Party

(Name, Signature and Details)

Witnesses

\_\_\_\_\_

(Name, Signature and Details)

\_\_\_\_\_

(Name, Signature and Details)

### Specimen Mediated Settlement Agreement

This Mediated Settlement Agreement is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 at New Delhi by and between

\_\_\_\_\_, maintaining its Registered Office at \_\_\_\_\_  
(hereinafter referred to as the "FIRST PARTY")

and

\_\_\_\_\_ S/o \_\_\_\_\_ residents of \_\_\_\_\_  
(hereinafter referred to as the "SECOND PARTY")

WHEREAS pursuant to agreement dated \_\_\_\_\_, disputes relating to \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ has arose between the parties.

**WHEREAS** by virtue of the above said agreement, the parties mutually agreed to settle their dispute through Mediation by entering into a separate Mediation agreement.

**WHEREAS** both the parties have appointed Mr. \_\_\_\_\_ as Mediator for conduct of the proceedings.

**WHEREAS** the parties have now settled the disputes in the mediation proceedings held on \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

#### NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The parties to this agreement accepts and agrees to the terms, conditions and clauses, as full and final settlement of the claims made by first party against the second party pertaining to matter indicated in mediated settlement agreement dated \_\_\_\_\_. However, any clause of this agreement should not be treated as admission of facts of dispute.
2. The second party agrees to pay Rs. \_\_\_\_\_/- by \_\_\_\_\_ (date) for the 100 computers machines delivered by the first party during the duration between \_\_\_\_\_ and \_\_\_\_\_.
3. The first party agree to provide Annual Maintenance of the above said 100 computers free of cost for a period of 3 years starting from \_\_\_\_\_ to \_\_\_\_\_.
4. The first party shall made available one of its employee during the office hours of Second Party. The employee of first party shall be entitled to 2 Earned Leaves Per month application of which should be made to Second Party 24 hours in advance and 1 Casual Leave per month that may be taken in case of exigency and 24 Sick Leaves per year.
5. The payment shall be made by second party to the first part by online transfer in the Bank accounts of later of by account payee the cheque in the name of "\_\_\_\_\_".
6. The parties agree that the obligations of First Party under the settlement agreement are fulfilled discharged on making the full and final payment under clause 2 of this Agreement to the Second Party before \_\_\_\_\_(Cut off date for making Payment).
7. The parties agree that unpaid amount after \_\_\_\_\_ (Cut off date for making Payment) shall bear interest from the date such payment was due until paid at a rate 10% compounded quarterly from time to time.

8. The parties agree that there shall be no further penalty or claim made pertaining to this transaction between the parties.
9. It is agreed between the parties that all the liabilities of the Second Party for payment as mentioned in the letter of possession dated 27.05.2016 are inclusive in the above agreed amount of Rs.25 LACS and no other payment whatsoever would be payable by the Second Party after payment of settled amount except interest for delayed payment as detailed herein above as also the maintenance charges with effect from 1.8.2021.
10. The parties agrees that parties shall pray the Hon'ble Court for a suitable adjournment of proceedings so that the parties can ensure compliance of the terms of this agreement and thereafter jointly apply to the Hon'ble Court for disposal proceedings.

It is agreed between the parties that the parties shall pray to the Hon'ble Court for a suitable adjournment of both the appeals of the two appeals as aforesaid.

In witness whereof the Bank, through its authorised officer has set its hand and stamp on this \_\_\_\_ day of March, 2023 at \_\_\_\_\_.

\_\_\_\_\_  
1<sup>st</sup> Party

(Name, Signature and Details)

Mediator

\_\_\_\_\_  
(Name, Signature and Details)

\_\_\_\_\_  
2<sup>nd</sup> Party

(Name, Signature and Details)

## 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. The document ensures that the employee knows his place in the organisation and what is expected of him.

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. Usually employment contracts contain only vague references to the "policies and procedures to which the employee will be bound".

The employer should provide the employee with all of the company policies and other documents that relate to the contract or are referred to in the contract.

Following are the usual contents of an employment agreement:

- 1) Name of the parties involved
- 2) Starting date of employment
- 3) Title and description of the job
- 4) Location of work
- 5) Hours of work
- 6) Probationary period

- 7) Salary
- 8) Restrictive terms
- 9) Holidays
- 10) Other information like deductions, permissible expenses, notice period etc.

### EMPLOYMENT AGREEMENT

Certain important issues that need to be taken care of before finalizing the employment agreement are given hereunder:

- Identify the long term requirement of employees.
- Identify the workmen and employees not covered under definition of workmen, respectively.
- Local laws of the State should be borne in mind while drawing up the contracts.
- Issue appointment letters which clearly define the employment terms and conditions.
- Employment contracts, where necessary, should be put in place with clauses for wages, benefits, non-compete, confidentiality, term, termination etc.
- Depending on the requirement, use fixed term contracts for workmen.
- 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

#### AGREEMENT FOR EMPLOYMENT

An **AGREEMENT** made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

BETWEEN

\_\_\_\_\_ (Name of Company) represented by its Managing Director  
\_\_\_\_\_ (hereinafter called the ‘Employer’ of the One Part

AND

\_\_\_\_\_ (Name of the Employee & his details) (hereinafter called the ‘Employee’ of the Other Part.

#### WHEREAS

1. The Employer is engaged in the business of \_\_\_\_\_ and maintains business premises at \_\_\_\_\_.
2. The employer wants to appoint a suitable person to work as \_\_\_\_\_ for his business concern;
3. The Employee, the party of the Other Part, has agreed to serve as \_\_\_\_\_ for the business concern on the terms and conditions hereinafter set forth.

#### NOW THIS AGREEMENT WITNESSED AND THE PARTIES HERETO AND HEREBY AGREE AS FOLLOWS:

##### 1. AGREEMENT TO EMPLOY AND BE EMPLOYED

The Employer hereby employs the Employee as \_\_\_\_\_ at \_\_\_\_\_ and the Employee hereby accepts and agrees to such employment.

## 2. DESCRIPTION OF EMPLOYEE'S DUTIES

Subject to the supervision and pursuant to the orders, advice, and direction of the Employer, the Employee shall perform such duties as are customarily performed by one holding such position in business concern. The Employee shall additionally render such other and unrelated services and duties as may be assigned to him from time to time by employer.

## 3. MANNER OF PERFORMANCE OF EMPLOYEE'S DUTIES

The Employee shall at all times faithfully, industriously, and to the best of his/her ability, experience, and talent, perform all duties that may be required of and from him/her pursuant to the express and implicit terms hereof, to the reasonable satisfaction of employer. Such duties shall be rendered at the abovementioned premises and at such other place or places as employer shall in good faith require or as the interests, needs, business, and opportunities of employer shall require or make advisable.

## 4. DURATION OF EMPLOYMENT

The term of employment shall commence on \_\_\_\_\_ and continue till such date the Employee works in the business concern subject, however, to prior termination as provided in Clause 9 hereof or by resignation by the Employee. In case of resignation, the Employee shall give one month prior notice to the Employer and on failure to do so, shall forego his salary for the notice period.

## 5. REMUNERATION

The Employer shall pay a salary of \_\_\_\_\_ to the Employee for the services rendered to the business concern. The details of the salary are mentioned in Annexure A of the document. In addition to the foregoing, the employer shall also reimburse the expenses incurred by the Employee while travelling for and on behalf of the Employer pursuant to the employer's direction.

## 6. EMPLOYEE'S LOYALTY TO EMPLOYER'S INTEREST

The Employee shall devote all his time, attention, knowledge, and skill solely and exclusively to the business and interests of the Employer, and the Employer shall be entitled to all benefits, emoluments, profits, or other issues arising from or incident to any and all work, services, and advice of the Employee. The Employee expressly agrees that during the term hereof he will not be interested, directly or indirectly, in any form, or manner, as partner, officer, director, stockholder, advisor, employee, or in any other form or capacity, in any other business similar to the employer's business or any allied trade, except that nothing herein contained shall be deemed to prevent or limit the right of employee to invest any of his surplus funds in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange.

## 7. NON-DISCLOSURE OF BUSINESS INFORMATION

The Employee will not at any time, in any form or manner, either directly or indirectly divulge, disclose, or communicate to any person, firm, or corporation in any manner whatsoever any information of any kind, nature, or description concerning any matters affecting or relating to the business of employer, including, without limitation, the names of any its customers, the prices it obtains or has obtained, or at which it sells or has sold its products, or any other information concerning the business of employer, its manner of operation, or its plans, processes, or other data of any kind, nature, or description without regard to whether any or all of the foregoing matters would be deemed confidential, material, or important.

The parties hereby stipulate that, as between them, the foregoing matters are important, material, and confidential, and gravely affect the effective and successful conduct of the business of employer, and its good will, and that any breach of the terms of this section is a material breach of this agreement.

**8. LEAVE**

The Employee will be entitled for one day leave for a completed month of service. Apart from this the employee will also be entitled to medical leave of 15 days in a year subject to submission of medical certificate in case the medical leave period exceeds three days.

**9. TERMINATION OF SERVICE**

- i. The Employer shall terminate the services of the Employee without any previous notice, if the employer is satisfied based on medical evidence that the employee is unfit and is likely for considerable period to continue to be unfit by reason of ill health for discharge of his/her duties.
- ii. The Employer shall terminate the services of the Employee without any previous notice, if the Employee is found guilty of any in-subordination, intemperance, moral turpitude or other misconduct or of any breach or non performance of any of the provisions of these conditions, or if otherwise found unsuitable for the efficient performance of his /her duties.

**10. SETTLEMENT OF DISPUTE**

Any claim or controversy that arises out of or relates to this agreement, or the breach of it, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and relevant labour legislations.

**11. WAIVER OR MODIFICATION EFFECTIVE ONLY IN WRITING**

No waiver or modification of this agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid.

**12. GOVERNING LAW**

This agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of \_\_\_\_\_, India.

**13. BINDING EFFECT OF AGREEMENT**

This agreement shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors, and assigns.

**IN WITNESS WHEREOF**

On behalf of the party of the ONE PART and by the party of the OTHER PART have hereto and hereby set their hands the day, month and year above mentioned:

\_\_\_\_\_

1. Signature of the Party of the ONE PART (Employer)

\_\_\_\_\_

2. Signature of the Party of the OTHER PART (Employee)

In the presence of

1. \_\_\_\_\_ (Name, designation and address)

2. \_\_\_\_\_ (Name, designation and 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.

Usually, in settlement agreements, there is no need for a long court case which saves the clients both time and money. 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?

If you are contemplating a way to settle your dispute without having to go to court, drafting a settlement agreement may be one of your legal options. With this type of agreement, one party must complete an action or pay a certain amount in exchange for the other party's promise to stop legal proceedings. Here are some situations in which a settlement agreement can apply:

- Any property damage claim;
- Mediation/Conciliation Settlement Agreements;
- Corporate Settlement Agreements;
- Family Business Settlement; and
- 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?

Understanding the potential terms and researching them will get you ahead in the settlement agreement process. You can start by looking at any terms that would assist the case in the mediation process.

For example, an insured claim being resolved by settlement agreement usually involves payment in exchange for release of legal liability. 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

##### Settlement of Family Business

This Deed of Family Arrangement is executed on this \_\_\_\_\_ in the year 2020

BETWEEN

A B S/o MN aged \_\_\_\_ years, occupation \_\_\_\_\_ r/o \_\_\_\_\_  
(hereinafter called as the first party)

AND

CD S/o XM aged \_\_\_\_ years, occupation and r/o \_\_\_\_\_ (hereinafter called as the second party)

**WHEREAS**

- (1) The first party has started and carried out the business and undertaking described in Schedule 'A' by his own initiative and efforts with his own capital and funds.
- (2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'B' and the second party shall hold the share in business and properties described in Schedule 'C'.
- (3) The movable and immovable properties, which is also described in Schedule 'A' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits

**NOW THIS DEED WITNESSETH AS FOLLOWS :**

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'C' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.
2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'B' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'A'.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
1. Signature of the 1<sup>st</sup> Party

\_\_\_\_\_  
2. Signature of the 2<sup>nd</sup> Party

Witnesses

1. \_\_\_\_\_ (Name, designation and address)

2. \_\_\_\_\_ (Name, designation and address)

**DRAFTING OF BYE-LAWS OF SOCIETIES****Society**

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.

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. 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.

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.' 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.

The Memorandum should contain name, registered office, area of operation, objects, name of members of governing body and names of promoters. 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.

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. 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.

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).

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. 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.

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.

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.

#### **Specimen format of Memorandum of Association and Rules and Regulations of Charitable Society**

##### **MEMORANDUM OF ASSOCIATION OF \_\_\_\_\_ CHARITABLE SOCIETY**

1. Name of the Society: The name of the society shall be \_\_\_\_\_.
2. Registered Office: Registered office of the society shall remain in the \_\_\_\_\_ (Mention the state) and at present it is at the following address: \_\_\_\_\_
3. Aims and Objects: The aims and objects for which the society is established are as under:
  - (a)
  - (b)
  - (c)
  - (d) and so on.....
4. Governing Body: The names, addresses, occupation and designation of the present members of the

governing body to whom the management of the society is entrusted as required under the Societies Registration Act, 1860, are as follows:

<b>S. No.</b>	<b>Name (full, in capital)</b>	<b>Address</b>	<b>Occupation</b>	<b>Designation in Society</b>
1.				
2.				
3.				
4.				
5.				
6.				
7. And so on				

5. Desirous person We the undersigned are desirous of forming a society namely “\_\_\_\_\_” under the Societies Registration Act, 1860 in pursuance of this Memorandum of Association of the Society.

<b>S. No.</b>	<b>Name (full, in capital)</b>	<b>Address</b>	<b>Occupation</b>	<b>Designation in Society</b>
1.				
2.				
3.				
4.				
5.				
6.				
7. And so on				

All the incomes, earnings, movable, immovable properties of the Society shall be society utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of Association and no profit on there of shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members of the Society or to any person claiming through anyone or more of the present or the past members. No member of the Society shall have any personal claim on any movable or immovable properties of the Society or make any profits, whatsoever, by virtue of his membership.

Attested the signatures from No. 1 to 7 (or more) Signatures of Two witnesses other than the members of the society with Addresses

Signature of the Attesting Officer with Official Seal

Certified that this is the true and correct copy of the Memorandum

Signatures of any three members of the Governing Body

**President**

**Secretary**

**Treasurer**

**RULES AND REGULATIONS OF \_\_\_\_\_ CHARITABLE SOCIETY**

1. NAME OF THE ASSOCIATION:
2. ADDRESS OF THE ASSOCIATION:
3. MEMBERSHIP:
  - a. The association membership fee shall be follows:-
    - i. Life Membership fees Rs. \_\_\_\_\_
    - ii. Annual Membership Rs. \_\_\_\_\_
    - iii. Monthly subscription Rs. \_\_\_\_\_
  - b. The admission fee for each member shall be Rs. \_\_\_\_\_ only.
  - c. Any person who has attained above the age of 18 years will be allowed to become a member of the association. All the members of the association is eligible to vote and contest to the managing committee in the General Body Meeting.
  - d. If the subscription of the member is in arrears for more than three months without satisfactory explanation to the General Secretary, his/her name will be removed and the Executive Committee may reconsider his/her application for re-admission subject to all the arrears including the admission fee being paid. The termination of membership maybe on death, the member acting against the objects of the association, unsound mind and other reasons stated by Executive Committee.
4. INFORMATION REQUIRED BY THE MEMBERS:-

Any member of the association may apply to the General Secretary for any information as may be required or any matter of the subjects or rules and regulations of the association.
5. GENERAL BODY AND OTHER MEETINGS:-
  - a. The report of the Management of the previous years and the audited accounts for the present period and proceedings year shall be discussed and submitted for confirmation.
  - b. A general body meeting of the association will be held annually during the month of \_\_\_\_\_.
  - c. An Executive committee consisting of \_\_\_\_\_ members shall be elected in the general body meeting once in a year.
  - d. An authorised officer bearer may call for a general body meeting for which 21 days notice shall be given to the members.
  - e. The executive committee shall generally meet once a month for which notice of 7 days shall be given to the members by the General Secretary.
  - f. Voting shall be conducted by show of hands or secret Ballot.
  - g. 21 days clear notice for the Annual General Body meeting and 21 days notice for a special General body meeting shall be given.
  - h. A special General Body Meeting shall be conveyed as per the provisions of the Societies Registration Act, 1860.
6. QUORUM:- The quorum of the General body meeting shall be 1/3 rd of the total membership of the Association.

**7. ACCOUNTS:-**

- a. Official year: - The official year of the Association shall be from 1st April to 31st March every year.
- b. The assets and liabilities and the balance sheet of the Association shall be laid before the Annual General body Meeting for confirmation.
- c. Such a balance sheet and the List of Committee Members shall be filed with the Registrar of Societies as per the provisions of the Societies Registration Act, 1860.

**8. AUDITOR:-**

An auditor shall be appointed annually and the remuneration shall be fixed by the members in the Annual General Body meeting.

**9. EXECUTIVE COMMITTEE:-**

- a. To ensure and promote the primary aim and objectives of the academy.
- b. To publish Annual report/accounts.
- c. To operate funds and manage the property of the association and to present the duly audited accounts at annual general body meeting.
- d. To form regional centres wherever deemed fit/feasible.
- e. In the event of any office bearer laying down office for whatever reasons, the managing committee can co-opt any member consider suitable for the office for the remaining period of the tenure or till elections are held.
- f. To ensure that all monetary transactions are through objectives of the association.
- g. To ensure that all monetary transactions are through objectives of the Association.
- h. May decide to expel a member of managing committee or a member of the association in case anyone is convicted or any criminal offence, or prove insanity or any member's action in contravention to the Bye-laws.
- i. Managing Committee shall have power to appeal and raise funds and fulfill all formalities incumbent upon it.
- j. To accept from Government, Non-Government, Local bodies, organisation and individuals Grants, donations, Subscriptions or any property movable/immovable for furtherance of the objectives of the Association.
- k. At any meeting of the Executive committee each member present will have one vote except the president who shall have in addition a casting vote. Voting may be by raising of hands or secret ballot.
- l. Executive committee may appoint committee, Sub-Committee with such powers as deemed fit by this body for the purpose that is commensurate with the objectives of the society. The committee, Sub-Committee may co-opt persons who are members of the Association.
- m. Executive committee may invite to their meetings not more than two specialists/experts who may be non members of the Association whose presence with the deliberations is considered useful.
- n. Executive Committee shall arrange for the publication in any manner, documents as may be considered fit in the furtherance of its objectives.
- o. To retain, appoint, promote, dismiss any employees for managing and functioning of the Association and to regulate their terms and conditions of employment including remuneration.
- p. To make the rules and bye-laws and get approval.

10. Any vacancy that may arise in the Executive Committee may be filled in by the remaining committee members.
11. Any member of the executive committee being absent for three successive meetings without proper cause shall cease to be a member of the executive committee. However he/she is eligible to be re-elected.
12. The executive committee is to meet every month or earlier if there is any business to consider and General Secretary shall convene such meetings with 1/3rd quorum.
13. PROVISION:- Provided that no amendments to the memorandum of association, rules and regulations of the association shall be made which may prove to be repugnant to the provisions of the Income Tax Act 1961 as amended from time to time. Further any amendment carried out shall be forthwith reported to the Commissioner of Income Tax.
14. The Executive committee in its meeting shall consider all the questions affecting business that may be of interest to the members of the association and they shall inform and circulate any information which may be of use to the members.
15. There shall be maintenance of accounts of the Association. The accounts shall be duly audited by a Chartered Accountant. Every year the Accounts shall be closed by 31st March every year.
16. The funds of the association shall be invested in the modes specified under the provisions of the Income Tax Act, 1961 as amended from time to time.
17. DISSOLUTION:- In the event of dissolution or winding up of the Society the assets remaining as on the date of dissolution shall under no circumstances be distributed among the members of the managing committee/Governing body but the same shall be transferred to another Charitable Society/Association whose objects are similar to those of this Society and which enjoys recognition u/s 80G of the Income tax Act 1961 as amended from time to time.
18. The association formed shall be irrevocable.
19. The benefits of the association shall be open to all irrespective of the caste creed or religion.
20. The funds and the income of the association shall be solely utilised for the achievement of its objectives and no portion of its shall be utilised for payments to the members by way of profit, interest and dividends.
21. Alteration of amendment of the memorandum of association shall be made as per the provisions of the Societies Registration Act, 1860.
22. Change of Name, Rules and regulations shall be made as per the provisions of the Societies Registration Act, 1860.
23. The working hours of the association shall be from:- Morning: 10.00 A.M. to Evening: 7.00 P.M.
24. For matters which have not been specified provided for therein above, the provisions of the Societies Registration Act, 1860 and the rules made there under shall apply.
25. EXECUTIVE POWERS OF THE COMMITTEE: The administration and management of the association shall vest in the executive committee consisting of 7 members including President, General Secretary of the association.

PRESIDENT:- a. He / She shall be in over all charge of the association and the General body meetings. All the policies and programmes shall be formulated and implemented only through him/her. b. He / She shall operate bank account jointly with the General Secretary.

**GENERAL SECRETARY:-** a. He / She shall call for all meetings of the General body meeting as and when deemed necessary and the General body meetings and the Special body meeting as per the rules with the previous approval of the president and maintain the minutes book and record of all the proceedings of the meetings. b. He / She shall be the correspondent of the association and shall be in-charge of the office with all the record of the association. c. He / She shall be the custodian of all articles and belonging both movable and immovable of the Association. d. He / She shall operate bank account jointly with the president.

<b>S. No.</b>	<b>Name (full, in capital)</b>	<b>Address</b>	<b>Occupation</b>	<b>Designation in Society</b>
1.				
2.				
3.				
4.				
5.				
6.				
7. And so on				

Signatures of any three members of the Governing Body

**President**

**Secretary**

**Treasurer**

### **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.

### Draft Model Standing Orders

#### 1. Short title, extent and commencement.-

- (1) These Model Standing Orders may be called the Model Standing Orders for Service Sector, 2020;
- (2) They extend to all States and Union territories within India to the industrial establishments employing three hundred or more number of workers who are working in the industrial establishments and which are covered under the Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020) and the rules made thereunder under the control of Central Government or the State Government engaged in service sector;
- (3) These Standing Orders shall come into force on the day of its publication in the Official Gazette.

#### 2. Definition.-

- (1) In these Model Standing Orders, unless there is anything repugnant to the subject or the context,-
  - (a) "Aadhaar" means the Aadhaar referred to in Section 142 of the Code on Social Security, 2020 (36 of 2020);
  - (b) 'Code' means the Industrial Relations Code, 2020 (35 of 2020);
  - (c) 'Form' means a form set out in Schedule appended to these standing orders;
  - (d) 'Habitual' means with respect to indiscipline, a worker shall be habitual if the worker found guilty of any misconduct three or more times in preceding twelve months; and
  - (e) "Standing Order" with its grammatical variation and cognate expressions, means the standing order of these model standing orders.
- (2) The words or expressions used in these model standing orders and not defined therein but defined in the Industrial Relations Code, 2020 (35 of 2020) shall have the respective meanings assigned to them in the definitions in the Code.

#### 3. (1) **Classification of Worker.-** For the purposes of these standing orders, the workers are classified as below, namely:-

- (a) Permanent;
  - (b) Temporary;
  - (c) Apprentices;
  - (d) Probationers;
  - (e) Badlis; and
  - (f) Fixed Term Employment.
- (2) A Permanent worker is a worker who has been engaged on a permanent basis in an industrial establishment and includes any person who has satisfactorily completed a probationary period of six months in the same or another occupation in the industrial establishment including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the industrial establishment.
  - (3) A Temporary Worker is a worker who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.
  - (4) Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship under the Apprenticeship Act, 1961 (52 of 1961).

- (5) A Probationer is a worker who is provisionally employed to fill a permanent vacancy in a post and has not completed six months 'service therein. The period of probation can be extended further period up to three months after assessing the performance of the probationer for the post, he has been appointed for. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of six months, be reverted to his old permanent post.
- (6) A badli is a worker who is appointed against the post of a permanent worker or probationer who is temporarily absent.
- (7) "Fixed term employment" means the engagement of a worker on the basis of a written contract of employment with the employer for a fixed period: Provided that—
  - (a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;
  - (b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute;
  - (c) he shall be eligible for gratuity, if he renders service under the contract for a period of one year; and
  - (d) for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to the worker at the rate of fifteen days' wages, based on rate of wages last drawn by the worker concerned as referred to in sub-section (2) of section 53 of the Code on Social Security, 2020 (36 of 2020).

*Explanation.-* For removal of doubt, it is clarified that the termination of service of a worker as a result of completion of tenure of fixed term employment shall not be included within the meaning of "retrenchment" as defined under clause (zh) of section 2 of the Industrial Relations Code, 2020 (35 of 2020).

#### **4. Identity Badge or Card.-**

- (1) All workers belonging to any categories under the Code on Industrial Relations, 2020 (35 of 2020) shall be issued an identity badge or card bearing his full name, employee number, blood group, mobile number, if any, and a recent photograph.
- (2) A worker should always wear his identity badge or card during the working hours of the industrial establishment and produce the same to the authorized security guard or personnel to allow him the right of entry and stay in the premises of the industrial establishment.
- (3) Such identity badge shall not be transferable to any other persons or workers. Safe custody of the identity badges or cards shall be ensured by the concerned workers.
- (4) Every Worker, who ceases to be in employment of the industrial establishment or is suspended from services, shall surrender his identity badge or card to the Department Head or the designated officer of the industrial establishment for such purpose.

#### **5. Publication of Working Timings.-**

- (1) The periods of hours of work for all categories of workers shall be exhibited on the notice board or Electronic Notice Board and on the Human Resource Portal/IT Application of the industrial establishment, if any, from time to time in Hindi, English and in local language majority of workers in the industrial establishment are conversant. Provided that in case of IT Sector, the working hour shall be as per agreement or conditions of appointment between employer and workers.
- (2) Any change in periods of hours of work, number of shifts, shift timings, work on all the days of the week with staggered weekly holidays system or like other matters, shall also be displayed on notice board or electronic notice board of the industrial establishment.

**6. Publication of Holidays, Pay days and Wage rates.-**

- (1) Notices specifying the days observed by the industrial establishment as holidays, and pay days shall be posted on the Electronic notice board or notice board and website or Human Resource portal of the industrial establishment, if any.
- (2) A list of national and Festival Holidays shall be displayed on the Electronic notice board or notice board and website or Human Resource portal of the industrial establishment, if any.

*Explanation:* If a worker is required to work on any Holidays, he/she shall be given benefits as per prevalent law(s) applicable to workers.

**7. Publication of wage band.-** Wage bands payable to all categories of workers shall be displayed on the Electronic notice board or notice board and website or Human Resource portal of the industrial establishment, if any in Hindi, English and local language majority of workers in industrial establishment are conversant.**8. Shift working:-**

- (1) More than one shift may be worked in a department or departments or any section of a department of the industrial establishment at the discretion of the employer. If more than one shift is worked, the worker shall be liable to be transferred from one shift to another. No shift working shall be discontinued without twenty one days' notice being given in writing to the workers prior to such discontinuance: Provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workers affected or mutually agreed between employer and worker. If as a result of the discontinuance of the shift working, any worker is to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Relations Code, 2020 (35 of 2020) and the rules made thereunder. If shift working is re-started, the workers shall be given notice and re-employed in accordance with the provisions of the said Code and the said rules.
- (2) Whenever an additional shift is started, or shifts are restarted or discontinued or altered, twenty- one days prior notice, shall be given to the affected workers: Provided that no notice shall be required in case of emergent situation which requires change of shift or shift working, otherwise than in accordance with Standing Order, in consultation with Grievance Redressal Committee in pursuant of clause (c) section 40 of the Industrial Relations Code, 2020 (35 of 2020): Provided further that if there is an agreement between employer and worker regarding change of shift, then no prior notice is required to given by the management/employer. Provided also that no notice shall be required, if such change is effected in accordance with the orders of the Central Government or State Government, as the case may be, or in pursuance of any settlement or award as envisaged in clause (d) of section 40 of the Industrial Relations Code, 2020 (35 of 2020).

**9. Notice of changes in shift working.-**Any notice of discontinuance or of re-starting of a shift working required by this Standing Order, shall be in form II appended to these standing orders and shall be served in the following manner, namely :-

- (a) The notice shall be displayed conspicuously by the employer on a notice-board or electronic notice board and Human Resource portal of the industrial establishment if any; and
- (b) Where any registered trade union of workers exists, then, a copy of the notice referred to in clause (a) shall also be served electronically or by registered post to the Secretary of such union.

**10. Work from home.-** Subject to conditions of appointment or agreement between employer and workers, employer may allow a worker to work from home for such period or periods as may be determined by employer.**11. Attendance and Late Coming.-**

- (1) All workers shall be at work at the time fixed and notified under paragraph 5. Worker attending late will be liable for deduction provided for in the Code on Wages, 2019 (29 of 2019).

- (2) All workers shall comply with the regulations related to hours of work for the time being in force.
- (3) Workers shall register their attendance at the start of the shift and at the close of the shift after and before change of uniform, if any, respectively.
- (4) Workers shall use identity card or biometrics or any other system as has been notified to register their attendance.
- (5) No worker shall use or punch the Identity badge other than his own under any circumstances.
- (6) Any worker, reporting late than the scheduled time for reporting shall not be permitted to enter his department or section, unless permitted by the express permission of the manager, or any other officer, duly authorized for such purpose.
- (7) A worker shall be deemed absent, if he/she fails to attend duty, unless he has obtained written permission for such absence from the manager or the Officer authorized in this behalf.
- (8) A worker who habitually comes late and remains absent will be liable to deduction of wages as provided under the Code on Wages, 2019 (29 of 2019).

#### **12. Leave.–**

- (1) Holidays with pay will be allowed as provided for in the Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020), and other holidays in accordance with law, contract, custom and usage applicable.
- (2) Leave cannot be claimed as matter of right.
- (3) A worker who desires to obtain leave of absence shall apply to the employer or any other officer of the industrial establishment specified in this behalf by the employer at least seven days in advance from the date of proposed date of leave. The employer or any other officer of the industrial establishment, who is responsible for issuing the order, shall issue the same within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier. If the leave has been applied and the leave is to commence on the date of the application or within three days thereof, then the worker shall mention the reason for late submission of application for leave. The order on such leave shall be given on the same day. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons there for shall be communicated to him in writing.
- (4) Where the worker after proceeding on leave desires an extension thereof, he shall apply to the employer or the officer specified in this behalf by the employer, who shall send a written reply either granting or refusing extension of leave to the worker if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.
- (5) Leave with wages and allowances shall be granted to all the workers in accordance with the law as applicable to the industrial establishment and under Standing Orders.
- (6) No employee while on leave shall take up any employment or any vocation for profit or gain.

**13. Casual Leave.-** A worker may be granted casual leave of absence with or without pay not exceeding ten days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the industrial establishment shall be obtained before such leave is taken, but when this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of the absence from and of the probable duration of such absence.

**14. Payment of Wages. –**

- (1) All payment including wages to the workers shall be paid by crediting in the bank account of worker on electronic mode or digital form. Intimation to the payment made to a worker shall be sent to him through SMS or e-mail or social media communication, such as, WhatsApp or by issuing a slip.
- (2) Notice of wage period and payment date in Hindi, English, and regional language familiar to the majority of workers at a factory, shall be displayed on the notice board or electronic notice board and on the Human Resource portal of the industrial establishment, if any.
- (3) Any wages, due to the worker but not paid on usual pay day on account of there being unpaid shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice boards as referred to in sub-paragraph (2); and
- (4) All worker will be paid wages on a working day before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable.

**15. Service Record:-**

- (1) Matters relating to service card, certification of service, change of residential address of workers and record of their age shall form part of service record and –
  - (i) Every industrial establishment shall maintain a service card in respect of each worker electronically or in manual form, wherein particulars of that worker shall be recorded with the knowledge of that worker in Form I. In case of manual maintenance of service card, the record shall be duly attested by an officer in this behalf together with date;
  - (ii) Every worker 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 to be issued by an employer;
  - (iii) A worker shall notify the employer immediately on engagement, the details of his permanent and local residential address, mobile number and digital communications details like e-mail address and thereafter promptly communicate the change in the same, if any. In case, the worker 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) Every worker shall indicate his exact date of birth to the employer or the officer authorized by him in this behalf, at the time of entering service in the industrial establishment. The employer or the officer authorized by him in this behalf may before the date of birth of a worker is entered in his service card, require him to supply,-
    - (a) his matriculation or school leaving certificate granted by the Board of Secondary Education or equivalent certificate granted by similar educational authority; or
    - (b) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;
    - (c) a copy of Aadhaar; and
    - (d) 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 worker to supply, a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon indicating the probable age of the worker: Provided that the cost of obtaining such certificate is borne by the employer.
  - (v) 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.

- (2) The date of birth of a worker, once entered in the service card of the industrial 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 industrial establishment. All formalities regarding recording of the date of birth shall be finalized within three months of the date of the appointment of a worker.
- (3) Cases, where date of birth of any worker had already been decided before the date these standing orders come into force shall not be reopened under these standing orders. Note.- Where the exact date of birth of a worker 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.

**16. Confirmation.-** The employer shall, in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible worker and issue a letter of confirmation to him. Whenever, a worker 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.

**17. Age of retirement.-** The age of retirement or superannuation of a worker shall be such as may be agreed upon between the employer and the worker under a written agreement or as specified in a settlement or award which is binding on both the worker and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of fifty eight years of age by the worker.

**18. Transfer.-**

- (1) There shall be a transfer policy of the industrial establishment and same shall be known to all workers. The details of transfer policy shall be available on the Human Resource (HR) portal.
- (2) A worker may be transferred according to the transfer policy and exigencies of work from one shop or department to another or from one station to another or from one industrial establishment to another under the same employer: Provided that the wages, grade, continuity of service and other conditions of service of the worker shall not be adversely affected by such transfer: Provided further that a worker shall be transferred from one job to another, which he is capable of doing: Provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the worker or where there is a specific provision to that effect in the letter of appointment and transfer policy in accordance with such provision and policy: Provided also that unless –
  - (a) reasonable notice is given to such worker, and
  - (b) reasonable joining time is allowed in case of transfers from one station to another and the worker concerned shall be paid traveling allowance including the transport charges and fifty per cent thereof to meet incidental charges, such transfer shall not be effected,
  - (c) The employer may, transfer, depute or assign a worker to any other assignment, team, department or office (whether in India or abroad) of the employer or any affiliates / client of the employer.

**19. Medical aid in case of accidents.-**

- (1) Where a worker 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 worker and shall arrange for his further treatment, if considered necessary by the doctor attending on him.

- (2) Wherever the worker is entitled for treatment and benefits under the Social Security Code, 2020 (36 of 2020), then, he shall be entitled for treatment and benefits under that Code. 20. Medical Examination.-
  - (1) Wherever the recruitment rule or any contract of appointment or Fixed Term Employment specify medical examination of a worker, on his first appointment, the employer shall at the employer's expense make arrangements for medical examination.
  - (2) All workers to be employed in the industrial establishment shall be required to clear the medical examination by the Medical Authority nominated by the industrial establishment for such purpose, at the time of first appointment.
  - (3) The industrial establishment may at any time direct any worker to undergo medical examination by any Medical Officer nominated to ascertain workers' fitness relatable to satisfactory performance of his job. The term "Medical Officer" shall have same meaning as it has in sub-section (1) of section 42 of Occupational Safety, Health and Working Condition Code, 2020 (37 of 2020).
  - (4) A worker who comes to know that he has contracted any infectious or contagious disease shall immediately notify the concerned Manager of such a happening and shall remain away of work until permitted to return on work by the Manager concerned and during such period, the worker shall be treated on leave to the extent of days he has leave with wages to his credit. Disciplinary action may be taken against a worker if he deliberately suppresses the fact of his suffering from an infectious or contagious disease and such a conduct on the part of the worker shall amount to misconduct within the meaning of these Standing Orders.
- 21. Secrecy.-** No worker shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property either in electronic form or physical form, 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 industrial establishment to any unauthorized person, company or corporation without the written permission of the employer.
- 22. Exclusive Service.-** A worker 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 industrial establishment, which may adversely affect the interest of his employer, but, the employer may permit him to take up additional job, assignment with conditions or without conditions and the worker shall obtain prior permission of the employer.
- 23. Stoppage of work. –**
  - (1) The employer may, at any time, in the event of fire, catastrophe, break-down of machinery or stoppage of power supply, disaster, pandemic, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the industrial establishment, wholly or partially for any period or periods without notice.
  - (2) In the event of such stoppage during working hours, the workers affected shall be notified by notices put upon the notice board or electronic notice board or on the Human Resource Portal of the industrial establishment, if any, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The worker shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceed one hour the worker so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workers so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the

stoppage. In case of piece rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppages. Wherever practicable, reasonable notice shall be given of resumption of normal work.

- (3) In cases where workers are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be, but where workers have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.
- (4) The employer may in the event of a strike affecting either wholly or partially any section or department of the industrial establishment close down either wholly or partially such section or department and any other section or department affected by such closing down, then, the fact of such closure shall be notified by notices put on the notice board or electronic notice board or on the Human Resource portal of the industrial establishment, if any, as soon as practicable. The workers concerned shall also be notified by a general notice, prior resumption of work, as to when work will be resumed.
- (5) The workers may be laid off as per provisions of the Industrial Relations Code, 2020 (35 of 2020).

#### **24. Termination of Employment.-**

- (1) This paragraph shall apply to an industrial establishment (not being an industrial establishment of seasonal character or in which work is performed intermittently) in which not less than three hundred workers, were employed on an average per working day in the preceding twelve months.
- (2) Subject to the provisions of the Industrial Relations Code, 2020 (35 of 2020) and rules framed thereunder, for terminating employment of a permanent worker, prior notice of one month shall be given or the worker shall be paid wages in lieu of such notice period and in case of remaining workers as specified in sub-paragraph (3), the notice period shall be regulated as provided in that sub-paragraph.
- (3) No temporary worker whether monthly rated, weekly rated or piece rated, and no probationer or badli or fixed term employment worker as a result of non-renewal of contract or employment or on its expiry, shall be entitled to any notice or pay in lieu thereof, if his services are terminated: Provided that the services of a temporary worker shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner specified in this behalf under these standing orders.
- (4) Where the employment of any worker is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

#### **25. Disciplinary action for misconduct.-**

- (A) (1) A worker may be suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him. Such investigation or enquiry, or where there is an investigation followed by enquiry, both the investigation and enquiry shall be ordinarily completed within ninety days from the date of suspension. The worker shall be paid subsistence allowance during the period of suspension which shall be subject to the worker not taking any employment elsewhere during the period of suspension.
- (2) The amount of subsistence allowance payable to such worker shall be as under, namely:-
  - (a) at the rate of fifty percent of wages which the worker was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

- (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension, if the delay in completion of disciplinary proceedings against such worker is not directly attributable to the conduct of such worker.
- (3) For the purposes of this standing order, the following shall denote misconduct, namely:-
- (a) theft, fraud, or dishonesty in connection with the employer's business or property;
  - (b) taking or giving of bribes or an illegal gratification whatsoever in connection with the employer's business or his own interests;
  - (c) willful insubordination or disobedience, whether alone or in conjunction with another or others, or of any lawful or reasonable order of a superior. The order of the superior should normally be in writing;
  - (d) habitual late attendance and habitual absence without leave or without sufficient cause;
  - (e) drunkenness, fighting or riotous, disorderly or indecent behaviours while on duty at the place of work;
  - (f) habitual neglect of work;
  - (g) causing wilful damage to work in progress or to property of the employer;
  - (h) sleeping on duty;
  - (i) malingering or slowing down work;
  - (j) acceptance of gifts from subordinate employees;
  - (k) conviction in any Court of Law for any criminal offence involving moral turpitude;
  - (l) continuous absence without permission and without satisfactory cause for more than ten days;
  - (m) giving false information regarding one's name, age, father's name, qualification or previous service at the time of the employment;
  - (n) leaving work without permission or sufficient reason;
  - (o) threatening, abusing or assaulting any superior or co-worker;
  - (p) preaching of, or inciting to, violence;
  - (q) abetment of or attempt to abetment of any of the aforesaid acts of misconduct;
  - (r) going on illegal strike either singly or with other workers without giving 14 day's previous notice;
  - (s) disclosing to any unauthorized person of any confidential information in regard to the working or process of the industrial establishment which may come into the possession of the worker in the course of his work;
  - (t) refusal to accept any charge-sheet or order or notice communicated in writing;
  - (u) failure or refusal to wear or use any protective equipment given by the employers;
  - (v) claiming false bill for reimbursement; and
  - (w) Involvement in unauthorized access of any IT system, computer network of the employer/customer/client.
  - (x) "sexual harassment" which means the 'sexual harassment' as defined in clause (n) of section 2 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013) and includes the circumstances specified in sub-section (2) of section 3 of the said Act.

**Note:**— The words defined in the Indian Penal Code (45 of 1860) and used in this sub-paragraph shall have the same meaning as defined in such Code.

(4) **Others Rules**

- (a) Where a disciplinary proceeding against a worker is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the worker under suspension, he may, by order in writing, suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the worker within a week from the date of suspension.
  - (b) In the enquiry, the worker shall be entitled to appear in person or to be represented by an office-bearer of a Trade Union of which he is a member or a co-worker of his choice.
  - (c) The proceedings of the enquiry shall be recorded in Hindi or in English or the language of the State where the industrial establishment is located, whichever is preferred by the worker.
  - (d) The proceedings of the inquiry shall be completed within a period of ninety days from the date of suspension.
  - (e) If on the conclusion of the enquiry or, as the case may be, of the criminal proceedings, the worker has been found guilty of the charges framed against him and it is considered, after giving the worker concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly: Provided that when an order of dismissal is passed under this clause, the worker shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered: Provided further that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the worker shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period: Provided also that in the case of a worker to whom the provisions of clause (2) of article 311 of the Constitution apply, the provisions of that article shall be complied with.
  - (d) If on the conclusion of the inquiry, or as the case may be, or the criminal proceedings, the worker has been found not to be guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.
  - (e) The payment of subsistence allowance under this sub-paragraph shall be subject to the worker concerned not taking up any employment during the period of suspension.
- (5) The authority imposing the punishment shall take into account any gravity of the misconduct, the previous record, if any, of the worker and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority imposing the punishment shall be supplied to the worker concerned.
- (6) (a) A worker aggrieved by an order imposing punishment under sub-paragraph (4) may within twenty-one days from the date of receipt of the order, appeal to the appellate authority specified under clause (b).

- (b) The employer shall, for the purposes of Clause (a) specify the appellate authority.
- (c) The appellate authority, after giving an opportunity to the worker of being heard shall pass order as he thinks proper on the appeal within fifteen days of its receipt and communicate the same to the worker in writing: Provided that where there is a complaint of sexual harassment within the meaning of clause (B) to subparagraph (3), the complaint committee constituted for such purpose in each industrial establishment for inquiring into such complaints, shall, notwithstanding anything contained in this paragraph, be deemed to be the inquiring authority appointed by the employer for the purpose of these standing orders and the complaint committee shall hold the inquiry under this paragraph, unless separate procedure has been specified by the employer for the complaint committee for holding such inquiry into the complaints of sexual harassment, as far as practicable.
- (7) The complaint committee referred to in sub-paragraph (6) shall consist of –
- (a) a Chairperson who shall be a woman;
- (b) one member representing Non-Government Organisation (NGO) or any other body which is familiar with the issue of sexual harassment or nominees of the National or State Human Rights Commission or the National or State Commission for Women familiar with the inquiry of the issue of sexual harassment, to be nominated by the employer.
- (8) The complaint committee referred to in sub-paragraph (6) shall make and submit every year an annual report, to the appropriate Government, of the complaints and action taken.
- (9) The employers or their agents shall report, to the appropriate Government, on the compliance of the guidelines issued by the appropriate Government in pursuance of section 23 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013) while monitoring the implementation of the said Act.
- 26. Grievance Redressal and Complaints.**– All complaints or grievances arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the Manager or person specified in this behalf with the right to appeal to the employer.
- 27. Liability of Employer and Workers.**– The employer of the industrial establishment shall be responsible for the proper and faithful observance of the Standing Orders. The workers shall also observe the Standing Orders truly and faithfully.
- 28. Forwarding of information to the certifying officer under sub-section (3) of section 30 on adoption of model standing order by an industrial establishment.**–
- (1) If the employer adopts the model standing order of the Central Government referred to in section 29 of the Industrial Relations Code, 2020 (35 of 2020), he shall intimate the concerned certifying officer electronically the specific date from which the provisions of the model standing orders have been adopted.
- (2) The model standing order adopted under sub-paragraph (1) in respect of an industrial establishment shall also be applicable to all other industrial units of the establishment irrespective of location.
- (3) On receipt of information under sub-paragraph (1), the certifying officer shall enter the details of the industrial establishment who has adopted the Model Standing Order in the register maintained under rule 15 of the Industrial Relations (Central) Rules, 2020. In the event, the certifying officer observes that the industrial establishment which has intimated adoption of Model Standing Order is also engaged in activities other than for which Model Standing Order has been adopted then, he shall within a period of thirty days from such receipt of intimation of Model Standing Orders so adopted may give his observation, if any, that the employer is required to include or adopt

certain provisions which are relevant to his industrial establishment and indicate those relevant provisions and direct the employer of the industrial establishment that he shall, within a period of thirty days from the date of the receipt of such direction comply with the direction and send compliance report only in respect of those provisions which the certifying officer observes to get included. The provisions of the Model Standing Orders so adopted shall remain in force with effect from the date specified in sub-paragraph(1).

Explanation.- For removal of doubt, it is clarified that certifying officer shall not raise any observation in the event the industrial establishment is engaged in activities which are wholly covered by the activities of the industrial establishment to which the Standing Orders apply.

**29. Exhibition of Standing Orders.-** A copy of these Standing Orders in Hindi, English and in the language majority of workers in a factory are conversant with, shall be displayed on the notice board or electronic notice board and Human Resource portal of the industrial establishment, if any. Signature or Thumb impression of the person verifying.

## 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 show cause notice must not be taken lightly and its seriousness should be understood. 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

When you are filling a reply to a show cause notice it must always be kept in mind that you must give a reasonable excuse. 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. Moreover, always sound humble in your reply and also sound sorry for the same. Lastly, 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, J 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.

*Explanation.*— For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

### Notice under Section 138 of the Negotiable Instruments Act

#### LEGAL NOTICE

Dated \_\_\_\_\_

To,

Name- XYX

Address \_\_\_\_\_, Royal Tower

Sec \_\_\_\_\_ G.B Nagar

Noida- 201301

Mob- \_\_\_\_\_

Sir,

Under the instructions from and on behalf of my client \_\_\_\_\_ s/o \_\_\_\_\_ r/o :- \_\_\_\_\_  
\_\_\_\_\_. I do hereby serve upon you with the following legal notice :-

That you and my client are having business relation with each other since last 9 years.

That in the moth of July to October 2017, you have purchased goods on a credit of Rs. 6,00,000/- and for which you approach and demanded the same, my client after thoughtful consideration and having good business relation with you had extended line of credit of Rs. 6,00,000/- (Six lakh only) for very short time.

That my client approached you time to time for the given said amount Rs,6,00,000/- but you noticee, always assured my client that I will pay the entire amount and you noticee demands some time.

That after the 10 months my client has been approached to above said noticee to return above said amount 6,00,000/- than you noticee demanded some more time of i.e.: – 9 to 10 month. After the completion of 9 to 10 month my client again approach to you, noticee with humble request for the above said amount. you, noticee had assured that my client that I will paid 6,00,000/- with interest and other charges and again demanded some more time i.e.: - one and half month. After the completion of one and half month to you noticee and the noticee had been given Rs, 1,00,000 in cash, and issued three cheuques respectively i.e.: – (i) cheque no – \_\_\_\_\_ dated 20-12-2019 of Rs. 50,000/-, drawn on \_\_\_\_\_ bank of India branch \_\_\_\_\_. (ii) cheque No- \_\_\_\_\_,

Dated on -30-11-2019 of Rs 1,00,000/- , drawn on \_\_\_\_\_ bank of India \_\_\_\_\_. (iii) Cheque No. \_\_\_\_\_ dated on 31-12-2019 of Rs. 6,00,000/ – , drawn on bank of India , Branch \_\_\_\_\_, in favor of my client. At that time my client had asked to you about of remaining balance amount Rs. 3,00,000/-, The noticee again assured my client that I will pay within near future.

As per your permission my client presented single cheque no \_\_\_\_\_ amount of Rs. 1,00,000/- on 16-12-2019 in his banker Kotak Mahindra bank, branch A- 000, address.....– Delhi- 92 to your banker however, to the utter dismay to my client the above said single cheque dishonored by your banker for the reason “ Funds Insufficient” vide return memo dated on 18-12-2019.

That after the dishonored the above said cheque (Cheque no \_\_\_\_\_), my client some time approached to you the noticee, but you have not returned the above said cheque amount of Rs. 1,00,000/- of my client.

That you are required to take a notice of demand under section 138 of the negotiable instrument Act., 1881 and to pay the amount within the period of 15 days from the receipt of this notice failing which you shall become liable to be prosecuted under the penal provision of the said section.

It is therefore, call upon you through this notice to pay the cheque of Rs. 1,00,000/ – ( One lakh only), along with counsel fees of 10,00/- to my client within a period of 15 days from the receipt of this notice failing which you shall become liable to be prosecuted U/S 138 N. I. Act and other penal provision of the IPC.

In the eventuality of proceeding Show Cause taken up, you will have to suffer the cost and consequences thereof. Copy kept for further necessary action.

(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 XXXXX

Advocate New Delhi-110019

Ph.011- 2437XXXX

Dt. 21.07.2015

To,

Sh. ....Advocate,

....., Delhi High Court,

New Delhi-110001

#### **SUB: REPLY TO YOUR LEGAL NOTICE U/S 138 NEGOTIABLE INSTRUMENT ACT, 1881 DATED 02.04.2023**

Dear Sir,

Your legal notice dated 02.04.2023 has been placed before me by my client Sh..... at Connaught Place, New Delhi -110001 and I, the undersigned, have been instructed to reply to your said notice by my client on his behalf as under:

- A. That, at the outset you are being informed that the notice under reply, you have sent on behalf of your above said client, contains false and frivolous facts provided by your said client against my client, thereby your notice under reply deserves to be withdrawn, with unconditional apology by your client, because the claim made by you is without any basis and is based upon concocted facts, as no claim is made out against my client and in favour of your client.
- B. That, in fact, my client did not place any order for supply of any machines whatsoever, as alleged by

you. But, with a view to dispose off your old stock of outdated machines, you requested my client to place them at his shop for sale. Keeping in view old relations my client agreed to your client's proposal, which was subject to the condition that payment would be made only after those machines were sold out. However, those machines were not only outdated, but were also mechanically faulty, because of which till date they are lying with my client, which your client is at liberty to take back with two days' prior notice. It is pertinent to mention here that the cheque in question was handed over by my client blank and the same was to be used only upon instructions of my client, after he could sold out your all those machines.

- C. That, however, your client has cheated my client by misusing that cheque which is not in the handwriting of my client. As a matter of fact, your client has committed fraud in the matter and, consequently, is liable to be proceeded under the relevant provisions of law.
- D. That, therefore, it is denied that the cheque in question was issued by my client to your client in discharge of any liability. Rather, your client has misused that blank cheque with ulterior motives, after forging the same.

#### Reply on merits

1. That the contents of para 1 of your legal notice are wrong and denied and whatsoever is stated above is reiterated. It is denied that my client purchased from you client any machines whatsoever. Rather, my client helped your client to keep your machines in his godown/shop for disposal. Therefore, it is denied that the cheque in question was issued in discharge of any liability towards my client, as alleged in this para.
2. That the contents of para 2 are denied for want of knowledge. However, it is reiterated that my client ever issued any cheque, in the manner as alleged by you.
3. That, in reply to para 3 of your legal notice, what is stated above is reiterated. It is submitted that your client was not entitled to use that cheque for encashment and deposit the same in his bank.
4. That the contents of para's 4 &5 are denied for want of knowledge. However, it is reiterated that any cheque was issued in discharge of any liability towards my client to your client.
5. That the contents of para 6 need no comments. However, it is denied that my client committed any offence whatsoever.

In view of aforesaid facts and circumstances, you are being advised to further advise your client to withdraw the said notice under reply and further advise him not to drag my client in any frivolous litigation, failing which my client shall be constrained to contest the same, besides proceeding against your client under the relevant provisions of law, at the costs, risks and consequences of your client only. Copy kept for future record and reference.

Yours Sincerely,  
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.

#### LESSON ROUND-UP

- The skill of drafting is one's ability to express one's thought process in writing. Probably no other profession demands this ability more than the legal profession. A document is a voice of a sender. Every written word in a legal profession is precious, as it has the power to advocate, inform, instruct and persuade.
- Lease means 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 are Parties, Subject matter of lease, Duration of lease, Consideration and Sub-lease.
- The essential distinction between a Lease and a Licence is that in a Lease, there is transfer of interest in the property while in the case of licence, there is no such transfer although the licensee acquires only a personal right to occupy the property. This principle has been confirmed by number of various High Courts and Supreme Court judgments.
- There are 6 types of Mortgages i.e Simple Mortgage, Conditional Mortgage, Usufructuary Mortgage, English Mortgage, Mortgage by deposit of Title deeds or Equitable Mortgage and Anomalous Mortgage.
- A gift is a common mode of transfer of property. It is the transfer of certain existing moveable or immoveable property by one person to another. The person transferring the property is called the donor. The person to whom the property is transferred is referred to as the donee. The essential elements of a gift are Voluntary, Without consideration, Donor, Donee, Competence to gift, Subject matter of gift, Transfer and Acceptance.
- The sale deed is the main document by which 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.

- Alternative Dispute Resolution (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. There are 3 types of ADR i.e Arbitration, Conciliation and Mediation.
- 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. Usually employment contracts contain only vague references to the “policies and procedures to which the employee will be bound”.
- Minimum seven persons, eligible to enter into a contract, can form society. 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.
- 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.
- Points to be kept in mind while writing a reply to show cause notice are (i) A proper explanation has to be provided at the earliest (ii) It should be kept as brief as possible (iii) 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.

### GLOSSARY

**Document:** Ordinarily the word “document” denotes a textual record. Increasingly sophisticated attempts to provide access to the rapidly growing quantity of available documents raised questions about which should be considered a “document”.

**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.

**Lease:** 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.

**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.

**Mortgage:** 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.

**Sale Deed:** 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. Further, it also acts as the main document for further sale by the buyer as it establishes his proof of ownership of the property.

### TEST YOURSELF

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)*

1. What are the essential fundamentals for drafting a document?
2. Define Power of Attorney and what is the difference between General and Special Power of Attorney?
3. Define Lease Deed & License Deed and draft a specimen Specimen.
4. Define Leave and Licence agreement and also mention a case law.
5. Define Mortgage? Explain the types of Mortgages?
6. What are the essential elements of Gift? Draft a specimen Gift deed.
7. What is Alternative Dispute Resolution (ADR) agreements?
8. Draft a Mediation Clause.
9. Draft a settlement agreement between two partners of a LLP on their respective shares. Assume necessary facts.
10. Draft a notice against a cheque bounce for your client. Assume necessary facts.

### LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

### OTHER REFERENCES (Including Websites/Video Links)

- <https://www.icsi.edu/home/cs/>

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