GENERAL FORMS

Forms of Formal Parts of Deeds

1. COMMENCEMENT

1. Commencement of Deed between Two Parties, without Recitals

THIS "DEED OF SALE", "MORTGAGE", "LEASE", "GIFT", *as the case may be*, or "THIS TRUST DEED", "THIS SETTLEMENT" made on the ——day of ——BETWEEN AB, etc. (hereinafter called the———) of the one part AND CD, etc. (hereinafter called the———) of the other part WITNESSES as follows :

(1) .....

(2) .....

etc.

2. Commencement of Deed between Several Parties with Recitals

THIS (*as in above form No.* 1) is made[1] BETWEEN AB, etc., (hereinafter called the ——) of the first part AND CD, etc., (hereinafter called the ——) of the second part AND EF, etc., (hereinafter called the———) of the third part, etc. WHEREAS, etc.

NOW THIS DEED WITNESSES that, etc., (*or*, as follows :)

3. Form in First Person

I, AB, etc., in consideration of———— hereby transfer to CD, etc. All that——— and covenant as follows :

4. Agreement between Two Parties with Recitals

THIS (*or*, AN) AGREEMENT made on the day of BETWEEN AB, etc., of the one part AND CD, etc., of the other part. WHEREBY it is agreed as follows :

5. Agreement between Three Parties with Recitals

THIS AGREEMENT is made on the —— day of ——

1 "made" or "is made", both forms are prevalent; either may be used.

BETWEEN AB, etc., of the first part AND CD,etc., of the second part AND EF, etc., of the third part. WHEREAS, etc.

NOW IT IS hereby agreed as follows:

(*or*, NOW THESE PRESENTS WITNESS and parties hereto hereby agree as follows:)

6. Deed Poll without Recitals

i) BY THIS DEED of (Adoption or Power of Attorney, etc.) I, AB, etc. ———

ii) THIS DEED of (Adoption or Power of Attorney, etc.,) made by me, AB, etc., WITNESSES that in pursuance of———I ——— (using the first person).

7. Deed Poll with Recitals

THIS DEED, etc., is made on the ———day of———by me, AB, etc.,

WHEREAS, etc.,

NOW THIS DEED WITNESSES that (*or*, as follows:)

8. Old form of Deed Poll

KNOW ALL MEN by these presents that I, etc.

9. Old form with Recitals

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING, WHEREAS, etc. Now, I———, etc.

10. Commencement of a Supplemental Deed

THIS DEED made, etc., BETWEEN, etc., supplemental (*or*, intended to be read as annexed) to the deed of——— dated the ——— and made between, etc., hereinafter called the principal deed (and another deed of dated the between, etc., hereinafter called the , etc.).

Or

THIS DEED made BETWEEN, etc., supplemental (*or*, intended to be read as annexed) to the several deeds the particulars and natures of

which together with the names and descriptions by which the same are hereinafter referred to, are specified in the schedule hereto.

Parties in special cases

1. Minor

AB, etc., a minor acting through his father and natural guardian CD, etc., (*or*, through CD, guardian of his property appointed by the court of the District Judge of Agra by order dated ----------).

2. Lunatic[2]

AB, etc., a mentally ill person acting through CD, guardian of his property appointed by the court of District Judge of Agra by order dated ----------.

3. Receiver

AB, etc., receiver of the property of CD, etc., an insolvent, appointed as such by order of the court of District Judge, Agra dated ----------.

4. Official Receiver

AB, etc., official receiver of the District of Agra acting on behalf of CD, etc., an insolvent under an order of Civil Judge of Agra dated ----------vesting the property of the said insolvent in him.

5. Trustees

AB, etc., CD, etc., trustees of the estate of XY, etc., (*or* trustees of the Agra College) under deed of trust dated ----------.

6. Mutwalli

AB, etc., CD, etc., EF, etc., mutwallis of the waqf known as ----------and appointed as such by the deed of waqf dated----------executed by----------.

7. Attorney

AB, etc., acting through his attorney CD, etc., appointed as such by a general power of attorney dated----------and registered at----------on----------.

2 The Lunacy Act 1912 has been replaced by the Mental Health Act 1987 which uses the expression "mentally ill person" instead of "lunatic" used in the former.

8. Firm (by all Partners)

AB, etc., CD, etc., and EF, etc., carrying on business in partnership together as ——— at ——— under the name and style of———.

9. Company, Statutory Corporation, Society, Co-operative Society

See Part II of the Introduction *ante*, precedents given under *"(c) Parties to the Deed-(iv) Juridical Person."*

Testimonium

1. Parties signing on one date

In witness whereof the parties hereto have signed this deed on the day and the year first above written.

2. Parties signing on different dates

i) In witness whereof the parties have signed this deed hereunder on the dates respectively mentioned against their signatures.

ii) In witness whereof the said AB (*or*, the vendor, mortgagor, etc.) has signed this deed on the———, and the said CD (*or*, the purchaser, mortgagee, etc.) on the———.

3. Deed executed by a Company

In witness whereof AB acting on behalf and under authority of the said ——— (Company or Corporation) in this behalf and the said parties hereto have, etc., (*as in preceding forms*)

4. Deed executed by other Corporation

In witness whereof X, the duly appointed officer for this purpose of the said ———Corporation has signed this deed on behalf of the said Corporation on the———and the said AB has signed this deed on the ———.

5. Deed Executed by Attorney

i) In witness whereof the said AB by XY his attorney has signed this deed on the———.

ii) In witness whereof XY as attorney for the above named AB by virtue of a power of attorney executed by the said AB and dated the——

and registered at the office of on the has signed this deed on the———.

6. Deed executed by Government

In witness whereof AB Collector of Agra for and on behalf of the Governor of Uttar Pradesh and the said AB have, etc.

7. Deed executed by Guardian

In witness whereof the said AB as guardian of the vendor and in the name and on behalf of the vendor has signed, etc.

8. Deed executed by Municipal Board or other Statutory Authority

In witness whereof the said AB, etc., (*designation*) for and on behalf of the said Municipal Board (*or other specified authority*) has signed this deed and the said Board (*or authority*) has affixed its common seal on this deed on the——.

9. Deed Poll

In witness whereof I, the said AB, have signed this deed on the———(*or*, on the day and year first above written).

10. Deed by an Illiterate Person

In witness whereof the said AB being an illiterate person has affixed his thumb mark on the———, etc.

Consideration and Receipt

1. Consideration Paid before Execution

In consideration of the sum of Rs.———paid by the———to the———before the execution of this deed (the receipt of which the——hereby acknowledges).

2. Consideration to be Paid at the time of Registration[3]

In consideration of the sum of Rs.-———to be paid by the——— to the———at the time of registration of this deed.

3 When consideration is paid before the Sub-Registrar, the acknowledgment of receipt is furnished by the Sub-Registrar's endorsement also and though no separate receipt of acknowledgment in the body of the deed is strictly necessary, yet it is customary and expedient for the sake of completeness to mention it in the deed too.

3. Consideration when Transferor is a Minor

In consideration of the sum of Rs.————paid by the———— to AB, the guardian of the————(the receipt of which the said AB hereby acknowledges).

4. Consideration Set Off against Debt due to the Transferee

In consideration of the sum of Rs.————due to the———— from the————under a mortgage deed dated————from the payment whereof and from all claims and demands in respect whereof the————hereby releases the————.

5. Consideration left for Payment to Creditors

In consideation of the sum of Rs.————left by the vendor with the purchaser for payment to XY on account of a debt due to him from the vendor under a mortgage deed dated————(*or*, for payment to the various persons mentioned in the first Schedule hereto).

6. Consideration Partly Paid in cash, Partly left for Mortgagee, and Partly Set Off

In consideration of the sum of Rs.————out of which the sum of Rs.————has been credited by the purchaser to himself on account of a debt due to him under the bond dated————, from the payment and from all claims and demands in respect whereof the purchaser hereby releases the vendor, and the sum of Rs.————has been retained by the purchaser for payment to one XY due under a mortgage deed dated———— ————, and the remaining sum of Rs.————has been agreed to be paid by the purchaser to the vendor in cash at the time of the registration of this deed.

7. Details in Schedule[4]

In consideration of the sum of Rs.————which has been agreed to be paid in the manner detailed in the schedule (or the first schedule) to this deed.

8. Agreed to be Paid Subsequently

In consideration of the sum of Rs.————agreed to be paid by the purchaser to the vendor in the manner provided in this deed.

4 This form is convenient and is generally adopted in sale deeds where the details are long.

9. Appearing from the Recitals

In consideration of the premises (*or*, of the covenant by ——— hereinafter contained) (*or*, of the payments hereinbefore recited).

10. Premium and Rent in Lease

In consideration of the payment by the lessee of Rs.———— as premium (the receipt of which the lessor hereby acknowledges) and the rent reserved and of the covenants contained in this deed.

11. Paid by several Purchasers separately

In consideration of the sum of Rs.————paid by the purchasers in equal shares (*or*, in the following proportions, *i.e.* by X Rs.————, by Y Rs.——and by Z Rs.————).

12. Natural Love and Affection

In consideration of the natural love and affection of the donor for the donee.

Parcels[5]

1. Agricultural Land

All those plots of land specified with reference to their *khasra* numbers and areas in the schedule and situate in village———— pargana———— tahsil————district————.

2. Non-Agricultural Land

i) The plot of land containing an approximate area of———— hectares/ acres/bighas ——cents (*or*,—— square metres) situate in village—— pargana—— tahsil—— district——— and bounded on the east by———, on the west by————, on the north by————, and on the south by————.

ii) The plot of land measuring approximately ———metres north-south and————metres east- west (*or*, ————metres on the north side, ————metres on the south side, —— metres on the east side and——— metres on the west side) and containing an area of————square metres approximately and situate in ——street, in the town of———— and bounded as follows :

5 *See* Part II of the Introduction, *ante* sub-head (i) Parcels.

On the east by———

On the west by———

On the north by and

On the south by———.

3. Land, by Reference to Plan (which is controlled by Description)

The plot of land, etc. (*as in forms given above*), and for greater clearness delineated on the plan annexed hereto and thereon shown with its boundaries coloured red (*or*, thereon coloured red) (*or*, thereon marked with letters ABCDE).

4. Land (when Plan Controls the Description)

All that piece of land situate at——— on the———side of the road leading from to and which as to its posititon, dimensions and boundaries is shown on the plan annexed hereto and thereon coloured red.

5. Groves

i) ALL that grove of mango and other fruit and timber trees situate in village———, pargana, ———tahsil———, district———and bearing khasra No.——— and containing an approximate area of——— acres and bounded as follows:

ii) ALL that grove of fruit trees and garden of flower and other plants situate at———, containing an area of———approximately (together with the *pucca* well and *kothi* standing in the said grove) and bounded as follows:

iii) ALL that one-fourth share in Bhumidhari Khata number——— in village——— pargana———tahsil———and district——— consisting of plot numbers area———hectares/acres/ bighas, as assessed to the sum of Rs.———as land revenue.

6. House

i) ALL that *pucca* built house facing———known as No.——— street and situate in the city of (*or*, situate in *mohalla*——— of———) and bounded on the east by———, on the west by———, on the north by and on the south by

ii) ALL that *pucca* built house (*or*, house built partly *kucha* and partly *pucca*) situate in village———pargana———, tahsil/thana——, district ———and standing on plot No.——— in the *khasra* abadi.

iii) ALL that bungalow known as No.———————road, and situate in the city of ——————together with out-houses, yard, garage, stables, garden, well and tennis court and other appurtenances thereof, the whole of which premises are shown on the plan annexed hereto with their boundaries marked with letters———.

7. Shop

ALL that shop facing——————and situate in Bazar———————in the city of————and bearing No.——— in the municipal register and bounded, etc. (*as in form of House above*).

8. Right of Way

Together with the right in common with the other persons having the like right to the use of the passage on the east of the said premises for going to and coming from the public road on the east of the said passage.

9. Right to Use Common Staircase

Together with the free right in common with the occupier of the house to the west of the demised premises to use the staircase between the demised premises and the said house on the west.

10. Right to Common Compound

Together with the free right of using in common with the lessor and occupiers of adjoining houses the common compound shown on the said plan as coloured blue.

11. Right to Drainage

Together with the free right to passage and running of water and sullage from the demised premises through the drain running from——— to ———and shown on the said plan by letters ABCD.

12. Fixtures and Fittings

Together with the fixtures and fittings therein and specified in the schedule hereto.

13. Mill and Machinery

ALL that mill, engine house, lands and buildings known as the—— Mill situate at————AND also ALL the engines, mill gear and fixed and movable machinery, implements and utensils placed upon or used in or about the said premises or any part thereof (all of which machinery, implements and utensils are respectively specified in the———Schedule hereto).

14. Rice Mill

ALL that rice mill and the building in which it is installed, known as ——— Mill, situate in ————, together with the godown, land and outbuildings appurtenant thereto, together also with the machinery belonging to the said mill and the right of taking and using the water of the adjoining stream called the ———usually enjoyed therewith.

15. Cement Factory

ALL that piece of land situate at———with the kilns, warehouses and other buildings and erections standing thereon and used as a cement factory known as———together with the machinery and furniture now in or about the said premises specified in the———Schedule hereto.

16. Minerals

[Note : Leases and licences relating to mines and minerals are now governed by the Mines and Minerals (Development and Regulation) Act 1957 and the rules made thereunder See Note under LEASE, *post* (General Forms)]

17. Business with Goodwill

ALL that business of a chemist carried on by the said——at——— under the name of David and Co., and the goodwill thereof and the exclusive right to use the name of David and Co. for the purpose of carrying on the said business, together with the benefit of all contracts and engagements entered into with the said———in respect of the said business and all book debts now owing to the said———in respect of the said business and all trade fixtures and fittings and utensils now in or upon the premises.

18. Stock in Trade

ALL their stock in trade, goods and effects in or upon their business premises and used and employed by them in or in connection with the said business.

19. Policy of Life Insurance

ALL that policy of insurance dated the———day of——— and numbered———granted by the Life Insurance Corporation of India, insuring the life of———in the sum of Rs.———at or under the annual premium of Rs.———and all the bonuses and additional sums of money to become payable or to be received under or by virtue of the said policy and all benefits and advantages thereof.

20. Share in Partnership[6]

ALL the share or interest of the said———in the goodwill of the said partnership and the gains and profits which have arisen or which will henceforth arise therefrom and in the goods, stock in trade, furniture, capital, account books and all other property and effects of the said partnership.

21. Share in Company[6]

ALL those———ordinary equity/preference shares of Rs.——— each , of registered folio No. ——— and bearing distinctive numbers ——— to ——— of the ——— Company Limited (held in my name *or*, jointly with ——— and ———.

22. Furniture

ALL the household furniture and things specified in the schedule hereto and being in the said house (*or*, house known as———).

23. Growing Crops

ALL the crop of wheat/paddy/maize and grass now growing in and upon the said land (*or*, the plots of land mentioned below) with full liberty for the———his servants, workmen and agents either with or without tractor, trolleys, carts, donkeys or other means of transport at all

6 For transfer of shares, only prescribed forms are used now. Under the depository system, which extends only to specified companies' shares, transfer of shares has been further simplified.

resonable times hereafter so long as the said crop shall be growing, standing or lying on the said land to enter upon the same to see the state of such crops or for the purpose of cutting, reaping and carrying away the same and for all other necessary purposes.

24. Timber[7]

ALL the trees of (*kind of trees*) (*or*, ALL the trees of all kinds) standing and growing on (*describe the plot of land or grove*) with full liberty to the , his servants, agents and workmen from the day of until, the day of at all resonable times to fell, cut down, grub up, saw and work up the said trees and wood and also to have free ingress and egress with or without horses, carts, lorries and other means of transport to enter into and upon the said premises for the purpose of taking and carrying away the said trees and wood.

25. Annuity

ALL that annuity of yearly sum of Rs. payable during the life of by half-yearly payments on the and on the in every year (*or, as the case may be*) and the arrears and future payments thereof and all remedies and powers whatsoever for the recovery thereof.

26. Bond

ALL that bond dated executed by in favour of for Rs. and all moneys now or hereafter to become due and payable thereupon or by virtue thereof and all the right, title and interest of the said in the same.

27. Debts

ALL those debts due and owing to the said which are specified in the first column of the schedule hereto with the names of the persons from whom they are due mentioned in the second column of the said schedule opposite such debts respectively (with the benefit of all security therefor).

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7 Cutting of trees is now subject to various statutory restrictions designed in the interests of afforestation and environmental conservation.

28. Decretal Debt

ALL that decree for the sum of Rs. dated the day of——and passed by the court of———at——in suit No. of——— between AB plaintiff and CD defendant and all benefits and advantages whatsoever obtainable in respect of the same.

29. Final Decree for Sale

ALL the benefit and advantage of the final decree for sale, full particulars of which are given in the schedule hereto, together with the decretal debt due under the said decree and further interest that may be due under the same and also with the security thereof and all the right and interest of the said AB as decree-holder under the said decree.

30. Rent

ALL that amount due to the said AB on account of rent from the tenants named in the first column of the schedule hereto which amounts are more particularly mentioned in the second column of the said schedule opposite the names of the tenants respectively (with the benefit of all security for the same).[8]

31. Benefit of Restrictive Covenants

Together with the benefit so far as the said AB can assign the same of all the covenants and conditions contained in the deed of——— dated ———and made between ——— and in respect of the user of the premises thereby transferred.

32. Interpretation Clause

The references to the parties herein shall, whenever such an interpretation would be requisite to give the fullest possible scope and effect to any covenant herein contained, include their respective successors and assigns.

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8 Portion within brackets is not necessary and may be dispensed with in territories in which Transfer of Property Act is in force (vide Sec.8)

ACKNOWLEDGMENT

Preliminary Note

Acknowledgment serves to renew the liability, vide Sec. 18 Limitation Act. It does not create a new right. In order that this may be binding, the liability in question must be subsisting.[1] There must be indication of existence of a jural relationship between the parties from the words used in acknowledgment to make it effective in law. Even if not expressly denoted, this should be capable of being inferred by implication.

In order that acknowledgment may be availed under Sec. 18, it must be in writing and signed by the party who or on whose behalf it is made.[2] It can provide a fresh cause of action and may be made the basis of a suit, if it implies a promise to pay.[3]

Part payment of a debt also has the effect to extend the limitation under Sec. 19, provided it is acknowledged in writing and signed by the person making it. It is necessary for this purpose that the acknowledgment be made within the period prescribed for the enforcement of the right. To amount to acknowledgmem the admission need not be unconditional.[4] It may be sufficient despite omission to specify the exact nature of the property or right or accompanied by refusal to pay, deliver, perform or permit to enjoy. It is open to maintain a suit on the footing of 'Account stated', such as an endorsement on the creditor's *bahikhata* by the debtor or a person authorised on his behalf. In every case, however, the acknowledgment must appear to be a conscious act of the person liable.

For stamp duty, see Article 1 of Schedule 1 to the Stamp Act.

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1 *Lakshmiratan Cotton Mills Co. Ltd.* v. *Aluminium Corporation of India Ltd.*, A 1971 SC 1482.

2 *Inam Ali Khan* v. *Hazi Mohd. Idris*, 1986 All C J 212.

3 *Hiralal* v. *Badku Lal*, A 1953 SC 225

4 *P.C. Bhandari* v. *New Victoria Mills*, A 1979 All 1.

PRECEDENTS[1]

1—Acknowledgment Requiring Stamp Duty

This is to acknowledge that a sum of Rs.——— has been found due from me on the basis of an account settled between AB and myself.

Dated——— (Signed)——— Address———

2—Acknowledgment to Save Limitation

I have received your letter dated — demanding Rs. — due from me on account of a bond dated———executed by me in favour of———.

I shall be obliged if you will kindly wait for three months more, within which time I hope to be able to pay the said amount due from me.

3—Acknowledgment of Part Payment

I hereby acknowledge that I have this ————day of———— paid Rs.2000 (Rupees Two thousand only) in part payment of the debt of Rs.10,000 (Rupees Ten thousand only) I borrowed from AB on a pronote executed by me in his favour on———

4—Acknowledgment by Endorsement

This day I have paid Rupees two hundred in part payment of the within mentioned pronote debt.

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1 There are numerous other forms in which an acknowledgment may be made. It may be a mere receipt or an agreement. Where there is any question relating to any right in immovable property, suitable form may be adapted from other precedents given in this book.

ADOPTION

Preliminary Note

The Hindu Adoption and Maintenance Act, 1956 has changed the concept of adoption under the old law. The object of adoption as earlier understood was principally religious and not material.[1] The Act makes no mention of the object of adoption; it is immaterial for determining the validity of adoption under the Act. The Act prescribes the conditions for a valid adoption.

Deed of Adoption, not necessary

In order to make a valid adoption by a Hindu, only certain formal ceremonies are necessary and a deed of adoption is not essential.[2] In view of section 16 of the Hindu Adoption and Maintenance Act, a registered deed purporting to record an adoption made, if signed both by the person giving and the person taking the child in adoption, affords a rebuttable presumption of the factum of adoption.[3] If there is any inherent defect in adoption it cannot, however, be cured by such deed.

Other salient features of the Act

The Act applies to "Hindus", which expression, for the purposes of the statute, includes Sikhs, Jains and Buddhists by religion and also all other Indians excepting Muslims, Christians, Parsis and Jews (Sec.2). It further has an over-riding effect over all the prevailing concepts of adoption laid down by courts in cases of different caste Hindus or the widows of different communities on the basis of customs or usages, or texts or rules (Sec. 4). All adoptions made after the commencement of the said Act are to be governed by the provisions of the Act. Any adoption which contravenes its provisions will be invalid in law (Sec.5).

Any male 'Hindu' who is major and is of sound mind may adopt, but if he has a wife living, he can adopt only with her consent, unless she has renounced the world or has ceased to be a Hindu or is of unsound mind. If he has more than one wife, consent of all is necessary (Sec. 17). An adoption without the concurrence of wife is void.[4] An adoption by a widow is adoption to her deceased husband as well.[5]

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1 *V.T.S. Chandrashekhar* v. *Kulandaivalu*, A 1963 SC 185.

2 The statement of law herein is subject to any State amendments of the Hindu Adoption and Maintenance Act. For instance, in U.P.,a registered deed recording an adoption is compulsory, and that both the person giving and the person taking the child in adoption should make and sign it [Sec. 16(2)].

3 *Jai Singh* v. *Shakuntala*, A 2002 SC 1428.

4 *Krushna Chandra Sahu* v. *Pradipa Das*, A 1982 Ori 114.

5 *Sawan Ram* v. *Kala Wanti*, (1967) 3 SCR 687.

A female 'Hindu', if major and of sound mind, whether unmarried or widow, may as well adopt. A married woman has no such right unless she is divorced, or the marriage has been dissolved, or the husband has renounced the world or has ceased to be a Hindu or has been adjudicated to be a mentally ill person (Sec. 8).

The child can be given in adoption by its father, or if father is dead, by the mother, or if both father and mother are dead, by the guardian. The father can do so only with the consent of the mother of the child, if she is alive, unless the mother has renounced the world or has ceased to be a Hindu or been adjudicated to be a mentally ill person (Sec. 9).

The law now permits adoption of a boy or a girl and even an orphan, provided he or she is a 'Hindu', and has not already been adopted, and subject to a custom or usage to the contrary, is unmarried and has not completed the age of 15 years (Sec. 10).

Some other conditions as given in Sec. 11 are :

1. If a boy is adopted, there should be no living son or son's son or son's son's son to the adoptive father or mother.
2. If a girl is adopted, there should be no living daughter or son's daughter.
3. The adoptive father or mother must be at least 21 years older to the female or male child respectively.
4. There should be actual giving and taking ceremony but *Datta Homam* is not necessary.

Sec.12 lays down the effect of adoption on the families of the adoptive father and natural father and forbids divesting of property already vested.[6]

The adoption is to the person adopting, though the wife of the adopter also becomes the adoptive mother (Sec. 14). However, if the adoption is by a widower or by a widow or by an unmarried person their subsequent marriages will only result in their spouse acquiring the relationship of a step-mother or step-father as the case may be. There is no divesting of property vested in the adopted child or the adoptive father or mother. The child becomes a member of the adoptive family and severs his connections with the family of his birth (Sec.12).

Does a child adopted by a widow become the child of the deceased husband for all purposes including succession? The view taken by the Allahabad High Court in *Subash Misir* v. *Thagai Masir*,[7] is that in the absence of any provision to the contrary it is not unreasonable to infer from Secs. 12 and 13 that the child adopted would be the son of the widow as well as her

6 *Namdev* v. *Chandrakant*, A 2003 SC 1735

7 A 1967 All 148.

deceased husband. On the opening of succession a second time when the widow dies the heir of the husband would preferentially be the adopted son and not the reversioner.[8] The adoption by the woman is considered not only to herself but also to her husband: Sec 5 (1)

Under the Hindu Succession Act 1956 the widow becomes the absolute owner of the husband's property vested in her. Merely by adopting a child she would not be deprived of any of her rights in the property. The adoption would come into play and the adopted child would get the rights to which he is entitled after her death as is clear from the scheme of Sec. 12 proviso (c). Where the persons giving the child in adoption intend to limit the power of the adoptive parents to dispose of their property *inter vivos* or by will, it is open to the parties to agree to the contrary, vide Sec. 13. That would require, however, to be registered under Sec. 17 (1) (b) of the Registration Act.[9]

Form of Deed

In the deed of adoption the child to be adopted should be fully described, its age and the consent of its mother if alive should be stated, as also the consent of the wife of the adoptive father. The ceremony of giving, as to who gave the child in adoption and that of, taking the child in adoption should be described, as under the present law this is the only required ceremony. The deed should better be in the form of a Deed Poll and should be executed by the person making the adoption. No deed is usually executed by the person giving the child in adoption but there could be no objection to such a deed. However, a declaration from such a person would be in the fitness of things.

Agreements before Adoption

Under the Act the adopted child continues to have the property which vested in him or her before the adoption subject to the obligations, if any, attaching to the property including the obligation to maintain relatives in the family of his or her birth [Sec. 12, proviso (b)]. The adopted child also does not divest any person of any estate which vested in him or her before the adoption [proviso (c)]. Unless otherwise provided, the adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will (Sec. 13). Sec. 17 prohibits any person from receiving or agreeing to receive any payment or other reward in consideration of the adoption of any person. A pre-adoption agreement, if any, must therefore be drafted keeping these points in view. There is nothing to prevent the person to be adopted giving up the whole or part of the property which vested in him before adoption. But that should not be the consideration for the adoption being made. As under Sec. 10 (iv) the maximum age for adoption is 15 years.

8 *Sawan Ram* v. *Kalawanti*, A 1967 SC 1761.

9 *Dimaji* v. *Daddi*, (1990) 1 SCC 1.

only minors can be adopted, unless there is a custom or usage permitting the adoption of a person more than 15 years old.[10]

There is no provision in the personal law of Muslims, Christians, Parsis and Jews in India for adoption. Nor does there exist so far any general law of adoption applicable to all communities. Persons belonging to these communities, as also foreigners, can however "adopt" children from orphanages by resort to proceedings under the Guardians and Wards Act with the permission of the Court.[11] Such "adoption" does not however carry the various legal consequences of a Hindu adoption, but the adopting parents can get the psychological and emotional satisfaction of becoming foster parents and can later transfer or bequeath their property in favour of the "adoptee". In the eye of law however their status remains that of guardian and ward respectively, but there is no bar to their calling themselves father/mother and son/daughter which they surely are for all practical purposes.

Stamp Duty

Duty on an instrument recording an adoption or conferring or purporting to confer an authority to adopt is governed by Article 3, Stamp Act. No duty is payable if the fact of adoption is mentioned in a will or if authority or permission to adopt is given by a will.

Registration

The Act does not require the execution of a deed of adoption. If however, a deed is executed, it need not be registered except in U.P. (authority to adopt requires to be registered under Sec. 17(3) of the Registration Act). Where adoption deed is executed and registered, there is rebuttable presumption arising as to the adoption having been made in compliance with the provisions of the Act (Sec. 16).

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10 *Anirudh Jagdeorao* v. *Babarao Irbaji*, A 1983 Bom 391.

11 *Lakshmi Kant Pandey* v. *Union of India*, A 1984 SC 469 (In this case the Supreme Court has laid down guidelines in respect of adoption of Indian children by foreign couples); *Lily Kutty* v. *State*, 1997 AIHC 1373 (M.P.-DB) (Adoption of abandoned infants by Hindus and non-Hindus through the machinery of the Juvenile Justice Act 1986).

PRECEDENTS

1—Short Form of Adoption, without Recitals

THIS DEED of adoption made on the-----day of———— BETWEEN AB, etc., (hereinafter called "the adoptive father") of the one part AND EF, etc., (hereinafter called "the natural father") of the other part WITNESSES as under:

1. That the said AB has no son or son's son or son's son's son (*or*, no daughter or son's daughter, *in case a girl is adopted*) living.

2. That the said AB has on the day aforesaid (*or*, on the ———— day of————) taken in adoption XY the unmarried son of the said EF, aged about————years, as his son.

3. That the said EF has on the date aforesaid given the said XY, in adoption to the said AB.

4. That the ceremony of giving and taking in adoption has been duly performed alongwith other religious ceremonies customary with the parties.

5. That the said XY has and shall have from the date of adoption all the legal rights of an adopted son of the said AB.

IN WITNESS WHEREOF, we the said AB and EF have signed this deed on the day and the year first above written.

2—Short form of Adoption, with Recitals

THIS DEED of adoption is made on the————day of————by AB, etc., of the first part and EF, etc., of the second part.

WHEREAS

1. AB, the party of the first part has no male issue and being now sixty years of age has no expectation of having such issue.

2. Both AB and his wife had long been anxious to adopt a suitable boy as their son.

3. PQ, the wife of AB has consented to the taking in adoption of XY by AB.

4. AB has on the———— day of———— taken in adoption XY son of EF, etc., the party of the second part, a boy of 4 years of age, as his son.

5. The said boy, XY, has been given in adoption to the said AB by his natural father the said EF with the consent of his mother.

6. All the ceremonies, including the giving and taking in adoption of the said XY and *Datta Homam*[1] have been duly performed at the time of adoption, on the———day of——.

NOW THIS DEED WITNESSES and the parties do hereby declare that the said AB has duly adopted the said XY as his son and the said XY has and will have from the date of adoption all the legal rights of an adopted son. IN WITNESS, etc.

3—A Joint Deed by the Natural Mother and Adoptive Father

KNOW ALL MEN BY THESE PRESENTS that we AB,etc. and CD, etc., hereby declare that I the said AB have this day in a meeting of relatives, caste fellows and friends held at———, have duly adopted EF,etc., as my son and I the said CD being the natural mother of the said EF, his natural father XY having already died, have given the said EF in adoption to the said AB AND WE ALSO record that the ceremony of giving and taking in adoption and other customary ceremonies necessary under the Hindu Law to which we are subject have been duly performed AND we declare that henceforth the said EF has ceased to be a member of his family of birth and has all the rights of an adopted son of the said AB.

IN WITNESS WHEREOF, etc.,

4—Wife's Consent given before Adoption, without Recitals

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc., wife of CD, etc., hereby consent to the taking of X son of YZ, etc., aged 4 years in adoption by my husband, the said CD, etc., as our son.

IN WITNESS WHEREOF, etc.

5—Wife's consent to Adoption, with Recitals

KNOW ALL MEN BY THESE PRESENTS that I, AB, etc., wife of CD, etc., hereby declare that

1 Though *Datta Homam* is no longer insisted on as a matter of law, yet normally such *Yajna* does take place. So if it has taken place there is no harm in mentioning it.

WHEREAS———

1. We have no issue of our own and having now become quite aged, have no expectation of having any issue.

2. Both myself and my husband have long been anxious to adopt a suitable boy as our son.

3. EF son of GH, etc., has a son, XY, etc., 4 years old, who is suitable in every respect and whom the said EF is authorized and willing to give in adoption.

4. My husband is willing to take the said XY in adoption as his son with my consent.

NOW THIS DEED WITNESSES that I hereby freely and willingly give my consent to the taking of the said XY in adoption by my husband as our son.

IN WITNESS WHEREOF, etc.

6—Adoption by a Hindu Widow

THIS DEED of adoption made on the———day of———by AB, widow of———a Hindu by religion———aged——and resident of———hereby declare as follows :

1. That I have no son or son's son or son's son's son (*or*, daughter or son's daughter in case a girl is adopted)living.

(*Or, as the case may be, it may be mentioned that no issue was ever born or that son or sons or daughter or daughters were born but they died during the life time of the husband or after his death*).

2. That I have this day ———— adopted EF, son of GH, a Hindu aged———by caste———and resident of————as my son, the said EF having been given to me in adoption by his father/mother/ guardian.

Note : *If it is the father, mention, with the consent of his wife. If it is the guardian, mention his authority.*

3. That the ceremony of giving and taking in adoption and other religious ceremonies were duly performed.

4. That the said EF is aged———years and is unmarried and he shall have from this day all legal rights of an adopted son.

IN WITNESS WHEREOF, etc.

7—Adoption by an Unmarried Hindu Woman

Formal part as in Precedent No.6 (except, insert daughter for widow).

1. That I, AB, am the only living daughter of WX, son of YZ, and remained unmarried though attained the age of years.

2. That I have with my free will and consent on this day———adopted/taken in adoption EF, ———(*same as in para 2 of Precedent of No.6*).

3 & 4. Same as in paras 3 & 4 of Precedent No.6.

IN WITNESS WHEREOF, etc.

8—Adoption of an Orphan from a Family or Orphanage[2]

Formal part same as in Precedent No.6 (except, insert son for widow).

1. *Same as in para 1 of Precedent No.6.*

2. That I have this day———adopted EF, son of GH, aged——— by caste———and resident of———as my son. The said EF having been given to me in adoption by his natural guardian/testamentary guardian/ certificated guardian (*or, if the adoption is of an orphan from any orphanage*), by the President/Secretary/Manager/Superintendant of———orphanage, of city/ town, with the previous permission of———court dated———.

3 & 4 . *Same as in paras 3 & 4 of Precedent No.6.*

IN WITNESS WHEREOF, etc.

2 If the adoption is from some orphanage there should be a certificate of the head of the institution as named earlier certifying that he had satisfied himself that the adoption will be for the welfare of the child and if the child has reached the understanding that he had also obtained the willingness and ascertained the wishes of the child and that permission of the competent court had been obtained. He should further state about the actual adoption and the ceremony of giving and taking. In fact, it will be better that the certificate is of the same authority of the orphanage, who was party to the obtaining of the court's permission and actually gave the child in adoption.

9—Declaration by the Guardian[3]

I, AB, son of CD, resident of hereby declare that I being guardian (*mention what kind of guardian*) of EF and having obtained the permission of————court on————(*date*) have given my ward————in adoption to————after performance of the ceremony of giving and taking this day————. Henceforth he shall be the adopted son of————.

3 A declaration of the person giving in adoption should be obtained in the form given above. This will minimise the chances of any future litigation.

AGREEMENTS

Preliminary Note

An agreement between the parties is an instrument whereby the parties freely agree to perform certain acts or refrain from doing something, unilaterally or bilaterally. The purpose of the instrument is to bind them to the terms and conditions agreed upon. Agreements should, therefore, be drafted as deeds between the parties thereto and not as Deeds Poll.

In preparing an agreement it is necessary and important that the intention of the parties should be set forth explicitly so as to leave no room for doubt or future controversy. Only a concluded contract can be enforced. An agreement is a legally enforceable contract only if it is made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and is not expressly declared by the provisions of the Contract Act or any other law to be void (Sec. 10, Contract Act). The language should be simple and the words used should be definite and precise; the use of loose expression such as "proper", "reasonable", should, as far as possible, be avoided. The essence of a valid agreement is that the parties consciously agree about the subject matter at the same time and in the same sense (*consensus ad idem*).

The provisions of the Contract Act about the essential incidents and legality of agreements (sections 2 to 30) should be studied and nothing should be introduced or left out which would make the agreement void. Where, under an agreement, a party agreed to pay the other a sum of money "after deduction as would be agreed upon", it was held that the clause offended against Sec. 29 (Agreement void for uncertainty) and no suit could be brought on such agreement.[1] But, if the material terms of an agreement are clear and specific, omission of certain details which can be worked out by consent of parties or in its absence be settled by court will not invalidate the agreement.[2] However, normally, it is not for the court to make a contract for the parties if the parties have left the terms vague or ambiguous.[3]

Normally, a third party cannot gain any right under a contract,[4] unless he is beneficiary under a trust created by a contract to which he is not a party.[5]

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1 *Koyuru* v. *Kumar Krishna*, A 1945 Mad 10.

2 *Ramchandra* v *Chinubhai*, A 1944 Bom 76, at 82 (Chagla J); [*Compare, Gujarat Ginning Co.* v. *M.H. S. & W. Co.*, 31 BLR 1310; *East India Co.* v. *Nuthum*, 7 Moo PC 482 at 497; Beer v. Bowden, (1981) 1 All ER 1070 (CA) (increase of rent)].

3 *Dwarkadas & Co.* v. *Dalu Ram*, A 1951 Cal 10.

4 *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, 1915 AC 847; *M.C. Chacko* v *State Bank*, (1969) 2 SCC 343; *Jamna Das* v. *Ram Autar*, (1911) 39 IA 7, PC.

5 *Khwaja Mohd. Khan* v. *Husaini Begum*, (1910) 37 IA 152 PC, approved in *M.C. Chacko*, supra.

Under the English Common Law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties : a stipulation in a contract in *terrorem* is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. Sec. 74 Contract Act has sought to cut across the web of rules and presumptions under the Common Law by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty, and according to this principle, even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. Thus like a claim for unliquidated damages a claim for liquidated damages also does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a Court or other adjudicatory authority.[6]

Secs. 23 to 30 of the Contract Act pertain to the legality of agreements. The provisions contained therein have to be borne in mind to ascertain what considerations and objects are lawful and what are not. Agreement between the parties with the object that one of them should wield influence with government to have the *Nawab* recognised as the heir to the estate in return for being given a share in the amount to be recovered by the *Nawab* was nullified being opposed to public policy. Contract having tendency to injure public welfare is regarded opposite to public policy. The public policy is not static. With the changing time and the needs of the society it varies. The march of law must match with the 'felt needs' of the society : the fact situation.[7] Agreement between two bidders at an auction sale to bid jointly but not intended to peg down the price or to defraud government to knock out the sale at a lower price was held not to be against public policy and as such not unlawful and void. The agreement, was only to bid jointly, it may be noted, and not to bid against each other.[8]

Commencement

Agreements generally begin with "An Agreement" or "This Agreement" or "Articles of Agreement" or "Memorandum of Agreement". The latter two expressions are generally used in cases where the covenants are lengthy. After the title follows the date, then the names of the parties with their addresses, as in the case of transfer deed. Then follow recitals, if necessary. (For detailed instructions about parties and recitals see Part II of the Introduction).

6 *Union of India* v. *Raman Iron Foundry*, (1974) 2 SCC 231 (para 11); (see also *Rajratha Naranbhai Mills Co. Ltd.* v. *S.T.O.*, (1991) 3 SCC 283.

7 *Rattan Chand Hira Chand* v. *Askar Nawaz Jung*, (1991) 3 SCC 67.

8 *Gurumukh Singh* v. *Amar Singh*, (1991) 3 SCC 79; Halsbury's Laws of England (4th ed. Vol. 9 para 392 at p.266)

The covenants are introduced by some such phrase as:

"WHEREBY the parties mutually agree with each other as follows" (*if there are no recitals, then by*———)

"NOW THIS AGREEMENT WITNESSES (*or*, THESE PRESENTS WITNESS) and the parties mutually agree as follows:

Agreement to agree

Does not amount to a concluded contract, hence not enforceable.[9]

Memorandum of Understanding (M.O.U.)

This is a recent development following gradual globalisation of the economy. An M.O.U. is in the nature of a preliminary agreement recording only the *main* terms and acquires legal shape only when subsequently a formal agreement is entered into. Often M.O.U.'s are entered into between the Government and public sector undertakings controlled by it or between the Government and prospective investors. No precedents for such informal memoranda, which are really of an administrative nature and do not create any right or duty of a binding nature[10] have been given here.

Letter of Intent

Similarly, a Leter of Intent may or may not be a concluded contract, depending on the facts and circumstances of the case.[11]

Agreement to Sell Immovable Property

See precedents under SALE, *post*.

Mention of Representatives

An agreement can, on the death of promisor, be enforced against his representative (Sec. 37, Contract Act), and on the death of a promisee can be enforced by his legal representative, unless the agreement is of a personal nature. It is, therefore, not strictly necessary though it is usual to mention the representatives or successors-in-title of either party as persons on whose behalf or for whose benefit the contract is made. The assignee of rights under an agreement can enforce them against the other party, but obligations cannot be assigned without the consent of the party in whose favour they arise.[12]

9 *Punit Beriwola* v. *Suva Sanyal*, A 1998 Cal 44 (DB); *Rickmers Verwaltung Gimb H.* v. *Indian Oil Corpn.*, A 1999 SC 504 ("draft charter party agreement").

10 Sri M. Naseem's article in 1998 AIR Journal at p. 146

11 *Multichannel (India) Ltd.* v. *Kavitalaya Productions Ltd.*, A 1999 Mad 59 (DB) (paras 7, 8, 10); *K. Sriramalu* v. *Ashwatha Narayana*, A 1968 SC 1028; *Currimbhay & Co.* v. *Creet*, A 1933 PC 29; 69 IA 297.

12 *Cheru Komen* v. *Govindan*, 5 MHCR 145 (at 151)

Duplicates.

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

Attestation

An Agreement does not require attestation.

Stamp Duty

For stamp duty see Articles 5 and 6, Stamp Act.

Registration

If an agreement does not by itself create an interest in immovable property, its registration is not compulsory under Sec. 17(2)(v); but if it creates an interest in immovable property worth Rs.100 or more its registration is compulsory. Other agreements not relating to immovable property are not compulsorily registrable. In U.P., however, an agreement to sell immovable property is also compulsorily registerable if the agreement is accompained by delivery of possession.

PRECEDENTS

1— Case Stated under Section 90 read with Order XXXVI, Rules 1,2 C.P.C.

THIS AGREEMENT made on the———day of——— BETWEEN AB, etc., of the one part AND CD, etc., of the other part.

WHEREAS there is a dispute between the parties, full particulars of which and of the documents bearing on which are stated in the schedule to this deed;

AND WHEREAS the parties are interested in the decision of the following questions arising out of the dispute, namely,

(1)

(2)

(3)

etc., etc.,

AND WHEREAS the estimated value of the property in dispute (*or*, the estimated value of the act about the doing or refraining from doing the parties are in disagreement) is Rs.———.

AND WHEREAS the parties have agreed that a case be stated for the opinion of the court under Sec. 90 read with Order XXXVI of the Code of Civil Procedure, 1908;

NOW THESE PRESENTS WITNESS and the parties agree as follows:

(*i*) The case as stated in the schedule be referred to the court having jurisdiction for opinion on the questions mentioned above;

(*ii*) If the finding of the court on either of the above questions is in favour of AB in respect of any one or more of the buildings mentioned in para———of the schedule, then CD shall pay to AB such sum on account of rent in respect of such building or buildings as is mentioned in para ——— of the schedule [or, as the case may be, vide clauses (a), (b) and (c) of Order 30, rule (1)].

Schedule

(*Parawise statement of facts, documents and dispute*)

IN WITNESS WHEREOF the parties hereto have signed this agreement on the dates respectively mentioned against their signatures.

2—Agreement under Sec. 41 of the Land Acquisition Act, 1894[1]

THIS AGREEMENT made on the———day———19——— BETWEEN the Governor of———(hereinafter called "the First Party") of the one part AND AB a society registered under the Societies Registration Act XXI of 1860.

(*Or*, AB a co-operative society registered under the——— Co-operative Societies Act)

(*Or*, AB a company incorporated under the Companies Act and having its registered office at———) (hereinafter called "the Second Party") of the other part;

WHEREAS the Second Party has made an application to the Government of_____(hereinafter called "the State Government") to acquire for the purposes of the Second Party under the provisions of the Land Acquisition Act, 1894, the land described in Schedule I hereto (and delineated on the plan hereto annexed);

AND WHEREAS the State Government is satisfied that the Second Party is a "company" within the meaning of section 3(e) of the said Land Acquisition Act;

AND WHEREAS the State Government after making and holding such inquiry as is required and prescribed by law and after taking into consideration the report of the Collector under Sec.5-A(2) of the Land Acquisition Act, 1894 and after consulting the Land Acquisition Committee in accordance with rule 4(4) of the Land Acquisition (Companies) Rules, 1963, is satisfied that the acquisition of the said land is needed for the work(s) described in detail in Schedule II hereto and that such work(s) is (are) likely to prove useful to the public;

Or

AND WHEREAS the State Government after making and holding such inquiry as is required and prescribed by law and after taking into

1 This form is based on that prescribed by the Government of U.P. and may be suitably adapted to the requirements of any other State. [See also Rules 5, 6 and 8 of the Land Acquisition (Companies)Rules 1963]

consideration the report of the Collector under Sec. 5-A(2) of the Land Acquisition Act, 1894 and after consulting the Land Acquisition Committee in accordance with the rule 4(4) of the Land Acquisition (Companies) Rules 1963 is satisfied that the acquistion of the said land is needed for erection of dwelling houses for workmen employed by the Second Party or for the provision of amenities directly connected therewith[2];

Or

AND WHEREAS the State Government after making and holding such inquiry as is required and prescribed by law and after taking into consideration the report of the Collector under Sec. 5-A(2) of the Land Acquisition Act 1894 and after consulting the Land Acquisition Committee in accordance with rule 4(4) of the Land Acquisition (Companies) Rules, 1963 is satisfied that the acquisition of the said land is needed for the construction of the work(s) described in detail in Schedule II hereto for a company which is engaged (*or*, taking steps for engaging itself) in an industry/work which is for a public purpose;

AND WHEREAS under Sec. 41 of the said Land Acquisition Act it is necessary that the Second Party should enter into an agreement with the First Party regarding matters specified in the said section read with the Land Acquisition (Companies) Rules, 1963;

NOW THEREFORE it is hereby agreed and declared as follows :

1. Agreement to Pay Compensation

That the Second Party will pay to the State Government or such person or persons as the State Government may appoint in this behalf all such sums of money as shall be awarded by the Collector under the provisions of the Land Acquisition Act, 1894, or by Court to which a reference under Part III of the said Act may be made, or by the Court or Courts including the High Court or the Supreme Court to which an appeal from the award of the said Court may be preferred, as compensation to any person or persons who may be found on inquiry held under the provisions thereof to be interested in the said land.

2 Land cannot be acquired under Part VII of the Land Acquisition Act, except for the purpose mentioned in section 40(1) (a), for a private company which is not a Government company, vide Section 44B.

2. Agreement to Pay Expenses

That the Second Party will pay to the State Government from its funds all costs, charges and expenses of proceedings in the Courts or otherwise incidental to the proposed acquisition or payable in respect thereof under the provisions of the said Act and in particular, upon a reference being made under Sec. 18 of the Land Acquisition Act, 1894, the Second Party shall within seven days of receiving the demand in this behalf deposit with the Collector all estimated costs, charges, and expenses computed on the differential in the compensation claims made by persons interested (including the counsel's fee and other expenses incidental to the reference or payable in repsect thereof), failing which the First Party may, without prejudice to any other remedy, recover the amount spent or the expenses incurred from the Second Party as arrears of land revenue[3] and may also rescind or withdraw from the proceedings in acquisition and all loss resulting therefrom shall be borne by and be to the account of the Second Party;

Provided however that the Second Party may, at its option, instead of making the aforesaid deposit in cash furnish in whole or in part Bank Guarantee in like amount to the satisfaction of the Collector but this shall be subject always to the Second Party getting the guarantee extended from time to time till the proceedings under reference, including appeals, have been finally disposed off, failing which the same consequences shall ensue as are provided hereinbefore in respect of default in deposit of the amounts mentioned hereinabove.

3. Agreement to Pay Value of Government's Interest in Land

That the Second Party will further pay to the State Government compensation on account of rights of intermediary which vested in the State Government in pursuance of the provisions of the Act.[4]

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3 This clause shall be effective only if there exists, as in U.P., a statutory provision to the effect that any government dues agreed to be recoverable as arrears of revenue shall be recoverable: u/s 3 (1) (d) of U.P. Public Money (Recovery of Dues) Act, 1972. In the absence of such statutory backing mere agreement cannot confer jurisdiction on revenue authorities to resort to coercive processes for recovery e.g., arrest, attachment etc.; *State of Meghalaya* v. *Orneshwar Das*, 1987 (supp) SCC 134; *Mohd. Umar* v. *Nagar Palika*, 1998 AIHC 2127 (Alld-DB).

4 In U.P. the reference is made to the Zamindari Abolition Acts.

4. Agreement to Transfer subject to Condition and Restrictions

That upon the Second Party having made all payments incidental to the acquisition of such land as are mentioned in clauses 1, 2 and 3 hereof the First Party will forthwith, but without prejudice to his rights to recover from the Second Party enhanced compensation, if any, awarded by any court in respect of the said land, convey and grant to the Second Party the said land described in Schedule I hereto TO HOLD the same unto the Second Party for ever subject to the conditions and restrictions hereinafter set forth,[5] namely:

a) That the Second Party, its successors and assigns, will use the said land for the aforesaid purpose and for no other purpose without the previous sanction in writing of the State Government;

b) That the Second Party shall within three years of being put in possession of the said land erect and complete all work in accordance with the particulars specified in Schedule II hereto under supervision of the District Officer or an officer authorised by him in this behalf. The District Officer shall make half-yearly report to the State Government and the Land Acquisition Committee indicating the conditions which have been or have not been complied with as well as on the progress of the work and on the amount of money spent progressively on the work. If the State Government is satisfied after such inquiry as it may deem necessary that the Second Party was prevented by reasons beyond its control from erecting, providing, constructing or executing the said work within the said period of three years, the State Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period of extension shall not exceed three years and upon extension being granted, the Second Party shall work, provide, construct or execute the said work within the extended period;

c) That if at any time or times any part or parts of the said land shall be necessary to be possessed by the State Government for the purposes of revenue administration or for purposes connected with the public health, safety or necessity (of which matter the State Government shall be the sole judge), the Second Party shall, on being thereunto required by the State Government, transfer to the State Government such part or parts of the said land as the State Government shall specify to be necessary for the

purposes aforesaid and in consideration of such transfer the First Party shall pay to the Second Party a sum equal to the amount of the compensation awarded under the said Act and paid by the Second Party in respect of such part or parts including the amount, if any, awarded in respect thereof under Sec. 23(2) of the said Act, together with compensation for the buildings erected on such part or parts at valuation to be determined by the Collector of ————. An appeal from the decision of the Collector shall lie to the Commissioner, and the decision of the Collector, or where an appeal has been preferred against such decision, the decision of the Commissioner, determining such valuation as aforesaid shall be final, conclusive and binding on both parties hereto;

d) That if the said land or any part or parts thereof shall no longer be required by the Second Party then the Second Party will forthwith relinquish and restore the same after removing all buildings and structures to the First Party at a price equal to the amount paid by it under the said Act (including the amount, if any, awarded in respect thereof under Sec. 23(2) of the said Act);

e) That if the Second Party utilises only a portion of the land for the purpose for which it was acquired and the State Government is satisfied that the Second Party can continue to utilise the portion of the land used by it even if the unutilised part thereof is resumed, the State Government will be entitled to make an order declaring the transfer of the land with respect to the unutilised portion thereof as null and void, whereupon such unutilised portion shall revert back to the State Government, and directing that an amount equal to one-fourth of such portion of the amount paid by the Second Party as cost of the acquisiton under clauses 1, 2 and 3 hereinbefore as is relatable to the unutilised portion shall be forfeited to the State Government as damages and that balance of that portion shall be refunded to the Second Party and the order so made shall be final and binding; PROVIDED THAT the State Government shall not make an order under this sub-clause unless the Second Party has been given an

5 Such conditions and restrictions can be imposed because of the provisions of sections 41 and 44 A of the Land Acquisition Act and the Rules thereunder and also by Government Grants Act (The latter overrides the provisions of sections 10 and 11, Transfer of Property Act). Rule 5 specifically requires that the agreement shall include some of these terms.

opportunity of being heard in the matter; PROVIDED FURTHER THAT where there is any dispute with regard to the amount relatable to the unutilised portion of the land, such dispute shall be referred to the Court within whose jurisdiction the land or any part thereof is situated and the decision of that Court thereon shall be final;

f) That in case of a breach by the Second Party of any of the terms and conditions of this agreement, the First Party shall be entitled to declare the transfer of the land to the Second Party as null and void whereupon the land shall revert back to the State Government and an amount equal to one-fourth of the amount paid by the Second Party to the State Government as the cost of acquisition under clauses 1, 2 and 3 hereinbefore shall be forfeited to the State Government as damages and the balance shall be refunded to the Second Party, and the order so made by the State Government shall be final and binding on the Second Party; PROVIDED THAT that State Government shall not make an order under this sub-clause unless the Second Party has been given an opportunity of being heard in the matter;

g) That in the event of a breach by the Second Party referred to in sub-clause (*e*) or sub-clause (*f*) above the occupation of the Second Party over the land in question shall be deemed to be unauthorised within the meaning of the———Act[6] and the First Party may, without prejudice to any other remedy, effect re-entry in accordance with the provisions of the said Act. In the event of re-entry the Second Party shall be entitled to remove within six months from the date of such entry all buildings and other structures on the said land PROVIDED THAT any buildings or other structures that are not removed within the period aforesaid shall vest absolutely in the First Party and all rights of the Second Party shall cease in respect of such buildings or other structures without any compensation;

h) That the Second Party shall not transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the State Government;

i)[7] That in case of any urgency where possession of any land is proposed to be taken under Sec. 17 before an award has been made

6 In U.P., the reference is made to the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

7 See Rule 6 ("Additional matters which may be provided in the Agreement under Sec. 41").

under Sec. 11 of the Land Acquisition Act, 1894, the Second Party shall deposit with the Collector free of interest, such amount being not more than two-thirds of the approximate amount of compensation payable in respect of the land as determined under clause (*ii*) of sub-rule(2) of Rule 4 of the Land Acquisition (Companies) Rules, 1963, and within such time as the Collector thinks fit to specify in this behalf;

j) That should any dispute or difference arise touching or concerning the subject-matter of this agreement or any covenant or clause or things therein contained, except as to matters the decision of which has been specifically provided hereinbefore, the same shall be referred to the arbitration of the Secretary to the State Government in ———— Department as sole arbitrator. His opinion or decision upon such dispute or difference shall be final and conclusive and binding on the parties hereto.

5. It is hereby further agreed that if in any proceedings for the assessment and payment of compensation for acquisition of the said land or any part thereof the amount of compensation is enhanced or is held to be more than the amount assessed by the Collector under the provisions of the Land Acquisition Act, 1894 or by court to which a reference under Part III of the said Act may be made or by the court or courts including the High Court or the Supreme Court to which an appeal from the award of the said Court may be preferred, the Second Party shall within one month of the demand therefor pay to the State Government such further amount on account of the price of the said land or any part thereof together with all incidental charges in relation thereto, failing which the amount due shall be recoverable from the Second Party and such recovery shall in no way relieve the Second Party from its liability to any other action that may be taken against it under the terms and conditions of the previous clauses.

Schedule—I

Name of village, tahsil and district	Plot No.	Area	Boundaries
1	2	3	4

Schedule—II

(1) Name and nature of the work.

(2) Plans and specifications.

(3) Minimum expenditure to be incurred in the construction of the work.

(4) Any other direction.

IN WITNESSES WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

3—Agreement for Supply of Electric Energy from a Generating Station under Construction to a Public Limited Company for Industrial Purposes

THIS AGREEMENT made————between ———— State Electricity Board, (hereinafter called the Board) of the one part and ABC, a company incorporated under the Companies Act, 1956, and having its registered office at———(hereinafter called the Company) of the other part;

WHEREAS the Board in the process of constructing a Thermal Station/a Dam and a Hydro-electric generating station at——on——— River in————district of the State of———— (hereinafter called the XY) for the production of electricity;

AND WHEREAS the Company has decided to construct a plant for the production of———at———near XY and desires to purchase electrical energy from the Board;

AND WHEREAS the Board and the Company have still to complete their respective works essential for the production of power;

AND WHEREAS the Board has agreed to supply and the Company has agreed to purchase electrical energy from generating station XY on the terms and conditions hereinafter appearing;

NOW THEREFORE the parties hereto hereby covenant with each other to observe and perform the following:

1.Provision for take off points

(a) The Board shall provide : Two separate and distinct KV take-off point on the gantry of the———sub-station to enable the

Company to take off two transmission lines from these points to their factory premises.

(*b*) ———KV metering installation at the———Sub-station equipped with all the necessary metering transformers, meters and instruments to measure the maximum demand and energy to be supplied to the Company at the——— Sub-station (hereinafter called the 'point of supply').

2. Works to be Constructed by the Company

The Company shall provide, install and maintain:

(*a*) Two separate and distinct ——— KV transmission lines for transmission of electrical energy from the gantry at the———Sub-station to and within the Company factory premises and such transmission lines shall remain the property of the Company (KV in this clause would be the same as in sub-clauses (a) and (b) of clause 1 above).

(*b*) A suitable control station or sub-station with suitable circuit breakers, switches and protection equipment for the two_____KV circuits specified in sub-clause (a) above. The setting of fuses and relays of Company's control gear and rupturing capacity of the circuit breakers shall be to the satisfaction of the Board.

3. Right of Access

The Company shall at all reasonable times permit the authorized representative or representatives of the Board to have access to that part of the Company's premises which may be necessary for the purpose of reading meters or for testing, repairing, maintaining, installing or replacing any or all of the Board's apparatus and doing all things necessary or incidental to the proper carrying out of the supply of electricity under this Agreement. The Company shall also permit the authorised representative or representatives of the Board to have reasonable access to the Company's premises for the purpose of ascertaining that the electricity supplied hereunder was and is being used by the Company in accordance with the terms of this Agreement.

4. Date of Commencement and Period of Supply

The Company shall take electrical energy from the Board and the

Board undertakes to supply the same in the manner hereunder stated for a period of——years commencing from the date on which the Company's transmission lines are connected with and energized at the point of supply at ——— Sub-station. The Board shall make every reasonable effort to commission their plant and to make the electrical energy available to the Company at Sub-station as early as possible in the year .

5. Characteristics of Supply

The electrical energy supplied shall be from the balanced 3 phase alternating current system at a pressure of approximately——— KV between phases and a frequency of approximately———cycles per second.

Subject to the other provisions of this Agreement the supply of energy by the Board to the Company shall be available continuously during 24 hours of each day and throughout the whole period of this Agreement.

6. Consumption

(*a*) The Company's demand, as defined in clause 7(*a*) hereof, shall not at any time exceed———KW or such reduced amount as may be fixed under clause 11 (d) hereafter. In case of breach of this condition the Company shall pay to the Board, in addition to the energy charge under this Agreement, Rs.———per KW of such excess for every month in which the excess occurs.

(*b*) The maximum consumption of energy shall not exceed——— KW hours in a quarterly period of three calendar months ending (to be fixed as agreed upon) and the maximum of———KW hours in a period of one year.

Note : It should be clearly stated when the year shall be deemed to commence and when it shall end and then describe it as the computing year.

(*c*) The Company shall utilize energy supplied under this agreement solely for the purpose of production of———and for operations ancillary thereto, but shall not utilize the same for any subsequent processing or fabrication of———into any other form or for any other purpose whatsoever; Provided that the Company may utilize an agreed amount of energy for lights, fans and air conditioning within the factory premises.

(*d*) The Company shall not transmit or utilize any of the energy supplied under this agreement beyond the Company's factory premises.

7. Measurement of Energy Supplied

(*a*) For the purpose of this Agreement the minimum demand in KW in any month shall be deemed to be———.

(*b*) The energy supplied shall be measured at the point of supply by means of three KW hour meters and three Maximum Demand Indicators indicating Maximum demand in Kilowatts. The metering equipment shall be so arranged as to register in summation the KW hours supplied through each circuit and to record the maximum demand made by the Company at ——Sub-station.

(*c*) All the meters and the indicators shall be read monthly and the consumption and maximum demand shall be taken to be (*as agreed upon between the parties*).

Note: It is better to have a variation clause as may be fit in each case.

(*d*) The Company may at any time by notice in writing to the Board call for a test to be carried out on any of the Board's meters or indicators used under this agreement and the Board shall forthwith make all arrangements for carrying out the tests. (*There should also be a mention about the expenses as may be agreed upon between the parties. The parties should also agree to some sort of standard for purpose of carrying out the tests within the prescribed or appropriate limits*).

(*e*) Any such meters or indicators shall be sealed by Board . The seal shall not be broken or otherwise interfered with except in the presence and with the consent of the Company's duly authorised representative. (*The designation of the parties' representatives or necessary authorisation in that behalf in favour of the representatives should also be mentioned in this clause*).

(*f*) The readings of the meters shall be taken by the accredited representatives of both parties and in each others' presence and shall be signed jointly by them on or as near as is practicable to the last day of each calendar month (*The appropriate period for notice to the Company*

should be provided for because in case the representative of the Company fails to appear at the appointed time the accredited representative of the Board should have the power to read and record the meter reading immediately following the last day of the notice). In either case whether the reading is taken jointly or by the Board representative alone, after the notice the reading so recorded shall be binding on the Company and shall not be questioned by it.

8. Power Factor of Supply

The power factor of the supply taken by the Company shall not be less than———, and should it be less it should be brought up at least to the said figure by the Company by methods approved by the Board. If the Company fails to make necessary improvements within (*as may be agreed upon*) of the notice in writing given to the Company for this purpose the Board shall have the right to install the necessary equipment at the Company's premises for increasing the power factor to the minimum aforesaid and shall charge the cost thereof to the Company. Such equipment after payment shall become the property of the Company.

9. Board Regulations

The Company shall conform to any reasonable Board regulations for the operation of its plant and equipment. The Company shall take and use at all times the power hereunder in such manner that the current will be taken from the three phases approximately equally, and in no case shall the out-of-balance current in any one of the phases exceed———per cent of the current delivered over any of the other phases. The Board shall have, by giving——days' notice in writing, the right to disconnect the supply in the event of non-compliance with this provision provided that the Board shall restore the supply as soon as possible after the defect has been removed by the Company on payment of Rs.———as reconnection charges.

Note: A mention may be made in this clause according to the agreement between the parties whether the Company shall or shall not be liable to pay the minimum charges for the quarter or the year, as the case may be, for the period of disconnection.

10. Running Charge, Minimum Charge and Rate of Charge

The Company shall pay to the Board for the energy consumed by it for the purpose mentioned in clause 6 (c) at the rate of———per KWH consumed.

(*a*) In each year of supply the total payment in a quarter of a computing year shall, subject to the other provisions of this Agreement, be for not less than——units and in a computing year for not less than———units whether or not such number of units shall have been taken by the Company in such quarter or year of supply, as the case may be.

PROVIDED THAT the Board shall be bound to give notice in writing to the Company at least———weeks (*or* months) in advance intimating the date on which it expects the energy to be available in the first year of supply and the Company will be liable only from the date of the expiry of the period of notice or from the date on which energy actually becomes available at the point of supply.

Note: If there is any special agreement between the parties with respect to this matter it should be incorporated in this clause.

(*b*) Should the total consumption in any quarter of a year exceed the maximum consumption of energy given under clause 6 (b) or exceed the maximum limit of consumption as reduced under clause 11 hereafter, the Company shall pay for such excess consumption at the rate of——per unit.

Note : If there is any particular agreement in respect of this matter it may be added.

(*c*) The rate of charge hereinbefore provided is inclusive of all charges, duties and taxes of whatever nature on electricity.

11. Reduction in Energy Requirement

If the Company finds that the maximum energy hereinbefore provided is in excess of its requirements, it may in writing request the Board to reduce the maximum limit of consumption of energy for the remaining period of this Agreement by giving a notice in writing to the Board three months in advance and in that case, with effect from the commencement of the next quarter immediately following the expiry of the period of notice:

(*a*) the maximum limit of annual consumption shall be reduced to the quantum intimated by the Company;

(*b*) the maximum consumption of energy in any quarter of a computing year as given in clause 6 (*b*) shall be proportionately reduced;

(*c*) the payment for the minimum number of units as per clause 10(*a*) for a quarter or a year shall also be proportionately reduced;

(*d*) the maximum demand of the Company as agreed in clause 6(*a*) shall also be proportionately reduced.

12. Reduction in Charges

(*a*) In the event of the Company being unable to consume the electrical energy agreed to under this Agreement due to fire, floods, tempest or any accident or any strike or lockout of wrokmen in the factory or from any other cause beyond the control of the company, the amount payable for the minimum number of units by the Company in any quarter or a year as per clause 10 (*a*) shall be reduced proportionately (*or shall not be reduced if so agreed upon*) to the period during which any of the said faertors operate. (*If it is agreed that there should be a reduction it should further be provided that the minimum duration of such factors is not less than days. If there is an agreement for reduction of the minimum amount payable it should further be provided that the Company shall take all necessary steps to resume consumption of electrical energy stipulated under this Agreement as soon as possible*).

(*b*) (*i*) If at any time the total generation of energy of the XY generating station comes to be reduced by causes beyond the Board's control then, the energy available shall be rateably distributed amongst the consumers from the said generating station and such reduction shall not make the Board liable for damages, and under such circumstances the payment for the minimum number of units as per clause 10(*a*) for a quarter and the year shall also be proportionately reduced.

(*ii*) The Board shall not be responsible for damages or otherwise for accidental interruption of supply or for stoppage or deficiency of energy caused by or resulting from fire, floods, tempest or any accident or from any strike or lockout of workmen or from any other cause beyond the control of the Board but the Board shall be bound to restore the supply as soon as possible. (*If there is an agreement between the parties for*

damages to be paid by the Board to the Company on account of delay in restoring the supply of energy, the amount should be mentioned under this clause).

13. Payments

The Company shall in respect of the supply of electricity make payments to the Board in accordance with the charges set out hereinbefore. The said payments shall be made in the following manner :

(*a*) As soon as practicable after the end of each month the Board shall deliver to the Company a bill for the units consumed during such month. (*If there is any adjustment to be made it may be mentioned whether it shall be adjusted in the monthly bill or at the end of any quarter or year*).

(*b*) The Company shall pay each bill within————days of delivery thereof with————days of grace.

(*c*) If the Company disputes any item or items in any bill, it shall within——days of the delivery of the bill, notify the Board in writing of the item or items disputed and the grounds of dispute, but the Company shall pay the total amount of the bill within the time prescribed in sub-clause (*b*) above. (*In case the parties agree otherwise suitable amendments may be made in this sub-clause*).

(*d*) If the Company shall neglect or refuse to pay any amount payable hereunder within the time permitted, it shall be lawful for the Board after giving————days' notice in writing, to disconnect the supply and in the event of such a disconnection of supply the Board shall not in any way be liable for damages or loss suffered by the Company. (*Suitable amendments may be made in this sub-clause with respect to the rights of the parties and a clause with respect to reconnection should also be added. A mention should also be made about the liability of the Company for the minimum charges as may be agreed upon*).

14. Security

As security for the payment of the Board's dues in time, the Company shall furnish a continuing Bank Guarantee to the satisfaction of the Board and shall when called upon so to do from time to time renew the guarantee or increase the amount thereof. The Board shall be at

liberty at any time to demand from the guarantor and to apply any security so furnished as aforesaid in or towards payment or satisfaction of all or any moneys which may have become due from or owing by the Company to the Board in respect of the supply of energy or otherwise under this Agreement PROVIDED THAT this provision shall not prejudice any other remedy to which the Board may be entitled for the recovery of such moneys.

15. Revision of Rate

(*a*) The Board may at the end of the first ——— years (computed from the date———) enhance charges for the electrical energy hereinbefore mentioned for the remaining period of this Agreement to the extent of——— (*or*, as may be mutually agreed upon between the parties) PROVIDED THAT such enhancement shall not exceed per cent of the rate mentioned in clause 10.

(*b*) If the parties hereto fail mutually to agree to the revision of the rates as aforesaid, the question shall be referred to arbitration under the provisions of the Indian Arbitration and Conciliation Act 1996, the Board and the Company each appointing an arbitrator.

16. Disconnection of Supply

The Board shall, after giving———days' notice, under sub-clause (*a*) below and———days' notice under sub-clause (*b*) below, in writing to the Company, and the Company failing to comply with the same during the period of notice, have the right to disconnect the supply of electricity to the Company in the following circumstances :

(*a*) Upon breach of conditions of this Agreement other than the one provided for in clause 13 (*d*); or

(*b*) Such use of electricity by the Company as is likely to interfere with the satisfactory generation and transmission of electricity produced in XY power station.

17. Reconnection of Supply

(*a*) The Board shall, on being satisfied that the causes for disconnection under sub-clause (*a*) or sub clause (*b*) of clause 16 above have been removed or remedied to its satisfaction, reconnect the supply of energy on payment of Rs.———as reconnection charges.

(*b*) The company shall remain liable to pay the minimum charges as per clause 10 for the quarter and the year, the disconnection of supply notwithstanding.

18. Board's Liability for Supply of Energy and Payment of Compensation

(*a*) Except in so far as the Board may be prevented by reasons mentioned in paras (*i*) or (*ii*) of sub-clause (*b*) of clause 12 hereof, the Board shall make continuously available to the Company throughout the——— hours of each day of each computing year during the period of this agreement a supply of electrical energy up to the agreed maximum of——KWH per year or up to the maximum as reduced under clause 11.

(*b*) The Board hereby undertakes not to enter into any other contract or arrangement or otherwise divert power as to prevent it from supplying to the Company the full aforesaid maximum of electrical energy or the reduced maximum as the case may be. In case of default the Company shall be entitled to recover from the Board such compensation as may be fair and just.

(If there is any particular agreement about the liability of the Board to pay a penalty for curtailing the supply the same may be mentioned under this sub-clause. If there is any other special agreement between the parties either because of the short-fall in the supply of energy to the Company or discontinuance of the energy for any particular period or if the energy supplied to the Company during any day falls short below a certain percentage special agreement between the parties with respect to these matters can be mentioned in further sub-clauses.

19. Interpretation Clause

The expressions 'the Board' and 'the Company' hereinbefore used shall, unless there be anything repugnant to the subject or context, include their respective successors and assigns.

20. Settlement of Disputes

Every dispute, difference or question which may at any time arise between the parties hereto or any persons claiming under them, touching

or arising out of or in respect of this Agreement or the subject-matter thereof shall be referred to three arbitrators, one to be appointed by each party and the third, namely the presiding arbitrator appointed by the first two, under the provisions of the Arbitration and Conciliation Act, 1996[8] and the decision of such arbitrators shall be final and binding on the parties.

21. Headings and Titles

The headings or titles of clauses of this Agreement shall not form part thereof nor affect the construction thereof.

22. Jurisdiction

Any suit or other legal proceeding arising out of or based on this Agreement shall lie only in the court at——— and not elsewhere.

23. Notices

Any notice to be given to the Board shall be deemed to be sufficiently served if delivered or addressed by prepaid registered letter post to the Secretary ——— Board and any notice to be given to the Company shall be deemed to be sufficiently served if delivered or addressed by prepaid registered letter post to the Secretary/Manager/ Managing Director ——— of the Company at the registered office of the Company. Any such notice addressed by prepaid registered letter post shall be deemed to have been received on the day and at the time at which such notice would be delivered in the ordinary course.

IN WITNESS WHEREOF Secretary to the Board for and on behalf of the Board AND Secretary/Manager/Managing Director of——— duly authorised by the Board of Directors of the Company by Resolution dated for and on behalf of the Company have signed these presents on the day and year first above written. The——— of the Company has affixed the company's Common seal hereunder.

4—Agreement between Government and an Agent for Sale of Government Publications

AN AGREEMENT made on the——— day of———BETWEEN AB, etc., (hereinafter called "the Agent") of the one part AND the

8 See section 11 of that Act.

Governor of ——— (*name of State*) (hereinafter called "the Government") of the other part.

WHEREAS the Government has at the request of the Agent agreed to appoint him to be agent for the sale of publications of the Government of ——— (*name of State*) (hereinafter called "the State Government") and to supply such publications to the Agent at twenty-five per cent below the published price;

AND WHEREAS such publications are sold by the Government at the published price and it is necessary in the interest of the Government that such publications should not be sold below the published price.

NOW THESE PRESENTS WITNESS as follows :

1. The Government hereby appoints AB as its Agent to sell publications of the State Government on the terms and conditions hereinafter appearing.

2. The Government will supply to the Agent for sale such of the State Government publications as he may require at twenty-five per cent below the published price.

3. The Agent hereby agrees with the Government as follows :

(a) Agent's Covenant not to Sell at Less Price

He will not sell any such State Government publication at less than the published price nor grant any rebate, discount or commission nor otherwise offer any special terms or inducement to purchasers of the said book in order to induce such purchasers to purchase from the Agent instead of the Government Press (*or*, Manager of Publications, etc., *as the case may be*).

(b) Power of Revocation

The Government may at any time revoke the appointment of AB as agent for sale of the State Government publications upon giving to the Agent ——— months notice in writing of its intention to do so; it shall also be entitled, if it so chooses, to take back from the Agent all State Government publications supplied to him for sale and then unsold at the date of the expiration of the period of such notice after refunding to the Agent the price which he has paid for such publications.

(c) Compensation for Breach

The Agent will if he sells any publication of the State Government at less than its full published price pay to the Government as compensation for breach of this agreement a sum equivalent to the difference between the published price of such publication and the price at which the Agent has actually sold such publication.

IN WITNESS WHEREOF, etc.,

5—Agreement for Conservation of Forests

AN AGREEMENT made on the———day of———1996 BETWEEN the Governor of———(hereinafter called "the Government") of the one part AND AB, etc., of the other part;

WHEREAS the Government has agreed with the said AB that the Government will take over certain areas of land set forth in Schedule A hereto annexed belonging to the said AB with a view to the preservation, formation or conservation of forests hereon on the terms and conditions hereinafter appearing.

NOW THESE PRESENTS WITNESS and the parties hereto hereby agree as follows:

1. Term

The period of this agreement shall be ten years, terminable earlier by the mutual consent of the Government and the said AB.

2. Rent

The Government shall pay to the said AB an annual rent of Rs.---- (Rupees---------).

3. Power to Manage

The Forest Department of the Government shall manage the said land for the improvement of grass and grazing.

4. Powers of Forest Officer

The Forest Officer appointed by the said Forest Department in that behalf shall have full powers of control regarding the treatment of the said

land, the allotment and regulation of grazing, the felling of trees and removal of all produce and disposal of the same and shall have power to close such areas to grazing as he may deem fit for such periods as he shall think necessary and to impose such grazing fees as he may think fit in such areas as he may leave open for grazing.

5. Operation's Expenditure

The said government will bear the whole expenditure involved in the operation undertaken by the said Forest Department and take the income derived from the said areas and the said AB will not be entitled to any portion thereof.

6. Right of Free Grazing

The said AB shall be entitled to free grazing for his cattle in the aforesaid areas and to free fuel for his own requirements.

7. Settlement of Disputes

Any complaint against the action of the said Forest Department or any dispute arising under this agreement shall be referred to the Collector for the time being of the————district, whose decision shall, subject to an appeal to the Commissioner, ————Division, be final.

IN WITNESS WHEREOF, etc.

6—Agreement for Securing Advertisements

MEMORANDUM of an AGREEMENT dated the———day of——, BETWEEN AB, etc., of the one part AND the——— Co. Ltd., a company within the Companies Act, 1956, and having its registered office at————, (hereinafter called "the Company") of the other part.

WHEREAS the said AB publishes monthly an agricultural journal called the———in Hindi for general circulation particularly among the agricultural classes;

AND WHEREAS the said AB appointed the Company his sole advertising agent for the aforesaid journal on the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED between the said AB and the Company as follows :

1. Appointment

The Company will act as the agent of the said AB for the purpose of securing advertisements for the aforesaid journal and will secure contracts for advertising at such rates as it may consider proper and will secure copy and blocks and will give the printer or other person appointed for the purpose necessary instructions with reference to the printing of the said advertisements and will keep records, distribute voucher copies and collect amounts.

PROVIDED that it shall not without the previous consent of the said AB sell space at rates lower than the following rates :

* * * * *

2. Enquiries to be Referred to Company

The said AB will refer to the Company all enquiries about advertisement in the aforesaid journal and except as hereinafter provided shall not accept any advertisements for putting in the said journal except through the Company.

3. English Translation

If the text of any advertisement is set by the Company in English, arrangement will be made by the said AB for rendering the same into Hindi without any extra charge.

4. Space for Advertisement

The space at peresent sanctioned for letting to advertisers are 16 ordinary pages, two inside covers and one outside cover in each issue of the aforesaid journal but the said AB will favourably consider any representation by the Company for increase of such space.

5. Term

This agreement shall continue in force for a minimum period of years and will continue thereafter subject to three months' notice of termination on either side, but in the event of the said AB deciding to cease publication of the aforesaid journal for any reason whatsoever the agreement shall stand determined immediately on the journal ceasing publication.

6. Commission

The Company shall be entitled to a commission of ———percent on the amount of all bills for advertisements inserted in the aforesaid journal.

7. Bills and Bad Debts

(a) The Company shall within 30 days from the date of delivery to the Company of the voucher copies of any issue of the said journal submit to the manager of the said journal a statement of bills in respect of the advertisements appearing in such issue showing the gross amount of such bills and the net amount payable to the said AB. The said manager will check such statement and return the same after verification. The Company shall pay such amount to the said AB within 15 days of the return of such statement without any deduction for unrealized bill or for bad debts.

(b) If any debt is represented by the Company to be a bad debt, the said AB may on being satisfied in that behalf declare it to be so and after such declaration the share of the amount of such bill paid to the said AB shall be adjusted by deduction from subsequent payments due to the said AB or in any other suitable manner. The decision of the said AB on the question whether a debt is or is not a bad debt shall be final.

8. Refusal of Publication by Editor

The editor of the journal will have the power to refuse publication of any advertisement which in his opinion may be considered obscene or objectionable or of a generally unsuitable character. If the company is dissatisfied with the decision of the editor, the question shall be referred to the said AB whose decision shall be final.

9. Inspection of Company's Books

The said AB and/or any other person deputed by the said AB for the purpose shall be entitled to inspect the books of the Company relating to this contract at any time during the business hours of the Company, and if this agreement continues in force after twelve months the Company shall also before the——— day of———in each year during which this agreement remains in force submit to the said AB a certificate from a firm

of chartered accountants approved by the said AB to the effect that the said firm has audited the accounts of the Company relating to this contract and found them in order.

10. Each Contract to be forwarded by Company

For the purpose of keeping the said AB acquainted with the business booked by the Company and the terms of such booking, a copy of each contract made by the Company with the advertisers shall be forwarded by the Company to the manager of the said journal, and the contract with the advertisers shall be in a form approved by the said AB.

11. Consequence of Termination

In the event of this agreement being terminated at any time except on the ground of the said journal ceasing publication, such termination shall not affect the contracts already made by the Company, and in respect of all contracts as are on the books on the date of termination of the agreement the parties shall perform the duties and observe the covenants to be performed and observed by them respectively under the terms of this agreement.

12. Breach

In case of the Company commiting breach of any covenant herein contained the said AB shall be at liberty immediately to terminate this agreement.

13. Arbitration

All disputes between the parties hereto arising out of this agreement or in relation thereto or regarding the interpretation of any clause hereof for the decision of which no express provision has hereinbefore been made shall be referred to an arbitrator appointed by the Chamber of Commerce and the provisions of the Indian Arbitration and Conciliation Act for the time being in force shall be applicable to such reference.

IN WITNESS WHEREOF the parties hereto have signed this agreement in manner hereinafter appearing and the Company has affixed its common seal on the day and year first above written.

7—Works Contracts[9]

[*This form is in respect of a building work but can be adapted with suitable modifications for any other work*].

AN AGREEMENT made on the ————day of———— BETWEEN AB, etc., (hereinafter called "the Employer") of the one part AND CD, etc., (hereinafter called "the Contractor") of the other part. WHEREBY the parties hereto mutually agree as follows :

1. Complete the Works in Workman-like Manner

The Contractor will clear and prepare the site for and will erect and complete in a thorough and workmanlike manner and with the best material (*or*, with material supplied by the Employer) the works specified in the schedule hereto in accordance with the plans and specifications hereto annexed (hereinafter referred to as "the works").

2. Payment

Subject to the conditions hereinafter appearing, the Employer will pay to the Contractor a sum of Rs. within six months after the Contractor has completed the works in accordance with the terms of this agreement and handed over the same to the Employer.

(*or*, a payment schedule may instead be inserted herewith reference to different stages of the completion of the work or preparations therefor).

3. Incidental Works

The Contractor will do and perform all work incidental to the proper execution and completion of the works including all works rendered necessary in the consequence of the doing of the works and will supply all labour (and material) necessary for the same and no additional payment shall be made for the same.

4. Access to Works

The Contractor will permit the Employer to have access to the works while the same are under construction and to inspect the same.

9 For distinction between a works contract and contract of sale, see *Union of India* v. *Central India Machinery Mfg. Co.*, (1977) 2 SCC 847 (Re : contract for the manufacture and supply of wagons to railways).

5. No Variation

The Contractor will not vary or deviate from the said plans and specifications without having first obtained the permission in writing of the Employer.

6. Price Adjustment[10]

(1) The contract price shall be adjusted for increase or decrease in rates and prices of labour, materials, fuels and lubricants in accordance with the following principles and procedures.

(a) The cost of materials and electrical energy supplied by the Employer at fixed prices shall be excluded from the scope of price adjustment.

(b) The price adjustment shall apply only for work carried out within the stipulated time or extended time granted by the Employer under clause 10 hereof and shall not apply to work carried out beyond the stipulated time for reasons attributable to the Contractor.

(c) The price adjustment shall be calculated for work done in accordance herewith.

Or

The price adjustment shall be determined during each quarter in accordance with the following formula :

(To be omitted if no formula is specified)

(2) To the extent that full compensation for any rise or fall in the cost to the Contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such rise or fall in the cost.

(3) (i) The price adjustment for increase or decrease in cost due to labour shall be paid in accordance with the following formula :

* * * * *

10 This is also called "Escalation Clause". The subject is dealt with at length in *Delhi Cloth Mills* v. *Rajasthan SEB*, (1986) 2 SCC 431; In some cases escalation has been allowed on grounds of reasonableness even in the absence of such clause: *P.M. Paul* v. *Union of India*, A 1989 SC 1034; *C.T. Xavier* v. *P.V. Joseph*, A 1995 Ker 140; *Tarapore & Sons* v. *Cochin Shipyard Ltd.*, A 1984 SC 1072, (1984) 2 SCC 68.

(ii) Price adjustment for increase or decrease in cost of materials procured by the contractor other than fuel and lubricants shall be paid in accordance with the following formula :

* * * * *

(iii) Price adjustment for increase or decrease in cost of fuel and lubricants shall be in accordance with the following formula :

* * * * *

(4) If within a period of thirty days from the date of execution of this contract there occur in India changes to any Central or State Act, Ordinance, rule or other law or any regulation or bye-law of any local or other duly constituted authority, and the introduction of any such Act, Ordinance, rule, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under sub-clauses (1), (2) and (3) of this clause in the execution of the work, such additional or reduced cost shall be certified by the Employer after examining the records, if any, provided by the Contractor and shall be paid by or credited to the Employer and the contract price be adjusted accordingly. Provided that such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any input to the price adjustment formula in accordance with sub-clauses (1), (2) and (3) of this clause.

7. Alteration[11] *of Design*

The contractor will, if so required by order in writing signed by the Employer, alter the design or size of the works and the materials to be used in constructing the same, provided that he shall not be bound to do

11 'Alteration' or 'modification', according to various dictionaries such as Webster's Dictionary and Black's Law Dictionary, may involve an increase or decrease in the details but not a change in the general purpose and effect. It would only mean "a small adjustment, a minor or slight change, a qualification or limitation, alteration of a subordinate character", not a change of a vital nature affecting the basic structure: See *S.K. Gupta* v. *K.P. Jain*, (1979) 3 SCC 54 (para 23) (wherein this dictionary meaning adopted by the Delhi High Court in the decision under appeal was held inapplicable to a statutory definition which permitted even an alteration of a basic nature).

so unless the sum to be paid for any extras or to be allowed for any omission has been first fixed by agreement between him and the Employer and, in absence of agreement, the sum to be so paid or allowed shall be settled by

8. Defect

The Contractor shall make good any defects, shrinkage or other faults that may appear in the works within six months after their completion.

9. Materials at Contractor's Risk

While the works are in course of construction and until the Employer takes over the same, they and all materials or plants used or to be used in constructing the same shall remain at the Contractor's risk and he shall not be entitled to any compensation for injury to, or loss or destruction of such works or materials arising from any cause whatever.

10. Extension of Time

If the Contractor requires any extension of time for completing the works he must apply to the Employer within seven days from the date of the occurrence of the event on account of which he desires such extension; and the Employer may, if he thinks such request reasonable, grant such extension of time as he may think necessary.

11. Unsatisfactory Progress

If the Employer is at any time dissatisfied with the progress of the work or with the quality of materials used or of the workmanship he may apply to to depute an Engineer to inspect the works, and if such officer certifies in writing that the rate of progress or the materials used or the workmanship or any or all of them is or are unsatisfactory or not in accordance with this contract, the Employer may then enter upon the site of the works and may employ another builder to complete the same and may pay such builder the cost of such completion out of the sum payable to the Contractor under this agreement or the balance of such sum if advances have been made to the contractor, and, if such cost is more than such sum or balance, then the Contractor will pay the excess to the Employer.

12. Time for Completion

Unless the time is extended under clause 10 hereof, the Contractor will complete a portion of the works of the value of not less than Rs.———on or before the———, and will complete the whole work and will remove from the site of the works all plant, scaffolding, unused materials and rubbish and will leave the works and site clean on or before———.

13. Default

If the Contractor fails to comply with the provision of clause 12 on or before the dates mentioned therein or within such extended time as may be permitted in accordance with clause 10 hereof, he will pay to the Employer as liquidated damages a sum of Rs.———for every day's delay, and the Employer may deduct such sum or sums from any money due to the Contractor under these presents or may recover it otherwise.

14. Running Payments

At the end of each calendar month commencing from the date when the Contractor commences work the Employer will pay to the Contractor a sum equal to 80 per cent of the value as estimated by the parties or in case of disagreement between the parties by———of the work executed by the Contractor during the month and the Employer will make final payment to the Contractor within two months from the date when the works are completed.

15. Force majeure [See clause 11 of Form No. 25 in this chapter on Agreements for model] :

16. Arbitration[12]

If at any time during the progress of the works or after completion or the alleged completion thereof and at any time during the continuance of this agreement any disputes or differences arise between the parties hereto in relation to or in connection with this agreement, the same shall be referred

12 See Sec. 56, Contract Act; In *Southern Gas Ltd.* v. *Viswesaraya Iron & Steel Ltd.*, (1998) 9 SCC 555, it was held that the arbitrator should first determine the applicability or otherwise of the 'force majeure' clause and proceed to determine other questions only in case he finds the force majeure clause to be inapplicable.

to the arbitration of Sri ———as the sole arbitrator (*or*, three arbitrators, one to be appointed by each party and the third to be appointed by the first two) and the provisions of the Indian Arbitration and Conciliation Act 1996, shall apply. The decision so given shall be final and binding upon the parties.

17. Indemnity

The contractor will indemnify the Employer from all claims for injury caused to any person, whether a workman or not, while in or upon the works or the site of the same, and the Employer shall not be bound to defend any claim brought under the Workman's Compensation Act unless the Contractor first deposits with the Employer AB a sum sufficient to cover any liability which the Employer might incur by reason of defending any such claim.

18. Interpretation clause.

The Schedule herein referred to

IN WITNESS WHEREOF, etc.

8—Construction Agreement After Inviting Tenders[13]

[*After describing the parties and giving the necessary recitals an agreement may be drafted on the following lines*]

NOW therefore it is agreed

Scope of the Work

The contractor shall perform everything required to be performed and shall provide and furnish all the labour and materials and arrange for tools and equipment required to perform and complete the works (*or*, all works) covered by the contract document in a workmanlike manner and in strict accordance with the drawings and specifications and the general

13 An invitation to tender is a mere attempt to ascertain whether an offer can be obtained within such margin as the building owner or employer is willing to adopt, or, in other words, is an offer to negotiate, an offer to receive offers, an offer to chaffer. It differs from an auction which is a manner of selling or letting property by bids, and usually to the highest bidder by public competition (*P.R. Quenim* v. *M. Kalyan Tandel*, (1974) 2 SCC 169, quoting from Halsbury's Laws of England).

and special conditions of contract, which are made a part of this contract and shall do everything required by this contract in strict compliance of these contract documents and other documents made a part hereof.

Payments

All payments shall be made to the contractor in Indian currency (*or as may be agreed upon*) in accordance with the provisions embodied in the documents made a part of this contract, the sum of Rs.———— (Rupees————) or such other sum as may become payable to the contractor under this contract.

This contract consists of the following component parts all of which are as fully a part of this contract as if herein set out verbatim, or if not attached, as if hereto attached.

1. General conditions *of contract. They should be general in nature, such as relating to earnest money, security money, compensation for delay in execution of contract, action which has been agreed upon to be taken for delay, presentation of bills, interim payments, power of inspection, extension of time, sub-contracts, etc.*

2. Special conditions *of contract. They should generally contain an interpretation clause, the extent and scope of the contract, the mutually explanatory nature of the documents forming part of the contract, prices of different works or parcels of work, time for completion of the contract as a whole as well as completion of the particular parcel by a particular time, the contractor's obligations in respect of labour, sanitation, local bye-laws, safety measures, tools, plants, equipment, materials and appliances and perhaps also the programme of the different phases of the work, use of sub-standard material, sub-ontracts, supervision of the work, suspension of work, default and variations, etc.*

Special conditions will differ from contract to contract and it is for the parties to settle them. In Government contracts, there may be special conditions for providing certain facilities to the contractor, viz. assisting the contractor in getting the controlled materials required for the work, supplying machinery and other tools and equipment, the means of transport for movement of materials, or assisting him in getting essentiality certificates or the like.

Such conditions should also cover the jurisdiction of the courts[14] *as well as settling the disputes through arbitration.*

3. Contractor's tender or tenders and all material correspondence relating to the contracts should be made a part of the contract.

Discrepancies

In case of any discrepancy between the general and special conditions and special conditions and other documents forming part of this contract, the special conditions will prevail.

4. Interpretation clause

IN WITNESS WHEREOF, etc.,

9—Agreement for Publication of a Book on Royalty System

AN AGREEMENT made, etc.

WHEREBY IT IS AGREED as follows :

1. Time for Completion

The Author will write and complete a book titled the———— and will unless prevented by illness or other unavoidable cause deliver the manuscript to the Publisher for printing, so that the completed manuscript may be in the Publisher's hands on the————. The Author will promptly revise and correct all proof sheets submitted to him by the Publisher.

2. Time for Publication

Subject to the performance, by the Author, of the contract under the preceding clause, the Publisher will on or before the————print and publish the said book at his own expense and risk in all things.

3. Paper, Type, etc.

The paper, type, binding and embellishments shall be in accordance with specimens already approved by the Author and the said book will be published at the price of Rs.———— per copy net.

14 Under section 20, C.P.C. a suit arising out of a contract may lie, at the choice of the plaintiff, at one of several places. If, however, the parties have agreed that out of those alternative places the courts only at the specified place shall have jurisdiction such agreement is valid: *Hakam Singh* v. *Gammon (India) Ltd.*, A 1971 SC 740 (see Mogha's Pleadings, 16th edn., p. 258 for further implications of such clause).

4. Number of Copies

The first edition will consist of---------copies, out of which the Publisher shall supply to the Author *gratis* copies for his own use and presentation but not for sale.

5. Royalty[15]

The Publisher shall pay to the Author a royalty of 25 per cent, of the published price in respect of every copy of the first edition sold by the Publisher. Such royalties shall be paid within one month after the dates hereby fixed for rendering accounts by the Publisher.

6. Accounts

The Publisher shall keep proper Account of the sale of the said book and render the same to the Author at the end of each calendar month after the publication and shall at all reasonable times produce all books of accounts for the inspection of the Author who shall be entitled to make copies of or extracts from the same for his own use.

7. Author not to Publish

During the continuance of this agreement the Author shall not publish or authorise the publication of any copy or abridgement or translation of the said book.

8. Copyright

The copyright in the said book shall remain vested in the Author who will indemnify the Publisher against all claims for infringement of copyright or libel in respect of anything contained in the said book.

9. Assignment

This agreement shall not be assignable by the Publisher without permission in writing of the Author.

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15 Royalty is "a compensation or portion of the proceeds paid to the owner of a right, as a patent or oil or mineral right, for the use of it and also an agreed portion of the income from a work paid to its author, composer etc., usually a percentage of the retail price of each copy sold" (Random House Dictionary), adopted in *Pradeep C. Mody* v. *Sashikant C. Mody*, A 1998 Bom 351 (relying also on Supreme Court decisions to the same effect)

10. Default in Payment of Royalty

In case the Publisher shall make default in the payment of royalties for one calendar month after due date as appointed under this agreement or becomes insolvent, the Author will have the right to determine this agreement, and on such determination the Author will have the option to take all copies of the said book in stock at a fair valuation and if he fails to exercise this option within one month after notice requiring him to do so, such copies shall be sold and the Publisher shall receive half the amount of such valuation or proceeds of sale.

IN WITNESS WHEREOF, etc.

10—Agreement between Author and Publisher for Sale of Copyright and Publication of a Book[16]

AN AGREEMENT made on the day of BETWEEN AB, etc., (hereinafter called the "Author") of the first part and EF, etc., carrying on business as publishers under the firm name of———at————(hereinafter called the "Publisher") of the other part.

WHEREAS it is mutually agreed that the Publishers shall purchase the copyright of the book titled———written by the Author, on the following terms:

1. Printing and Publication

The Publishers shall bear the whole expense and risk of the paper and printing of the said book and the publication thereof.

2. Payment to Author

The Publishers shall pay to the Author the sum of Rs.———for the first edition of the said book when———copies shall have been sold and for the second and every future edition the sum of Rs.———to be paid within three months after the day of publication, no edition to exceed ———— copies and ——— copies of each edition shall be supplied *gratis* to the Author for his own use and for presentation but not for sale.

16 On assignment of copyright see *Raj Video Vision* v. *K. Mohankrishnan*, A 1998 Mad 294 in which it was held that even after a film producer has assigned all rights in the negatives of his film he retains his copyright in the film and can assign T.V. and video rights to a third party.

3. Author to Revise

The author shall revise any new edition of the said work and correct the proofs.

4. Alternative Arrangement for Revision

In case of the death of the Author or his inability to revise the said work or correct the proofs the Publishers shall be at liberty to employ such editors and proof readers as they may think fit and after deducting the payments made to such editors and proof readers, from said sum of Rs. ——— the balance shall be paid to the Author or his representatives.

5. Rights of Publisher if Books are not Sold

In case ——— copies of the first edition of the said book shall not be sold within ———years from the date of publication, the Publishers shall be at liberty to waste the same and shall not be liable to pay the aforesaid sum of Rs. ——— to the Author.

IN WITNESS WHEREOF, etc.

11—Agreement between Firm of Manufacturers and an Agent

THIS AGREEMENT made on this ———day of——— BETWEEN AB, etc., CD, etc., and EF, etc., carrying on in partnership the business of manufacture of steel boxes and padlocks under firm name of Bhargava Industrial Works at Aligarh (hereinafter called the "Employer") of the one part AND XY, etc., (hereinafter called the "Agent") of the other part WHEREBY it is agreed as follows:

1. Term of Engagement

The Employer will employ the Agent for a term of———years from the date hereof (*or,* from the———day of———) as a travelling agent in the Employer's business of steel boxes and padlocks.

2. Agent to Serve Faithfully

The Agent will serve the Employer during the said term of employment diligently and according to his best abilities in all respects and shall at all times obey the directions of the Employer in regard to such service.

3. To Devote Whole Time

The Agent shall devote the whole of his time, attention and energies to the performance of the duties as such agent and shall not either directly or indirectly be in any way connected with or concerned in any other business or pursuit whatsoever.

4. To Keep Account

The Agent will, subject to the control of the Employer, keep proper books of account and shall make correct entries of the price of goods sold and of all transactions and dealings of and in relation to the said business.

5. To Submit Report

The Agent will forward to the employer every week a statement of all business done by him during the previous week.

6. Salary

The Employer will pay to the Agent a salary of Rs. ---- per mensem payable on the first day of the month following that for which it is due.

7. Commission

The Employer will also pay to the Agent a Commission of ---- per cent on the moneys actually received by the Employer in respect of all original orders obtained by the Agent and a commission of ---- percent on moneys received in respect of repeat orders.

8. Travelling Expenses

The Employer will also pay to the Agent actual reasonable travelling expenses incurred by him in or about the business of the Employer (*or*, the Employer will pay to the Agent in respect of all journeys undertaken by him in or about the business of the Employer one and one-half railway fare of the ordinary second class for journeys performed by rail and at the rate of two rupees per kilometre for journeys exceeding five kilometres performed by road and halting allowance of Rs.50 per day for halts of more than 9 hours in one day) (*or*, the Employer will provide a motor car

to the Agent for travelling and will pay him a monthly allowance of Rs.- - - - -per mensem to cover the pay of the driver and cost of petrol and oil and in the event of any damage to the said car the loss shall be borne by the parties hereto equally and for all journeys undertaken by rail will pay him one and one-half second class airconditioned fare).

9. Jurisdiction of Agent

The Agent will travel in and receive orders from———(*name of territory*) and during the continuance of his employment under this agreement the Employer will not allow any other agent to travel in or receive orders from the said territory.

10. Duty to Secure Orders

The Agent will use his best endeavours to obtain orders for the Employer's goods and shall at regular intervals visit the present customers of the Employer in the said territory and also endeavour to secure fresh customers and shall accurately and promptly transmit all orders obtained by him to the Employer. Provided that he shall not be entitled to solicit orders from any place outside the said territory without the direction in writing of the Employer.

11. To Collect Debts

The Agent shall collect debts and receive moneys on behalf of the Employer and give receipts for the same and shall transmit to the Employer all moneys received by him immediately on receipt thereof.

12. Correspondence

The Agent shall deliver over to the Employer all letters and correspondence in any manner relating to the business of the Employer immediately on receipt thereof and shall induce customers and others to address directly to the Employer all correspondence relating to the said business.

13. Not to Undersell

The Agent shall not without the consent in writing of the Employer accept any orders for sale or offer to sell goods at prices less than those appearing in the price lists of the Employer.

14. Absence from Duty

In the event of the Agent being unable to perform his duties for a period of———— days owing to illness or other unavoidable cause, the Employer may either appoint a substitute to perform the said duties and remunerate him out of the salary of the Agent for such period, or may determine this agreement on payment of a sum equal to one month's salary in addition to salary and commission actually due to him at the date of such determination.

15. Determination of Agreement

Either party hereto may at any time determine this agreement by giving to the other three calender months' notice in writing and the Employer may determine the agreement immediately without any such notice on giving to the Agent three months' salary in lieu of notice with estimated commission for such three months to be calculated on the average commission earned by the Agent during the year preceeding such determination provided that in a case of wilful neglect or refusal of the Agent to perform his duties under this agreement without any justifiable cause or of any other act of misconduct on the part of the Agent, the Employer may terminate the Agent's services without giving such notice or salary or commission as aforesaid.

16. (Arbitration clause if necessary).

IN WITNESS, etc.

12—Agreement for Agency to Sell Goods[17]

THIS AGREEMENT is made on the————day of———— BETWEEN AB, etc., and CD, etc., carrying on business in partnership as———— under the firm name of Garg and Company of the one part AND EF, etc., (hereinafter called "the Agent") of the other part.

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17 On this type of agreements see discussion in *Bhopal Sugar Industries* v. *S.T.O.*, (1977) 3 SCC 147 (Petroleum agency agreement with Caltex Ltd., held not to create a relationship of principal and agent but one of seller and buyer of goods); See also *Rohtas Industries Ltd.* v. *State of Bihar*, A 1963 SC 347; compare form No. 25 *post* for marketing agreement not amounting to agency.

WHEREAS the expression "Successors in business" hereinafter used in relation to the said firm Garg and Company means any one or both of the said AB and CD who after any change or changes in the constitution of the said firm by the death or retirement of a partner or the admission of a new partner or partners shall either alone or in partnership carry on the said business under the firm name of Garg and Company and his or their partners (if any) for the time being in the said business AND the expression "Principals" means Garg and Company or their successors in business;

AND WHEREAS the Agent has agreed with Garg and Company to become the agent of the Principals in the State of Punjab for the sale of ———, manufactured or supplied by them upon the terms and in manner hereinafter mentioned.

NOW THIS DEED WITNESSES and the parties hereto hereby mutually agree as follows :

1. Firm to Supply Goods

The Principals shall from time to time during the term of——— years from the ———, consign and supply, at their own cost and charge, to the Agent as early as possible after receipt of his order in writing for the same unless they shall be prevented by some just and sufficient cause, such quantities and description of as the Agent shall require.

2. Agent to Sell

The Agent shall use his best endeavours to sell and dispose of the goods supplied to him as hereinbefore stated to the best advantage and for the best price obtainable not being less than such prices (if any) as may from time to time be fixed by the Principals and shall in the meantime keep such goods stored in a proper place or places at his own risk.

3. Expenses and Commission

The Principals shall allow or pay to the Agent all reasonable expenses for carriage or delivery of the said goods and for books, stationery and postage and all other reasonable and customary expenses attending the sale thereof or otherwise incurred by him in respect of such sale and shall also allow or pay to him a commission at the rate of———per cent upon

the net proceeds of sale of such goods after deducting expenses, such commission being chargeable upon moneys actually received and not on outstanding debts.

4. Lien

The Agent shall have a lien or charge for all moneys becoming due to him hereunder upon the goods of the Principals which shall for the time being be in the possession or custody of the Agent.

5. Servants

The Agent shall himself and at his own cost employ such clerks, salesmen and assistants as may be necessary.

6. Accounts and Inspection

The Agent shall keep proper accounts of all goods received by him and of the particulars of the sale thereof and of all sums of money received by him and of all credits given on account of any such goods and of all other matters and transactions concerning the sale of such goods and such accounts shall at all reasonable times be open to the inspection of the Principals or any members of their firm or their representative who shall have full liberty to take copies or extracts of or from the same or any of them.

7. Submission of Accounts

The Agent will in the first week of every quarter render to the Principals a true and proper account of all goods received by him and of all orders received by him and the particulars of all sales and other transactions made and of all moneys received and spent by him for and on account of the said goods during the preceding quarter.

8. Settlement of Accounts

The parties shall on the———day of———next and thereafter during the continuance of the Agency on the———day of———and the——— day of——— in every year unless prevented by unavoidable cause and then as soon as may be after the removal of such cause, settle accounts respecting the sale of the said goods and other matters aforesaid (*or*, The Agent shall on the day of and the day of in

every year submit to the Principal a half yearly statement of account showing all receipts and payments and other dealings and transactions concerning the premises) and the Principals shall have the right to check it with the account books and when such statement of account is approved and signed by the parties it shall be binding on them and shall not afterwards be re-opened unless some manifest error or omission is discovered within one year.

9. Agent not to Work for Another and Principals not to Sell Goods to Another

The Agent, his clerks, sub-agents or servants or any of them shall not during the continuance of the said agency, without the consent in writing of the Principal, buy, sell or deal in——— directly or indirectly for or on account of any person other than the Principals AND the Principals, their clerks, servants or agents or any of them will not, during the period aforesaid without the consent in writing of the Agents, supply such goods as aforesaid, whether for resale or otherwise, to any person or persons whosoever who shall reside or carry on business in the State of———.

10. Limit to Credit

The Agent shall not give credit for any goods to any firm for a longer period than———months nor for any goods exceeding the value of Rs.——without the consent in writing of the Principals and shall not give credit for any goods to any person to whom the Principals shall have prohibited him to give credit.

11. Not to Pledge

The Agent shall not without the consent in writing of the Principals pledge any goods consigned or supplied to him as aforesaid.

12. Agent to Obey Principal's Direction

The Agent shall at all times during the continuance of the said agency obey and observe all reasonable directions and instructions which may be given to him by the Principals concerning the sale or disposal of the said goods or otherwise relating to the business of the said agency.

13. Not to Compound Debts

The Agent shall not without the consent in writing of the Principals, compound any debt, obligation or security relating to the business nor shall withdraw or compromise any legal proceeding taken for enforcement of any such debt, etc., as aforesaid nor do any act by which any such debt, etc., as aforesaid may be discharged or diminished in value or prejudiced until the same shall have been fully paid or satisfied.

14. Liability for Loss or Damage

The Agent shall not be liable for any loss or damage which may happen to any goods as aforesaid or which may otherwise be incurred in or about the matters aforesaid unless the same shall be occasioned by his wilful neglect or default.

15. Power to Terminate

Either party hereto shall be at liberty to terminate the aforesaid agency by giving ———months' notice in writing to the other provided that if either party shall wilfully neglect or refuse to observe or perform any of the agreements and stipulations aforesaid then the other may terminate the said agency upon giving - - - weeks' notice to him. And any notice hereinbefore required to be given to the Principals may be addressed to the firm by its/their name or style or to any partner thereof.

16. To Deliver Goods, Accounts, etc., on Termination of Agency

On the termination of the agency either by expiry of time or by notice as aforesaid, the Agent shall deliver to the Principals all or such of the goods aforesaid as shall remain unsold and all books, accounts and documents relating to the said agency which shall be in his possession or control.

17. Not to Assign Agency

The Agent shall not without the consent in writing of the Principals assign or in any other manner make over the said agency or this contract to any other person.

18. Power of Attorney to Agent

For further effectuating this agreement the Principals hereby appoint the Agent to be their attorney in the name of the Principals to demand, sue

for recovery and receive and give effectual receipts and discharges for all sums which may be due from any person or persons for or on account of goods sold by the Agent as aforesaid and generally to do all such acts and things as may be necessary or proper in relation to the matters aforesaid with power to appoint a substitute or substitutes under him for any of the purposes last aforesaid and the Principals shall ratify and confirm whatever the Agent or his substitute may do or cause to be done in or about the premises.

19. Arbitration

If any question or dispute shall at any time arise between the Agent and the Principals with respect to the meaning or effect of any clause in this agreement or the rights or liabilities of the parties hereto respectively hereunder then such question or dispute shall be referred to the arbitration of ——— whose award shall be conclusive and binding on the parties.

IN WITNESS WHEREOF, etc.

13—Agreement between the Government[18] and a Company for Loan Borrowed for Setting up a Factory

THIS AGREEMENT made this ——— day of ——— BETWEEN the ——— a company within the meaning of the Companies Act, 1956 and having its registered office at ——— (hereinafter called "the Company") of the one part AND THE GOVERNOR OF ——— (hereinafter called "the State Government") of the other part ;

WHEREAS the State Government has on the request of the Company agreed to grant to the Company an advance of Rs.——— (Rupees) for the purpose of setting up a ——— factory in the State of ———.

AND WHEREAS it is agreed that the said advance of Rs.——— shall be secured by a mortgage of the tangible assets including lands, buildings, plant and machinery of the Company/Director ——— but the completion of mortgage documents cannot be immediately effected and the parties have agreed that till such time as the said security is furnished the Company shall furnish a Bank Guarantee from the———

18 It can also be adapted with suitable modifications for a loan by a financial institution.

Bank, through whom the advance shall be made, for the repayment of the said advance.

AND WHEREAS the Memorandum of Association of the Company did not expressly include in the objects of the Company the power to carry on the business of manufacture of———— but the Company has at an Extraordinary General Meeting of the shareholders held on the———— day of———— 1996 unanimously passed a special resolution to alter the said memorandum by incorporating the said power in the objects of the Company;

AND WHEREAS a copy of the said special resolution has been filed in the office of the Registrar of Companies ————, and an application has also been made to the Company Law Board[19] for approving the same but the said application has not been disposed off as yet by the said Board;

AND WHEREAS the Company has agreed that the said loan of Rs.———— to be advanced by the State Government shall not be withdrawn by the Company from the Bank except after and upon the said Board approving the alteration as aforesaid of the Memorandum of Association; and after the Government of India have granted a licence to the Company to set up a ——factory in—— State.

NOW THIS DEED WITNESSES as follows :

1. Covenants by Company

In consideration of the State Government agreeing to advance to the Company the amount of Rs.————the Company hereby covenants with the Governor as follows:

(i) Purpose

That the Company shall utilise the said advance for setting up a factory in the State of and for no other purpose.

(ii) Repayment

That the Company shall repay the said principal amount of Rs.—— with interest, which will start accruing from the date the money is paid by the State Government to the ————Bank (hereinafter called "the Bank")

19 See Sec. 17, Companies Act, 1956.

in accordance with sub-para (*vi*) herein at———per cent per annum by ———in———monthly equated instalments of principal and interest, the first of such repayment instalment shall be due on the first day of——— PROVIDED THAT in the event of the interest not being paid on the due date, the interest so accrued will be added to the amount of the loan, and the equated instalments will be calculated on that basis.

(iii) Liability in case of Default in Payment

That if any instalments of principal or interest or both as aforesaid are not paid on the due dates, interest on the sum or sums that are in arrears shall be paid at the rate of———per annum for so long as the arrears are not paid, PROVIDED THAT this provision for the payment of enhanced interest shall in no way prejudice or affect the exercise by the State Government of any of the rights or remedies vested in it by law or by this deed.

(iv) Repayment of Whole Amount

That notwithstanding the stipulation regarding payment of——— monthly instalments as aforesaid, the Company may repay the whole amount of the loan or any portion thereof and the interest that has accrued thereon at any time before the date on which the loan or any portion thereof and the interest that has accrued thereon is due.

(v) Procurement of Licence

That the Company shall obtain a licence from the Government of India for establishing the proposed ——— factory in the State——— and if the Company shall not be able to obtain such a licence, the loan together with such interest as may be due shall become repayable forthwith.

(vi) Amendment of Memorandum of Association of the Company

That for so long as the Memorandum of Association of the Company has not been finally altered as aforesaid and until such instructions as hereinafter have been issued by the State Government, the amount to be advanced shall remain in deposit and be held by the Bank and the Company shall as soon as the said Memorandum has been altered as aforesaid furnish to the State Government a certified copy of the order of the Company Law Board and the State Government shall instruct the Bank in writing to make payment to the Company.

(vii) Mortgage of Assets & Furnishing of Bank Guarantee

That the Company shall, as soon as possible, and in any case within——— calendar months from the date of these presents, and upon terms and conditions as are herein provided or may hereafter be required by the State Government, create a mortgage on the tangible assets including lands, buildings, machinery and plant of the Company and on such other assets as may, to the satisfaction of the State Government, be of the value of Rs.——and till such time as such security is furnished the Company shall furnish a Bank Guarantee from the Bank for the repayment of the aforesaid loan with interest thereon and for keeping the State Government harmless against any and all losses which may result from the failure of the Company to furnish adequate security.

(viii) Hypothecation of Factory's Assets

That the tangible assets including, lands, buildings, plant and machinery of the proposed———factory, as and when created, shall also be duly hypothecated with the State Government.

PROVIDED ALWAYS that upon the creation of a mortgage on the assets of the said factory, the security mentioned in sub-para (*vii*) shall be reduced *pro tanto*.

(ix) Insurance of Building and Machinery

That the Company shall at its own cost insure the buildings and machinery offered as security in sub-paras (*vii*) and (*viii*) above with a nationalised general insurance company for the full amount for which such buildings and machinery are hypothecated and the Company shall keep the insurance alive until the whole amount of principal and interest is fully repaid.

(x) Bar to Re-hypothecation

That the assets hypothecated with the State Government will be kept free from all encumbrances and shall not be re-hypothecated in favour of any other person or as security for any other loan or amount till the dues of the State Government have been paid off in full.

(xi) Liability in Case of Abandonment of Purpose

That in case for any reason the scheme is abandoned or the proposed factory is closed after its establishment or in case of default on the part of the Company in the payment of any equated instalment on due date or in case of breach of any of the other conditions and covenants of this

agreement, the entire amount of the loan outstanding on that date together with accrued interest shall become recoverable forthwith and it shall be open to the State Government to effect the recovery, in any manner it thinks fit, from the Company or by disposal of the mortgaged or hypothecated assets of the Company either by sale or by public auction PROVIDED THAT if prior to the creating of the mortgage as aforesaid, the scheme for the setting up of the factory, for which purpose the loan is agreed to be advanced, is given up or abandoned, the entire amount of the loan outstanding on that date together with accrued interest shall become recoverable forthwith and it shall be open to the State Government to effect the recovery in any manner it thinks fit, from the Guarantors as well.

2. Condition for Release of Advance by Bank

IT IS HEREBY FURTHER AGREED between the parties hereto:

(*i*) That the sum herein advanced shall remain in deposit and be held by the Bank and the Bank will release the same to the Company only on receipt of specific written instructions from the State Government which will be issued by the State Government when :

(*a*) the company has been granted by the Government of India the requisite licence for establishing ———factory in———State, and

(*b*) the alteration in the Memorandum of Association of the Company is confirmed by the Company Law Board.

Or, That if the Company is unable to secure the licence required for establishing ——— factory in ——— State and Company Law Board's confirmation to the alteration in the Memorandum of Association within two months of issue of the instructions of the State Government the amount of the loan will be refunded together with the interest due thereon.

(ii) Company to raise Amount Equal to Advance

That the Company shall, over and above the amount to be advanced as aforesaid by the State Government, provide or arrange an amount at least equal to the amount of the advance for the purpose of the erection, establishment and working of the proposed factory.

(iii) Location of Factory

That the proposed ——— factory with all its processes shall be located in the State of at a place to be approved by the State Government.

(iv) Government's Nominees on Board of Directors

That the Company shall, as early as may be, alter its Articles of Association[20] with a view to securing the appointment of two Directors to be nominated by the State Government on the Board of Directors who shall be Directors till such time as the loan including interest has been paid off in full.

(v) Apprenticeship Training

That the Company shall make suitable arrangements for apprenticeship training at the proposed factory in accordance with an agreed plan.

(vi) Settlement of Disputes

That if at any time any dispute, doubt or question shall arise between the Company and the State Government or any person claiming under them, touching or arising out or in respect of this deed or the subject matter thereof, the same shall be referred to an arbitral tribunal consisting of three members, one to be appointed by each party to the agreement, and the third, namely the presiding arbitrator being the Secretary to Government, ——— Judicial Department, and the decision of the arbitrators shall be final and binding on the parties.

PROVIDED ALWAYS and it is hereby agreed that expression "the Company" and "the State Government" herein used shall, whenever such an interpretation would be requisite to give the fullest possible scope and effect to any covenant herein contained, include their respective successors and assigns.

3. Covenants by the Company

The Company hereby assure unto the State Government as follows:

(*i*) That they have been duly authorised by their Board of Directors, through a resolution dated ——— to raise loan for the purpose of setting up a———factory and to mortgage the assets of the Company as security therefor.[1]

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20 See Sec. 31, Companies Act.

1 If the loan together with the moneys already borrowed by the company will exceed the paid up capital and free reserves, then a resolution of the company in a general meeting, will be necessary vide section 293 (1) (d), Companies Act.

(*ii*) That apart from the temporary loan obtained from the Company's Bankers in the ordinary course of business there are no loans contracted or due from the Company.

(*iii*) That the Issued and Paid Up Share Capital of the Company is rupees ——.

(*iv*) That the Free Reserves of the Company are not less than rupees .

(*v*) That, subject to the confirmation of the alteration of the Memorandum of Association and Articles of Association of the Company by the Company Law Board at ——, the Company has power to establish a —— factory.

(*vi*) That the Company shall execute all such assurances and documents as may be required by the State Government or be necessary under the Articles of Association of the Company for creating the mortgage as aforesaid.

SIGNED, sealed and delivered by, etc.

14—Agreement with Estate Broker for Arranging Sale of Immovable Property

(*In the form of letter issued by Owner of property to Broker*)

I, AB, etc., do hereby authorise you to negotiate the sale of my property (*specify brief particulars*) free from all encumbrances at a price not less than Rs.1,00,000. I shall make out a good title to the property. If you succeed in securing a buyer for Rs.1 lac, I shall pay you Rs. 1000 as your remuneration. If the price exceeds Rs.1,05,000 and does not exceed Rs.1,10,000, I shall pay you the whole of the excess over Rs.1,05,000 in addition to your remuneration of Rs.1000 as stated above. In case you can secure a buyer at a price exceeding Rs.1,10,000, I shall pay you 25 per cent of the excess amount in addition to Rs.6,000 as stated above. This authority will remain in force for a period of one month from date.[2]

2 This particular agreement was interpreted in *Abdulla Ahmad* v. *Animendra Kisan Mitter*, A 1950 SC 15, and it was held that where the broker negotiated the sale and within the specified period secured a buyer who made a first offer to buy the property for Rs.1,10,000 but the vendor-principal sold it to the nominee of that buyer for Rs.1,05,000 only the broker became entitled to Rs.6000 as commission (and not merely Rs.1000) as he had done everything he was required to do. His right to commission was subject only to the condition that the buyer

15—Catering Agreement with an Establishment

THIS AGREEMENT made on the day of BETWEEN AB, etc., (hereinafter called "First Party") of the one part AND CD, etc., (hereinafter called "the Caterer") of the other part.

WHEREAS AB have permitted the Caterer to run a restaurant within the premises owned by AB at——— (hereinafter called "the restaurant") upon the terms and conditions hereinafter appearing :

NOW it is hereby agreed between the parties hereto as follows :—

1. Term

This contract shall commence from the——— day of and shall, except as hereinafter otherwise provided, remain in force for a period of two years ending on the day of

2. Consideration

(a) The Caterer shall for the permission hereunder granted pay AB for such permission a sum of Rs. per month payable in advance on or before the ———day of each month.

(b) *Rebate*

If the Caterer shall pay to AB the sum under sub-clause (a) above, within the period specified therein then the Caterer shall have to pay only Rs.———in that month, the remaining sum being treated as rebate allowed by AB.

(c) *Interest*

If the Caterer shall fail to make the said monthly payment within the period specified in sub-clause (a) above he shall be liable to pay AB interest at 12% p.a. on the outstanding amount.

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procured by him should complete the transaction and the reduction of price by the vendor for any reasons could not affect the amount of commission due to the broker. It was further pointed out that the position of a house or estate agent is different from that of a broker at the stock exchange in as much as unlike stocks and shares which pass by a short instrument immovable property can be transferred only after investigation of title, etc., and the conveyance in that regard also contains various special stipulations. Ordinarily therefore an estate agent is not given authority to complete the transaction but only to negotiate a sale and find a purchaser without furnishing him with all the terms, i.e., 'to find a man willing to become a purchaser and not to find him and make him a purchaser'

3. Not to Assign

The Caterer shall not except with the consent of AB obtained beforehand in writing, make sub-contract of any description for the catering hereby contracted for or any part thereof, nor except with such consent as aforesaid assign, sublet or otherwise part with this contract or any interest therein.

4. Menu and Rates

The Caterer shall supply to the public, good and wholesome food according to the standard menu as per Schedule A annexed hereto, and shall charge them at the rates mentioned therein. The parties hereto may vary the said Schedule by mutual agreement and if the parties fail to agree upon such variation, either party will be at liberty to determine this agreement without notice.

5. Inspection

Refreshments and drinks to be supplied by the Caterer shall be wholesome and of good quality to the satisfaction of AB or any person nominated by him for the purpose (hereinafter for brevity's sake called "the Inspecting Officer") and the Inspecting Officer or any other person deputed by him may inspect any provision or foodstuff brought by the Caterer as also cooked food, and take away samples thereof for inspection or analysis. If on examination it is proved that any article of the menu, provision or foodstuff was or is defective or that higher rates than those prescribed in Schedule A annexed read with the provision for variation hereinbefore contained , were or are charged by the Caterer, the Caterer shall pay to AB a sum of Rs.——— as damages each time such default is proved to the satisfaction of the Inspecting Officer, whose decision shall be binding on the Caterer and AB may in its discretion also terminate this agreement without notice.

6. Manager

The Caterer shall either stay in the premises to look after he arrangements himself or be represented by an experienced Manager.

7. Caterer's Covenant

(1)*Voucher*

All sales made by the Caterer shall be under Vouchers.

(2) *Sales Tax*

Sales Tax, if applicable, on sale of foodstuffs and drinks in the restaurant shall be borne and paid by the Caterer.

(3) *Working Hours*

The restaurant shall remain open during such hours and on such days as the Inspecting Officer may fix.

(4) *Servants*

The Caterer will take all reasonable precautions that the servants and all other persons employed by him to do any work in the restaurant shall be courteous, civil, sober and honest and observe personal cleanliness. Before any person is employed or otherwise engaged by the Caterer in the Restaurant, the Caterer shall require such person to obtain and furnish a certificate (from such medical attendant as the Inspecting Officer may fix) that the person is free from contagious diseases. Such persons or servants as are found in the opinion of the Inspecting Officer guilty of any misconduct or personal uncleanliness or suffering from any contagious disease shall be removed by the Caterer forthwith.

(5) *No Residential Use*

The Caterer shall not use any portion of the Restaurant for residential purposes.

(6) *Uniforms*

The bearers and other servants engaged in the Restaurant by the Caterer shall wear such uniforms as may be prescribed by the Inspecting Officer.

(7) *List of Employees*

The Caterer shall by the ——— day of—— furnish to the Inspecting Officer a list of persons employed or proposed to be employed by him in the Restaurant together with their temporary and permanent addresses and shall promptly intimate to the Inspecting Officer any change in the said list.

(8) *Cleanliness*

The Caterer shall see that the restaurant pantries and kitchens are clean and shall provide clean table cloth, napkins, etc., which will be changed on every alternate day or earlier if required.

(9) *Electric and Water Charges*

The electric and water installation in the premises shall be maintained by AB but the Caterer will bear and pay the electric and water charges.

(10) *Compliance of Laws*

The Caterer will be responsible to the local authorities including health authorities for complying with laws relating to sanitation and sale of unadulterated or otherwise harmful foodstuffs and drinks and AB will in no case be liable for the same.

(11) *Orders of Inspecting Officer*

The Caterer will comply with all orders that may be given to him by the Inspecting Officer regarding the upkeep and running of the restaurant.

(12) *Cooking*

Cooking will be done only at such place as may be specified by the Inspecting Officer.

(13) *Name*

The name of the restaurant shall be such as may be approved by the Inspecting Officer.

(14) *Erection of Structures*

The Caterer will not erect any temporary or *pucca* structure in the premises without the previous consent in writing of AB. Any such structure shall on expiration or sooner determination of this agreement become the property of AB without payment of any compensation.

8. Articles and Appliances

The sum specified in clause 2 above includes the hire of furniture, coffee machine, refrigerator, gas plant, pressure cooker and utensils described in Schedule B annexed which shall be maintained by the Caterer and returned to AB upon expiration or sooner determination of this Agreement in as good a condition as it is on the date of hire subject to reasonable wear and tear. The Caterer shall not remove the same without the permission of the Inspecting Officer and shall be responsible for any damage to or loss of the said articles and shall be liable to pay to AB such sum of Rs. ——— per day as damages.

9. Breach

Upon breach of any conditions of this agreement by the Caterer, AB

will be entitled to determine this agreement forthwith without notice and thereafter the Caterer will be deemed to be a trespasser and in addition will be liable to pay to AB a sum of Rs.————per day as damages.

10. Termination Option

This agreement shall be terminable by either party giving to the other, thirty days notice in writing without assigning any reason therefor and without payment of any compensation.

11. Restaurant dues

AB do not undertake any responsibility in the matter of realisation of restaurant charges from the customers.

12. Complaint Book

The Caterer shall keep a complaint book at a conspicuous place in the restaurant in which complaints may be recorded by customers and which shall be open to inspection by the Inspecting Officer.

13. Security

The Caterer has deposited with AB a cash security of Rs. ---- and shall within days of the date of this agreement furnish to AB a personal bond in the sum of Rs.————for the faithful performance of this contract. If there shall be any breach of the terms and conditions herein contained and to be observed and performed by the Caterer, AB may, without prejudice to any other rights or remedies in law, forfeit the security deposit and recover the sum under the personal bond and determine this agreement forthwith.

14. Arbitration clause.

15. Interpretation clause.

IN WITNESS WHEREOF, etc.

16—Agreement to Purchase Shares which are subject to Equitable Mortgage

THIS AGREEMENT made this---- day of BETWEEN AB, etc., (hereinafter called "the First Party") of the one part AND

(1) CD, etc., (2) EF, etc., (3) GH, etc., (hereinafter called the "Second Party") of the other part;

WHEREAS the Second Party are also mortgagees of the shares mentioned in the Schedule hereto under an equitable mortgage dated the day of on behalf of for the sum of Rs.——.

AND WHEREAS the Second Party offered to transfer the mortgagee rights under the equitable mortgage aforesaid to the First Party in consideration of Rs.

AND WHEREAS the First Party has agreed to purchase the aforesaid shares and mortgagee rights;

NOW THIS DEED WITNESSES and the parties hereto hereby agree as follows:

1. In pursuance of the aforesaid agreement and in consideration of the sum of Rs.———— paid by the First Party to the Second Party, the receipt whereof the Second Party hereby acknowledges, the Second Party as mortgagee under the equitable mortgage aforesaid hands over to the First Party the share scrips alongwith the blank transfer deeds for the said shares and the title deed (*or*, memorandum) relating to the mortgage aforesaid TO HOLD the same to the First Party as absolute owner.

2. The Second Party further covenants with the First Party that they will execute such other documents as may be considered necessary in relation to the transactions herein contained at the cost of the person requiring the same.

3. *Interpretation clause.*

The schedule herein referred to.

IN WITNESS WHEREOF, etc.

17—Agreement to Recane Chairs

THIS AGREEMENT made on the ——day of———— BETWEEN AB, etc,. (hereinafter called "the Contractor") of the one part AND CD, etc., (hreinafter called "the Second Party") of the other part;

WHEREAS the Contractor has agreed with Second Party to do the recaning of chairs of the office of————by Assam cane at the rates

and in the manner and at the place hereinafter mentioned on the terms and conditions hereinafter contained;

NOW THESE PRESENTS WITNESS AND the parties hereto hereby agree as follows:

1. Period

This contract is to last for twelve months counted from the ——— day of———but in the event of any breach of the agreement at any time on the part of the Contractor the contract shall be determinable summarily by XY on behalf of the Second Party (hereinafter called "the Inspecting Officer") without compensation to the Contractor.

2. Raw material

The Contractor shall use Assam cane for the recaning of chairs, and the cane so used shall be of the quality or sort in every respect equal and answerable to the samples sent with the tender and such as the Inspecting Officer shall approve.

3. Place of Work

The recaning of chairs under this agreement shall be done by the Contractor in the office of ———situate at———.

4. Working days

The Contractor shall depute his workmen to do the said recaning work on all working days in the premises of the said office or at such other place or places as may be appointed by the Inspecting Officer.

5. Timely Completion

Conditions as to time for performance whether laid down herein or in any indent issued by the Inspecting Officer hereunder shall always be regarded as of the essence of the contract.

6. Rate

For all the said work done by the Contractor, the Inspecting Officer shall pay to the Contractor at the rate of Rs.———(Rupees———) per seat and at the rate of Rs.———(Rupees———) per back recaned. PROVIDED THAT if the Contractor fails to do the recaning work to the

entire satisfaction of the Inspecting Officer, the Inspecting Officer shall have the power to reject the said work if it is of defective workmanship or if any material of inferior quality has been used therein. Work rejected on the ground of inferior quality or of defective workmanship shall not be paid for.

7. Delegation of Power

The Inspecting Officer may delegate any or all of his powers under this agreement to any officer or official subordinate to him.

8. Not to Sublet

The Contractor shall not sublet or assign the contract without the permission in writing of the Inspecting Officer.

9. Default

In the event of the work not being in strict accordance with the conditions herein agreed upon or not being done within the time allowed, the Inspecting Officer may deduct or recover from the contractor as liquidated damages and not by way of penalty the sum of Rs.————for each and every day upto 25 days during which the said work is not done or bad material is not replaced. Further it shall be lawful for the Inspecting Officer to entrust to any other person the said work at the risk and cost of the contractor, who in addition to the liquidated damages aforesaid shall be liable for any loss or damages caused by the same. If the delay shall have arisen from any cause which the Inspecting Officer may accept in writing to be reasonable, such additional time may be allowed as may be considered necessary in the circumstances of the case. In such a case he may also forego the whole or any part of the aforesaid liquidated damages but not the other loss or losses.

10. Security

The Contractor shall simultaneously with the execution of this agreement deposit with the Second Party a sum of Rs.————as security for the due performance of this contract. In case of non-performance in any form or shape of the covenants and conditions of this contract, the Inspecting Officer shall have power to terminate this contract, and there upon the said sum of Rs.————deposited as security for the due

performance of this contract may be forfeited by him and upon his doing so shall become the property of the Second Party.

11. Return of Security

The Inspecting Officer is empowered to deduct from such security money any sum that may be fixed by him as being the amount of loss or losses or damages due to the non-performance of one or any of the conditions hereinbefore contained. If not confiscated under the provisions of this contract, the security money or such balance thereof as may be left after making the deduction or deductions aforementioned shall be returned to the contractor after the Inspecting Officer shall have satisfied himself that all the terms of this contract have been duly and faithfully carried out by the contractor.

12. Arbitration clause.

13. Interpretation clause.

IN WITNESS WHEREOF, etc.

18—Agreement to Promote a Company

THIS AGREEMENT made on this———— day of BETWEEN AB, etc., of the one part AND CD, etc., of the other part;

WHEREAS AB had received a letter of intent from the Government of India for the manufacture of ——— and other allied products at an annual capacity of————.

AND WHEREAS AB desired that a plant be installed and set up for manufacturing———and other allied products so as to give the required annual production of————.

AND WHEREAS CD being possessed of the requisite technical know- how and management expertise and being fully capable of setting up the desired Plant, offered to install and set up the required Plant which was accepted by AB in accordance with and subject to the terms and conditions as herein contained;

AND WHEREAS both the parties hereto for the aforesaid purpose further agreed to promote a Public Limited Company for the manufacture of the said————and other allied products and for marketing the same

upon the terms and conditions as herein contained and the said Company was accordingly incorporated under the name and style of EF having its registered office at and duly registered under the Companies Act, 1956;

NOW THEREFORE the parties hereto accordingly agree to abide with and remain bound by the terms and conditions hereinafter contained;

1. CD undertake to instal and set up the————and other allied products manufacturing plant of————annual capacity (hereinafter called as "Plant") at latest by *(date)*.

2. CD shall set up the plant as aforesaid for and on behalf of AB fully complete so as to go into production latest by————in accordance with the terms and conditions of this agreement.

3. The Plant is to be installed and set up as aforesaid by CD for and on behalf of EF, and CD shall give a detailed project report including the descriptions, drawings and detailed cost estimates fully complete in every respect to EF and after the consideration of the said report, EF and CD shall execute a contract in this behalf upon such terms and conditions as may be agreed upon between the said parties in this behalf.

4. (a) The authorised capital of EF is Rs.————consisting of equity shares of Rs. each and preference shares of Rs.————each. The first issue of the capital of EF shall be of Rs.————out of which Rs.————will be Equity and Rs.———— Preference Shares. It is hereby agreed between the parties hereto that whenever share capital is issued for subscription including the first issue, 26% of the Equity thereof shall be subscribed by AB and 25% of the Equity by CD and the balance 49% will be offered to the public or subscribed in such manner as may be desired by EF.

(b) Except with the mutual consent of the parties hereto in writing in this behalf EF will not alter its share capital or the number of its shares nor shall it in any manner alter or modify the rights, privileges, restrictions or qualifications of any class of shares or issue any further shares to any party.

5. (a) If in addition to the initial capital of EF further rupee funds are required for implementation of this project, the same may be borrowed and the parties hereto agree that they will use their good offices with various

financial institutions in the country in getting the loans sanctioned. If, however, for any reasons the financial resources of EF together with aforesaid assistance are not sufficient to meet the total actual cost of the project then in that event the extra amount needed to meet the cost of project will be provided by AB and CD in equal proportions.

(b) It is further agreed between the parties hereto that in case the Plant is to be expanded further at any stage during the subsistence of this contract, the burden of the required additional cost of expansion shall also be borne by the parties in equal proportions.

6. The Board of Directors of EF shall consist of minimum five directors and maximum eleven directors. For the present EF shall have only seven directors four of whom shall be nominated by AB and three by CD. When the Board of Directors of EF is to consist of all the eleven directors then out of them four will be nominated by AB and three by CD and the remaining four will be elected by mutual consent of the parties from amongst the other shareholders of EF. The Chairman of the Board of Directors of EF will be nominated by AB and the Managing Director will be nominated by CD from amongst its nominees on the Board.

7. AB and CD shall have the right to remove any of their respective nominees on the Board of Directors of EF and similarly they shall have the right to provide a substitue thereof.

8. EF will be managed through its Managing Director subject to overall control and directions of the Board of Directors of EF.

9. CD will provide the complete technical know-how for implementing and running the Project and Plant and for developing and maintaining a research and development wing for EF and for that purpose CD and EF will enter into a separate contract and CD will receive as remunerations an amount of Rs. ——— for this work from EF on such terms and conditions as may be provided in the aforesaid contract to be entered into beteween CD and EF.

10. If during the subsistance of this agreement either party hereto desires to part with or transfer its share holding or any part thereof in the equity share capital, such party shall give first option to the other party for the purchase of such shares at the average market value of shares during the last six months preceding the date of offer or at cost plus cumulative

interest at the rate of 10% per annum from the date of investment minus the dividends received from EF upto the period of acceptance of the offer to purchase by the party concerned, whichever is higher. The party desiring to part with or transfer its shares or any part thereof shall give to the other party a written notice of such intention specifying the number of shares it is willing to sell and if the other party within thirty days of the receipt of such notice, accepts the offer to purchase such shares the party giving notice shall be bound to sell and transfer such shares to the other party. If the party receiving such notice as aforesaid fails to give such acceptance within thirty days of the receipt of such notice the party giving the notice will be free to sell the shares in question to any other party at any rate within three months after the expiry of the thirty days notice period. However, in the event where any of the parties hereto disposes of, transfers or sells its share holding or any part thereof whereby the requisite percentage of shares (26% for AB and 25% for CD) as required to be taken by the party concerned under this agreement, falls below by whatever percentage, the benefits and rights conferred on that party by clause 6 of this agreement shall not be available to that party except to such extent and subject to such limitations and restrictions as the Board of Directors of EF may decide in this behalf.

It is also agreed between the parties hereto that if any of the parties sells as aforesaid only a part of its share holding to the other party, the selling party so long as it remains a party to this contract, will have the first option to repurchase the sold shares if the other party intends to sell, at a price to be determined in accordance with the provisions of this clause.

The provisions of this clause shall be subject to clause 12 of this agreement.

11. Duration of this contract shall be for————years beginning from and ending on—— subject to the condition that this contract may be extended further by mutual consent of the parties hereto upon such terms and condtions or with such modifications as may be agreed upon between them.

12. During the first five years of the subsistence of this contract none of the parties hereto shall be empowered to exercise the right to part with or transfer its shareholding or any part thereof in the equity share capital, unless mutually agreed in writing.

13. The parties hereto undertake to exercise or procure the exercise of all voting powers either direct or indirect of themselves respectively, at general meetings, class meetings or any other official meeting of EF (through their respective nominees on the Board of Directors) and in the exercise of the powers of the Directors to pass resolutions by circulation or otherwise so as to give effect to the terms and conditions of this agreement.

14. *Arbitration clause.*

15. *Interpretation clause.*

IN WITNESS WHEREOF, etc.

19—Agreement with Architect[3]

THIS AGREEMENT made on this ——— day of ——— BETWEEN AB, etc. of the one part AND CD, etc. (hereinafter called the Architects) of the other part.

WHEREAS AB intends to construct a multistoreyed building on a plot of land measuring about————sq. meters situate at———.

AND WHEREAS the aforesaid Architects are a reputed firm of architects with long experience in providing professional services;

AND WHEREAS the Architects have, after acquainting themselves with the site, scope and the extent of the work, have agreed to provide to AB all professional services for the completion of the civil works of the construction of the said building (hereinafter referred to as "the said works") and to supervise the construction thereof in the manner and subject to the terms and conditions hereinafter mentioned;

AND WHEREAS AB will at its (*or,* his or her) discretion entrust the execution of the said work either to a construction company or to a firm or any other person (hereinafter called "the Contractor") as AB may think fit.

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3 According to Hudson's Building and Engineering Contracts (9th Edn. 1965), (Chap 2, Section 3 of the work deals with such contracts of employments in detail and may be consulted). 'An architect or engineer may be employed
i) to advise only; or
ii) to make drawings, plans or designs only; or
iii) to supervise only; or
iv) to advise, design, make plans, and supervise" (p.73).
It is therefore the employer to decide first what for he wants the architect's services.

Now this deed witnesses and the parties hereto hereby agree as follows:

1. Fee

AB agrees to pay to the Architects as remuneration for the profesional services to be rendered by the Architects in relation to the said works and in particular for the services[4] hereinafter mentioned, fees as stipulated in paragraph 3 hereof (the said fees are hereinafter called "the Fees"). The cost of lifts and the air conditioning equipment, if any, will be excluded from the total cost of construction for the purposes of calculating the fees of the Architects.

2. Scope of Work

(a) The Architects agree to supervise the construction of the said works, to attend conferences, prepare working drawings, specifications, large scale detailed drawings, and do all other acts and render professional services in all such matters as may be requisite and appertain to the works of an architect. The supervision of the construction as above stated shall mean supervision and inspection as may be necessary to ensure that the works are being executed in accordance with approved designs, working drawings and specifications.

(b) The services to be rendered by the Architects shall include architectural planning, designing and structural details of:

(i) Civil works.
(ii) Water Supply systems.
(iii) Sanitary installations.
(iv) Electric supply installations.
(v) Fire fighting.

4 "In the case of a personal appointment (as distinct from the appointment of a firm) of an architect or engineer, that person's death will terminate the contract, as it is clearly one for personal services" (Hudson, p. 74). On the other hand in case of firm, generally the death of the employer does not make a material difference and his successor will be bound except "in those cases where the architect is engaged to design work which will satisfy the taste or special requirements of the building owner" (Hudson, p.75). [The interpretation clause no. 15 at the end will have to be moulded accordingly.]

(vi) Ventilation/air conditioning, if required (structural provisions only).

(vii) Laying of telephone conduit.

(viii) Drainage, etc.

(c) In consideration of the fees hereby agreed to be paid to the Architects as aforesaid, the Architects shall faithfully, expeditiously and honestly perform the following professional services pertaining to the said works ;

A. Sketch Stage

(i) Take AB's instructions regarding the requirements of the project as a whole.

(ii) Visit the site.

(iii) Prepare in consulation with AB a plan of accommodation and requirements.

(iv) Examine and take into account legislation, code and standards as they affect the works.

(v) Prepare preliminary draft sketches and notes sufficient to explain the Architects' general understanding of AB's requirements, including an estimate of the cost involved. Estimates of cost prepared from the preliminary draft sketches will simply indicate, from the Architects' experience, the probable cost of the whole works.

(vi) Discuss the draft sketches with AB and make such modifications as may be necessary to satisfy AB regarding his requirements.

B. Preliminary Stage

(i) Obtain from AB, or after approval of AB, prepare at AB's expense, a detailed topographical survey of the site to a scale of 1 : 500 and contour interval as may be decided by AB in consultation with the Architects. The survey shall include all necessary data related to the public utility services, lines of streets and pavements, building lines, adjoining properties, obstacles, restrictions, easement rights with respect to access, ventilation and light and boundaries etc.

(ii) Assist in obtaining approval of drawings, designs, estimates, etc., required for proper execution of works from statutory bodies, local and other concerned authorities.

(iii). Obtain from AB or after approval of AB prepare at AB's expense, test site borings, soil tests and such other tests required to provide essential design data of sub-soil conditions. The Architects shall interpret the said soil test reports and prepare detailed designs of the economic type of foundations for the building. The building structure shall be designed to withstand wind and seismic loads and all designs shall be in accordance with the Indian Standard Code of Practice and where these are not available then in acordance with the international specifictions. The Architects will be responsible to ensure the safety of the building.

(iv) Prepare a sketch scheme, Report and Estimate of cost in sufficient details to enable the Architects to proceed with the working drawings stage of the works. (Estimates of cost prepared with sketch schemes are intended for AB's budget forecasting).

(v) Obtain AB's approval of the Sketch Scheme Report and Estimate of cost.

C. Working Drawing Stage

(i) Prepare the necessary drawing and documents in accordance with the requirements of the Contractor.

(ii) Prepare the necessary schedule of quantities and documents in relation to all materials and goods in accordance with the requirements of the Contractor.

(iii) Direct and coordinate the surveying, architectural and engineering work and prepare complete working drawings, schedules (as per——— Department Specifications and Bill of Quantities) to describe the whole works adequately for the purpose of execution of works.

(iv) Obtain AB's approval for any material deviation in design or cost or working drawings, schedules and specifications.

D. Construction Stage

(i) Supply in advance to the Contractor sufficient copies of the working drawing schedules, specifications, bill of quantities, etc., required to start the work.

(ii) Assist the Contractor in the preparation of the work progress schedule.

(iii) Prepare and supply to the Contractor such further drawings, specifications or details as may be required for the proper execution of work.

(iv) Supervise the construction work to ensure that the works carried out conform in detail to the design and so as to achieve speedy and economical completion of the work.

3. Fees

(a) AB shall pay to the Architects their fees for the above described services as detailed below :

(i) Design of the buildings and all other work mentioned in clause 2 of this Agreement.	3 per cent of the total cost.
(ii) Travelling expenses for Sri ——— only.	Actual travelling expenses based on Air/ACC fare and taxi fare from——— to ——— and back plus Rs.—— per day as incidental charges.

(b) Payment of Fees

Payment to the Architects on account of fee shall be made as follows :

(i) Upon completion of Sketch stage under Clause 2 (c) (A).	One-quarter per cent.
(ii) Upon completion of the preliminary stage under Clause 2 (c)(B).	Three quarters percent inclusive of item (i) above.
(iii) On completion of working drawings under Clause 2(c)(C)	One percent inclusive of item (ii) above.
(iv) Detailed estimates and completion of all detailed drawings under clause 2 (c) (D).	One and half percent inclusive of item (iii) above.
(v) Completion of works upto plinth level.	Two percent inclusive of item (iv) above.
(vi) Completion of works upto the slab level.	Two and a half percent inclusive of item (v) above.
(vii) Completion of works including finishing.	Three percent inclusive of item (vi) above.

4. Schedule of Time

The Architects undertake to complete their professional services hereunder by the dates mentioned below :

(i) Sketch Stage under Clause 2(c)(A). By----------

(ii) Preliminary drawings and designs under clause 2(c)(B) By----------

(iii) Working drawings under 2(c)(C). By----------

(iv) Detailed estimates and completion of all detailed drawings under clause 2(c)(D). By----------

(v) Supervision of the construction work By----------

5. Construction Cost

The construction cost shall not exceed Rs.---------- per square metre on an average and should conform to the norms of the C.P.W.D. (*or*, as the case may be) for such work.

The construction cost as above stated shall not include :

(a) Cost of land.

(b) The Architects fees.

(c) Any services relating to or cost of fittings or fixtures not designed, planned and supervised by the Architects.

(d) Soil testing fees.

6. Supply of Drawings & Documents

The Architects shall supply free of charge to AB adequate number of copies of all approved drawings alongwith subsequent modifications. Two sets of completion drawings showing all the installations in the building and subsequent corrections, if any, shall also be supplied by the Architects free of charge.

7. Other Architects and Consultants and Assignment

(1) The Architects shall be entitled to collaborate in the performance

of this agreement with any other architect, structural consultants, civil or mechanical engineers, quantity surveyors and other consultants with whom they may in good faith enter into partnership relations or other engagements. But AB shall be entitled to withhold permission to any particular architect or engineer, surveyor or other consultant as aforesaid if for reasons stated by AB, AB should bona fide consider it advisable to do so. Any such arrangement shall however not create any contractual obligation between AB and the persons so collaborating and AB shall also not be required to pay any extra sum to the Architects on that account.

(2) The Architects shall not assign or sublet or transfer their interest in this agreement without the permission of AB.

8. Extra Service

AB shall pay to the Architects a reasonable amount mutually agreed upon for any extra services rendered by them if the Architects are required to incur any drafting and other expenses due to any major changes ordered by AB after approval of designs and drawings, provided that the Architects shall obtain written permission from AB to do such work.

9. Structural Soundness

The Architects shall be fully responsible for the structural soundness of the work.

10. Deviations, Alterations, Additions, Omissions and Revisions

The Architects shall not make any deviations, alterations, omissions or additions from or to the approved drawings without the knowledge and prior written consent of AB.

11. Discharge of Functions to be Performed by the Architects

The Architects hereby agree that the fees to be paid as provided herein will be in full discharge of the functions to be performed by them and no claim whatsoever shall lie against AB in respect of any other party collaborating with the Architects relating to the services herein agreed. The Architects shall indemnify and keep indemnified AB against any such claims.

12. Compensation to AB

(i) If the Architects fail to observe the time schedule as per clause 4,

they shall be liable to pay to AB compensation of Rs.———per day till the work remains incomplete.

(ii) If the Architects abandon the work or become incapacitated from acting as such architects as aforesaid, AB may make full use of all or any drawings and designs prepared by the Architects and AB shall not be liable to pay anything more. If the Architects abandon the contract for any reason whatsoever, the Architects shall be liable to pay such damages to AB as may be assessed by AB upto a maximum of ———per cent of the total estimated cost of the work.

13. Defects and Deficiencies

The Architects will endeavour to guard AB against any defects and deficiencies in the work of the Contractor, but they are not deemed to guarantee the performance of its contracts.

14. Arbitration

In the event of any question, dispute or difference arising out of the contract between the parties with regard to the interpretation of this contract or the rights, liabilities or duties arising out of it or otherwise in connection with this contract, the matter shall be referred to two Arbitrators, one to be appointed by each of the parties hereto. The Arbitrators shall appoint a presiding Arbitrator before entering upon the reference. The majority decision of the Arbitrators shall be final and binding on the parties. The provisions of the Arbitration and Conciliation Act 1996 as amended from time to time shall apply to such arbitration. If work under the contract has not been completed when a dispute is referred to arbitration, the work shall continue during the arbitration proceedings, and no payment due to the Architects within the provisions of the contract shall be withheld on account of the pendancy of the arbitration proceedings unless authorised or required by the Arbitrators.

15. Interpretation clause. [*However, it is to be moulded in the light of footnote under clause 1 for Fees of this model.*]

IN WITNESS WHEREOF, etc.

20—Agreement for Installation of Hoardings

THIS AGREEMENT made on this ——— day of ———

BETWEEN AB, etc. of the one part AND CD, etc. (hereinafter called the Firm) of the other part.

WHEREAS AB is desirous of having his/its advertisement hoardings installed at selected sites in Uttar Pradesh;

AND WHEREAS the Firm has offered to fabricate, supply, paint and instal the said hoardings and to maintain the same subject to the terms and conditions hereinafter appearing;

NOW THESE PRESENTS WITNESS as follows :—

1. During the period commencing from the———day of———— and ending on———the Firm shall whenever so required by AB fabricate, supply, paint and instal the hoardings in accordance with the annexed specifications at such places in Uttar Pradesh as may be specified in the indents sent to the Firm.

2. The Firm shall complete the work of fabrication, supply, painting and installation of each hoarding within such period, not being less than 30 days, as may be specified in the said indents.

3. The painting of the hoardings shall contain such description, design and display as AB may indicate in each indent.

4. The hoardings when istalled shall become the property of AB.

5. *(a)* After all the work in respect of a hoarding has been completed the Firm shall request AB to get the installation inspected. If upon inspection the material and workmanship are found to be in order AB shall intimate to the Firm that the specified installation has been taken over. PROVIDED THAT if AB shall fail to get the installation inspected within sixty days from the receipt of notice of completion of the work from the Firm the installation shall be deemed to have been approved and taken over by AB.

(b) If any defect is noticed on inspection then before the taking over the Firm shall remove the defect immediately and, in any case, before the period as specified in the indent.

6. The Firm hereby undertakes that if during a period of one year from the date of taking over any hoarding the painting on the hoarding shall fade, peel off or wash off or if the hoarding installed shall be damaged by storm or civil commotion or otherwise then and in any such case the defect shall be removed by the Firm within 15 days of receiving intimation,

failing which AB may get the same done by other persons on contract or otherwise at the risk and responsibility of the Firm.

7. If during the defect liability period of one year as provided in clause 6 above, the painting fades, peels off or washes off or the hoarding is damaged as above stated and is re-done by the Firm the defect liability period in respect of such hoarding shall be for one year from the date the work is re-done by the Firm.

8. The price of every hoarding fabricated, supplied, painted and installed at selected site including maintenance thereof for one year as aforesaid shall be Rs.————which shall be paid to the Firm after the hoarding duly installed is taken over under clause 5(a). PROVIDED THAT a deduction of 10% of the amount shall be made from every such bill towards security deposit which, after making deductions, if any, will be returned to the Firm after the defect liability period of one year as aforesaid is over.

9. AB will be at liberty to get the work inspected at any stage during execution.

10. The Firm shall attend to any defect in the work pointed out to it and shall not use or apply any material rejected or disapproved by AB or his authorised representative.

11. *Arbitration clause.*

12. *Interpretation clause.*

IN WITNESS WHEREOF, etc.

21—Agreement for Purchase of Wooden Cases

This AGREEMENT made on ——day of——— BETWEEN AB, etc. (hereinafter called the Purchaser) of the one part AND CD, etc. (hereinafter called the Contractor) of the other part.

WHEREAS the tender of the Contractor for the supply of about wooden cases at the rate of Rs. ——— each inclusive of sales tax,stacking and other charges per case has been accepted by the Purchaser.

NOW THIS DEED WITNESSES and the parties hereto hereby agree as follows ;

1. That the Contractor shall supply to the Purchaser upto a maximum quantity of———wooden cases during the period from——to——

as per specifications given below and as per sample submitted by the Contractor along with his tender :

Specification	*Internal dimensions*
Type of wood	
Length	——— cm.
Breadth	——— cm.
Height	——— cm.
Thickness of plank to be used	——— mm.

The wood used in fabrication shall not be less than 15 mm in thickness. The top lid shall be of one piece only while the other sides of the cases should not consist of more than two pieces. The top lid should be temporarily fixed. Iron Pàtti 1.25 mm thick and 15 mm wide should be fixed with three nails (5 cm long and 12 guage) on three sides of both the long ends and sufficient extension of the same Iron Patti will be left unfixed for fixing the top lid after packing. In joining the pieces to form side panel or in joining side to side panel or side to bottom panel, 4 nails of 12 gauge and 5 cm long shall be used. At each long end side there shall be a small stout rope handle attached by knots through two holes. Ends of nails should not protrude out of wood.

2. Delivery of the cases will be taken at———————.

3. The Contractor shall start the supply immediately after the execution of this agreement in accordance with the Purchaser's requirement and stop the supply as soon as the maximum supply aforesaid has been made within the aforesaid period.

4. The wooden cases supplied by the Contractor shall be inspected by the Purchaser or his authorised representative and if wooden cases are not found according to the sample and specifications the same will be rejected and the Purchaser will be at liberty to arrange the supply from other parties at the risk and expense of the Contractor or the Purchaser may at his discretion accept the same at such reduced rate as may be mutually agreed upon. PROVIDED THAT the Purchaser shall have the option of stopping the supply at any stage in case he finds that the Contractor is not supplying the wooden cases according to the sample furnished by him.

5. In respect of wooden cases accepted by the Purchaser the payment will be made within 15 days of the receipt of bill from the Contractor.

6. The Contractor shall within three days of the execution of this agreement deposit security money of Rs.———— with the Purchaser in the form of fixed deposit receipt of any nationalised bank for the due performance of this agreement. But in case the amount of security falls short of the total loss caused to the Purchaser the Contractor will be liable to indemnify to the extent of total loss caused to the Purchaser. If the Contractor fails at any time to carry out his obligations or defaults in the performance of any terms or conditions hereof the whole or a part of the aforesaid security deposit shall in the discretion of the Purchaser be liable to be forfeited. The security shall, after making deductions, if any, be refunded to the contractor within six months after the expiration or sooner determination of this contract.

7. Any sum of money due and payable to the Contractor including the security returnable to him under this contract may be appropriated by the Purchaser and set off against any claim of the Purchaser for the payment of sum of money arising out of or under any other contract made by the Contractor with the Purchaser.

8. *Arbitration clause.*

9. *Interpretation clause.*

IN WITNESS WHEREOF, etc.

22—Agreement (Lump sum contract) for Fabrication of Bodies on Chassis

THIS AGREEMENT made on the——day of———BETWEEN AB, etc., (hreinafter called "the Contractor") of the one part AND CD, etc., of the other part;

WHEREAS CD requires the fabrication of bodies and cabs on———chassis complete;

AND WHEREAS the Contractor has agreed to execute upon and subject to the conditions of contract set out below (hereinafter called "the said conditions") the work shown in the schedules and blue prints annexed hereto and a copy of which has been delivered to the Contractor for the sum of Rs.——per Chassis plus Sales Tax, if applicable, on the completed works (hereinafter called "the contract sum");

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. In consideration of the contract sum to be paid by CD at the time

and in the manner set forth in the said conditions the Contractor will upon and subject to the said conditions execute and complete the said works.

2. CD will pay to the Contractor the contract sum or such other sums as shall become payable at the time and in the manner set forth in the said conditions.

3. The said conditions shall be read and construed as forming part of this contract and the parties hereto respectively shall abide by and observe and perform and comply with the terms, stipulations and agreements therein contained and on their part to be observed, performed and complied with respectively.

4. *Conditions of Contract*

i) The Contractor will with his own men and materials execute the work in strict conformity with the annexed specifications and shall deliver the vehicles duly completed on or before———as per delivery schedule hereinafter provided.

ii) If any deviation, change or alteration from the specifications is necessary, the Contractor shall obtain prior sanction from CD or his authorised representative (hereinafter called "the Indenting Officer").

iii) The Indenting Officer shall have free access to the place where the work is being executed and he may at any time inspect thereat the materials used, the workmanship and progress of work.

iv) (a) The Contractor shall before using any materials in the fabrication work, get such materials approved by the Indenting Officer and only the materials so approved shall be used in the works. Any delay on the part of the Contractor in furnishing the materials for inspection and approval shall not be a ground for extension of time of delivery but if the approval by the Indenting Officer shall be delayed by more than three days, the Contractor shall be entitled to corresponding extension of time of delivery.

(b) The price is firm and final.

v) The work will be inspected by the Indenting Officer specially at all the stages as will be indicated in O.K. Card. It will be necessary for the Contractor to maintain these O.K. Cards so that the final O.K. of the body builts will be given on the basis of these inspections done at various stages.

vi) The Contractor shall attend to any defects in the work pointed out to him and shall not use or apply any material rejected or disapproved by the Indenting Officer.

*vii).*The Contractor shall give notice to the Indenting Officer when bodies are ready whereupon the same shall be inspected by the Indenting Officer and the defects, if any, pointed out by the Indenting Officer to the Contractor shall be rectified by the Contractor accordingly.

viii) The Contractor shall not paint any body until the same has been inspected by the Indenting Officer, approved and passed as fit for painting.

ix) The Contractor shall get the paint material approved by the Indenting Officer before applying the same to the bodies.

x) The new chassis will be supplied to the Contractor in perfect running condition and free from any mechanical defects. After body building work, the vehicles must be handed over in the same condition. If later on any defect will be found while running the vehicle or otherwise it will be set right by the Contractor without any extra charge upto a period of six months from the date of delivery of the vehicle complete by the Contractor to the Indenting Officer.

xi) The Contractor shall be responsible for the safe custody of the chassis given to him for the said work and he will be responsible for any deterioration, loss or shortage of materials and parts of to the said chassis from whatsoever cause arising while the same are in his custody and charge.

xii) Before taking over the chassis for the said work the contractor shall take at his own cost Comprehensive Insurance Policy from any nationalised insurance company to cover the chassis to be supplied to him against the risks of fire, theft, pilferage, accident and floods in the sum of Rs.------- per vehicle. The Comprehensive Insurance Policy shall be assigned in favour of CD. The assignment shall be endorsed on the Policy. The endorsement shall be got registered with the Insurance Company who will make necessary entries on the Policy.

xiii) The Contractor shall within thirty days of the signing of this agreement and in any case before taking over the chassis for the said work deposit security in a manner acceptable to the Indenting Officer, amounting to Rs. . is security money shall remain in deposit with the Indenting Officer for a period of six months from the date of delivery of the last completed vehicle to the Indenting Officer.

xiv) The Contractor shall make good at his cost any defects in the fabrication of bodies or the quality or quantity of material used in the

execution of the work that is pointed out to the Contractor and on his failure to do so the Indenting Officer may get the defects rectified by some other person on contract or otherwise and the cost thereof will be recoverable from the Contractor.

xv) Pilot sample of body shall be delivered by the Contractor for inspection and final approval within———weeks from the receipt of chassis. The balance quantity *i.e.*, Nos. shall be delivered at the rate of———Nos. per month commencing after one month of the approval of the pilot sample. The said time of delivery shall be the essence of the contract. The Contractor will deliver the vehicles at the premises of———.

xvi) The Contractor shall pay by way of liquidated damages to CD a sum of Rs.——— only per day per vehicle for delay of each day in respect of each vehicle not delivered complete with body on the contracted date of delivery. This sum represents the parties' agreed pre-assessment of the damages that will be suffered by CD from the delay.

xvii) The Indenting Officer may waive off the damages for late delivery of vehicle if, in his opinion, the delay is for reasons beyond the control of the Contractor.

xviii) If called upon to do so the Contractor shall make such alterations in the pilot samples and/or in subsequent bodies as the Indenting Officer may in writing direct, and such alterations shall not vary the rate per body herein agreed but the cost of material only thereby reduced or added shall be deducted from or added to the rate per body as aforesaid at the market rate of such material as are certified by the Indenting Officer.

xix) If the Contractor commits a breach of any of the conditions of this contract the Indenting Officer may forfeit the said security deposit.

5. *Arbitration clause.*

6. *Interpretation clause.*

IN WITNESS WHEREOF, etc.

23—Agreement to Construct a Railway Siding for a Sugar Mill

THIS AGREEMENT made on the ——— day of ——— BETWEEN ——— Sugar Mills Co. Ltd., ——— (hereinafter called "the Company", which expression shall include its successors and assigns)

of the one part AND the President of India through the General Manager, ——— Railway (hereinafter called "the Railway") of the other part.

WHEREAS the Company has requested the Railway to construct for and at the expense of the Company a railway siding for transport sugarcane for the Company and to maintain the same, and to operate the railway siding at the expense of the Railway and with the rolling stock belonging to the Railway at the haulage rates agreed to by the Company as hereinafter mentioned;

AND WHEREAS the Railway has agreed to accede to the said request of the Company on the terms and conditions hereinafter mentioned, which terms and conditions have been accepted by the Company;

NOW IT IS HEREBY AGREED as follows :—

1. Covenants of the Railway

The Railway shall—

(a) supply the rails, crossings, and sleepers which are and will remain its property but the cost of their removal from the———branch and their re-laying for the———branch, together with the cost of land and all earthwork and masonry works and the usual departmental overhead charges will be met by the Company;

(b) acquire land required for the purpose aforesaid which will vest in the Railway as hereinafter agreed to by the Company;

(c) maintain, at its expense, the branch line and run it;

(d) will not carry any sugarcane on the said line for anyone else besides the Company, but it may transport miscellaneous goods thereon so long as the carriage of sugarcane for the Company is not interfered with thereby;

(e) will reserve two locomotives of———make and thirty five 5 MT wagons for the exclusive purpose of carrying sugarcane of the Company on the said branch line.

2. Covenants of the Company

The Company shall—

(a) deposit a sum of Rs.———with the———prior

to the commencement of the construction of the line, to cover the estimated approximate cost of the line, provided that the Company shall be entitled to recover any surplus left after the construction of the line is complete:

(b) pay in advance to the Railway at the beginning of every season in the month of———the sum of Rs.———to cover the interest charges at ——— percent per annum on the depreciated value at the time of construction of the branch line of the rails, crossings and sleepers and the rolling stock and on account of the annual depreciation thereon ;

(c) guarantee to take a minimum of lakh metric tonnes of sugarcane from the branch line in a year. Should circumstances beyond the control of the Company prevent this minimum carriage being attained, such as a greatly decreased area of cane sown in the reserved area feeding the factory, or a serious failure of the crop therein or break-downs in the Company's factory extending to more than a week at any one time, the Company may ask the Railway in writing to reduce the aforesaid amount for that crushing season and the Railway shall reduce it to such amount as it may in its discretion deem fit to fix ;

(d) supply, in case it considers necessary, additional wagons for the line at its own expense to be used by the Railway exclusively for the transport of sugarcane for the Company, PROVIDED THAT it shall do and undertake such repairs thereof as may from time to time be required and the Railway shall not be liable for any damages that may occur to wagons so supplied ;

(e) pay the Railway for haulage of sugarcane at the following rates:

(i) For sugarcane transported to the factory of the Company :

For the first six lakh tonnes of cane carried from all way-side stations on this Branch to the Company's weigh-bridge at the rate of Rs. per 5 MT wagon and Rs. per 3 MT wagon. Thereafter, at Rs. per 5 MT wagon and Rs.——per 3 MT wagon for all cane carried over and above the first six lakh metric tonnes.

(ii) For miscellaneous goods carried to and from the factory of the Company:

For such goods carried to the factory of the Company, full rates as in (i) above, and for carriage of such goods from the factory of the Company,

half the rates given in (*i*) above when the goods are carried by an empty train returning from the factory of the Company to load up more cane, PROVIDED THAT when a special train will be required to be run for carrying such goods as aforesaid, the Company shall pay full rates as specified in (*i*) above.

(*f*) shall pay to the Railway or such person or persons as the Railway may appoint in this behalf all such sums of money as shall be awarded under the provisions of the Land Acquisition Act, 1894 as compensation to any person or persons who may be found on enquiry held under the provisions thereof to be interested in the said land, together with all payments and costs incidental to the acquisition of such land by the Railway, and the land so acquired shall vest in and be the property of the Railway.

3. It being the intention of the parties hereto and being hereby expressly agreed that this agreement shall last and hold good and be binding between them for a period of five years from the crushing season———— to the crushing season

4. The Railway shall not commence the construction of the railway siding unless the Company shall have performed such of its obligations under this Agreement as ought to be performed prior to the commencement of such construction and the Railway shall be at liberty to refuse to work and maintain the siding and to recover compensation and damages from the Company for breach of any condition, the fulfilment whereof has been hereunto undertaken by the Company.

5. *Arbitration clause.*

IN WITNESS WHEREOF, etc.

24—Agreement with Government for Permission to Pump Canal Water for Industrial Purposes

THIS AGREEMENT made on the ————day of—— BETWEEN the Governor of the State of———(hereinafter called "the State Government", which expression shall where the context so admits include his successors and assigns) of the one part AND ——— a Company within the meaning of the Companies Act, 1956 (hereinafter called "the Company", which expression shall where the context so admits include its successors and assigns) of the other part ;

WHEREAS the Company has installed tubewells in its premises at—— but the quality of water from such tubewells is not suitable for use in the Company's industries at the aforesaid premises ;

AND WHEREAS the Company has made an application to the State Government for permission to pump water from the———canal and to construct pump house, intake and exit well on the water edge of the said canal and to lay pipes under the service road for the purpose of pumping water from the said canal as aforesaid for use of the Company's industries at the said premises ;

AND WHEREAS the State Government has acceded to the aforesaid request of the Company on the terms and conditions hereinafter appearing ;

AND WHEREAS the State Government has also agreed to grant to the Company on lease the plot of land shown in the annexed plan in—— colour on the terms and conditions contained in the Deed of Lease dated the———day of———between the same parties as are hereto ;

NOW IT IS HEREBY AGREED AND DECLARED as follows :

1. The State Government hereby grants permission to the Company to pump water from the said canal (hereinafter called "canal water") for use in their industries at the premises hereinbefore mentioned at the rate not exceeding———litres of water per hour throughout 24 hours on the following conditions :

(a) The Company will deliver back daily at its own cost in the said canal an equal quantity of water drawn from the Company's tubewells (hereinafter called "tubewell water") but this provision for delivering back tubewell water shall not apply during the period July 10 to October 31 of each year when water is spare to the needs of irrigation.

(b) The Company shall pay to the State Government Rs. —— per thousand litres of canal water pumped and replaced by tubewell water as stated in sub-clause (a) above.

(c) Should the Company fail to deliver on any calender day an equivalent quantity of tubewell water into the said canal, the Company shall pay to the State Government for such deficiency at the rate of Rs. ——per thousand litres on or before the—— day of every month following, to the Executive Engineer —— or his authorised representative and if the same shall remain in arrear after the due date the Company shall pay

interest thereon at per cent per annum, PROVIDED THAT this provision for interest shall not prejudice or affect the exercise by the State Government of any of the rights or remedies vested in it by law or by this deed.

(d) The canal water pumped and the tubewell water delivered back as aforesaid shall be measured by meters as hereinafter provided all of which shall be read daily by a representative of the said Executive Engineer and a representative of the Company at any fixed time of the day which the said Executive Engineer may decide, at which both the representatives shall be present. The measurement as aforesaid shall be recorded on two separate registers to be provided by each party and both the representatives shall sign both the registers. The measurement so recorded shall not be questioned by the Company. If the Company's representative shall fail to present himself at the appointed time, the measurement recorded by the representative of the said Executive Engineer shall be binding on the Company.

(e) The Company shall at its own cost arrange for pumping canal water by means of a pumping set and carry the same by means of pipes to the Company's premises.

2. For the purpose of installing equipment for pumping canal water as aforesaid, the State Government hereby grants permission to the Company to construct suitable intake and an exit well on the water edge of the said canal and to lay pipes under the service road connecting the pump house with the intake and the exit well, and the Company hereby covenants to restore the service road to its proper condition at its own cost to the entire satisfaction of the said Executive Engineer within thirty days of its being dismantled or opened for laying pipes as aforesaid. If the Company shall fail to restore the service road as aforesaid it shall be lawful for, but not obligatory upon, the said Executive Engineer to get the same repaired and the cost of such repairs together with usual supervision charges will be recovered from the Company, and a certificate of the said Executive Engineer as to the cost of repairs as aforesaid shall be binding on the Company.

3. For the purpose of constructing a pump house for pumping canal water as aforesaid the State Government has agreed to grant to the Company on lease the plot of land shown in ——— colour in the annexed

plan on the terms and conditions contained in the Deed of Lease made on the ——day of——between the parties hereto. If the said Lease Deed is determined by the State Government under the provisions therein contained, this agreement shall also determine.

4. The Company shall at its own cost instal two water meters, one on the intake and the other on the exit pipes at such places as may be directed by the said Executive Engineer.

5. This agreement shall remain in force for a period of ten years from the date hereof, and may be renewed for another term of ten years or more at the request of the Company but at the discretion of the State Government on such terms and conditions as may then be agreed upon.

6. If the Company shall commit a breach of any of the covenants and conditions herein contained and on its part to be observed and performed, the State Government may, notwithstanding the waiver of any previous right, terminate this agreement by giving to the Company three calendar months' notice in writing.

7. Upon the expiration or sooner determination of this agreement the Company shall with all reasonable despatch and in any case within three calendar months remove all equipment and material and restore the land to its original condition, PROVIDED THAT any equipment or material not removed within the period aforesaid shall become the property of the State Government without any compensation being payable for it.

8. The Company shall not assign the benefit of this agreement to any one nor shall it use the canal water for any purpose other than for the bonafide use of the Company.

9. *Arbitration clause.*

IN WITNESS WHEREOF, etc.

25—Agreement between a Manufacturer and a Marketer[5]

THIS AGREEMENT entered into on day of one thousand nine hundred ninety six BETWEEN a company within the meaning of the Companies Act, 1956, having its Registered Office at—— (hereinafter referred to as the "MANUFACTURER") AND ——— a company within the meaning of the Companies Act, 1956,

5 Compare form No.12 *ante* for agency to sell goods.

having its registered office at (hereinafter referred to as the "Marketer"). The expressions "Manufacturer" and "Marketer" shall, wherever the context so permits, mean and include their respective assigns and successors in interest.

WHEREAS the Manufacturer is manufacturing and its attachments in the brand name of (hereinafter called "the Product");

AND WHEREAS the Marketer is doing business in agricultural inputs;

AND WHEREAS both the parties consider it mutually advantageous that the Marketer should undertake the marketing of the Product in a certain territory.

NOW THIS DEED WITNESSES :

1. Territory and Original Purchaser

Subject to the terms hereof, the Manufacturer agrees to sell to the Marketer and the Marketer agrees to buy from the Manufacturer the Product for sale within the territory described hereunder (hereinafter called "the Territory") and in no other place or places :

(a) The Territory covered under this Agreement shall be the States of ——.

(b) "Original Purchaser" shall mean the first buyer of each unit of the Product from the Marketer or directly from the Manufacturer as per advice of the Marketer.

2. Dealership

(a) The Marketer shall work diligently and faithfully to foster and promote sales of the Product purchased by them from the Manufacturer within the Territory and safeguard the Manufacturer's interests to the best of its ability.

(b) The Marketer shall convey to the Manufacturer any information regarding demand or enquiries for the said Product from outside the Territory that may come to its knowledge.

(c) The Marketer shall watch any competitor's activities in the Territory and report to the Manufacturer relevant information so as to

enable the Manufacturer to take appropriate action for promoting the sale of the Product.

(d) The Marketer hereby guarantees that it shall buy a minimum number of———units of the Product every year commencing on ———.

3. Term

Subject to clause 17 below, the term of this Agreement shall be———years from———to ———. The Agreement shall stand renewed for a further period if, on receipt of advice in this behalf from the Marketer, a letter is issued by the Manufacturer confirming its willingness to renew the Agreement for a further period. Such extension, however, must be asked for by the Marketer 90 days before the expiry date of this Agreement, and at the time of such extension, the Marketer and the Manufacturer may agree to vary the minimum number of units of the Product which the Marketer shall be liable to purchase from the Manufacturer.

4. Limitations

The Marketer shall not, either directly or indirectly and either alone or in conjunction with others, knowingly promote the sale or sell the Product to any person or party outside the Territory nor shall it sell the same to any person or party within the Territory if the Product is to be removed for resale outisde the Territory. In the event of such sale, the Manufacturer shall have the option after giving the Marketer an opportunity to explain either to recover in full or in part the discount paid to the Marketer for the Product so sold outside the Territory provided that this right to recover the discount shall be without prejudice to all other rights available to the Manufacturer.

5. Product-Warranty

The Marketer agrees that the only Warranty binding on the Manufacturer shall be the published warranty of the Manufacturer. The Manufacturer agrees to supply, free of cost, any parts found defective during the Warranty Period under normal operation and service when owned by the Original Purchaser, but no claim for expenditure upon them or consequent damages will be entertained. Defective parts will be sent to the Manufacturer's works at at Marketer's cost. The eventual

replacement parts will be sent at Manufacturer's cost. The repairs and/or replacements under Warranty conditions will be carried out by the Marketer free of cost to the Original Purchaser.

6. Price, Commission, etc.

(a) The Marketer shall not charge for the Product and its accessories, prices in excess of the prices stipulated in the Price-list issued by the Manufacturer from time to time plus actual freight charges, insurance, etc., from the Manufacturer's works, Sales Tax, Octroi, other local levies, and such other charges as may be found to be essential and mutually agreed to.

(b) The Manufacturer shall supply spare parts of the Product to the Marketer at Dealers' Prices fixed by the Manufacturer from time to time which are on the basis of F.O.R. destination (by rail or road transport service) and inclusive of Sales Tax. The Marketer shall sell these parts only at the Retail Selling Prices fixed by the Manufacturer plus local Sales Tax and any other local statutory levies.

(c) The Manufacturer shall allow to the Marketer a commission of Rs. (Rupees) for each unit of the Product sold to the Marketer or sold to any other party within the Territory as advised by the Marketer. Similar commission allowable on accessories is at the rate of per cent of the List Price of the Assessories. The Manufacturer shall pay to the Marketer a further service commission of Rs. ———per unit product sold after the Marketer has satisfactorily rendered to the Original Purchaser installation, training and other services as prescribed by the Manufacturer.

7. Organisation

(a) The Marketer shall, at its own expense maintain in the Territory such organisation for the sale of the Product as may in the opinion of the Manufacturer, after consulting the Marketer, be deemed to be necessary to thoroughly cover sales and service in the Territory. Such Organisation shall include :

(i) the maintenance of upto-date show rooms and stock rooms commensurate with the size of the Territory and the Product.

(ii) an adequate and properly trained staff and workshop facilities for satisfactory sale and after-sale services of the Product as required by

the Manufacturer and to the Manufacturer's sole and entire satisfaction advised from time to time. The Manufacturer reserves the right to appoint its own service dealers for the service of the Product (hereinafter called the "Service Dealer") in the Territory as and when it deems necessary in the interest of the sale promotion of the Product. The Marketer shall pay to the Service Dealer such commission as the Manufacturer may fix for the service of the Product effected by the Service Dealer.

(b) The Marketer shall put in its best effort at all times to obtain maximum sales in the Territory.

(c) The Manufacturer shall have the right any time to depute its representative(s) to visit the Marketer's premises, its branches or its sub-dealers and stockists for purposes of inspecting the show-rooms, relevant records and to make physical checks of branches or the sub-dealers and stockists. The Marketer shall provide all relevant information, assistance and facilities that may be required by the representative(s) of the Manufacturer.

(d) The Marketer shall submit regular stock and service figures as required by the Manufacturer on forms provided by it.

8. Payment

The Marketer shall pay the sale price of the Product, its assessories and spare parts on terms that may be mutually agreed upon.

9. Supply Schedule

The Marketer shall, at least 30 days before the start of each quarter, give a supply schedule to the Manufacturer on a month-wise basis so as to enable the Manufacutrer to plan its production schedule. It shall be open to the Marketer and the Manufacturer to make marginal adjustments in the monthly supply schedule.

10. Despatch by Manufacturer

The Manufacturer shall despatch the quantity to be supplied in each month by the 15th of the month, or in accordance with the mutually agreed delivery schedule. If, however, the Manufacturer fails to deliver the quantity contracted to be supplied before the end of the month to which the supply relates, subject to Clause 9 above and Clause 11 below, the Marketer

shall not be bound to its commitment indicated in Clause 2 (d) above to the extent of the short-supplied quantity. The Markter shall, however, have the option to require the Manufacturer to supply and despatch such material, if any, in the subsequent two months. If the Marketer exercises such option, the commitment on the Marketer as per Clause 2 (d) shall continue to operate.

11. Force Majeure

The Manufacturer shall be not responsible for and shall incur no liability of any kind whatsoever for inability to supply for causes beyond its control, and in particular but without prejudice to the generality of the foregoing, by war, strikes, lock-outs, slowdowns, riots or civil commotions, shortage of labour or material, defects in machinery or the working thereof or for delays in supply of bought-out components, transportation difficulties, power failures or Government Regulations encountered by the Manufacturer and its suppliers, and no such delay shall render void any sale hereunder.

12. Purchase from other Sources

The Marketer shall not sell accessories and spare parts not purchased from the Manufacturer or not purchased from sources authorised by the Manufacturer.

13. Trade Marks

The Marketer admits the validity of the copy-rights, trade marks and trade names belonging to the Manufacturer in the Product even if not herein listed. The Marketer shall not make use of the said copyrights, trade marks and trade names except with the permission in writing of the Manufacturer and such permission will terminate with the termination of this Agreement.

14. Publicity

(a) Media publicity shall be under-taken by the Manufacturer. Whereas the Marketer shall give necessary advice to the Manufacturer for carrying out publicity, the decision regarding the type, extent and manner of publicity to be undertaken will be solely that of the Manufacturer.

(b) The Marketer will be free to carry out publicity at its own cost. However, the layouts and designs of the advertisement and publicity materials shall be subject to the Manufacturer's approval and supervision. The Marketer shall display conspicuously at, in or on its premises, only such type of signs as may be authorised by the Manufacturer and upon termination of this Agreement shall discontinue representing itself to be an Authorised Marketer in the Product and shall forthwith remove all the said signs and return to the Manufacturer without compensation all such signs whether or not loaned to the Marketer by the Manufacturer. The Marketer will not display or advertise nor permit to be displayed or advertised nor trade in the Product in such a way as in the opinion of the Manufacturer may cause annoyance or injury to the Manufacturer or any of its duly Authorised Marketers.

(c) It is realised by both parties that extensive demonstrations of the working of the Product should be held at various points in the Territory covered by the Agreement. The parties shall mutually agree on the programme for demonstrations and the Manufacturer undertakes to make available a Demonstration Van and a unit of the Product for demonstration purposes and also the personnel required therefor in accordance with an agreed programme. Such programme shall be drawn up from time to time keeping in view the Manufacturer's commitments outside the Territory. The running expenses of the Demonstration Van and the salary, travelling allowances, etc., of the Manufacturer's staff will be met by the Manufacturer. All other local expenses for organising and conducting the demonstration will be met by the Marketer.

15. No Agency Created

Nothing contained in this Agreement shall in any way operate by implication or otherwise to constitute the Marketer as an Agent of the Manufacturer in any respect and for any purpose whatsoever, and the Marketer shall have no right or authority to assume or create obligation of any kind expressed or implied on behalf of the Manufacturer, in any respect whatsoever, except to the extent detailed herein.

16. Assignment

The Marketer agrees that it will not assign this Agreement nor any interest in it, nor any of the rights or liabilities hereunder without the written consent of the Manufacturer.

17. Termination

This Agreement shall remain in force and govern transactions between the parties hereto until cancelled or terminated in the manner hereinafter expressed :

(i) Either party to this Agreement may terminate the Agreement without assigning any reason therefor at any time by giving ninety days' notice in writing to the other.

(ii) The Manufacturer may forthwith without any previous notice terminate this Agreement without prejudice to its other rights hereunder in any of the following events, viz.

(a) If the Marketer fails to observe and perform any of the conditions and obligations herein stipulated to be observed and performed by it; *or*

(b) If the management or control of the Marketer's business shall be changed so that in the Manufacturer's opinion its interests are likely to be adversely affected; or

(c) If the Marketer shall not pay its debts in due course of business; *or*

(d) If the Marketer shall be wound up or commit any act of insolvency or have any insolvency proceedings instituted against it; *or*

(e) If any receiver or trustee be appointed for the Marketer's property or business ; *or*

(f) If the Marketer's property or any part thereof shall be seized or attached in distress or execution of or under process of law.

18. Supplies after Termination

If the Manufacturer after the termination of this Agreement makes any supplies to the Marketer, such supplies shall not imply a continuance or renewal of this Agreement or the extension of appointment of the Marketer.

19. Liability after Termination

In case of termination of this Agreement, the Marketer shall not be discharged of any liability arising out of the Product already delivered to customers by it.

20. Orders on hand at Termination

The Manufacturer may, upon termination of this Agreement, require the Marketer to immediately turn over to the Manufacturer all its unexecuted orders as also those of its sub-dealers and stockists.

21. Previous Contracts

This Agreement supersedes all previous contracts, verbal or written (if any), which may have been made between the parties hereto.

22. Waiver

Any failure on the part of the Manufacturer to enforce at any time the performance by the Marketer of any of the provisions hereof shall in no way be considered to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of the Manufacturer to enforce thereafter each and every such provision.

23. Security

The Marketer shall give to the Manufacturer a Bank guarantee from a Scheduled Bank, in the form prescribed by the Manufacturer, for a value of Rs.——— (Ruppes——— only) as security for satisfactory compliance of the terms and conditions of this Agreement.

24. Amendments

Any amendments or alteration to this Agreement shall be valid only if set down in writing and signed by the parties hereto.

25. Arbitration clause

IN WITNESS WHEREOF, etc.

26—Agreement between a Government and a Transport Contractor for the Carriage of Foodgrains[6]

AN AGREEMENT made on the day of BETWEEN

6 If it is to be executed by a statutory Corporation such as the Food Corporation of India, substitute "——— a corporation established and incorporated under the ——— Act (hereinafter called the 'the Corporation')," in place of "(Governor of the State of ——— (hereinafter called 'the Government')," and the name of the appropriate officer in place of "Regional Food Controller."

the Governor of the State of (hereinafter called "the Government") of the one part and (hereinafter called the "Transport Contractor") of the other part:

WITNESSES as follows :

1. That the Transport Contractor shall carry foodgrains by motor vehicles from one place to another in the same district or in different districts in accordance with the instructions issued, from time to time, by the Regional Food Controller (hereinafter called "the Controller")

2. That the Transport Contractor shall arrange for stacking bags, and for loading the foodgrains into motor vehicles at the place of despatch if so required by the Controller.

3. That the Transport Contractor shall arrange to unload the foodgrains from motor vehicles and to load them into railway wagons or stack them in godowns at destination, if so required by the Controller.

4. That the Transport Contractor shall be liable to compensate the Government for any loss, damage or shortage of the foodgrains during the course of handling or transport, and shall also be liable to compensate for any demurrage or wharfage incurred through his negligence.

5. That the Transport Contractor shall arrange for the necessary number of motor vehicles for transporting foodgrains, and shall complete such transport within such time as may be specified by the Controller.

6. That the Transport Contractor shall be paid at the following rates:

A. For transporting foodgrains—

(i) On metalled roads, other than those mentioned in sub-clause (iii) below, at the rate of ---- paise per quintal per loaded kilometere;

(ii) On *Kachcha* roads, at the rate of ------ paise per quintal per loaded kilometre.

(iii) On metalled roads which are in a very bad condition and in respect of which the Controller has certified that the depreciation and running expenses of a motor vehicle plying on it will be equivalent to those of a motor vehicle plying on a *kachcha* road, at the rate of ------ paise per quintal per loaded kilometre;

B. For loading and unloading etc.,

(i) For Stacking bags, at——— per bag;

(ii) For loading into motor vehicles, at ——— per bag;

(iii) For unloading from motor vehicles, at ——— per bag;

(iv) For loading into railway wagons, at ——— per bag.

7. That the Transport Contractor shall not load more than ——— quintals of foodgrains in a 3-tonne motor vehicle when plying on a *kachcha* road or a road certified under clause 6 (*iii*) by the Controller, and more than——quintals in such vehicle, when plying on a metalled road.

8. That in case the Transport Contractor transports foodgrains in excess of the limits prescribed in clause 7 above, he shall not be entitled to any transport charges for the excess quantity so transported.

9. That in case the Transport Contractor fails to carry out on any day any of the work mentioned in clauses 1 to 3, the Controller or any other officer authorised by him in this behalf may, without prejudice to any other legal remedy, have the same done in any manner he likes and in every such case the Transport Contractor shall be liable to pay to the Government all such costs, charges or other incidental expenses connected therewith as may be incurred by the Controller or the said officer, together with a sum of———paise per bag per day as damages.

10. That the Transport Contractor agrees to indemnify the Government against all claims for compensation by or on behalf of any workman employed by him in connection with this contract for injury or death by accident under the Workmen's Compensation Act.

11. That the Transport Contractor shall not sublet, assign or part with this contract.

12. That the Transport Contractor shall within ——— days of the signing of this Agreement deposit in a bank to be approved by the Controller a sum of Rs. ——— in cash or give Government securities of the same value as security for the fulfilment of this Agreement.

13. That the Government shall be entitled to deduct from the pending bills of the Transport Contractor all such sums of money as may be claimed by the Government under the terms of this Agreement. Any sum of money not covered by the amount of the said bills shall be liable to be deducted from his deposit made under clause 12 above.

14. That this Agreement shall remain in force for a period of from day of 19 and shall be liable to be terminated on 20 days notice in writing on the side of the Transport Contractor and 10 days notice in writing on the side of the Government. But in the event of any breach of any condition hereincontained by the Transport Contractor or in the event of any misconduct on his part or on the part of any of his employees, it shall be lawful for the Government to terminate this Agreement forthwith without giving any notice, and in such a case the Transport Contractor shall not be entitled to any compensation whatsoever.

15. That in the case of any dispute or difference 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 or the subject-matter thereof, such dispute or difference shall be referred to the arbitration of any person nominated by the Secretary to Government of ------in the Food and Civil Supplies Department, and the decision of such arbitrator shall be final and binding on the parties hereto.

16. That for the purposes of this Agreement "Controller" means the Regional Food Controller or Deputy Regional Food Controller having jurisdiction in the area from which the foodgrains are transported.

17. That all expenses for the preparation and execution of this deed, including the stamp duty and conveyancing fee, shall be payable by the Transport Contractor.

IN WITNESS WHEREOF, etc.

For other forms of agreement see under the heading of the subject to which the agreement relates. For example, an agreement to sell will be found under "Sale", an agreement of hire under "Hire", a supplemental agreement for rectification of a document under "Rectification", an agreement of employment under "Service Contracts", and so on.