

**PRAVIN GANDHI COLLEGE OF LAW**

**INTRA-COLLEGE CONTRACT DRAFTING COMPETITION**

**27<sup>th</sup> March, 2017**

**Agreement Overview:**

Your client, ABC Private Limited, a company incorporated and registered under the (Indian) Companies Act, 2013, is a leading manufacturer and supplier of certain specialized chemicals. Your client develops its own formula and technology with regards to the said specialized chemicals, procures the raw materials from various sources, manufactures the finished products as per the specifications developed by them and then supplies the same to its customers. Your client has become a pioneer in manufacturing the specialized chemicals due to which the demand in the market for its chemicals has grown exponentially. Unfortunately, your client's manufacturing unit is unable to produce the amount of finished products that are needed for supply and building a new manufacturing unit shall entail a work of at least 2 years. Therefore, in order to supplement its manufacturing process, your client has decided to outsource the manufacturing part of the process to a separate proprietary concern, being XYZ Industries, which exclusively carries on the business of manufacturing finished products as per the specifications provided to it by its customers and thereafter supplying the finished products back to its customers. Your client wishes to make use of the manufacturing facilities of the said Proprietorship in order to manufacture its specialized chemicals and for the same purpose it shall supply **i.e. sell** the raw materials for its finished products to the said Proprietorship and shall also provide the said Proprietorship with the technology to produce the said finished products.

In view of the same your client being ABC Private Limited is entering into a Supply-Purchase and Technology Sharing Agreement ("the Agreement") with XYZ Industries, a proprietorship.

**Terms to be captured in the said Agreement:**

1. Your client shall provide the raw materials that it procures through various sources and which are very crucial to the finished products, to the said Proprietorship. For immense clarity, please note that by "provide" it is meant that the said Proprietorship shall **buy** and your client shall sell the raw materials needed for its finished products to the said Proprietorship. Thus, the raw materials that shall be needed by the said Proprietorship in order to

manufacture the finished products shall be procured by it directly from your client at a price that is mutually agreed between the parties.

2. Along with supplying the raw materials for the finished products, your client shall also share the technology i.e. the exact science and specifications on lines of which the finished product, being the specialized chemicals, shall be manufactured by the said Proprietorship in its manufacturing units. The document containing the technology for production of the finished products shall be bound by a Confidentiality Clause which is also to be incorporated in the Agreement.
3. Once the finished products are ready, the Proprietorship shall sell the finished products back to your client at a price that is again mutually agreed between the Parties. This price shall of course be inclusive of the manufacturing costs. However, for completion of this transaction, quality of the finished products shall be a major factor.
4. Please note that it is essential that it be stated in the Agreement itself that the said Proprietorship shall not supply the said finished products to any other entity or person and shall be manufacturing the finished products exclusively for your client.
5. The Technology for manufacturing the finished products, the Intellectual Property and trade marks (collectively known as the "Proprietary Information") that may be shared by your client shall always remain property of your client and will have to be protected as such under the Agreement.
6. Further, since your client is sharing its valuable Proprietary Information with the said Proprietorship it is a given that an ironclad Confidentiality Clause has to be inserted in the Agreement.
7. In case the said Proprietorship breaches any of the essential covenants of the Agreement, your client should have the right to seek injunctive relief against the said Proprietorship.
8. The Parties have also agreed to offset/ net off the amounts that are owed by them to each other, if there are outstanding amounts that are payable by the Parties to each other at the end of the quarter.

*(Hint: Offsetting/ Netting Off in general language means the practice of cancelling an open accounting entry, in this case of trade receivables, with an equal but opposite open accounting entry with the same parties, in this case of trade payables, in the books of accounts of any entity. Therefore, for example, at the end of the quarter, your client is to receive Rs. 200/- from the said Proprietorship against the raw materials supplied by it to the said Proprietorship and your client has to pay Rs. 400/- to the said Proprietorship for the finished products that were sold by the said Proprietorship to your client, then if they have agreed in the present Agreement, at the end of the quarter your client can offset the two said amounts and thereafter shall be required to pay only Rs. 200/- to the said Proprietorship for the finished products bought by it.)*

9. Apart from the provisions and clauses mentioned hereinabove, the boilerplate clauses shall follow.

*(Hint: Boilerplate clauses are those clauses which are routinely used in any agreement.)*

**Notes:**

1. The key of drafting any agreement is first to understand the problem and thereafter make a structure of the Agreement. Your client, though can provide an overview of the problem, is not well versed with the nitty-gritty of law and hence it has approached you for the lawyer's perspective. Therefore, try to assess the problem and thereafter include those clauses which you feel are essential for protection of rights of your client.
2. The Agreements shall be assessed at the understanding of the students of the problem given hereinabove and as to how they have captured the essence and other important peripheral clauses in the Agreement which are not specifically mentioned hereinabove but nonetheless are essential for the Agreement to flow and for protecting the rights of your client.
3. Boilerplate clauses are essentials of any agreement and the Students understanding of the same and as to how well they include the same in the contract shall also have a bearing on the assessment.