S A M P L E

JOINT VENTURE AGREEMENT

The Joint Venture Company

This Agreement is made and entered into on *[day]* of *[month, year]* by and between:
[Name of the foreign company], a company organized under the laws of *[country of the foreign company]* having its principal office at *[address of the foreign company]*, hereinafter referred to as FOREIGN; and *[Name of the local company]*, a company organized under the laws of *[host country]* having its principal office *[address of the local company]*, hereinafter referred to as LOCAL.

Recitals

WHEREAS the government of *[host country]* passed a Joint Venture Law on *[date]* permitting the establishment in *[host country]* of private companies with participation from developed and developing countries;
WHEREAS LOCAL has performed at its own expense market and pre-feasibility studies of a joint venture for the establishment of a production facility for *[Product 1]* and their sales initially in *[host country]* and eventually abroad and for the expansion of already existing production facilities for *[Product 2]* in *[host country]* for sales abroad.
WHEREAS LOCAL and FOREIGN entered into a Letter of Intent on *[date]* under which LOCAL and FOREIGN undertook to conduct jointly a Feasibility Study to analyze and evaluate the potential for such a Joint Venture between LOCAL and FOREIGN;
WHEREAS the Feasibility Study carried out by the consulting firm [Name of consulting firm] pursuant to the above mentioned Letter of Intent demonstrated the viability of establishing such a Joint Venture and has indicated the likelihood of a 60% increase in sales of *[Product 2]* to FOREIGN and a feasible sales volume for *[Product 1]* of 25,200 units per annum at full capacity;
WHEREAS LOCAL has applied for and been granted permission from the Board of Investments of *[host country]* to form a Joint Venture with FOREIGN for the purposes outlined below;
WHEREAS LOCAL and FOREIGN now wish to enter into a Joint Venture for the production of *[Product 1]* and *[Product 2]* in *[host country]*.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements herein contained, LOCAL and FOREIGN agree as follows:

1. Formation of the Joint Venture Company

On or before the [day] of [month, year], the parties hereto shall cause the formation of a private Joint Venture company under the laws of *[host country]* as follows:

1. The Joint Venture Company shall be called *[Name given to the joint venture company]* hereinafter referred to as JOINT COMPANY
2. JOINT COMPANY shall be limited by shares and have an authorized share capital of 20.0 million *[host country]* currency units (hereinafter referred to as "CU") divided into 10,000 Class A common shares having a par value of CU <u>1000</u> each and having voter's rights at all shareholder's meetings; and 14 Class B ordinary shares having no par value but bearing rights to membership on the Board of Directors, and 10,000 cumulative preferred shares having a par value of CU <u>1000</u> each and having rights to priority in the receipt of dividends and participation from assets in case of dissolution.
3. JOINT COMPANY's initial issued share capital shall be 8,000 Class A common shares, 14 Class B ordinary shares, and 8,000 (cumulative) preferred shares and shall be subscribed by the parties in the following proportions to their respective equity ownership:

LOCAL:	Common Shares, Class A:	4,080
	Common Shares, Class B:	6
	Cumulative Preferred Shares:	4,080
FOREIGN:	Common Shares, Class A:	3,920
	Common Shares, Class B:	8
	Cumulative Preferred Shares:	3,920

4. JOINT COMPANY shall have its registered and principal offices [address of JOINT COMPANY].
5. JOINT COMPANY's By-laws and Articles of Association shall be as set out in Appendix A which is attached hereto and made a part hereof.

<u>2. **Objectives of JOINT COMPANY**</u>

The objectives of JOINT COMPANY are:

2.1. General objectives

- To develop a modern *[Product 1]* production and marketing in *[host country]*; expand and upgrade existing *[Product 2]* production and sales facilities for export.

2.2. *[Product 2]* production:

- to obtain foreign currency through the sale abroad of locally made
- *[Product 2]*;
- to provide employment for the local labour force;
- to establish a new market for locally manufactured *[Product 2]*;
- to safeguard the already existing market for furniture in [country of FOREIGN] by obtaining a product produced at lower cost in *[host country]*;
- to secure advanced *[Product 1]* manufacturing know-how and design and modernize the already existing local *[Product 1]* industry;
- to utilize an abundant natural resource;
- to safeguard the raw material supply required for the [country of FOREIGN] *[Product 2]* market.

3. *[Product 1]* production:

- to secure advanced electronic know-how;
- to develop low cost *[Product 1]* for *[host country]* home market through local production and to upgrade thereby the local level of computer sophistication;
- to obtain management know-how for a *[Product 1]* production plant;
- to obtain cost and other advantages through *[host country]*'s low labour and raw materials costs, tax and other incentives;

- to establish a new market in *[host country]* and possibly abroad for *[Product 1]* and related parts;
  - to obtain foreign currency in the event that *[Product 1]* and related parts are sold abroad.

3. **Expansion and Future Growth of Operations**

Each party shall take such action as may be necessary to ensure that JOINT COMPANY shall progressively develop and expand the joint *[Product 1]* production and *[Product 2]* production to the maximum extent consistent with sound commercial practice.

4. **JOINT COMPANY's Future Share and Loan Capital Requirements**

4.1. Should JOINT COMPANY decide to export outside the territory of *[host country]* the *[Product 1]* which it produces under this contract, LOCAL and FOREIGN will jointly undertake during the period of three years starting on the first day of *[date]* to make additional contributions to JOINT COMPANY at its request up to an aggregate of CU 10.0 million.

4.2. Each such contribution shall be divided between the parties in proportion to their respective equity ownership. Not more than 50% of such contributions shall be requested before *[date]* and not more than 75% total of such contributions before *[date]*.

4.3. Any further equity may be issued by the JOINT COMPANY in excess of the above equity contribution requirements, provided, however, that shares representing such equity shall be offered for subscription in the first instance to the parties in proportion to their respective equity ownership and that any such further equity shares shall be issued for subscription at a price per share equal to the book value per share of the company as of the end of its immediately preceding fiscal year.

4.4. The parties agree that no additional equity contributions will be required to be made to JOINT COMPANY during the six year period following the formation thereof beyond the initial equity contribution provided under Section 1 of this Agreement.

4.5. The parties agree that any additional financial requirements of JOINT COMPANY shall be met through borrowing. To the extent that any such borrowing should not be available to JOINT COMPANY without the assistance of guarantees by either party, the parties shall supply such guarantees provided that at no time shall LOCAL's exposure for such guarantees be in currency other than CU or exceed the amount of CU 7.5 million and that FOREIGN's exposure for such guarantees shall not exceed the amount of CU 6.0 or the equivalent thereof.

4.6. The exchange rate for any operation under this contract shall be the average of the exchange rates of buying and selling published by the National Foreign Exchange Bureau of *[host country]* on the date that the said operation takes place.

5. **Parties' Contributions to and Contractual Relations with JOINT COMPANY**

5.1. LOCAL shall contribute to JOINT COMPANY in total fulfillment of its contribution to the initial share capital of JOINT COMPANY in accordance with the preceding Section 1 of this Agreement the facilities and other assets listed in Appendices B and F.

5.2. FOREIGN shall contribute to JOINT COMPANY in total fulfillment of its contribution to the initial share capital of JOINT COMPANY in accordance with the preceding Section 1 of the Agreement the facilities and other assets listed in Appendix C.
5.3. The parties agree to accept the evaluation of said facilities and other assets found in the feasibility study.
[ALTERNATIVE WORDING: In the event that both parties agree that because of time lapse since the feasibility study, the evaluation found in the feasibility study no longer represents the true value of the facilities and/or assets described therein, they will use their best efforts to arrive at an evaluation satisfactory to both parties. If, however, despite their best efforts, they should fail to reach such conclusive agreement with respect to any such item prior to [date], the final evaluation shall be conclusively determined by (independent chartered accountant or other third party agreeable to both sides) at fair market value in the country and city where located. The valuation determined by said third party shall be final and binding for the parties who shall bear the costs of his/her services in equal shares.]
5.4. All contractual and other commercial dealings, including supplies of all kinds, between either party or its respective affiliates and JOINT COMPANY shall be negotiated on a commercial arm's length basis. Upon its request, each party shall have the right to be informed by JOINT COMPANY annually of the prices applied with respect to dealings contemplated in this provision in order that it may review compliance with the principles set out herein.
5.5. Prices of material or equipment supplied by either party or its respective affiliates to JOINT COMPANY shall be negotiated having regard to prices of similar products and services sold or supplied by independent suppliers to their most preferred customer. Where similar products are not available from independent suppliers, prices shall be negotiated on the basis of bearable cost plus a mark-up.

6. **Incentives**

6.1. This agreement is made subject to JOINT COMPANY's continuing to be admitted to the benefits of the following incentives under the Joint Venture Law of *[date]*, other pertinent legislation and regulations of *[host country]*, and the *[host country]/[country of FOREIGN]* double taxation treaty.
6.11. Tariffs and other forms of protection:
- Seven year import tariff of 100% on purchase price of competing goods from other countries;

6.12. Import-duty concessions:
- import restrictions for three years thereafter and limiting permitted imports to a one quarter of the number produced in the proceeding year by JOINT COMPANY;

6.13. Tax incentives:
- tax rate on salaries of individual expatriate employees reduced to the same tax rate as in *[country of FOREIGN*];
- exemption from the 20% export tax on profits (in accordance with the *[host country]/ [country of FOREIGN]* double taxation treaty;
- reduction of the tax on profits from 38% to 33 %.

6.2. *[host country]* shall immediately upon signing this agreement duly file any further applications necessary for the above incentives to the competent authorities and shall comply with any requirement prescribed in connection therewith.

7. **Marketing**

1. Marketing of the *[Product 2]* of JOINT COMPANY shall be conducted by FOREIGN in accordance with the terms set forth in the marketing agreement annexed hereto in Appendix D.
2. Marketing of the *[Product 1]* in *[host country]* under this Agreement shall be conducted by LOCAL in *[host country]* and by FOREIGN abroad in accordance with the terms set forth in the marketing agreement annexed hereto in Appendix E.

<u>8. **Board of Directors**</u>

8.1 JOINT COMPANY shall be directed by a Board of Directors which shall consist of a total of seven members of whom four shall be nominees of FOREIGN and three shall be nominees of LOCAL for so long as the proportion of ownership in the Company is 49 percent by FOREIGN and 51 percent by LOCAL . If the proportion of ownership is altered by any means whatsoever, this alteration shall be reflected in the proportion of the members of the Board of Directors nominated by each party at the meeting of the shareholders at which the said alteration of proportion of ownership is approved.

[ALTERNATIVE WORDING: FOREIGN shall be the owner of 8 Class B shares and shall be entitled to make binding nominations for the appointment of four of the directors, and LOCAL shall be the owner of 6 Class B shares and shall be entitled to make binding nominations for the appointment of three directors. Both parties agree to take all steps necessary to secure the appointment of the said nominees in accordance with the law of [host country].]

8.2. Should one of the positions on the Board of Directors become vacant for any reason whatsoever, the partner who originally nominated the holder of the position now vacant shall have the right to appoint another director to fill out the remainder of the term of the vacant position.

8.3. Each party shall exercise its voting rights in JOINT COMPANY and take such other steps as lie within its power:

- 8.3.1. to procure that the persons nominated in accordance with the preceding paragraph shall be directors of JOINT COMPANY; and
- 8.3.2. to prevent the passing of any resolution for the removal of any director nominated by the other party, except at the request, or with the consent of, that other party.

8.4. LOCAL will use its best efforts to remove obstacles to temporary visas for FOREIGN Board members attending Board meetings in *[host country]*.

8.5. The Board of Directors shall hold at least one regular meeting annually. A special meeting shall be held upon the recommendation of at least three of the directors.

8.6. The meetings of the Board of Directors shall be normally held at the headquarters of JOINT COMPANY. Upon approval of all Directors, it may be held at other locations.

8.7. The Chairperson shall send each Director a written notice indicating the agenda, time and place of any meeting 30 days prior to the said meeting.

8.8. If a Director is unable to attend any meeting, he may designate in writing another person as a proxy to attend the meeting.

8.9. A quorum for a meeting of the Board of Directors shall consist of at least six Directors.

8.10. The written minutes of each meeting of the Board of Directors shall be signed by all Directors attending. The minutes will be in *[host country language]* and English and will be filed in JOINT COMPANY's headquarters.

8.11. Unanimous approval of the Board of Directors is required for the following issues:

- 8.11.1. Approval of reports submitted by the General Management, such - as production plans, annual business operation reports, loan statements;
- 8.11.2. Approval of the annual financial statements including profit and loss accounts;
- 8.11.3. Approval of major corporate regulations and rules;
- 8.11.4. Approval for amendments of JOINT COMPANY's Articles of Association;
- 8.11.5. Approval of any bankruptcy petition for JOINT COMPANY;
- 8.11.6. Approval of extension of the term of JOINT COMPANY;

8.12 Approval of five or more Directors is required for the following issues:

- 8.12.1. Approval of Managing Director's normal operation plan;
- 8.12.2. Approval of corporate working regulations and rules including the policies concerning bonuses;
- 8.12.3. Approval of decisions made by the General Manager and the Deputy General Managers concerning the day-to-day operation of JOINT COMPANY.

9. **Management of JOINT COMPANY**

9.1. LOCAL shall appoint a General Manager who will be responsible for all non-technical questions in the day-to-day management of JOINT COMPANY under the direction and control of the Board of Directors.

9.2. FOREIGN shall appoint two Deputy General Managers for the first five years of JOINT COMPANY's operation. One Deputy General Manager will be responsible under the direction and control of the Board of Directors for the setting up of the *[Product 1]* production operation with sales in *[host country]* and will be responsible for recommending to the Board of Directors if and when sales should begin outside *[host country]*. The other Deputy General Manager will be responsible for the *[Product 2]* production operation and will be responsible under the direction and control of the Board of Directors for modernizing and upgrading the standards of wood furniture production and for overseeing the adherence to specifications provided by FOREIGN, including the installation of new equipment and the quality control of the final product.

9.3 After the first five years of JOINT COMPANY's operation, the Board of Directors shall decide whether to market *[Product 1]* produced in *[host country]* in other countries. If such decision is taken, FOREIGN will have the right to appoint a third Deputy General Manager and an Assistant Deputy General Manager who will have responsibilities for sales outside *[country of FOREIGN]* during the next five years period. In such case, FOREIGN will also provide JOINT COMPANY at cost without any charge for creative work all advertising and marketing aids which it then has or will acquire during the term of this Agreement and which relate to *[Product 1]* sold by JOINT COMPANY outside *[host country]*. More specifically, but without limiting the generality of the foregoing, such advertising and marketing aids shall include brochures, pamphlets, catalogue sheets, labels, boxes, cartons, packaging, diagrams, manuals, designs, pictures, descriptions, instructions, films, scripts, recordings, colour schemes and other data designed to explain, assist or promote the sale, distribution, use and servicing of the said computers.

9.4. The *[Product 1]* division will have four additional managers for the first five years of JOINT COMPANY's operations: a Technical Director and a Financial Director appointed by FOREIGN and a Marketing Director and a Personnel Director appointed by LOCAL.
9.5. The *[Product 2]* division will have four additional managers: a Technical Director and a Marketing Director appointed by FOREIGN and a Financial Director and a Personnel Director appointed by LOCAL.
6. LOCAL will use its best efforts to remove obstacles to employment permits for foreign management in *[host country]*.

10. **Shareholders' Rights**

10.1. As long as either party holds at least 45 percent of the equity securities of JOINT COMPANY, none of the following actions shall be taken without the consent of both parties:

10.1.1. Amendment of the By-laws or Articles of Association
10.1.2. Increase of capital;
10.1.3. Distribution of dividends;
10.1.4. Merger or consolidation with another company or companies;
10.1.5. Appointment or removal of the independent auditor of JOINT COMPANY;
10.1.6. Dissolution, transfer of any substantial part of the assets, or institution of any fundamental change in the nature of the business.

10.2. The parties shall cause JOINT COMPANY at the close of each fiscal year to have an audit conducted by an independent firm of chartered accountants acceptable to both parties, and to present to its shareholders an annual report covering such year, including financial statements certified by such accountants as having been prepared in accordance with the standards established in *[host country]* for state-owned enterprises.
10.3. As early as practicable after the formation of JOINT COMPANY, the parties shall cause the JOINT COMPANY to provide both parties with at least quarterly financial and operating reports, business plans and forecasts, prepared on principles consistent with those set out for JOINT COMPANY's annual reports.
10.4. The parties are requesting that JOINT COMPANY be exempted from the *[host country]* Joint Venture Law requirement that Joint Venture auditing be carried out by an *[host country]* auditing organization operating on a self-supporting basis and that Joint Ventures not submit any accounting or business information to the state or other authorities of foreign countries as *[country of FOREIGN]* requires FOREIGN to submit tax and other information about its subsidiaries in its accounting documents which must be prepared in line with generally accepted accounting standards. If such authorization is granted, JOINT COMPANY will employ *[name of auditing firm]* to prepare its accounts.

11. **Transfer of Shares**

Neither party shall, without the previous written consent of the other party, sell, transfer, pledge, encumber, dispose of, or otherwise part with the beneficial ownership of, any of its shares of the capital of JOINT COMPANY.

12. **Profit policy**

12.1. LOCAL and FOREIGN recognize that their own and the best interests of JOINT COMPANY will be best served by taking all reasonable steps to ensure the expansion of the production facilities of the joint company as rapidly as market conditions permit, and to this end, agree to retain sufficient earnings in JOINT COMPANY before distributing profits to the shareholders, as shall be reasonably required in the circumstances to provide for such expansion and for the other requirements of conducting the affairs of JOINT COMPANY according to sound business practices.

13. **Patent Rights**

FOREIGN is the owner of certain patents outlined in the Foreign Patent License Agreement in Appendix F and has the right of disposal of the said patents. FOREIGN agrees to license LOCAL which undertakes to assign said license to JOINT COMPANY to permit JOINT COMPANY to use these patents and the manufacturing secrets and experience (know-how) concerning the manufacture of the *[Product 1]* to be assembled by JOINT COMPANY and the *[Product 2]* to be produced by JOINT COMPANY for a period of time not to exceed the present term of JOINT COMPANY, i.e. not longer than fifteen years from the date JOINT COMPANY comes into existence as a legal entity.

14. **Duration of Agreement**

14.1. This Agreement shall enter into effect on the date of its registration in accordance with the laws of *[host country]* and shall remain in effect for a period of fifteen years therefrom and shall be subject to renegotiation at the end of the period.

14.2. Should the parties fail to agree within a period of three months following the end of the fifteen year period on the renegotiation of the Agreement or on termination of the Agreement under Section 15 of this Agreement, LOCAL shall have the option to acquire the shares in the Company then held by FOREIGN at a valuation to be calculated by the auditor of JOINT COMPANY on the basis of the net tangible assets of JOINT COMPANY as disclosed in the latest audited accounts.

15. **Termination of the Agreement**

15.1. Either party may terminate this Agreement in the event that the other party shall:

15.1.1. Breach in any material manner any provision of this Agreement and fail to remedy such breach within 60 days after the injured party has given written notice requiring that the breach be remedied or such longer period as the injured party may specify as reasonable in the circumstances;

15.1.2. Commit any act of bankruptcy, become insolvent, enter into any agreement with its creditors, take advantage of any law for the benefit of debtors, go into liquidation, whether compulsory or voluntary, or have a dissolution order made in respect of it.

15.2. The effective date of termination of this Agreement shall be the date on which the injured party gives written notice to that effect in accordance with this clause.

15.3. Any termination pursuant to this clause shall be without prejudice to any rights and remedies which the injured party may seek against JOINT COMPANY or the other party for breach of contract or otherwise and shall not operate to prejudice the rights and obligations provided for in the *[host country]* Joint Venture Law or this Agreement concerning the disposition of shares and assets of JOINT COMPANY.

16. **<u>Distribution of Assets on Dissolution</u>**
In the event of the dissolution of the Company, the assets of the Company shall be disposed of in accordance with the following rules:
16.1. LOCAL shall be given a first option for a period of ninety (90) days to purchase all or any of such assets at their depreciated book value;
16.2. After the expiration of the first option, FOREIGN shall be given an option for a further period of ninety (90) days to purchase at their depreciated book value all or any assets not purchased under the first option;
16.3. Any remaining assets shall be disposed of in accordance with the directions of the liquidator of the Company.

17. **<u>Arbitration</u>**
Any dispute between the parties that cannot be settled by mutual agreement and that relates to the interpretation, carrying out of obligations, breach or enforcement of this Agreement, or of any document or instrument referred to herein, shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. The arbitrator or arbitrators shall sit in Vienna, Austria.

18. **<u>General</u>**
18.1. This Agreement shall be construed in accordance with and governed by the laws of *[host country]*.
18.2. This Agreement represents the entire understanding and agreement between the parties and supersedes any and all previous oral or written understandings or agreements between the parties with respect to the matters set forth herein. Appendices annexed hereto are for all purposes an integral part of this Agreement.
18.3. No modification or amendment to this Agreement or any schedule or exhibit thereto and no waiver of any of the terms or conditions hereof or thereof shall be valid or binding unless made in writing duly signed.
18.4. Any notice or other communications to a party required or permitted hereunder shall be made in writing and shall be sent by cable or telex and confirmed by registered air mail addressed to the address of such party set forth below or to such other address as such party shall have communicated to the other party.
Notices or communications to LOCAL shall be sent to:

[Name of LOCAL, address, contact coordinates, contact person]

Notices or communications to FOREIGN shall be sent to:

[Name of LOCAL, address, contact coordinates, contact person]

18.5. Each party shall use its best efforts to secure any authorization by public authorities necessary for the execution and performance of this Agreement in accordance with its terms.
18.6. Each party represents and warrants that, except for any authorization specified under the preceding paragraph 18.5. it has full power and authority to execute and to fulfill all of its obligations set forth in this

Agreement and that this Agreement constitutes a valid and binding agreement of such party in accordance with its terms.
18.7. The parties shall cause JOINT COMPANY, upon its registration, to become a party to this Agreement, whereupon JOINT COMPANY shall be entitled to the rights and bound by the obligations provided for the company herein. JOINT COMPANY shall deliver to each of the parties an appropriate document evidencing its agreement to such affect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

By ________________________
(LOCAL)

By ___________________________
(FOREIGN)

Appendix A

<u>By-Laws (Articles of Association)</u>

The By-Laws (American), Articles of Association (British) govern the internal affairs of the company. They may be altered from time to time as the need arises (subject to corporate laws and the general principles of corporate law laid down by the courts).

They commonly govern the following items:
- voting rights and proxies;
- relative powers of management and of the Board of Directors;
- meetings of shareholders and Directors;
- powers of the General Manager;
- dividend payments;
- share transfer rules;
- alteration of capital.

Appendix B

Contribution of LOCAL to Initial Share Capital of JOINT COMPANY

Appendix C

Contribution of FOREIGN to Initial Share Capital of JOINT COMPANY

Appendix D

Marketing Agreement *[Product 2]* of JOINT COMPANY

Appendix E

Marketing Agreement *[Product 1]* of JOINT COMPANY
Appendix F

Patent Licensing Agreement

Between FOREIGN whose principal office is *[address]* represented by *[name and position]*, which is hereinafter called "the Licensor"
and
LOCAL whose principal office *[address]* represented by *[name and position]*, which is hereinafter called "the Licensee".

Recitals
WHEREAS the Licensor is owner of patents *[description] ……….*
applied for at …………………………………………. on *[dates]* and has the right of disposal of the said patents;
WHEREAS non-exclusive licenses have already been granted in respect of these patents;
WHEREAS the Licensor further possesses manufacturing secrets and experience (know-how) concerning the manufacture of the subject matter of his License;
WHEREAS the aforementioned patents and know-how have already been the subject of exploitation by the patentee, the Licensor having manufactured *[Product 1]* and *[Product 2]*
[description] ……...

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Technical Field of Application**
This License is limited to the following uses:
[description] ....

2. **Nature of the License**
2.1. The License is for making, using and vending;
2.2. The License is non-exclusive;
2.3. The license is assignable only to the JOINT COMPANY, and the Licensee shall not assign his rights or obligations hereunder to any third party other than the JOINT COMPANY Joint Venture Company. Without prejudice to the generality of the foregoing, the Licensee shall not without the consent of the Licensor bring the License into the assets of a company.

3. **Sub-licenses**
The Licensee shall not grant sub-licenses.

4. **Territory**
4.1. The present license is granted for the territory of *[host country]*. The Licensee shall not manufacture in other territories, including those in which the Licensor does not enjoy any protection.

4.2. In the case of *[Product 2]*, the Licensee is authorized to export only to *[country of FOREIGN]*. He shall not export to other territories, including those in which the Licensor does not enjoy any protection.
4.3. In the case of *[Product 1]*, the Licensee is authorized to export only to *[country of FOREIGN]* for the first eight years of operation of the JOINT COMPANY. If the Board of Directors of the JOINT COMPANY by a unanimous decision decides to permit exports of the *[Product 1]* produced in *[host country]* at any time after the first eight years of operation of the JOINT COMPANY, the Licensee shall be entitled to export to any other territory to which the Board of Directors of the JOINT COMPANY by unanimous decision decides to export the said *[Product 1]* to.
4.4. For each and every breach of his above mentioned obligations, the Licensee shall pay to the Licensor US Dollars ……….. as liquidated damages. The Licensee shall further forbid the export by his purchasers of articles to which this Licensee applies to the extent that such export is forbidden by the preceding provisions of this Clause and shall impose on such purchases a liability to pay to the Licensor US Dollars ……….. as liquidated damages in respect of each and every breach of their obligations not to export.

5. **Registration of License**
Either party shall be entitled to register the License at the Patent Office if such registration is permissible under the law of the country or countries in respect of which the License is granted. The Licensor shall give the Licensee any powers and authorizations necessary for this purpose. The expenses of registration shall be borne by the party desiring to register the License.

6. **Drawings and descriptive documents**
The Licensor shall supply to the Licensee all existing reproducible drawings, plans, and other technical documents required for manufacturing the subject matter of the License. The Licensee shall treat such drawings and documents as secret during and after the term of the Agreement.

7. **Responsibility for claims by third parties**
If the use of the patent(s) forming the basis of this Agreement results in a claim for infringement against the Licensee, the costs for the defense and any damages awarded against him shall be shared by both parties. The costs and expenses of any counter-claim or of settling a claim shall be shared by both parties. The Licensee shall inform the Licensor of any claim made against the licensee for infringement and shall enable the Licensor to join in any legal proceedings.

8. **Novelty**
The Licensor does not warrant the novelty of his/her invention, but should it transpire that the patent is void by reason of its publication, whether wittingly or unwittingly, by the Licensor before a patent was applied for, the Licensee shall be entitled to terminate the Agreement wholly or in part by sending a notice in writing to the Licensor.

9. **Manufacture**
The Licensor undertakes no responsibility for the risks of industrial manufacture which are assumed solely by the Licensee. The Licensee

declares that s/he is familiar with the subject matter of the License, and s/he shall undertake its manufacture. If s/he fails to do so within one year from the date of setting up of the JOINT COMPANY Joint Venture Company, the Licensor shall be entitled to terminate this Agreement.

10. **Commercial exploitation**
The Licensor does not warrant that the invention is capable of commercial exploitation. The risks of such exploitation shall be assumed solely by the Licensee.

11. **Quality Control**
11.1. The Licensee shall manufacture the subject matter at the same high level of quality as is done by the Licensor. The Licensor shall provide all necessary advice and information concerning his/her own experience in accordance with the provisions of Sections ……………. of this Agreement.
11.2. The Licensor shall be entitled to inspect whether articles manufactured under license are of the agreed quality and to forbid the sale of articles of inferior quality.

12. **Modifications and improvements in items under license**
12.1. The Licensor shall disclose and make available to the Licensee without charge any modification or improvement of the items under license made during the term of the Agreement. The Licensor shall not be entitled thereby to any increase in royalties.

13. **Modifications and improvements made by Licensee in items under this license**
13.1. The Licensee shall obtain the consent of the Licensor before undertaking modifications and improvements in the articles under this License.
13.2. The Licensor shall be entitled to make use of modifications and improvements suggested by the Licensee in consideration of reasonable payment on reasonable terms. This right shall not extend, however, to territories in which by virtue of the contract the Licensor is not entitled to manufacture or use the articles under license. In default of agreement on the amount and terms of payment the parties may refer the matter to arbitration in accordance with Section ……………….. for the determination of the said amount and terms.
13.3. If the improvements are patentable the Licensor shall be entitled to patent them everywhere in consideration of reasonable payment on reasonable terms. In default of agreement on the amount and terms of payment the parties may refer the matter to arbitration in accordance with Section ……………….. for the determination of the said amount and terms.

14. **Payment on Transfer of Documents**
Before drawings and documents are transferred the Licensee shall pay to account No …………… at the ………. Bank the sum of CU 0.8 million. These drawings and documents will not be transferred to the Licensee unless and until the whole of the said sum has been paid to the ………. Bank. The Licensee shall not be entitled to the return of this sum by reason of the fact that this Agreement has for any reason been prematurely terminated.

15. **Royalties**
15.1. The Licensee shall pay in respect of each article produced under license and sold by him/her one per cent of the sales price.
15.2. The right to royalty accrues when the item made under this License is dispatched from the Licensee's factory.

16. **Taxes**
16.1. Direct taxes payable in the Licensee's country by virtue of sums paid to the Licensor in accordance with the terms of the agreement will be for the Licensor's account.
16.2. Turnover taxes payable in the Licensee's country on such sums will be for the account of the Licensee.
16.3. When the law of the Licensee's country requires that turnover taxes must be paid by the Licensor, the Licensee shall provide assistance to the Licensor to enable him to comply with the obligations and formalities involved. (It may be advisable for the parties to specify who will bear the cost of the formalities for the payment of VAT, e.g. the necessity to have a fiscal representative, if such is applicable).

17. **Marking**
The Licensee shall mark all articles made by him/her under this License and supplied to his/her customers with serial numbers and shall affix to such articles a plaque inscribed "License: Licensor's name" or "License: trade mark".

18. **Accounts and inspection of accounts**
The Licensee shall keep a special register in which s/he shall record the exact number of items manufactured by virtue of this Agreement, the serial numbers marked on such articles, and any other information relevant for determining the amount of royalties payable. The Licensor shall have the right by means of an accountant appointed by him/her and approved by the Licensee (who shall not unreasonably withhold his/her approval) to inspect these registers and to examine whether they are consistent with the general accounts of the Licensee. The costs of such inspection and examination shall be borne by the Licensor.

19. **Settlement of account and payment**
19.1. Royalty accounts shall be rendered quarterly. The Licensee shall within a month after the expiration of each calendar quarter send to the Licensor a complete account and any sum due to the Licensor thereunder.
19.2. The Licensee shall pay the Licensor in the currency or currencies in which payment is due.

20. **Obligation to exploit the License**
20.1. The Licensee undertakes to exploit the License and not to manufacture or sell articles to compete with the items under this License.
20.2. If the Licensee shall have shown that the invention(s) on which the License is based has (have) lost its (their) market by reason of technical or economic developments, s/he shall be entitled to terminate this Agreement before its performance is complete.

21. **Maintenance in Force of Patent**

21.1. The Licensor is not obliged to keep in force all patents on which this License is based. If s/he decides to allow a patent to lapse, s/he shall inform the Licensee to this effect not less than six months before the date on which any steps necessary to keep the patent in force must be taken. Thereupon the Licensee shall be entitled to acquire the patent free of charge.
21.2. This Agreement shall in such event be deemed to have been terminated pro tanto to the extent of that patent on the aforesaid date.
21.3. So long as the Licensor shall keep the patent in force, the Licensee shall assist him/her by payment of the requisite renewal fees on the Licensor's behalf.

22. **Protection of the Patent**
22.1. The Licensee shall take all reasonable steps to prevent the patents mentioned in the Recital being infringed on the territory for which the License is granted. The Licensee shall inform the Licensor of any such infringement which comes to his/her notice.
22.2. If the Licensee wishes to take proceedings against the infringer, the Licensor shall assist him/her especially if the law of the territory in question makes such assistance necessary in the opinion of the Licensor. Unless the Licensor proceeds him/herself, s/he shall provide the Licensee with all powers and authorizations required to enable the Licensee to take such proceedings.
22.3. The party who decides to undertake legal proceedings shall bear the costs and enjoy the benefits therefor. If the parties agree to commence proceedings jointly, the costs and benefits thereof shall be divided as follows:
Licensor: 50%
Licensee: 50%
22.4. The Licensee shall not undertake proceedings or cause proceedings to be undertaken by another person for invalidating the patents underlying this Agreement or for attacking them on the grounds of subservience to a prior patent, unless the invalidity is due to publication of the invention by the Licensor.
22.5 If the patent(s) underlying this Agreement is (are) revoked at the instance of a third party, the Licensor shall be entitled to retain any royalties already paid to him/her and to recover any royalties due at the date of revocation.

23. **Duration of the Agreement**
23.1. This Agreement shall not enter into force until signed and until all authorizations required for its performance shall have been obtained, including any authorizations required for the transfer of currency.
23.2. The contract shall come to an end fifteen years from its entry into force.
23.3. Without prejudice to any express provisions for termination contained in this Agreement, this Agreement may be terminated for any cause sufficient to justify termination under the governing law of this Agreement.

24. **Return of Documents**
24.1. The Licensee shall not, even after the expiration of the contract communicate to third parties the Licensor's trade or manufacturing secrets.

After the expiration of this Agreement, the Licensee shall cease using these and shall immediately return to the Licensor all documents relating to the manufacture of the items under this License.

25. **Transitional provision**
The Licensee shall be entitled to carry out after the expiration of this Agreement, contracts of sale entered into by him/her before the expiration of this Agreement.

26. **Governing Law**
This Agreement shall be governed by the law of *[country of FOREIGN]*.

27. **Arbitration**
27.1. Any disputes arising out of or in connection with this Agreement shall be settled without recourse to the courts, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules, the award being final and binding.
27.2. The arbitrator or arbitrators shall have the power to rule on their own competence and on the validity of the agreement to submit to arbitration.
27.3. Either party may ask the competent tribunal to confirm an arbitration award or otherwise provide that it shall be enforceable.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives

[Place and date]

By --------------------------
(FOREIGN)

By -----------------------------
(LOCAL)

Appendix G

Know-How Licensing Agreement[1]

Between FOREIGN, whose principal office is at *[address],* represented by *[name and position]*, which is hereinafter called "the Licensor"
and
LOCAL, whose principal office is at *[address]*, represented by *[name and position]*, which is hereinafter called "the Licensee".

---

1 The patent agreement provides the licensee with the right to use the patented items. The know-how agreement provides the licensee with the means and knowledge necessary to use them.

Recitals
WHEREAS the Licensor has been manufacturing the articles listed below for ten years:
[Product 1] [description] ………………………………………………………………
and
[Product 2] [description] ………………………………………………………………
WHEREAS these articles are protected in the following countries (list of countries and close description of intellectual property rights);
WHEREAS the Licensor has by Agreement with the Licensee dated .... (which agreement is attached hereto and made a part hereof) authorized the Licensee to reproduce and to sell the *[Product1]* and *[Product 2]* with patents;
NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements herein contained, the Licensor and the Licensee agree as follows:
The Licensor agrees to furnish to the Licensee generally all data on the article, his/her experience and methods, including know-how or manufacturing secrets, so that a normally qualified technician can use them after a reasonable period of adaptation.

1. **Provision of technical information**
1.1. The Licensor shall furnish to the Licensee within one month of the signing of this Agreement and after payment of the sums mentioned in Section 14 of the Foreign Patent License Agreement, all drawings and dimensional drawings enabling the article to be manufactured or used.
1.2 Such drawings shall be accompanied with a complete technical dossier including ………………………………………………………………………
1.3 Any drawings and documents furnished may not be used for purposes other than the performance of the Agreement without specific approval by the Licensor.

2. **Technical Assistance**
2.1. The Licensor shall at the cost of the licensee as mentioned in section 14 of the Foreign Patent Licensing Agreement, furnish to the Licensee in good faith and without reservation all technical assistance and advice necessary for the use and exploitation of the inventions covered under this Agreement.
2.2. The Licensor shall provide the Licensee with the services of skilled personnel on the following terms and conditions:
- 2.2.1. Number and qualifications (including language skills) of per sonnel provided
- 2.2.2. Length of time for which loaned
- 2.2.3. Board and lodging
- 2.2.4. Responsibilities
- 2.2.5. Insurance
- 2.2.6. Cost and how to pay

2.3. The Licensor undertakes to instruct JOINT COMPANY employees to explain to them the manufacture of the items under this license on the following terms and conditions:
- 2.3.1. Number and qualifications of employees to be instructed
- 2.3.2. Length of instruction

2.3.3. Responsibilities
2.3.4. Cost and how to pay

4. **Responsibility for claims by third parties**
4.1. The Licensor declares s/he has no knowledge of any valid patents belonging to third parties and covering devices or processes which form the subject of this agreement, but cannot warrant that such patents might not prove to exist.
4.2. If reproduction, sale or use of the article by the Licensee results in a claim for infringement against the Licensee, the costs and any damages awarded against him/her as well as the costs of any counter-claim or of settling a claim shall be borne as provided in the Foreign Patent License Agreement dated ....

5. **Obligation to buy from the Licensor**
5.1. For the manufacture of the items under this License, the Licensee undertakes to buy from the Licensor the following parts …
………
5.2. The said parts shall be supplied in accordance with the General Conditions annexed hereto, and the prices shall be the Licensor's catalogue prices at the relevant time[2].

6. **Confidentiality; post-expiry**
The Licensee shall not, even after the expiration of the contract, communicate to third parties the Licensor's trade or manufacturing secrets.

7. **Transitional provision**
The Licensee shall be entitled to carry out after the expiration of the Agreement contracts of sale entered into by him/her before the expiration of this Agreement.

8. **Governing Law**
This Agreement shall be governed by the low of *[host country]*.

9. **Arbitration**
9.1. Any disputes arising out of or in connection with this Agreement shall be settled without recourse to the courts, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules, the award being final and binding.
9.2. The arbitrator or arbitrators shall have the power to rule their own competence and on the validity of the agreement to submit to arbitration.
9.3. Either party may ask the competent tribunal to confirm an arbitration award or otherwise provide that it shall be enforceable.
IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their duly authorized representatives.

[Place and date]

---

2 If there are no catalogue prices, the parties must establish a list of prices and a method of revising them.

By ----------------------------
(FOREIGN)

By -------------------------------
(LOCAL)