**FACTORING AGREEMENT**

 This Agreement made at………….on this………..day of…….20 …….between A C Co. Ltd., a company incorporated under the Companies Act, 1956 and having its registered office at……………hereinafter called the factor, of the ONE PART and X Y Co. Ltd. a company incorporated under the Companies Act, 1956 and having its registered office at…………..hereinafter called the Supplier of the OTHER PART.

**WHEREAS** the supplier is carrying on the business of…………….in whole-sale at ........................

**AND WHEREAS THE** factor is undertaking the factoring business at .................

**AND WHEREAS THE** Supplier has approached the Factor to sell the debts, which owe to him from debtors in respect of goods supplied or contracted to be supplied to such debtors.

**AND WHEREAS** the Factor has agreed to purchase the debts of the supplier on the terms and conditions hereinafter contained.

**NOW THIS AGREEMENT WITNESSES AND THE PARTIES** hereto hereby agree as follows:

1. The Supplier shall offer to the factor for purchase of all debts which during the continuance of this agreement become owing to the Supplier from debtors in respect of goods supplied or contracted to be supplied to such debtors and the Factor will not be bound to purchase any debt so offered by the supplier.

2. The Supplier will submit the offer for credit approval in respect of orders for goods received to the factor giving all particulars as are required by the Factor and the Factor will inform the Supplier, within a period of …………days from the receipt of such offer, whether the resultant debt, in respect of the order will be accepted by him or not.

3. When the Factor conveys his acceptance about any debt, the Supplier will include a clause in the invoice stating that the amount payable under this invoice has been purchased by A C Co. Ltd. to whom payment may be made and his receipt will be treated as a good discharge. The authority and request to make the payment to A C Co. Ltd. is irrevocable without the consent in writing of A C Co. Ltd. The Supplier shall furnish the copies of all such invoices to the Factor at agreed intervals, together with a Schedule thereof.

4. (1) The Supplier shall be deemed to warranting and undertaking to the Factor while making an offer under clause (2).

(a) That the goods have been supplied or will be supplied by the Supplier in accordance with the contract with the debtor and the debt will be legally enforceable against the debtor in full without any deduction, set off or counterclaims.

 

(b) That the copy of the invoice delivered to the Factor is a true and correct copy of the invoice delivered to the debtor and the invoice contains the clause mentioned in clause 3.

(c) That the Supplier will not grant extension of time to the debtor for payment of the debt without the prior consent of the factor in writing.

(d) That the Supplier will pay all taxes payable on the goods sold creating purchased debts and the Supplier will maintain proper books of accounts.

(e) That the Supplier will effect insurance as required under its contract and the Supplier will make claim in respect of loss or damage to goods with the insurance company and any payments received from insurance company of such claims in respect of purchased debts will be held in trust for the Factor and will be paid to him immediately.

(ii) If the above warranties and undertakings in respect of any debt are not fulfilled by the Supplier, the Factor will forthwith debit the Supplier's account with the full amount of that debt.

5. When the debts are accepted by the factor, it will record account in the name of the Supplier in its books with an amount equal to the invoice value of the goods comprised in the accepted invoices and will advise the Supplier of such credits. The property in debts so purchased by the Factor will forthwith pass to the Factor.

6. The Factor will charge service charges equal to per cent of the gross value of all invoices credited to the record account of the Supplier or such other percentage as may from time to time be agreed in writing between the Supplier and Factor and such service charges will be debited to the Supplier's current account. If the factoring agreement is terminated by the Supplier before the term as mentioned hereinafter and the supplier fails to comply with a demand for payment to the Factor of the debit balance on Supplier's account, the Factor shall be entitled additionally to debit Supplier's account with a sum equal to half the aggregate service charge payable during the three months prior to the date of termination.

7. While submitting the copy of the invoice, the Supplier shall furnish information regarding the commercial and financial position of the debtor, as in the possession of the Supplier and if he has not already been imparted to the Factor by the Supplier.

8. The monies of bills of exchange received by the Supplier from the debtors in payment of any debt will be paid or delivered to the Factor immediately and in the meantime, the Supplier will hold such money or bills of exchange in trust for the factor.

9. If the debtor returns or does not accept the goods supplied by the Supplier for any reason and any proceeds thereof will be held in trust for the Factor under advice to the Factor. All such goods will be stored separately by the Supplier and will be marked as belonging to the Factor.

 

10. When the Factor receives payments from the Supplier's debtors without appropriating the sum at or before the time of payment wholly or in part to specific invoices or where the debtors make payment to the Factor generally on account, the Factor will be entitled to apply such payments or the appropriate part thereof in satisfaction of such debts as the Factor in its absolute discretion may decide.

11. The Supplier hereby irrevocably appoints the Factor and the S/Shri ……………….and ………….Directors for the time being of the Factor jointly and each of them severally to be the attorneys or attorney of the Supplier to execute or sign in the Supplier's name such deeds and documents to complete or indorse such negotiable instruments, to institute or defend such proceedings and to perform such acts, as the Factor may consider necessary in order to perfect the Factor's title to any receivable or goods or any right or instrument or arising in connection therewith or to secure performance of any of the Supplier's obligations under this agreement.

12. The Supplier shall furnish to the Factor the profit and loss account, balance sheet certified by auditor within one month after the end of the financial year.

13. The Factor shall be entitled to inspect and make copies of or extracts from the books and records of the Supplier at reasonable time and the Supplier will furnish to the Factor such information and copies of the documents as required by the Factor.

14. The Factor will keep proper accounts of all its dealings with Supplier and debtors and render statements to the Supplier and debtors at regular intervals. The statements sent to the Supplier will be deemed to be accepted, unless the Supplier makes any written objections thereto to the Factor within ten days from the date of issue of the statement.

15. If the Supplier makes any arrangement or composition with its creditors or goes into liquidation or cease to carry on business or has a receiver appointed over any of its assets or a petition for winding up is presented against the Supplier or it is unable to pay its debts or commits breach of the conditions and obligations under this agreement, this agreement may be terminated by the Factor by notice in writing. This Agreement may also be terminated at any time by either party giving to the other party by notice in writing expiring not less than three months, after the date of service of such a notice.

16. On termination of this agreement, the Factor shall have an option to require the Supplier to repurchase the debts purchased by the Factor and remain unpaid at the time of termination or debit Supplier's account with the invoice value of unpaid debts and if the account of the Supplier after debit goes in debit, the Supplier shall immediately pay to the factor such sum of money as may be necessary to pay off such debit balance.

17. This Agreement will commence from …………….and will remain in force for a period of………….years from the said date.

18. The Supplier shall not be entitled to assign any of the rights or benefits or delegate any of its duties under this agreement to any party without the prior written consent of the Factor.

 

19. This agreement will continue to be in force notwithstanding any change in the constitution, composition or legal personality of the Supplier.

In Witness whereof, the parties hereto have caused these presents to be signed on their behalf by their duly authorised officials the day and year first hereinabove written.

**WITNESSES**

1 Signed and delivered by the A C Co. Ltd. the within named Factor by

 the hands of Shri………………its duly authorised official

2. Signed and delivered by the X Y Co. Ltd., the within named Supplier by the hands of Shri……………its duly authorised official