

Patent Licensing Term Sheet (India)

Records negotiated patent licensing commercial terms before formal agreement is drafted

HOW TO USE THIS TEMPLATE

1.	This term sheet records agreed commercial terms before a full Patent Licence Agreement is drafted.
2.	A signed term sheet is not itself a binding licence — it is a basis for drafting the formal agreement.
3.	Mark clearly whether terms are binding or non-binding.
4.	Have the full Patent Licence Agreement reviewed by an IP advocate before execution.
5.	Royalty rates: India — typically 2–8% for technology patents; 5–15% for software.

PARTIES AND PATENT DETAILS

Licensor — Full Legal Name	[Patent owner's company full name and CIN]
Licensor — Represented by	[Name and designation]
Licensee — Full Legal Name	[Licensee's company full name and CIN / individual PAN]
Licensee — Represented by	[Name and designation]
Patent(s) to be Licensed	[Patent No. IN XXXXXX / Application No. XXXXXX — Title: [invention title]]
Date of This Term Sheet	[DD Month YYYY]
Target Date for Formal Agreement	[DD Month YYYY — typically 30–60 days from term sheet]

COMMERCIAL TERMS

Licence Type	[Exclusive / Non-exclusive / Sole (exclusive except licensor retains right to use)]
Field of Use	[Specific field — e.g. 'software-as-a-service applications for the MSME finance sector in India only' — or 'all fields of use']
Territory	[India only / India and [specific countries] / Worldwide]
Term of Licence	[X years from effective date / For the full remaining term of the patent / Perpetual]
Royalty Structure	[Percentage of net sales / Fixed fee per unit / Combination]
Royalty Rate	[X% of net revenues attributable to the licensed patent / Rs. X per unit sold]
Minimum Annual Royalty	[Rs. X per year — payable regardless of actual revenues]
Upfront Licence Fee	[Rs. X payable on execution of formal agreement / Nil]
Milestone Payments	[Rs. X on [milestone — e.g. first commercial sale] / Nil]
Royalty Reporting	[Quarterly / Semi-annual reports with payment within [30] days of period end]
Audit Rights	[Licensor has right to audit once per year on [30] days notice]
Sub-licensing	[Permitted with Licensor's prior written consent / Not permitted]

Improvement IP	[Licensee improvements owned by Licensee / Grant-back licence to Licensor / Jointly owned — specify]
Exclusivity Termination	[If Licensee fails to achieve [X] minimum royalties per year for [2] consecutive years, exclusivity converts to non-exclusive]
Patent Enforcement	[Licensor has primary obligation to enforce / Licensee may enforce if Licensor declines / Joint — specify]
Termination for Breach	[Either party may terminate on [60] days notice if material breach is not cured]
Effect of Patent Expiry	[Licence terminates on patent expiry / Continues at reduced rate for know-how]
Governing Law	[Laws of India — courts of [City]]

KEY REPRESENTATIONS TO BE CONFIRMED IN FORMAL AGREEMENT

- Licensor owns the patent(s) free and clear of all encumbrances and has full authority to grant this licence.
- The patent(s) are valid, in force, and renewal fees are current.
- Licensor has not previously granted any conflicting exclusive licence.
- To Licensor's knowledge, the licensed technology does not infringe any third-party IP rights.
- Licensee will maintain adequate records for royalty calculation and reporting.

INDICATIVE AGREEMENT (NON-BINDING UNLESS MARKED OTHERWISE)

The Parties acknowledge that this Term Sheet is intended as a basis for drafting a formal Patent Licence Agreement and is non-binding except for the confidentiality of its terms. Either Party may withdraw from negotiations at any time before execution of the formal agreement.

LICENSOR	LICENSEE
Signature: _____	Signature: _____
Name: _____	Name: _____
Designation: _____	Designation: _____
Date: _____	Date: _____

PATENT LICENSING STRUCTURES AND ROYALTY BENCHMARKS

6.1 Exclusive vs Non-Exclusive Licensing Strategy. The choice between exclusive and non-exclusive licensing has profound strategic implications. Exclusive licences maximise the licensor's per-licence revenue and give the licensee a competitive advantage — but they limit the licensor's ability to derive revenue from multiple licensees. Non-exclusive licences allow licensing to multiple parties and create a broader revenue stream, but each licence generates lower revenue. Sole licences (licensor retains right to use but no other licensee) are a middle ground. For startups, consider: (a) exclusive licences in fields outside your core business where you will never compete; (b) non-exclusive licences where market penetration is more important than per-licence revenue; and (c) field-of-use limitations to grant exclusivity in one market while retaining the ability to licence in others.

6.2 Royalty Rate Benchmarking for Indian Markets. Indian royalty rates are typically lower than US or European rates due to market size, cost structures, and historical precedent. Reference points for royalty rate negotiations in India: Technology/Software: 3–8% of net revenues; Pharmaceutical active ingredients: 2–5% of net sales; Mechanical inventions: 2–5% of product revenues; Electronics/Semiconductors: 1–4%; Brand licences (trademark): 2–8% of retail price; Franchise fees: 5–10% of revenues. The OECD BEPS guidelines and Indian transfer pricing rules (under the Income Tax Act 1961) apply to royalty payments in related-party transactions — ensure royalty rates in related-party licences are at arm's length.

6.3 Royalty Calculation Base. How the royalty base is defined can significantly affect the economics: (a) Net Sales (most common) — total revenues minus returns, discounts, and applicable taxes; (b) Net Profits — more favourable for licensee in early stage but requires transparent accounting; (c) Per Unit — simple and verifiable but may not capture value for high-value sales; (d) Tiered royalties — lower rates at low volumes, higher rates as volume grows (or inverse). Always define the base precisely in the agreement, including what deductions are permitted.

6.4 Tax Implications of Patent Royalties. Patent royalty payments in India have specific tax treatment: (a) royalties paid by an Indian company to a foreign patentee are subject to withholding tax (TDS) under Section 195 of the Income Tax Act 1961 — typically 10–20% depending on the applicable Double Tax Avoidance Agreement (DTAA); (b) royalties received by an Indian company from a foreign licensee are taxable as business income; (c) for domestic royalty payments between Indian entities, TDS at 10% applies under Section 194J; (d) GST at 18% applies to royalty payments for use of patents as a taxable service. Ensure the licence agreement clearly allocates tax obligations.

LICENSING MODELS AND REVENUE RECOGNITION

7.1 Running Royalties vs Lump-Sum Licences. Running royalties (percentage of revenues) are preferred when the licensee's revenues are difficult to predict at the time of negotiation and when the IP is expected to drive significant revenue over time. Lump-sum licences are preferred when the licensee wants certainty of total cost, when the IP has a relatively short useful commercial life, or when enforcement of running royalties would be administratively burdensome. Hybrid structures are common: a lower upfront lump sum plus a reduced running royalty rate. For Indian startups licensing to large companies, insisting on running royalties ensures you share in the upside if the product is more successful than expected.

7.2 Revenue Recognition for IP Licences Under Ind AS 115. The accounting treatment of licence revenue under Ind AS 115 (Revenue from Contracts with Customers) depends on whether the IP is 'distinct' (functional IP) or 'symbolic' (value depends on ongoing activities). For functional IP licences (patents, software): revenue is typically recognised at a point in time when the licence is granted, unless access to updated IP is promised over time. For brand licences (trademarks): revenue is recognised over the licence term, as the licensor is expected to maintain and promote the brand. Running royalties are recognised when the subsequent sale or use occurs. Consult your auditor on the correct revenue recognition treatment for each type of licence.

7.3 ESOP and IP Cross-References. Some Indian startups have explored issuing ESOPs or shares to individual inventors as supplemental consideration for key patent assignments or licence agreements. This approach is unusual and legally complex — it can create confusion between employment compensation and IP transaction consideration, and may have unintended tax implications for both the startup and the inventor. If you wish to incentivise inventors through equity, use a clearly documented inventor recognition programme rather than mixing equity grants into the IP assignment/licence documentation.

ENFORCEMENT PROVISIONS AND SUBLICENSING

8.1 Patent Enforcement in Licensed Territory. A well-drafted patent licence must address what happens when a third party infringes the licensed patent within the licensed territory. Options: (a) Licensor has primary right and obligation to sue — Licensee must provide reasonable assistance; (b) Licensee has the right to sue if Licensor fails to act within 90 days of written notice from Licensee; (c) Joint enforcement — both parties co-plaintiff with cost sharing; or (d) No enforcement obligation — Licensee takes the risk. For exclusive licensees in India, Section 67 of the Patents Act 1970 gives a registered exclusive licensee standing to bring infringement proceedings. For non-exclusive licensees, standing requires the patent owner to be a party. Specify enforcement rights clearly to avoid disputes.

8.2 Sublicensing Rights and Controls. Whether and how the Licensee may grant sublicences is a critical commercial issue. If sublicensing is permitted: (a) require the Licensee to obtain prior written consent for each sublicense; (b) specify that all sublicences must contain terms at least as restrictive as the head licence; (c) make the Licensee responsible to the Licensor for all obligations of its sublicensees; (d) require the Licensee to provide copies of all sublicense agreements; and (e) provide for automatic termination of sublicences on termination of the head licence (or provide for survival of sublicences if the Licensor has no valid termination cause). In India, the Income Tax Act 1961 treats royalties from sublicences the same as from direct licences for withholding tax purposes.

8.3 Improvement Patents and Grant-Back. If the Licensee develops improvements to the licensed patent, the licence agreement must address ownership and licensing of such improvements. Options range from: full assignment of improvements to Licensor (most favourable to Licensor); grant-back licence (Licensee retains ownership but grants a licence to Licensor); no grant-back (Licensee retains all improvement IP). Grant-back clauses are subject to scrutiny under competition law if they effectively prevent the Licensee from commercialising its own improvements. Non-exclusive, royalty-free grant-back licences are generally considered acceptable under the Competition Act 2002.

8.4 Audit and Records. To ensure accurate royalty reporting, the licence agreement must include: an obligation for the Licensee to maintain accurate books and records of all sales, revenues, and units of the licensed product; a right for the Licensor to audit those records once per year on 30 days' notice; a provision that if the audit reveals underpayment of more than 5%, the Licensee must pay the shortfall plus interest and bear the cost of the audit; and a confidentiality obligation on the Licensor with respect to any Licensee financial information obtained through the audit.