

Trademark Licensing Term Sheet (India)

Records key trademark licensing commercial terms with quality control provisions

HOW TO USE THIS TEMPLATE

1. Records agreed commercial terms before the full Trademark Licence Agreement is drafted.
2. Specify the territory, exclusivity, term, and royalty rate clearly.
3. A trademark licence without quality control provisions is legally fragile under the Trade Marks Act 1999.
4. The Licensor **MUST** retain quality control rights — uncontrolled licences can invalidate the trademark.
5. Template only — have reviewed by an IP advocate.

PARTIES AND MARK

Licensor	[Trademark owner — full name and CIN]
Licensee	[Full name and CIN]
Trademark(s)	[Mark text or description — Reg. No. XXXXXXXXX — Class(es): [X]]
Date of Term Sheet	[DD Month YYYY]

COMMERCIAL TERMS

Licence Type	[Exclusive / Non-exclusive / Sole]
Territory	[India / State of [X] / Worldwide]
Field of Use	[Specify permitted goods/services]
Term	[X years / Perpetual]
Royalty Rate	[X% of net sales / Rs. X per unit / Fixed annual fee of Rs. X]
Upfront Fee	[Rs. X / Nil]
Quality Control	Licensor retains right to approve all goods/services under the mark and to inspect quality
Inspection Rights	[Licensor may inspect premises and samples [quarterly / annually]]
Sub-licensing	[Not permitted / Permitted with Licensor consent]
Reporting	[Monthly / Quarterly royalty reports with payment within [30] days]
Governing Law	[Laws of India — courts of [City]]

Quality Control Rationale. Under Section 49 of the Trade Marks Act 1999, a registered user (licensee) agreement is only valid if the registered proprietor controls the quality of the goods or services in connection with which the mark is used. An uncontrolled licence — one where the proprietor does not monitor quality — can lead to the trademark being 'naked licensed' which can result in its cancellation for lack of distinctiveness. The quality control provisions in this term sheet are therefore not merely commercial — they are legally essential to preserving the validity of the trademark. The Licensor must exercise genuine quality control, not just nominal control.

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INDICATIVE TERMS (NON-BINDING)

LICENSOR	LICENSEE
Signature: _____	Signature: _____
Date: _____	Date: _____

QUALITY CONTROL, ENFORCEMENT, AND TAX IMPLICATIONS OF TRADEMARK LICENSING

6.1 Why Quality Control is Legally Mandatory. Section 49 of the Trade Marks Act 1999 requires that a registered user (licensee) relationship must involve the registered proprietor exercising control over the permitted use with respect to quality of goods/services. If the Licensor does not genuinely exercise quality control, the trademark may be deemed 'naked licensed' — meaning it no longer functions as a source identifier and can be cancelled. Quality control must be substantive, not merely nominal: the Licensor must inspect samples, approve marketing materials, and have contractual rights to terminate the licence if quality standards are not met.

6.2 Registered User vs Ordinary Licensee. Under the Trade Marks Act 1999, a 'registered user' is a licensee whose use of the mark is formally recorded at the Trade Marks Registry (Form TM-U). Registration of the licensee's use: (a) gives the licensee standing to sue for infringement independently; (b) creates a public record of the licence; and (c) ensures that the licensee's use of the mark counts towards the Licensor's use for anti-non-use purposes. For exclusive or long-term licences, registering as a registered user is strongly recommended.

6.3 GST on Trademark Licences. Trademark licence royalties are taxable services under the Goods and Services Tax Act. The Licensor must charge GST at 18% on royalties invoiced to the Licensee. The Licensee can typically claim input tax credit (ITC) on the GST paid. For cross-border trademark licences (foreign Licensor to Indian Licensee), the Licensee must pay Integrated GST under the reverse charge mechanism. Ensure the licence agreement is clear about whether royalties are exclusive or inclusive of GST.

6.4 Withholding Tax on Trademark Royalties. When an Indian Licensee pays royalties to a foreign Licensor for use of a trademark in India, the payments are subject to withholding tax (TDS) under Section 195 of the Income Tax Act 1961. The applicable rate depends on the DTAA between India and the Licensor's country of residence. The Licensor should provide a Tax Residency Certificate (Form 10F) to claim DTAA benefits.

6.5 Monitoring and Enforcement Obligations of the Licensor. Even after granting a licence, the Licensor has ongoing responsibilities: (a) monitor the Licensee's use of the mark for quality compliance; (b) enforce the trademark against third-party infringers (since the mark is the Licensor's — infringing use weakens the mark for both parties); (c) renew the trademark registration; and (d) maintain the registered user records at the Trade Marks Registry. A Licensor who ignores infringement may be held to have implicitly consented to the infringing use.

REGISTERED USER AGREEMENT AND LONG-TERM LICENCE MANAGEMENT

7.1 Registered User Agreement (Form TM-U). For exclusive trademark licences or licences lasting more than a few months, the Licensor and Licensee should file a joint application (Form TM-U) to register the Licensee as a 'registered user' of the trademark at the Trade Marks Registry under Section 49 of the Trade Marks Act 1999. Benefits of registered user status: (a) the Licensee's use of the mark counts as use by the Licensor for anti-non-use purposes; (b) the Licensee has standing to bring infringement proceedings without necessarily joining the Licensor; and (c) the licence is publicly recorded, providing commercial certainty to both parties and to potential investors or acquirers reviewing the IP portfolio. The application requires a certified copy of the licence agreement, the names of both parties, and the prescribed fee.

7.2 Managing Long-Term Licence Relationships. For licences of more than 2 years' duration, schedule annual quality control reviews, royalty audits, and licence term reviews. Track: royalty payment timeliness; quality compliance incidents; any sub-licensing granted; changes in the Licensee's business that may affect the field of use or territory; and any infringement notices the Licensee receives relating to the licensed mark. Maintain a licence register and diarise all key dates: royalty payment dates, review dates, renewal options, and termination notice deadlines.

7.3 Termination and Wind-Down Provisions. Ensure the formal licence agreement (to be drafted from this term sheet) includes: clear termination triggers (breach, insolvency, change of control, non-payment); adequate cure periods for breach (typically 30–60 days); obligation to stop using the mark immediately on termination; prohibition on passing off after termination (using similar marks or trade dress that recalls the licensed mark); return or destruction of all branded materials within a specified period; and audit rights to verify compliance with wind-down obligations.