

Commercial Contract

INTERNATIONAL DISTRIBUTORSHIP AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

January 2013

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

LEGAL SERVICES, SMEDA

The Legal Services (LS) department is a part of Business & Sector Development Services Division of the Small Medium Enterprises Development Authority and plays a key role in providing an overall facilitation and support to the small businesses. The LS believes that information dissemination among the small businesses on the existing legal & regulatory environment and business to business and business to client contracting is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate small businesses, the LS, under the Pro-GOLE (Right to do business) project, a joint SMEDA-UNDP initiative for supporting the small businesses, has developed user-friendly contract templates.

Pro-GOLE, (Right to do Business)

The UNDP has partnered with the Small and Medium Enterprises Development Authority to initiate and execute the Pillar 4 (Right to do business) component of the UNDP PRO-GOLE project which seeks to enhance the legal awareness and mobility of marginalized/ informal businesses. Under the project legal services outreach shall be extended to small businesses including home based enterprises, small shopkeepers, growers, women entrepreneurs, hawking vendors etc. In addition, small business shall be mobilized to access legal services.

The Need for Commercial Contracts Templates

In an increasingly complex and competitive industry, it is vital that suppliers and purchasers are fully protected against legal and commercial risks. To counter such risks, a viable solution; available as- of the shelf commercial contract templates- will provide the users with first class ready to use support. With obligations properly set out and liabilities accurately defined, the users will be in a far better position to look after their rights and interests and move forward from their marginalized positions to being active players of the economy. The Legal Service Providers can equally take benefit of these templates for their professional and business development.

Disclaimer

The information contained in this template is meant to facilitate the businesses in documenting transactions with reference to import and export. However, SMEDA, UNDP or any of their employees or representatives accept no responsibility and expressly disclaim any and all liabilities for any and all losses/shortfalls caused by or motivated by recommendations from the information contained within this document. Although SMEDA's ambition is to provide accurate and reliable information; yet, the document is not an alternative to expert legal advice and should ideally be used in conjunction with the same. Any person using this document and or benefiting from the information contained herein shall do so at his/her own risk and costs and be deemed to have accepted this disclaimer.

All information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

INTERNATIONAL DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (hereinafter referred to as the "Agreement") is made at [insert place] on this ____ (insert date) day of _____ (insert month), 20__ (insert year)

BY AND BETWEEN:

M/s [insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

OR

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number]

(hereinafter referred to as the "Business", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

AND

M/s [insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

OR

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number]

(hereinafter referred to as the "Distributor", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents).

(The Business and the Distributor are hereinafter collectively referred to as the "Parties", and individually as the "Party".)

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

WHEREAS the Business is engaged in the manufacture and sale of [insert description of products and goods] as more fully detailed in Annexure A hereto (hereinafter referred to as the "Products") in [insert country].

AND WHEREAS the Business has agreed to appoint the Distributor as its exclusive distributor for the sale of the Products in [insert countries] (hereinafter referred to as the "Territory") with the right to market, promote, sell and distribute the Products in the Territory.

NOW THEREFORE the Parties have agreed to this Agreement on the following terms and conditions:

1. APPOINTMENT AND TERM:

- (1) The Business appoints the Distributor as its exclusive and sole distributor in the Territory for the sale of the Products.
- (2) The Business has represented to the Distributor that it has not appointed any other company, person, agent, distributor or representative for distribution and sale of the Products in the Territory. The Business further agrees that it shall not appoint, during the term of this Agreement, any other company, person, agent, distributor or representative for the distribution and sale of the Products in the Territory.
- (3) The Agreement shall come into effect on the date of execution of this Agreement, and shall continue for a period of [insert number] years, unless terminated earlier by either of the Parties in accordance with the terms and conditions of this Agreement.

2. MINIMUM PURCHASE

- (1) The Distributor shall achieve the Minimum Purchase levels as detailed in Annexure B to this Agreement. For the purpose of this Article, the Products shall be considered purchased when shipped by the Business and the Business has received full price for the Products, excluding the Products returned to the Business due to any defects or damages, etc.
- (2) If the Distributor, with or without faults of the Distributor, does not achieve the Minimum Purchase, then, without prejudice to remedies available to the Business, the Business may terminate this Agreement by a notice with immediate effect.

3. TERM OF DELIVERY

The Business shall be under the obligation to deliver the Products on the delivery dates mentioned in any quotation or acceptance form and shall be liable to indemnify

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

the Distributor in respect of any losses or damages sustained by the Distributor due to a failure to deliver the Products on any particular delivery dates.

4. TITLE AND RISK

Title and risk to the Products shall pass from the Business to the Distributor at the time of delivery at the designated location delivery. All costs relating to the delivery of the Products shall be borne by the Business.

5. TERMS OF PAYMENT

The Business shall sell the Products to the Distributor and the Distributor agrees to buy the Products at prices as may be agreed between the Parties from time to time.

Unless otherwise agreed by the Parties in writing, all payments in respect of the Products under this Agreement shall be made through irrevocable Letters of Credit.

6. INSPECTION

- (1) Upon the receipt of Products, the Distributor shall inspect the Products at its own cost. The Distributor shall, within thirty (30) days, notify the Business if, during the inspection, any of the Products is found not to be in compliance with quality standards, which will be agreed to in writing by the both Parties. In such case, the Business shall repair, replace or refund, as appropriate, the defective Product in question.
- (2) All claims for errors, damages, defects, shortages and non-conformities in any shipment of the Products discovered by the inspection shall be made in writing to the Business and be dispatched by the Distributor with full particulars within [insert number] days after the receipt of Products. Failure to make such claim within such period shall constitute acceptance of the shipment, and agreement that such shipment fully complies with the quality standards and any other applicable terms and conditions.

7. SALES PROMOTION AND ADVERTISEMENT

- (1) Promotion, publicity and advertisement, including without limitation participation in trade fairs, shall be made by the Distributor upon the Business's prior written approval.
- (2) The budget for the purpose of carrying out advertisement and promotion for each year shall be determined through mutual discussion and agreement and the Business shall make its firm commitment to provide the Distributor with funds amounting [insert percentage]% of the annual advertising budget.
- (3) The Distributor shall provide the Business with the annual advertising and sales promotion plan by the end of December, each year for the Business's review and approval.

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

- (4) The Business reserves the right to make its own advertising of its name, trademarks and Services in the Territory at any and all times.

8. TRAINING

- (1) Before the Distributor's undertaking of the distribution of the Services provided by the Business, the Business shall arrange for the thorough training of the Distributor's personnel and staff (hereinafter referred to as the "Training") in order to impart complete knowledge and the mode and method of the Business' imparting the Services to its Clients.
- (2) The Training, and all the expenses related thereto, shall be the sole responsibility of the Distributor.
- (3) The Distributor shall ensure that an appropriate number of its personnel are trained, and duly certified by the Business as being fit for imparting the Services to the Clients.
- (4) The place of training shall be decided by the Business, after consultation with the Distributor.
- (5) The Distributor shall be responsible for the cost and expense incurred in any of the Distributor's personnel attending the Training so provided by the Business under Clause 8 (1) of this Agreement, including travel, lodging, training fees, if any, etc.

9. TERMINATION

- (1) Either Party may terminate the Agreement by giving a [insert number] months prior written notice to the other Party in any of the following events:
- i.
 - ii.
 - iii.
- (2) If either party defaults in any of the other terms of this Agreement and fails to cure the default within [insert number] days of receipt of a notice given by the non-defaulting Party, the non-defaulting Party may forthwith terminate this Agreement by giving a written notice thereof.
- (3) The Business hereby agrees to buy, upon termination, all stocks and inventories still in the possession or under the control of the Distributor at a pre-agreed price.

10. CONFIDENTIALITY

- (1) The Distributor shall maintain in strict confidence and duly safeguard to the best of its ability any and all confidential business and technical information pertaining to the Services or the Business (the "Confidential Information"), and shall not at

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

any time disclose such Confidential Information to any third party or parties or use such confidential information for any purpose other than those contemplated in this Agreement.

(2) This obligation of the Distributor shall survive for [insert number] years after the date of expiration or termination hereof.

(3) It is understood that the Confidential Information does not apply to any information which:

- i. at the time of its receipt was already known to the Distributor;
- ii. is or becomes part of the public domain without breach of this Agreement;
- iii. is independently developed by the receiving Party;
- iv. is received from a third party without similar restriction and without breach of this Agreement;
- v. is approved for release by written authorization of the Business; or
- vi. is required to be disclosed by court order or governmental agency.

11. OWNERSHIP OF INTELLECTUAL PROPERTY

(1) The Distributor acknowledges that the Business is the sole and exclusive owner of the intellectual property rights, including without limitation trademarks, service marks, design and design rights, database rights, copyright works, trade or business names and any other industrial and proprietary rights (whether registered or unregistered) (hereinafter collectively referred to as the "Intellectual Property"), and agrees that the Distributor shall not claim ownership rights to the Intellectual Property by virtue of being appointed the Business' Distributor under this Agreement.

(2) The Distributor agrees that nothing in this Agreement shall give the Distributor any right, title, or interest in the Intellectual Property other than the right to use the same in accordance with this Agreement.

12. INDEMNIFICATION

(1) Each Party agrees to protect, indemnify and hold harmless the other Party, and its employees, agents, representatives and assigns (collectively the "Indemnified Parties") from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings (including reasonable fees and disbursements of counsel) arising out of its misrepresentation or breach of this Agreement or otherwise, and negligence or willful misconduct by it or any of its representatives, agents or employees in connection with its obligations pursuant to this Agreement. Provided, however, that the a Party shall not be required to reimburse or indemnify any Indemnified Party for any loss or claim to the extent such a loss or claim is due to the negligence or willful misconduct of the Indemnified Party.

(2) In case of any product liability claims made or threatened against the Distributor by any customer in connection with a manufacturing defect in the Products and if such defect was caused by any act or omission of the Business (whether willfully,

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

negligently or otherwise), the Business hereby agrees to indemnify the Distributor against all costs, claims, expenses, damages, demands or losses whatsoever arising therefrom or in connection therewith.

13. ASSIGNMENT

Neither Party hereto may assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the other Party.

14. INDEPENDENT BUSINESS RELATIONSHIP

- (1) The Business and the Distributor are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as set forth in this Agreement.

15. FORCE MAJEURE

- (1) Force Majeure shall mean any event that is beyond the reasonable control of a Party, or the effects of which adversely affect the performance by such Party of its obligations under this Agreement, including, but not limited to, acts of God, sabotage, insurrection, terrorism, riots, hostilities or war (whether declared or not), acts of the public enemy, civil disturbances, any kind of fire, explosion, flood or accidental damage, epidemics, landslides, washouts, lightening, storms, earthquakes, lockouts, blockades, shortage of labor or material, major equipment failure, or other causes beyond the control of the Party affected.
- (2) Notwithstanding anything contained hereinabove, neither Party shall be liable to the other if it is unable to perform any of its obligations under this Agreement due to the occurrence of Force Majeure.
- (3) The Party affected by the Force Majeure event shall be entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded or made impossible by the events of Force Majeure.
- (4) Each Party shall give a notice within [insert number] days of the occurrence of the event of Force Majeure and shall promptly thereafter consult the other Party for the purpose of finding a mutually acceptable solution to the Force Majeure event.

16. GOVERNING LAW AND EXCLUSIVE JURISDICTION

This Agreement in all respects be read and construed and shall operate as a contract, in conformity with the laws of [insert country], and the courts at [insert

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

17. SETTLEMENT OF DISPUTE

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules [or insert any other applicable rules] , subject to the exclusive jurisdiction of the Courts of [insert place].

18. MISCELLANEOUS

- (1) This Agreement represents the complete agreement between the Parties with regard to the subject matter and supersedes any prior understanding or agreements, oral or written.
- (2) This Agreement may be amended or revised only by an instrument in writing signed by either the Parties or their duly authorized representatives.
- (3) No provision hereof or breach of any provision may be waived except by a written waiver, signed by the waiving Party. No waiver of any right under or breach of this Agreement shall be construed to be a waiver of any other right or breach under the Agreement.
- (4) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in any applicable jurisdiction for the time being shall be ineffective only to the extent of such prohibition or lack of enforceability, and shall not invalidate the remaining provisions hereof.

IN WITNESS WHEREOF, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

For and on behalf of
The Business

For and on behalf of
The Distributor

WITNESS NO. 1

WITNESS NO. 2

International Distributorship Agreement

Pro- Gole (Right to do Business)

Legal Services, B&SDS

Signature: _____

Name: _____
—

Designation: _____

Date: _____

Signature: _____

Name: _____

Designation: _____

Date: _____

ANNEXURE A Description of Products

1. [insert description of Product];
2. [insert description of Product];
3. [insert description of Product];

ANNEXURE B Minimum Purchase Level Per Year

- | | |
|------------------------------------|-----------------|
| a. [insert description of Product] | [insert minimum |
| purchase quantity] | |
| b. [insert description of Product] | [insert minimum |
| purchase quantity] | |
| c. [insert description of Product] | [insert minimum |
| purchase quantity] | |