

Commercial Contract

PROMOTION AND PRODUCT PLACEMENT AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Promotion and Product Placement Agreement

Pro-Gole (Right to 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 marketing. 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.

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PROMOTION AND PRODUCT PLACEMENT AGREEMENT

THIS PROMOTION AND PRODUCT PLACEMENT AGREEMENT (hereinafter referred to as the "Agreement") made and entered into 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 "Promoter", 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];

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

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

WHEREAS, the Client is a wholesale supplier of Products and the Promoter is a business with expertise in the promotion, marketing and sale of the Products into retail channels of trade located in [insert place];

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AND WHEREAS the Client desires to assure itself of the Promoter's services of promotion, marketing and sale of the products (hereinafter referred to as the "Services", and more particularly described in Clause 3 of this Agreement) and the Promoter is willing to provide such Services to the Client on the terms and conditions set forth herein.

NOW THEREFORE in consideration of the terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto intending to be legally bound, hereby agree as follows:

1. APPOINTMENT

The Client hereby appoints the Promoter on a non-exclusive basis for the Services, and the Promoter hereby accepts such appointment.

2. TERM

This Agreement shall come into force on [insert date] and shall continue to remain in force for a period of [insert number] years, unless terminated earlier by any Party in accordance with the terms and conditions of this Agreement.

3. DUTIES OF THE PROMOTER

- (1) The Promoter shall use its best efforts for the promotion of sales and use of the Client's following Products and for the marketing thereof through the Promoter's network of distributors (hereinafter referred to as the "Products"):
 - i. [insert description of the products]
 - ii. [insert description of the products]
 - iii. [insert description of the products]
- (2) In addition to the basic information of the specific retail location, the Promoter shall deliver to the Client a photo in digital format of each Product delivered and displayed in each retail location.
- (3) The Client may randomly call the retail locations to confirm placement of the Products but shall not call to solicit business unless approved by the Promoter.
- (4) The Promoter shall maintain frequent contact with the Client, either via telephone, e-mail or other acceptable means of communications, to discuss the performance of the Services under this Agreement.
- (5) The Promoter's sole authority shall be to promote and market the Products in accordance with the terms of this Agreement. Any and all of the purchase orders shall be placed directly by the Client's distributors to the Client, subject to terms and conditions to be entered into by and between the Client and each one of the distributors. The Client reserves the right to reject any order placed, and/or to limit quantities on any order.
- (6) The Client agrees to provide the Promoter with such information, advice and other assistance in matters relating to the marketing and distribution of the

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Products as may be reasonably required to enable the Promoter to carry out effectively its obligations.

4. INDEPENDENT CONTRACTOR

For purposes of this Agreement, each Party shall be and act as an independent contractor. The Promoter is an independent contractor, and nothing contained in this Agreement shall be construed to constitute the Parties as partners, joint-venturers, co-owners or otherwise, or allow the Promoter to create or assume any obligation on behalf of the Client for any purpose whatsoever. Except as otherwise provided in this Agreement, all financial and other obligations associated with the Promoter's business are the sole responsibility of the Promoter.

5. COMPENSATION

(1) During the Term of this Agreement, unless earlier terminated, the Client shall pay the Service Fees to the Promoter in the following manner:

- i. The Client shall pay an amount of Rs. ____/- (Rupees _____) (insert amount) to the Promoter per month for providing the Services under this Agreement.
- ii. Furthermore, the Promoter shall also be entitled to Rs. ____/- (Rupees _____) (insert amount) for each Product Display delivered to and merchandised to each retail store location.
- iii. All payable amounts shall be payable by the Client to the Promoter on the [insert number] day of each month, in arrears.

6. TRADEMARKS

(1) During the Term of this Agreement, the Promoter shall have the right to indicate to the public that it is an authorized representative of the Client's Products and to advertise such Products under the trademarks, marks, and trade names that the Client may adopt from time to time (hereinafter referred to as the "Client's Trademarks").

(2) Nothing contained herein shall grant the Promoter any right, title, or interest in Client's Trademarks.

(3) At no time during or after the Term of this Agreement shall the Promoter challenge or assist others to challenge the Client's Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of the Client.

(4) The Client hereby agrees to indemnify the Promoter for any and all use of Client's Trademarks.

7. WARRANTIES

(1) The Promoter hereby warrants and represents that:

- i. it has the experience, staff, skill and authority to perform its obligations hereunder;
- ii. it shall comply with all applicable laws, rules, regulations, codes and orders of any public, quasi-public or other governmental authority; and

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- iii. it has obtained all licenses and permits required to observe and perform the terms covenants, conditions and other provisions on its part to be observed or performed under this Agreement.

8. INDEMNIFICATION

- (1) The Promoter shall indemnify and hold the Client harmless with respect to any claims, loss, suit, liability or judgment suffered by the Client, including reasonable attorney's fees and costs, based upon or related to any action of the Promoter in performing its Services under this Agreement, except where any such claim arises out of any acts, or failure to act, of the Client.
- (2) The Client agrees to indemnify and hold the Promoter harmless with respect to any claims, loss, liability, damage or judgment suffered by the Promoter, including reasonable attorney's fees and court costs, which results from the use by the Promoter of any material furnished by the Client.

9. TERMINATION

- (1) Either Party may terminate the Agreement by giving [insert number] days prior written notice in writing to the other Party in any of the following events:
 - i. [insert description of event of default];
 - ii. [insert description of event of default];
 - iii. [insert description of event of default].
- (2) The right to terminate as provided above shall arise if the a Party commits any breach of its obligations hereunder which breach if remediable is not remedied to the satisfaction of the other Party within [insert number] days of a notice in writing to the from the other Party.
- (3) Upon termination of the Agreement, the Promoter shall transfer, assign and make available to the Client all property and materials in the Promoter's possession or subject to the Promoter's control, subject to payment in full of amounts due pursuant to this Agreement.

10. 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 Pakistan and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

11. RESOLUTION OF DISPUTES

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 Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

12. 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,

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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.

13. 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. The failure of either Party to exercise any right provided in this Agreement shall not be construed as a waiver its right to subsequently enforce such provision or any other provision of this Agreement.
- (4) Any provision of this Agreement which is prohibited or unenforceable under any law, rule or regulation applicable in [insert place] 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.

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For and on behalf of
The Client

For and on behalf of
The Promoter

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____