

# Commercial Contract

## EXCLUSIVE MANUFACTURING AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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**January 2013**

## **Exclusive Manufacturing Agreement**

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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### **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 manufacturing. 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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### **B10. EXCLUSIVE MANUFACTURING AGREEMENT**

**THIS EXCLUSIVE MANUFACTURING 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 "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]

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

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

**WHEREAS** the Business is involved in the production and sale of [insert description of products] (hereinafter referred to as the "Products", and more particularly described in Schedule I of this Agreement) in Pakistan.

**AND WHEREAS** the Manufacturer has a manufacturing facility for the manufacturing of similar products.

**AND WHEREAS** the Business wishes to engage the Manufacturer for the manufacturing of the Products on an exclusive basis, within the territorial boundaries as stated in Clause 4 of this Agreement.

**AND WHEREAS** the Business has agreed to engage the Manufacturer for the manufacturing of the Products, and the Manufacturer hereby accepts such engagement.

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

### **1. TERM**

This Agreement shall become effective on [insert date], and shall remain in full force and effect for a period of [insert number] years unless terminated earlier by the Parties under the terms and conditions of this Agreement.

### **2. MANUFACTURING**

(1)The Business hereby grants to the Manufacturer an exclusive right to manufacture the Products.

(2)The Manufacturer shall manufacture the Products in the quantities mentioned in Schedule I of the Agreement, and the Products shall be delivered by the Manufacturer to the Business at [insert address] for sale of the Products.

(3)Apart from the Products given in Schedule I, the Manufacturer shall not manufacture any of the Business' Products.

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- (4) In undertaking the manufacturing of the Products, the Manufacturer shall abide by the quality standards of the Business, as communicated by the Business to the Manufacturer from time to time. The Business shall have the right to inspect the quality standards of the Manufacturer's products to ensure the strict compliance of the Manufacturer with the Business' quality standards.
- (5) The Manufacturer shall not undertake the sale of the Products to the end users. Instead, the Manufacturer shall sell the manufactured Products to the Business against the prices as set out in this Agreement, and subject to revision with the mutual consent of the Parties.

### **3. DELIVERY**

- (1) The Manufacturer shall be responsible for delivering the Products to the Business, weekly, at the premises of the Business at [insert number] by the first working day of the week.
- (2) Upon receipt of the Products, the Business shall inspect the same. If it is determined by the Business that any Product does not match with the specifications or quality standards provided by the Business to the Manufacturer, the Business may reject and return to the Manufacturer such Product. The Manufacturer, if required by the Business, shall replace the same, free of cost, within [insert number] days from the date of raising the discrepancy, failing which the Manufacturer shall return the cost of the Product. If such inspection and rejection causes the Business to incur additional costs, such costs shall be reimbursed by the Manufacturer to the Business, and may be deducted by the Business from any money due, or to become due, to the Manufacturer.
- (3) All transportation costs for taking delivery of the Products shall be borne by the Manufacturer.
- (4) The Manufacturer shall notify the Business in writing of any actual or anticipated delays for the delivery of the Products immediately upon discovery. Such notice shall include an estimated period of delay, cause and corrective actions being taken by the Manufacturer. In such cases, the Manufacturer shall give intimation in the form of phone call/email/fax of the measures taken to avoid further delays or mitigate the effects of such delay.

### **4. EXCLUSIVE LICENSE**

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The Business hereby undertakes that the Manufacturer is the exclusive manufacturer of the Business, and that the Business shall, for the term of this Agreement, not engage any other person or entity for the manufacturing of the Products of the Business.

### **5. PRICE AND PAYMENT TERMS**

- (1) The prices for the manufacture and delivery of the Products shall be as per Schedule II hereto.
- (2) The Price for each delivery shall be payable by the Business to the Manufacturer on the [insert number] days of the weekly delivery of the Products from the Manufacturer to the Business, after the inspection of the Business with respect to the specifications and quality standards of the Products

### **6. STANDARDS**

The Manufacturer shall manufacture the Products in accordance with the principles of good manufacturing practices and shall comply with the safety, health and environment standards and practices in this regard.

### **7. NON-COMPETITION**

The Manufacturer shall not directly or indirectly, during the term of this Agreement, and for a period of [insert number] months after the expiry or termination of this Agreement, manufacture, sell or deliver any product to any other entity which might reasonably be considered to compete with the Business' Products, or enter into any business, in whatsoever capacity, which may conflict with the interest of the Business.

### **8. TERMINATION**

Either Party may terminate this Agreement, with or without cause, upon serving a [insert number] months' prior written notice to the other Party.

### **9. INDEMNIFICATION**

The Manufacturer shall indemnify the Business against any and all claims, losses, damages, costs, charges and expenses (including court fees and lawyers fees and expenses) suffered or incurred by the Business as a consequence of breaching the terms of this Agreement or due to its failure to abide by the Business' product specifications and standards.

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### **10. CONFIDENTIALITY**

- (1) Each party shall at all times during the continuance of this Agreement and after its termination keep confidential all trade secrets, know-how or other confidential information (hereinafter referred to as the "Confidential Information") made available under or in connection with this Agreement.
- (2) Notwithstanding the assignment of its rights in accordance with Clause 11 below, the Manufacturer shall be responsible and liable for maintaining the secrecy of the Confidential Information provided by the Business for the processing activity and also for ensuring compliance of all the terms and conditions of this Agreement.

### **11. ASSIGNMENT**

None of the Parties shall assign or transfer or purport to assign or transfer any of their rights or obligations under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

### **12. 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 UNCITRAL Arbitration Rules (or any other applicable laws/rules), subject to the exclusive jurisdiction of the Courts of [insert place].

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

### **14. 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

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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.

### **15. 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.



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**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 Business**

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**For and on behalf of  
The Manufacturer**

**WITNESS NO. 1**

**WITNESS NO. 2**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE I**  
**List of Products and Quantities**

- |   |                      |
|---|----------------------|
| 1. [insert description of the Product]<br>week] | [insert quantity per |
| 2. [insert description of the Product]<br>week] | [insert quantity per |
| 3. [insert description of the Product]<br>week] | [insert quantity per |

**SCHEDULE II**  
**Prices**

- |   |                   |
|---|-------------------|
| 1. [insert description of the Product]<br>unit] | [insert price per |
| 2. [insert description of the Product]<br>unit] | [insert price per |

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**3. [insert description of the Product]  
unit]**

**[insert price per  
unit]**