

# Commercial Contract

## INTELLECTUAL PROPERTY PURCHASE AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

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**January 2013**

# **Intellectual Property Purchase 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.

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

## A1. INTELLECTUAL PROPERTY PURCHASE AGREEMENT

**THIS AGREEMENT FOR PURCHASE OF INTELLECTUAL PROPERTY** (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 "Seller", 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 "Purchaser", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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

**WHEREAS** the Seller is the owner of the [insert description of the intellectual property] (hereinafter referred to as the "Intellectual Property", and more properly described in Clause 1), and any rights, trademarks, etc., associated with the same.

**AND WHEREAS** the Purchaser is a manufacturer of [insert description of the manufacturer's products] (hereinafter referred to as the "Products"), and wishes to purchase the Intellectual Property of the Seller in order to use and utilize the same in the manufacture and production of it existing Products, as well as any future products.

**AND WHEREAS** the Seller has agreed to sell the Intellectual Property along with the rights associated with it.

**NOW THEREFORE** the Parties have entered into this Agreement for the sale/purchase of the Intellectual Property on the following terms and conditions:

## 1. DEFINITION OF INTELLECTUAL PROPERTY

(1) Intellectual Property, for the purposes of this Agreement, is defined as follows:

[insert description of the Intellectual Property being sold, along with details of ownership/registration documents, if any] (the Intellectual Property may include any patents, formulas, trademarks, copyrights etc. for their use in the manufacturer's production processes).

(2) The Purchaser agrees to purchase from the Seller the Intellectual Property described in Clause 1 (1), and any rights, trademarks, etc., associated with the said Intellectual Property.

## 2. SALE OF INTELLECTUAL PROPERTY

(1)The Seller agrees that it has the requisite authority to sell and transfer the Intellectual Property, and further agrees that selling the Intellectual

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Property means that from the date of this Agreement, the Seller has no further claims, whatsoever, to the Intellectual Property.

- (2) The Seller agrees that the description of the Intellectual Property here (and on any included schedules or attachments) is accurate and thorough, and that no facets of the Intellectual Property have been left out of this Agreement.
- (3) The Seller agrees to transfer any and all rights to the Intellectual Property in favor of the Purchaser, and agrees to do all such acts necessary to transfer/register the Intellectual Property in the name of the Purchaser.
- (4) The Seller agrees that from the date of this Agreement, the Purchaser shall have the right to, among other things, exploit the Intellectual Property for profit. The Seller further agrees that following the execution of this Agreement, the Seller shall have no further rights to the Intellectual Property, and that the Seller shall not make any further profit, or any other kind of gain or benefit, as a result of a connection to the Intellectual Property, except as specified in this Agreement.
- (5) The Seller hereby covenants with the Purchaser that the Seller and any person claiming, whether in law or in equity, through or under the Seller's permission, any interest in the Intellectual Property or any part thereof, shall, from time to time or at any time at the request of the Purchaser, do and execute or cause to be done and executed at the cost of the Seller, all such acts, deeds and things as may be necessary for more perfectly, properly and completely selling/transferring and assuring to the Purchaser all the rights, title, and interest of the Seller in or to the Intellectual Property.
- (6) The Seller agrees that from the date of execution of this Agreement, the Seller shall have no right whatsoever in the Intellectual Property, including that to receive any royalties pertaining to the use thereof, and that all the rights and interests of the Seller with respect to the Intellectual Property shall stand sold, conveyed and transferred to the Purchaser.

### 3. CONSIDERATION

- (1) The Seller shall transfer the ownership in the Intellectual Property to the Purchaser against a consideration of Rs. \_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) (hereinafter referred to as the "Consideration") to be paid by the Purchaser to the Seller.

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(2) Of the Consideration Amount, the Purchaser shall pay an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) to the Seller at the time of execution of this Agreement. The remaining Consideration Amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) shall be paid by the Purchaser to the Seller on the date of registration of the Intellectual Property in the name of the Purchaser with the relevant authorities.

### **4. TRANSFER/ASSIGNMENT**

(1) The Seller agrees to provide the Purchaser with any and all documents related to the Intellectual Property, including any patent agreements, copyright certificates, plans, written works, etc.

(2) This transfer/assignment shall begin upon the signing of this Agreement, and shall be completed no later than [insert number] days past the signing of the Agreement.

(3) The Seller agrees to do all such acts, and to execute all such documents, which are necessary for the complete transfer of the Intellectual Property in the name of the Purchaser, including but not limited to, in the relevant records.

### **5. REPRESENTATIONS AND WARRANTIES**

(1) The Seller represents and warrants to the Purchaser:

- i. that the Seller has the right, power and authority to enter into this Agreement;
- ii. that the Seller is the exclusive owner of all right, title and interest in and to the Intellectual Property;
- iii. that the Seller's rights in the Intellectual Property do not infringe upon the rights of any third party;
- iv. that the Intellectual Property is free of any liens, security interests, encumbrances or licenses;
- v. that there are no claims, pending or threatened, with respect to Seller's rights in the Intellectual Property;
- vi. that the Seller has not entered into any agreement with any other party which may be in conflict with this Agreement, or which shall prejudice the interest of the Purchaser with respect to its title and ownership of the Intellectual Property as conveyed to it by the Seller under this Agreement;

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- vii. that the Seller is not subject to any agreement, judgment or order inconsistent with the terms of this Agreement;
- viii. that from the date of execution of this Agreement, the Seller shall cease to have any rights, title or ownership in and to the Intellectual Property, and shall not act in a manner so as to convey to any third party any impression to the contrary in.

### **6. 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.

### **7. 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].

### **8. 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

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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.

### **9. INDEMNIFICATION**

If either party is found to be in breach of this Agreement, the offending Party will indemnify the offended Party for any legal fees accrued as a result of the breach. Lost profits incurred as a result of any such breach shall be repaid by the offending Party to the offended Party.

### **10. AMENDMENTS**

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

### **11. SEVERABILITY**

If a court of law finds any provision of this Agreement invalid or unenforceable at law for any reason, the remainder of this Agreement shall not be affected, and shall be interpreted so as best to effect the intent of the Parties.

### **12. ENTIRE AGREEMENT**

This Agreement, contains the entire understanding and agreement between the Parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

### **13. NONWAIVER**

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.



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**IN WITNESS WHEREOF**, the Parties hereto have set their hands and seals the day, month and year mentioned hereinabove.

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**For and on behalf of  
The Purchaser**

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**For and on behalf of  
The Seller**

**WITNESS NO. 1**

**WITNESS NO. 2**

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

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

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

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

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

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

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

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