

Commercial Contract

NON-EXCLUSIVE JVA



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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 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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A6. NON EXCLUSIVE JOINT VENTURE AGREEMENT

THIS JOINT VENTURE 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];

(hereinafter referred to as the "First Venturer", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

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 "Second Venturer", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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(The First Venturer and the Second Venturer are hereinafter collectively referred to as the "Venturers" and individually as the "Venturer".)

WHEREAS the First Venturer is engaged in the business of [insert description of the First Venturer's business].

AND WHEREAS the Second Venturer is engaged in the business of [insert description of the Second Venturer's business].

AND WHEREAS the Venturers are desirous of initiating a business of [insert business description] (hereinafter referred to as the Business") together whereas both Venturers shall contribute their resources.

AND WHEREAS the Venturers are of the opinion that the Business may be best conducted by forming a Joint Venture Company, and the Venturers are desirous of reducing into writing the their respective responsibilities, interests, and liabilities in connection with the Joint Venture.

NOW THEREFORE the Venturers have entered into this Agreement on the following terms and conditions:

1. JOINT VENTURE

- (1) The Venturers do hereby agree to form a joint venture private limited company pursuant to the laws of Pakistan in order for the Venture to carry out the Business.
- (2) The Venturers shall execute such certificates and documents, including the Memorandum of Association and Articles of Association, as may be required by the law in order for the Venture to operate as a Company, and shall do all other acts and things requisite for the continuation of the Venture as a Joint Venture pursuant to the applicable law.
- (3) The Venture shall be conducted under the name and style of "[insert name of the Venture]".
- (4) The Authorised Share Capital of the Venture Company shall be [insert amount].
- (5) The registered office of business for the Venture shall be [insert complete address], which may be relocated with the mutual consent of the Venturers and in accordance with the requirements of the Venture.

2. PURPOSE OF THE JOINT VENTURE

The business of the Venture shall be to undertake the production of [insert description of the Products for which the Venture has been formed].

3. TERM

The term of the Venture shall commence on the date of the execution of this

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Agreement, and continue to remain in full force until the termination of this Agreement under the terms and conditions of this Agreement.

4. PERCENTAGE OF PARTICIPATION

(1) The Venturers shall own the following percentages of the paid up share capital of the Joint Venture Company:

1. First Venturer [insert percentage]
2. Second Venturer [insert percentage]

(2) The Venturers shall contribute to the Venture the following:

1. The First Venturer shall contribute the trademark and product design registered in the name of the First Venturer with the laws of [insert country] for the products to be produced by the Business pursuant to this Joint Venture Agreement. However, the Trademarks and the product design shall remain the property of the Venturer, and the ownership rights of both shall not be deemed to be transferred to the Joint Venture Company at any time.
2. The Second Venturer shall contribute to the Venture an amount of Rs. _____/- (Rupees _____) (insert amount) which shall be the working capital of the Business.

(3) Except as otherwise required by law or this Agreement, the Venturers shall not be required to make any further capital contributions to the Venture.

(4) Upon execution of this Agreement, the Venturers shall each own the interests in the Venture in the following percentages:

1. First Venturer [insert percentage]
2. Second Venturer [insert percentage]

(5) No Venturer shall have the right to withdraw his capital contributions or demand or receive the return of his capital contributions or any part thereof, except as otherwise provided in this Agreement.

(6) The Venturers shall not be personally liable for the return of capital contributions or any part thereof, except as otherwise provided in this Agreement.

5. MANAGEMENT

(1) The Venturers shall be the directors of the Venture Company, and shall make all decisions regarding the Venture Company in accordance with the decisions of the Directors' resolutions.

(2) [Insert name] shall be the first Chief Executive of the Company.

(3) Each Venturer may, at any time, substitute an alternative in place of any of its above named representatives by serving written notice to the other Venturer.

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Each Venturer's representative or alternative representative on the Board shall possess authority to act for such Venturer on all matters of interest to it with respect to its participation in the Venture.

- (4) The Board of Directors shall have the powers to do all such things and acts as required or permitted by the Companies' Ordinance, 1984, and the Memorandum and Articles of Association of the Venture Company.
- (5) The Policy Committee shall generally perform its duties at a meeting at which all designated representatives of the Venturers are present, but where circumstances warrant, telephone communication between the representatives or their alternatives is authorized.
- (6) The salaries and expenses of each of the representatives on the Board shall be borne by the Venturer whom the representative has been designated to represent, and shall not be an expense to the Venture.

6. TERMINATION

- (1) Either Party may terminate the Agreement, with or without cause, by giving to the other Party a [insert number] months' prior written notice.
- (2) Upon termination of this Agreement pursuant to a notice from the terminating Party under Clause 6 (1), the other Party shall have the option to exercise either of the following rights:
 - i. To require the dissolution or liquidation of the Venture Company;
 - ii. To purchase or cause its nominee to purchase for cash, all or any part of the shares of the Venture Company then held by the terminating Party at par value or the market value of the shares, whichever is higher.

7. JOINT VENTURE BANK ACCOUNTS

- (1) All Working Capital or other funds received by the Venture shall be deposited in a bank account, set up especially for the Venture, and requiring the signatures of both Venturers for any withdrawals.
- (2) Withdrawal of funds from the Venture's Account may be made in such amount and by such persons as authorized by the Directors through duly passed Board Resolution.

8. NON EXCLUSIVITY

- (1) The Venturers understand that this Agreement, and the subsequent Joint Venture formed is a non-exclusive arrangement, and the Venturers shall be free to enter into similar relations with any other entity or business to carry out same or similar activities, and there shall be no restrictions with respect to the Venturers' rights to do the same.

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(2) The First Venturer shall be at liberty to use its trademarks and product designs for the manufacturing of same or similar products alone, or in collaboration with any other entity, and such activities of the Venturer shall not be construed as violation of the terms of this Agreement.

(3) Any activity of the Joint Venturers in pursuance of this Clause shall be subject to the confidentiality provisions of Clause 9.

9. CONFIDENTIALITY

At all times, the Venturers shall keep the trade secrets of the Joint Venture Company, including any new formulas, product designs developed during the business activities, formulas, customer lists etc. (hereinafter referred to as the "Confidential Information") in confidence, and ensure that the Confidential Information of the Venturers is kept safe and confidential at all times. Except for the Trademarks and the Product Design contributed by the First Venturer, the remaining information, designs and all things related thereto are the property of the Company, and shall be treated as such, and shall only be disclosed to such people which have a need to know the same in order to carry out the purpose of this Joint Venture Agreement.

10. AUTHORITY

Nothing in this Agreement shall be construed to give any Venturer, and no Venturer shall hold itself out to have, the authority or power to enter into any obligation on behalf of the other Venturer except as specifically authorized by the other Venturer in writing.

11. 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.

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

13. FORCE MAJEURE

(1) Force Majeure shall mean any event that is beyond the reasonable control of a Venturer, or the effects of which adversely affect the performance by such Venturer 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 Venturer affected.

- (2) Notwithstanding anything contained hereinabove, neither Venturer 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 Venturer 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 Venturer shall give a notice within [insert number] days of the occurrence of the event of Force Majeure and shall promptly thereafter consult the other Venturer for the purpose of finding a mutually acceptable solution to the Force Majeure event.

14. AMENDMENTS

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

15. NONWAIVER

The failure of either Venturer 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.

16. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

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

**For and on behalf of
The First Venturer**

**For and on behalf of
Second Venturer**

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WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____