

# Commercial Contract

## PACKAGING AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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**January 2013**

## **Packaging 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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### **B14. PACKAGING AGREEMENT**

**THIS PACKAGING 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 "Business", 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 "Packager", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

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**WHEREAS** the Business is engaged in the production of [insert description of the goods] (hereinafter referred to as the "Products").

**AND WHEREAS** the Business has a packaging facility available at the site of production.

**AND WHEREAS** the Business requires the services of an entity to pack the Products at the production site in accordance with the requirements of the Business.

**AND WHEREAS** the Packager is engaged in provided packaging services to its clients like the Business.

**AND WHEREAS** the Packager has represented to the Business that it has the requisite resources, experience and expertise to provide packaging services to the Business.

**AND WHEREAS** based on the representations of the Packager, the Business desires to engage the Packager for providing packaging services to the Business at the production site.

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

### **1. TERM**

The Agreement shall come into effect on [insert date], and shall continue to remain in effect for a period of [insert number] years, unless terminated by either Party in accordance with the terms of this Agreement.

### **2. APPOINTMENT AND SCOPE OF AGREEMENT**

(1)The Business hereby appoints the Packager for providing packaging services (hereinafter referred to as the "Services") for its Products as listed in Schedule A to this Agreement.

(2)The Packager shall provide the packaging Services to the Business at the site of production, and in no case shall the Packager be allowed to take the Products outside the premises of the production site for packaging.

(3)The Business shall be at liberty to add/delete the Products as listed in Schedule A at any time.

(4)The Business shall be solely responsible for providing the Packager with the packaging material to be used in the packaging of the Products, and the Packager shall only be required to provide packaging Services.

### **3. SERVICE FEES**

(1)In consideration for the Packager's Services, the Business agrees to pay to the Packager a sum of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) per month as the

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service fees (hereinafter referred to as the "Service Fees").

- (2) Other than the Service Fees, the Business shall pay to the Packager a commission at the rate of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) per piece of the packaged Products (hereinafter referred to as the "Commission").
- (3) The Service Fees and the Commission shall be payable to the Packager by the Business on a monthly basis, in arrears.
- (4) On the first day of each month, the Packager shall provide to the Business an invoice detailing the number of the products packed by the Packager in the past month, and the accrued Commission, along with the Service Fees. Within [insert number] days of the Business receiving the invoice, it shall pay to the Packager the dues as stated in the invoice, or in case of any discrepancy in the number of packaged goods as stated in the invoice and in reality, such discrepancy shall be communicated to the Packager in detail, at the time of the payment to the Packager.

### **4. PACKAGER'S WORKERS**

- (1) The Packager shall be at liberty to employ as many workers for the packaging of the Products as it deem fit. However, reimbursement of the Packager's Workers shall be the sole responsibility of the Packager, and the Business shall not be held liable for any claim of the Packager's Workers towards the Packager.
- (2) The Packager's Workers shall, at all times, carry an identification card so as to identify themselves as the Packager's Workers when prompted by the Business' personnel on site.
- (3) The Packager shall ensure that the list of the Packager's Workers with the security personnel at the entrance of the business premises shall always remain updated, since the Security Personnel will not let any person within the boundaries of the Business' premises whose name is not stated in the list. The Business shall not be held liable for any claim of the Packager for lost profits or any other loss or harm incurred by the Packager due to the Security Personnel not letting any of the Packager's Workers in whose name is not on the list.
- (4) The Security Personnel shall also be at liberty to detain any of the Packager's Workers whom the Security Personnel has reasons to believe is a threat to the Business' environment.
- (5) The Security Personnel shall be at liberty to check the person and belongings of the Packager's Workers at the time of entering into, and leaving, the Business' premises.

### **7. CONFIDENTIALITY**

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All information, knowledge, technology and trade secrets (hereinafter collectively referred to as the "Confidential Information") of the Business, including but not limited to the information relating to the production, processing and testing of Products shall be used by the Packager only in the performance of its obligations under this Agreement. The Packager shall establish and maintain procedures to ensure that all Confidential Information disclosed to its Workers is maintained in confidence, and not disclosed to third parties or the public. The Packager shall not use such information for its own benefit, or for the benefit of any third party.

### **8. RELATIONSHIP OF THE EMPLOYEES AND THE BUSINESS**

- (1) It is clearly understood and agreed that in the performance of the Services under this Agreement, the Packager's Workers act solely as the workers of the Packager. Nothing in this Agreement shall be construed or applied to create a relationship of partnership, agency, joint venture or of an employer and an employee between the Business and the Packager's Workers or between the Business and the Packager. The Packager is obliged to inform its Workers of this fact and to ensure that any recourse by them is against the Packager and not the Business for any claim(s) arising while performing the Services under this Agreement.
- (2) The Business shall not be liable to pay anything to the Packager's Workers for the work done under this Agreement nor shall the Business be responsible for any other work-related claim(s) of the Packager's Workers.
- (3) The Business shall not be responsible for acts of negligence of the Packager's Workers in their course of providing the Services or otherwise. The Packager takes full responsibility for any loss resulting from any negligence of its Workers under all circumstances and conditions.

### **9. INDEMNIFICATION**

- (1) The Packager shall protect, defend, unconditionally indemnify and hold the Business, its staff, directors, officers, and agents free and harmless from and against any and all liabilities, losses, claims, liens, demands, damages, causes of action of every kind and character which may arise in the course of providing the Services to the Business. This will include without limitation judgments, penalties, interest, court costs, and any legal fees incurred in enforcing this indemnity, which the Business may at any time suffer or sustain or become liable for, by reason of any negligent act or omission of the Packager or its Workers.
- (2) The Packager makes no representation, covenants, warranties or guarantees, express or implied other than those expressly set forth in this Agreement. In no case shall the Packager be liable for contingent or consequential, special or indirect damages, except as may result from

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Packager's or its Workers' gross negligence or willful misconduct.

### **10. TERMINATION**

The Parties may terminate this Agreement at any time before its expiry and without assigning any reason by giving a [insert number] days written notice to the other Party.

### **11. ASSIGNMENT**

The Parties cannot transfer or assign its rights or obligations under this Agreement to any third party, without the prior written consent of the other Party. Any assignment in violation of this Agreement shall be void and without legal effect.

### **12. WAIVER**

(1) Failure of either Party to insist upon the strict and punctual compliance with any provision herein shall not constitute a waiver of the right to require such performance, nor shall a waiver in one case constitute a waiver with respect to a later breach whether of similar nature or otherwise.

(2) Nothing in this Agreement shall prevent a Party from enforcing its rights by such remedies as may be available in addition to termination.

### **13. GOVERNING LAW AND SOLE JURISDICTION**

(1) This Agreement shall be governed by the laws of Pakistan.

(2) This Agreement is made at [insert place] and the courts at [insert place] shall have exclusive jurisdiction in respect of all matters arising under or pertaining to this Agreement.

### **14. DISPUTE RESOLUTION**

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 [place].

### **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.

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- (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 [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. RELATIONSHIP OF THE PARTIES**

In the conduct and performance of this Agreement, the Packager shall be regarded as an independent entity and not as a partner, agent or employee of the Business. The Parties agree that their relationship under this Agreement shall not create an employment, agent or partnership relationship between the Packager and the Business. It is expressly agreed and understood between the Parties that unless expressly authorized in writing neither Party has the authority to bind the other Party to any third party.

### **17. AMENDMENT**

No modification or amendment of any provision of this Agreement shall be binding unless the same is in writing and signed by the Parties.

### **18. SEVERABILITY**

In the event that any provision in this Agreement should under applicable law be held illegal or void, such provision shall be considered severable and the remaining clauses and provisions shall continue in full force and effect.

### **19. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any oral or written representations, negotiations, or other communications of every kind heretofore made between the Parties relating to the packaging Services envisaged in this Agreement.

**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 Business**

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For and on behalf of  
**The Packager**



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**WITNESS NO. 1**

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

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

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

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

**WITNESS NO. 2**

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

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

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

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

**SCHEDULE A  
LIST OF PRODUCTS**