

# Commercial Contract

## QUALITY ASSURANCE CONTROL AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

#### Ministry of Industries & Production

#### Government of Pakistan

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**January 2013**

# **Quality Assurance Control 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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### **B9. QUALITY ASSURANCE/CONTROL AGREEMENT**

**THIS QUALITY ASSURANCE/CONTROL 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 "Manufacturer", 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 "Customer", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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

**WHEREAS** the Customer has placed an order for the manufacturing of [insert description of products] with the Manufacturer in accordance with the Manufacturing Agreement dated [insert date].

**AND WHEREAS** some of the products to be manufactured by the Manufacturer are to be manufactured against samples, while some are to be manufactured against specification provided by the Customer to the Manufacturer.

**AND WHEREAS** the Customer, in order to assure the quality and conformance of the products with the specifications/samples is desirous of entering into this Quality Control/Assurance Agreement.

**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 the date of its execution, and shall remain in force during the term of the Manufacturing Agreement dated [insert date] (hereinafter referred to as the "Manufacturing Agreement").

## 2. SCOPE OF AGREEMENT

The Manufacturer shall ensure strict compliance of the manufactured products with the samples/specifications provided by the Customer to the Manufacturer.

## 3. SAMPLE/SPECIFICATIONS/DESCRIPTION

(1)Where an order is placed against a sample, the Manufacturer shall ensure that the manufactured products shall correspond with the sample in every respect;

(2)Where the order is placed with the Manufacturer against description, the Manufacturer shall ensure that the manufacturer products correspond

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with the respective description.

(3)The failure of the Manufacturer to ensure the correspondence of the manufactured with the sample/specification/description shall give the right to the Customer to return the products which do not correspond with the sample/specification/description provided by the Customer to the Manufacturer.

### **4. QUALITY CONTROL MEASURES**

(1)The Manufacturer shall warrant and covenant that the products supplied by it to the Customer shall be of merchantable quality and will comply with all specifications notified by the Customer to the Manufacturer.

(2)All Specifications shall be strictly adhered to by the Manufacturer in the production and supply of the product.

(3)To ensure the conformance of the products with the samples/specifications, the Manufacturer shall depute a quality controller to inspect the manufactured products and the production process at the Manufacturer's premises, in order to check the products and for compliance with the specifications and/or samples.

(4)The Manufacturer shall also allow the representatives of the Customer at all reasonable times to inspect the manufactured products at the Manufacturer's premises to ensure the quality of the manufacturing process(es). The Manufacturer shall fully co-operate with the representatives of the Manufacturer in the said inspection.

(5)Upon the receipt of products, the Customer shall inspect the products. All claims for damages, defects, shortages and non-conformities in any of the products discovered by the inspection shall be made in writing to the Manufacturer and be dispatched by the Customer with full particulars within [insert number] days of the discovery of the defect or non-conformities. In such case, the Manufacturer shall replace the defective or sub-standard products or refund the price of the defective products at the option of the Customer.

### **5. INDEMNIFICATION**

The Manufacturer shall indemnify the Customer against any and all claims, losses, damages, costs, charges and expenses (including court fees and lawyers fees and expenses) suffered or incurred by the Customer as a

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consequence of breaching the terms of this Agreement or due to its failure to abide by the Customer's product specifications and standards.

### **6. 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.

### **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. 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.

### **9. 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 the extent that

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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.

## 10. MISCELLANEOUS

(1) Subject to the Manufacturing Agreement, 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 Customer**

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**For and on behalf of  
The Manufacturer**

**WITNESS NO. 1**

**WITNESS NO. 2**

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

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

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

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

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

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

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

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