

Commercial Contract

STANDARD 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

Standard Manufacturing Agreement

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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B1. STANDARD MANUFACTURING AGREEMENT

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

WHEREAS the Manufacturer has its manufacturing facility at [insert place] (hereinafter referred to as the "Manufacturing Unit"), for the manufacture of [insert description of the products].

AND WHEREAS the Customer requires the services of the Manufacturer for the manufacturing of certain products as detailed in Clause 2 of this Agreement (hereinafter referred to as the "Products").

AND WHEREAS the Manufacturer has represented to the Business that it has the capacity and the facilities necessary for manufacturing the Products for the Customer.

AND WHEREAS the Customer has agreed to retain the services of the Manufacturer with respect to the manufacturing of the Products.

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

1. TERM

(1) This Agreement shall come into effect on [insert date], and shall expire upon the completion of the purpose of the Agreement as detailed in Clause 2 below.

(2) The Parties agree and understand that in no circumstances shall the term of the Agreement be extended beyond [insert date].

2. MANUFACTURE AND SUPPLY OF THE PRODUCTS

(1) The Manufacturer agrees to manufacture the following products, in the quantities given hereunder, for the Customer:

- i. [insert description/specification of the product]
[insert quantity]
- ii. [insert description/specification of the product]
[insert quantity]
- iii. [insert description/specification of the product]
[insert quantity]

(2) The Manufacturer shall manufacture the Products in accordance with the specifications provided in Clause 2 (1) above, and shall ensure the completion of the Agreement before [insert date].

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3. CONSIDERATION

- (1) The Manufacturer shall be entitled to receive the following amounts in lieu of the manufacturing of the Products (hereinafter referred to as the "Total Price"):
- | | | |
|------|-------------------------------------|----------------|
| i. | [insert description of the product] | [insert price] |
| ii. | [insert description of the product] | [insert price] |
| iii. | [insert description of the product] | [insert price] |
- (2) Of the Total Price, the Customer shall pay to the Manufacturer an amount of Rs. _____/- (Rupees _____) (insert amount) as advance at the time of execution of this Agreement.
- (3) The Remaining Amount shall be paid by the Customer to the Manufacturer at the time of delivery of the Products from the Manufacturer to the Customer.
- (4) The Total Price shall be exclusive of the delivery charges of the Products from the Manufacturer's place of business to the destination, which shall be borne by the Customer, solely.

4. DELIVERY

- (1) Upon the manufacturing of the Products, the Manufacturer shall inform the Customer, who shall, within [insert number] days of such information take the possession of the Products from the Manufacturer at [insert address].
- (2) The Products shall be deemed to have been delivered to the Customer upon the Manufacturer's handing over of the Products to the Customer's designated personnel at the Manufacturer's Facility at [insert address] for the delivery of the Products to the destination.
- (3) The Remaining Amount shall become payable by the Customer to the Manufacturer upon taking possession of the Products from the Manufacturer.

5. RISK OF LOSS

The risk of loss or damage to the Products, arising out of any casualty, regardless of the cause, shall be on the Manufacturer until the time that the Products have been delivered to the Customer, after which the risk shall transfer to the Customer.

6. INSPECTION

Upon receipt of the Products, the Customer shall be entitled to inspect the same within [insert number] days. If it is determined by the Business that any Product does not match with the sample/specification of the Product provided by the Customer to the Manufacturer, the Customer shall inform the Manufacturer within [insert number] days of the delivery. The Manufacturer

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shall, in such case, be obligated to replace the Product for the Customer at entirely its own costs and expenses, or the Customer may, in its sole discretion, demand the refund of the price of the faulty Product against return, at the Manufacturer's cost, along with [insert percentage]% of the price of the Product as liquidated damages within [insert number] days of the Customer's demand to such effect.

7. TIME IS OF THE ESSENCE

- (1) It is hereby acknowledged by the Manufacturer that the Customer requires the Products to be used for [insert description of the event/purpose], and for this purpose, it is essential that the Manufacturer delivers the Products to the Customer on or before [insert date], failing which the Products would be of no use to the Customer. Therefore, the Parties agree that the timely delivery of the Products shall be of essence of the Agreement.
- (2) Upon the failure of the Manufacturer to deliver the Products to the Customer by [insert date], the Agreement shall be deemed as terminated, and the Manufacturer shall pay to the Customer [insert percentage]% of the Total Price as liquidated damages, along with the refund of the Advance Amount. In such case, the Customer shall be under no obligation to receive the delivery of the Products from the Manufacturer.

8. GOVERNING LAW AND RULES OF CONSTRUCTION

- (1) The validity, interpretation, and the performance of this Agreement shall be governed by the laws of [insert place].
- (2) If any term or provision of this Agreement is determined to be invalid, it shall not affect the validity and enforcement of the remaining terms and provisions of the Agreement.
- (3) This Agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, representatives, and heirs of the Parties herein.

9. SETTLEMENT OF DISPUTE

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].

10. 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

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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 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.

11. AMENDMENTS

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

12. 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.

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

**For and on behalf of
The Manufacturer**

WITNESS NO. 1

**For and on behalf of
The Customer**

WITNESS NO. 2

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Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____