

# Commercial Contract

## AGENCY AGREEMENT FOR SALE OF MANUFACTURED GOODS



**Small and Medium Enterprises Development Authority**

**Ministry of Industries & Production**

**Government of Pakistan**

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**January 2013**

#### **4. AGENCY AGREEMENT FOR SALE OF MANUFACTURED GOODS**

**THIS AGENCY AGREEMENT FOR SALE OF MANUFACTURED GOODS** (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 "Business", 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];

(hereinafter referred to as the "Agent", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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

**WHEREAS** the Business is engaged in the manufacturing and sale of [insert description of the manufactured goods] (hereinafter referred to as the "Manufactured Goods" and described more particularly in Schedule I to this Agreement) at its manufacturing plant at [insert address of the manufacturing plant] (hereinafter referred to as the "Manufacturing Facility").

**AND WHEREAS** the Business wishes to enter into an agency agreement with the Agent so that the Agent may, as the Business' agent, market and sell the Manufactured Goods to the Business' customers and prospective customers.

**AND WHEREAS** the Business has agreed to appoint the Agent, which appointment the Agent hereby accepts, as its agent for the sale of the Manufactured Goods.

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

##### **1. APPOINTMENT AND TERM**

(1) The Business hereby appoints, and the Agents hereby accepts, the appointment of the Agent as the Business' agent for the sales of the Manufactured Goods for the Territory as defined in Clause 3 of this Agreement.

(2) This Agreement shall become effective on [insert date], and shall remain in force for a period of [insert number] years, unless terminated by either Party under the terms and conditions of this Agreement.

## **2. NON-EXCLUSIVITY**

The Parties agree that the Agent is not the exclusive agent of the Business, and that the Business may, if and when it deems fit, appoint more agents within the Territory as defined in Clause 3 of this Agreement.

## **3. TERRITORY**

(1) Under this Agreement, the Agent shall act as the Business' agent for the sale and promotion of the Manufactured Goods within the territorial boundaries of [insert description of the territorial boundary] (hereinafter referred to as the "Territory").

(2) The Agent agrees and confirms that it shall not sell or market the Manufactured Goods in the area outside the Territory, neither it shall sell the Goods to anyone who may resale the Manufactured Goods in the area outside the Territory.

(3) The Agent expressly acknowledged that the Business shall be at liberty to appoint further Agents for the marketing and sale of its Manufactured Goods within the Territory.

## **4. OBLIGATIONS OF THE PARTIES**

(1) The Business shall be responsible for the overall marketing and promotion of the Manufactured Goods, and shall be obligated to include the name of the Agent and its contact details in its marketing campaigns and promotional materials, etc. as its Agent. However, the Agent shall be solely responsible for the marketing of its point of sale within the Territory, and the Business shall not be responsible for reimbursement of any expenses incurred by the Business in this regard.

(2) The Business agrees to provide the Agent with advice, know-how and guidance relating to the management, finance, promotion and methods of operation to be employed, as well as technical assistance, in connection with performance of obligations under this Agreement. The Business shall also be responsible for providing initial training to the Agent and its employees with respect to the sale of the Manufactured Goods.

(3) The Agent shall, at all times, maintain in its inventory no fewer than [insert number] of each of the Manufactured Goods. In this regard, the Agent shall inform the Business of the prospective decrease in the number of Manufactured Goods in the inventory [insert number] days in advance, based on the extrapolation of the sales of the preceding month.

(4) The Business shall endeavor to make deliveries within a reasonable time in accordance with orders accepted from the Agent.

## **5. COMMISSION**

(1) The remuneration of the Agent for the sale of the Manufactured Goods shall be on commission basis.

(2) The Agent shall receive a commission of [insert percentage]% against each unit of the Manufactured Goods sold, provided that the unit sold has not been sold at a discount, in which case, the commission shall be discounted in accordance with the discount so offered.

(3) The Agent agrees not to charge prices of the Manufactured Goods to the customers higher than the price list provided by the Business.

## **6. TERMINATION**

- (1) This Agreement may be terminated, with or without cause, at any time by either Party by giving the other Party a [insert number] days prior written notice.
- (2) Upon expiration or termination of this Agreement:
  - i. Each Party shall return or, at the disclosing Party's request, destroy the Confidential Information of the other Party; and,
  - ii. Other than as provided herein, all rights and obligations of each Party under this Agreement, exclusive of the Services, shall survive.

## **7. NON-COMPETITION**

The Agent agrees that during the continuation of this Agreement, and for [insert number] years following the expiry or the termination of this Agreement under Clause \_\_\_\_, the Agent shall not enter into any business within the territory, in any capacity, which may be in direct competition with the Business.

## **8. CONFIDENTIALITY**

Each Party shall at all times during the continuance of this Agreement and after its termination keep confidential all trade secrets, know-how or other confidential information (hereinafter referred to as the "Confidential Information") made available under or in connection with this Agreement.

## **9. OWNERSHIP OF INTELLECTUAL PROPERTY**

- (1) The Agent acknowledges that the Business is the sole and exclusive owner of the intellectual property rights, including without limitation patents, design patents, utility models, registered or unregistered design, trademarks, service marks, design and design rights, database rights, copyright works, trade or business names and any other industrial and proprietary rights (whether registered or unregistered) (hereinafter collectively referred to as the "Intellectual Property"), and agrees that the Agent shall not claim ownership rights to the Intellectual Property by virtue of being appointed the Business' Agent under this Agreement.
- (2) The Agent agrees that nothing in this Agreement shall give the Agent any right, title, or interest in the Intellectual Property other than the right to use the same in accordance with this Agreement.

## **10. INDEMNIFICATION**

- (1) The Agent shall indemnify the Business against any and all claims, losses, damages, costs, charges and expenses (including court fees and lawyers fees and expenses) suffered or incurred by the Business as a consequence of or due to the negligence or default on the part of the Agent or any of its employees, servants or agents.
- (2) The Agent shall fully indemnify and hold harmless the Business and its employees, agents, distributors and retailers against all losses, liabilities, damages, costs and claims resulting from negligence or as a result of any misrepresentation or breach of this Agreement by the Agent.
- (3) The Business shall fully indemnify, defend, and hold harmless the Agent from and against any and all claims, losses, damages, expenses and liability, including claims of copyright infringement arising out of the Agent's authorized use of the Intellectual Property. The Business does not agree to indemnify the Agent for claims of copyright infringement directed at the appearance or design of the packaging and advertising for the Intellectual Property which has been created, or is owned, by the Agent.

## **11. ASSIGNMENT**

Neither Party hereto may assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the other

Party.

## **12. 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 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.

## **13. 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.

## **14. 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].

## **15. ENTIRE 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.

## **16. AMENDMENT**

This Agreement may be amended or revised only by an instrument in writing signed by either the Parties or their duly authorized representatives.

## **17. WAIVER**

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.

## **18. SEVERABILITY**

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.

\_\_\_\_\_  
For and on behalf of  
The Business

**WITNESS NO. 1**

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

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

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

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

\_\_\_\_\_  
For and on behalf of  
The Agent

**WITNESS NO. 2**

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

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

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

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

**SCHEDULE I**  
**MANUFACTURED GOODS OF THE BUSINESS**