

# Commercial Contract

## FRANCHISE AGREEMENT FOR SALE OF MANUFACTURED GOODS



**Small and Medium Enterprises Development Authority**

**Ministry of Industries & Production**

**Government of Pakistan**

**[www.smeda.org.pk](http://www.smeda.org.pk)**

**HEAD OFFICE**

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,  
Lahore  
Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7  
[helpdesk@smeda.org.pk](mailto:helpdesk@smeda.org.pk)

<b>REGIONAL OFFICE PUNJAB</b>	<b>REGIONAL OFFICE SINDH</b>	<b>REGIONAL OFFICE KPK</b>	<b>REGIONAL OFFICE BALOCHISTAN</b>
3 <sup>rd</sup> Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 <a href="mailto:helpdesk.punjab@smeda.org.pk">helpdesk.punjab@smeda.org.pk</a>	5 <sup>TH</sup> Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 <a href="mailto:helpdesk-khi@smeda.org.pk">helpdesk-khi@smeda.org.pk</a>	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 <a href="mailto:helpdesk-pew@smeda.org.pk">helpdesk-pew@smeda.org.pk</a>	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 <a href="mailto:helpdesk-qta@smeda.org.pk">helpdesk-qta@smeda.org.pk</a>

**January 2013**

## 5. FRANCHISE AGREEMENT FOR SALE OF MANUFACTURED GOODS

**THIS FRANCHISE 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];

**OR**

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number]

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

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

**WHEREAS** the Business is engaged in the manufacture and sale of [insert description of the products] (as more particularly described in Schedule A to this Agreement, hereinafter referred to as the "Manufactured Goods").

**AND WHEREAS** the Franchisee desires to obtain the right and franchise to sell the Manufactured of the Business at the shop owned by the Franchisee at [insert address].

**AND WHEREAS** the Business has agreed to grant and the Franchisee has agreed to accept a franchise arrangement for the establishment and operation of an outlet at [insert address] (hereinafter referred to as the "Franchise") for the sale of the products of the Business under the name and style of '[insert name of the Franchisee]' on the terms and conditions detailed in this Agreement.

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

## **1. APPOINTMENT AND TERM**

- (1) The Business hereby grants to the Franchisee the sole and exclusive right and license to sell the Manufactured Goods at the Franchise (as more particularly described in Clause 3).
- (2) The Franchisee shall display the following words or such similar words as may from time to time be specified by the Business at the Premises: "A [insert name of Business] Franchise owned and operated under License by [insert name of Franchisee]". Same wordings shall be displayed upon all letter headings, bills, invoices and other documents and literature used by the Franchisee in connection with the operation of the Franchise.
- (3) 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. FEES AND PAYMENT**

- (1) In consideration of the grant of the right and license to operate the Franchise for the sale of the Manufactured Goods the Franchisee shall pay to the Business an amount of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) (insert amount) at the time of execution of the Agreement (hereinafter referred to as the Service Fee").
- (2) The Franchisee shall also pay to the Business, in arrears, on or before the [insert number] day of the month (hereinafter referred to as the "Payment Date"), [insert percentage amount]% of the gross monthly income against the sale of the Manufactured Goods.
- (3) [Insert the commercial terms and conditions for placing orders, payment and shipment to be provided by the Business].

## **3. OBLIGATIONS OF THE BUSINESS**

- (1) The Business agrees to provide the Franchisee 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 Franchisee and its employees with respect to the sale of the Manufactured Goods.
- (2) The Business shall provide such assistance as the Business shall deem appropriate in connection with the opening and operation of the Franchise, including on-site supervision thereof and advice concerning pre-opening and launch activities.

## **4. OBLIGATIONS OF THE FRANCHISEE**

- (1) The Franchisee agrees to operate the Franchise strictly in accordance with the standards of the Business, and to adhere to the instructions of the Business in all matters relating thereto. The Franchisee also agrees to abide by the terms and conditions of this Agreement, and to use its best efforts to increase the sales of the Manufactured Goods of the Business.
- (2) Furthermore, the Franchisee shall, at all times, maintain in its inventory at the Franchise no fewer than [insert number] of each of the Manufactured Goods. In this regard, the Franchisee shall place an order with the Business for the respective Manufactured Goods [insert number] days prior to the expected decrease in the number of the Manufactured Goods beyond the minimum level, based on the extrapolation of the sales of the preceding month.

## **5. OWNERSHIP OF INTELLECTUAL PROPERTY**

- (1) The Franchisee 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 Franchisee shall not claim ownership rights to the Intellectual Property by virtue of acquiring the Franchise rights under this Agreement.

(2) The Franchisee agrees that nothing in this Agreement shall give the Franchisee any right, title, or interest in the Intellectual Property other than the right to use the same in accordance with this Agreement.

(3) The Business warrants that it is entitled to license the Intellectual Property to be utilized in the operation of the Franchise throughout the terms of the Agreement and that subject to registration under the relevant statute, the use of the Intellectual Property by the Franchisee in accordance with the terms of this Agreement shall not constitute an infringement of the rights of any third party and will fully and effectively indemnify the Franchisee for and against all loss, damage, costs, claims and expenses arising out of any such infringement.

## **6. ADVERTISING**

The Franchisee will expend in aggregate not less than [insert percentage]% of the annual gross sale on local advertising in the form and style prescribed by the Business after consultation with the Franchisee. The Franchisee will not publish any other advertising material unless samples thereof have been submitted to the Business for use in such advertising materials. The Franchisee shall immediately cease the use of such advertising materials deemed inappropriate by the Business upon receipt of a request from the Business to do so.

## **7. ACCOUNTS AND RECORDS**

(1) The Franchisee shall:

- i. maintain an accurate account and record of all gross sales and purchases made at the Franchise in each month up to the close of business on the last working day of each month and shall prepare in a form approved by the Business a monthly financial statement thereof and shall remit the same to the Business on or before each Payment Date.
- ii. maintain accurate books of account and shall keep detailed management and accounting records, which shall be permitted to be audited by the nominated Auditor of the Business after a prior written notice of [insert number] days of the Business' intention of doing so.

## **8. 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,
- i. The Franchisee shall immediately cease to operate the Business, and the use of the Intellectual Property in any way, and shall not thereafter hold itself out in any way as a Franchisee of the Business and refrain from any action that would or may indicate any relationship between it and the Business;
- ii. The Franchisee shall return to the Business or otherwise dispose of or destroy as the Business shall direct all signs, advertising materials, stationery, invoices, forms, specifications, designs, records, data, samples, models, and drawings pertaining to or concerning the Business;

- iii. The Franchisee shall return all items of unsold goods to the Business upon the Business paying their cost to the Franchisee.

## **9. NO PARTNERSHIP OR AGENCY**

- (1) The Business and the Franchisee are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as set forth in this Agreement.

## **10. INDEMNITY BY FRANCHISEE**

- (1) The Franchisee 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 Franchisee or any of its employees, servants or agents.
- (2) The Franchisee 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 Franchisee.

## **11. NON-COMPETITION**

The Franchisee 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 Franchisee shall not enter into any business within insert territorial boundary], in any capacity, which may be in direct competition with the Business.

## **12. 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.

## **13. ASSIGNMENT**

- (1) This Agreement and all the rights of the Business hereunder may be assigned, transferred or otherwise dealt with the Business and shall inure to the benefit of the successors and assigns of the Business.
- (2) The franchisee shall not assign, convey or otherwise transfer any of its rights, obligations, or interest herein without prior express written consent of the Business.

## **14. 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, lightning, 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.

**15. 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.

**16. 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].

**17. 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.

**18. AMENDMENT**

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

**19. 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.

**20. 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.

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

\_\_\_\_\_  
**For and on behalf of  
 The Franchisee**

**WITNESS NO. 1**

**WITNESS NO. 2**

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

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

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

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

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

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

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

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

**SCHEDULE A**  
**DESCRIPTION OF MANUFACTURED GOODS**

- 1.
- 2.
- 3.