

Commercial Contract

MANUFACTURING AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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 business process outsourcing. 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.

Information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

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2. 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 "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

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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)

(The Business 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 "Plant"), for the manufacture, *inter alia*, of certain products, as detailed in Annexure A attached hereto (hereinafter referred to as the "Products").

AND WHEREAS the Business is carrying on the business of [insert description of the "Business"], and is desirous of purchasing the Products manufactured by the Manufacturer at the Plant.

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

AND WHEREAS the Manufacturer has agreed to exclusively manufacture and supply to the Business and the Business has agreed to purchase from the Manufacturer the Products as per the terms and conditions of this Agreement.

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

1. TERM

This Agreement shall come into effect on [insert date], and shall continue for a period of [insert number] years, unless earlier terminated by the Parties in accordance with the terms of this Agreement.

2. MANUFACTURE AND SUPPLY OF THE PRODUCTS

- (1) The Manufacturer agrees to manufacture and supply the Products exclusively to the Business, and the Business agrees to purchase from the Manufacturer, from time to time, such quantities of the Products as may be ordered, in writing, by the Business under and in accordance with the terms and conditions of this Agreement.
- (2) This Agreement is on an exclusive basis and the Manufacturer shall not manufacture for or supply to any other party, or enter into an agreement with any other party for the manufacture and supply

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of the Products mentioned in Annexure A, during the term of this Agreement.

3. CONFIRMATION AND DELIVERY

- (1) The Manufacturer shall provide, as a sample, [insert number] of the manufactured Products to the Business for approval. Once the sample is approved by the Business, the Business shall issue a statement of confirmation (hereinafter referred to as the "Statement of Confirmation") to the Manufacturer. On receiving the Statement of Confirmation, the Manufacturer shall proceed with the manufacturing of the final Products for its dispatch to the Business.
- (2) The Manufacturer shall ensure that the supplies of the Products match with the sample in respect of which the Statement of Confirmation has been issued.
- (3) The Manufacturer shall be responsible for delivering the Products to the Business, at the premises of the Business within [insert number] days of the issuance of the Statement of Confirmation.
- (4) Upon receipt of the Products, the Business shall inspect the same. If it is determined by the Business that any Product does not match with the sample in respect of which the Statement of Confirmation was issued, it may reject and return to the Manufacturer such Product. The Manufacturer, if required by the Business, shall replace the same, free of cost, within [insert number] days from the date of raising the discrepancy, failing which the Manufacturer shall return the cost of the Product. If such inspection and rejection causes the Business to incur additional costs, such costs shall be reimbursed by the Manufacturer to the Business, and may be deducted by the Business from any money due, or to become due, to the Manufacturer.
- (5) All transportation costs for taking delivery of the Products shall be borne by the Manufacturer.
- (6) The Manufacturer shall notify the Business in writing of any actual or anticipated delays for the delivery of the Products immediately upon discovery. Such notice shall include an estimated period of delay, cause and corrective actions being taken by the Manufacturer. In such cases, the Manufacturer shall give intimation in the form of phone call/email/fax of the measures taken to avoid further delays or mitigate the effects of such delay.

4. PRICE AND PAYMENT TERMS

The prices for the manufacture and delivery of the Products shall be as per Annexure B hereto.

5. NON-COMPETITION

The Manufacturer hereby acknowledges and agrees that it shall not, directly or indirectly, during the term of this Agreement, or for a period

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of [insert number] years after expiry or termination of this Agreement as per Clause 9, manufacture, sell or deliver the Products to any person, firm or company other than the Business.

6. STANDARDS

The Manufacturer shall manufacture the Products in accordance with the principles of good manufacturing practices and shall comply with the safety, health and environment standards and practices in this regard.

7. INDEMNIFICATION

- (1) The Manufacturer 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 faulty manufacture of the Products by the Manufacturer, or as a consequence of or due to the negligence or default on the part of the Manufacturer or any of its employees, servants or agents, whether in the manufacture of the Products or otherwise.
- (2) The Manufacturer 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 it.

8. TRADE MARKS

- (1) The Manufacturer agrees that the Business is an absolute owner of the trade mark(s) that the Business may introduce from time to time in future.
- (2) The Parties agree that this Agreement does not give or transfer to the Manufacturer any right whatsoever to any trade mark, trade name, property mark, get-up, slogan, dimension, sign advertisement or patent used by the Business or to which it is entitled to and which will remain the exclusive property of the Business.
- (3) The Manufacturer shall not, during the period of this Agreement or thereafter, acquire any title to the aforesaid trade mark, trade name, nor will it act in any manner which will endanger the said property mark, get-up, slogan, dimension, sign advertisement or patent, or the goodwill of the Business.

9. TERMINATION

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- (1) Either Party may terminate this Agreement by giving [insert number] months' notice in writing to the other Party.
- (2) In case either Party fails to perform its obligations under this Agreement, the other Party may terminate this Agreement by giving [insert number] months' notice in writing to the Party failing to perform its obligations.

10. CONFIDENTIALITY

- (1) 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.
- (2) Notwithstanding the assignment of its rights in accordance with Clause 11 below, the Manufacturer shall be responsible and liable for maintaining the secrecy of the Confidential Information provided by the Business for the processing activity and also for ensuring compliance of all the terms and conditions of this Agreement.

11. 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.

12. 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].

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 Pakistan and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

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

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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.

15. MISCELLANEOUS

- (1) 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

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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

For and on behalf of
The Manufacturer

WITNESS NO. 1

Signature:

—

Name:

—

Designation:

Date:

WITNESS NO. 2

Signature:

—

Name:

Designation:

Date: _____

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ANNEXURE A **DETAILS OF THE PRODUCTS**

1. [insert description of product]
2. [insert description of product]
3. [insert description of product]

ANNEXURE B **PRICES OF THE PRODUCTS**

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- | | |
|-----------------------------------|--------------------|
| 1. [insert product name]
unit] | [insert prices per |
| 2. [insert product name]
unit] | [insert prices per |
| 3. [insert product name]
unit] | [insert prices per |