

Commercial Contract

WEB SALES AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

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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 internet and technology. 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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19. WEB SALES AGREEMENT

THIS WEB SALES AGREEMENT (hereinafter referred to as the "Agreement") is made 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 "Seller", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents).

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

WHEREAS the Business is the manufacturer of [insert description of the products] (hereinafter referred to as the "Products").

AND WHEREAS the Seller owns an online website for the sale of manufactured goods under the name and style of "[insert name of the website]" (hereinafter referred to as the "Website").

AND WHEREAS the Seller has demonstrated to the satisfaction of the Business that it has the capacity and will to advertise and sell the Products to the Website users in the manner and subject to the conditions hereafter provided.

AND WHEREAS the Business and the Seller recognize that both the maintenance of quality of Products and the professionalism of the Seller are essential to their mutual success.

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

1. WEB SALES

The Business hereby appoints the Seller, on a non-exclusive basis, to advertise, sell and promote the sales of the Business' such Products as the Business may deem fit, in accordance with the terms and conditions of this Agreement.

2. TERM

The Agreement shall come into effect on [insert date] and shall continue to remain in force for a period of [insert number] years, unless terminated earlier by either of the Parties in accordance with Clause 7 of this Agreement.

3. BUSINESS' OBLIGATIONS

- (1) The Business shall, within [insert number] days of the execution of this Agreement, provide to the Seller marketable photographs of the Business' Products to be sold through the Website, along with descriptions of the Products, in [insert format] format.
- (2) The Seller shall be at liberty to alter the description of the Products or the photographs before putting them on the Website, provided that the changes are not such as to deceive the buyers or prospective buyers of the Products.
- (3) The Business shall strictly adhere to any special delivery instructions, specifications, or any other instructions provided by the Seller to the Business at the time of communication of the order. If the Business is

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unable to deliver an order on the specific date of delivery, the Business shall notify the Seller as soon as the Business comes to know of the prospective delay, and in no case later than at least [insert number] hours prior to the time of delivery.

4. ORDERS

- (1) The Seller shall solicit orders for the Business' Products through its online Website, and shall communicate the orders to the Business within [insert number] of receipt of such orders, along with any special delivery instructions, specifications, or any other instructions.
- (2) The Seller shall charge such prices and delivery charges to the online buyers of the Products as provided by the Business to the Seller from time to time.

5. PAYMENTS

- (1) The Seller shall electronically charge the buyers of the Products at the time of taking the order. Against each Product of the Business sold through the Website, the Seller shall be entitled to receive [insert percentage]% of the price of the specific Product as commission. However, if the Product is returned to the Business within [insert number] days against refund, the Seller shall promptly refund the commission for that specific Product against the refund receipt provided to the Seller by the Buyer.
- (2) The Seller agrees that it shall not sell the Products of the Business at prices higher than the price list provided by the Business.
- (3) Similarly, the Seller agrees that it shall not offer discount to any of its customers beyond of the Product price provided by the Business.
- (4) The Seller shall, on the [insert number] day of every month, make the payment to the Business in lieu of the sales and delivery charges after adjustment of the payments due from the Business to the Seller, as well as any refunds under Clause 5 (1).

6. OBLIGATIONS OF THE SELLER

- (1) The Seller shall encourage the purchase of the Products by the Seller's customers by advertising the Products at prominent places on the Website for at least [insert number] days every week.
- (2) Any Product returns/repairs are subject to prior approval, inspection and acceptance by the Business, and subject to the warranty of the Business applicable to each Product. The Seller must contact the Business' office for approval and for a return authorization number.

7. TERMINATION

- (1) Either the Seller or the Business may terminate this Agreement with or

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without cause; provided, however, that in the event the termination is without cause, at least [insert number] days prior written notice must be given to the other Party.

(2)The termination for cause may be effected forthwith and without any advance written notice, and may be effected in any of the following events:

- i. If either Party breaches any provision of this Agreement.
- ii. In the event that the Business, in its sole discretion, determines that the Seller is not employing its best efforts to promote the sales of the Products.
- iii. [insert any other causes as may be agreed between the Parties.]

8. CONFIDENTIALITY

(1)The Seller shall maintain in strict confidence and duly safeguard to the best of its ability any and all confidential business and technical information pertaining to the Products or the Business (hereinafter referred to as the "Confidential Information"), and shall not at any time disclose such Confidential Information to any third party or parties or use such confidential information for any purpose other than those contemplated in this Agreement.

(2)This obligation of the Seller shall survive for [insert number] years after the date of expiration or termination hereof.

(3)It is understood that the Confidential Information does not apply to any information which:

- i. at the time of its receipt was already known to the Seller;
- ii. is or becomes part of the public domain without breach of this Agreement;
- iii. is independently developed by the receiving Party;
- iv. is received from a third party without similar restriction and without breach of this Agreement;
- v. is approved for release by written authorization of the Business; or
- vi. is required to be disclosed by court order or governmental agency, provided that the Business is provided with prior written notice of any such disclosure.

9. OWNERSHIP OF INTELLECTUAL PROPERTY

(1)The Seller 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,

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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 Seller shall not claim ownership rights to the Intellectual Property by virtue of the right to sell the Business' Products through its Website pursuant to this Agreement.

- (2)The Seller agrees that nothing in this Agreement shall give the Seller 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 Seller shall fully indemnify, defend, and hold harmless the Business from and against any and all claims, losses, damages, expenses, and liability, other than those for infringement, including without limitation, suits arising from offering, promoting, advertising, sale, or use by the Seller of the Intellectual Property, whether or not such use conforms to standards set by Business, provided that such claim, loss, damage, expense, or liability does not arise from the negligence of Business.

- (2)The Business shall fully indemnify, defend, and hold harmless the Seller from and against any and all claims, losses, damages, expenses and liability, including claims of copyright infringement arising out of the Seller's authorized use of the Intellectual Property, provided that such claim does not arise due to the Seller's alterations or changes in the Product descriptions or photographs provided by the Business to the Seller.

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. INDEPENDENT BUSINESS RELATIONSHIP

- (1)The Business and the Seller 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.

13. 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.

14. 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.

15. 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].

16. 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

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be a waiver of any other right or breach under the 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.

**For and on behalf of
The Business**

WITNESS NO. 1

Signature: _____

Name: _____

—
Designation: _____

Date: _____

**For and on behalf of
The Seller**

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____