

Commercial Contract

AGREEMENT FOR PACKAGING OF FINISHED GOODS



*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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January 2013

Agreement for Packaging of Finished Goods

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 respect 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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5. AGREEMENT FOR THE PACKAGING OF FINISHED GOODS

THIS AGREEMENT FOR THE PACKAGING OF FINISHED GOODS (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];

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

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 "Packager", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

WHEREAS the Business is engaged in the production of [insert description of the goods] (hereinafter referred to as the "Products").

AND WHEREAS the Packager provides services of packaging of finished goods to its clients.

AND WHEREAS the Packager has represented to the Business that it has the requisite resources, experience and expertise to provide packaging services to the Business.

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Legal Services, B&SDS

AND WHEREAS based on the representations of the Packager, the Business desires to engage the facilities and services of the Packager for the packaging of certain products to be sold by the Business.

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

1. TERM

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

2. APPOINTMENT AND SCOPE OF AGREEMENT

- (1) The Business hereby appoints the Packager for providing packaging services for its products listed in Schedule A to this Agreement (hereinafter referred to as the "Products").
- (2) The specifications for the packaging shall be communicated by the Business to the Packager at the time of placing specific order.

3. PRICE

- (1) In consideration for the Packager's services, the Business agrees to pay to the Packager the sums agreed upon at the time of specific orders (hereinafter referred to as the "Order Price").
- (2) The Business shall pay to the Packager [insert percentage]% of the Order Price at the time of placing the specific order, and the remaining amount shall be paid by the Business to the Packager within [insert number] day of the completion of the specific order and the delivery of the packaging to the Business.

4. DELIVERY

- (1) *Scheduling.* The Packager shall schedule the timely shipment of the packaged finished products pursuant to the schedule agreed with the Business at the time of the placement of a specific order.
- (2) *Delivery.* The Business shall arrange for the delivery of the packaged products from the Packager's business premises at [insert address] to its desired destinations. The cost of such delivery shall be exclusively borne by the Business.

5. WARRANTIES AND INDEMNITIES

- (1) To the extent that the Business chooses the materials and supplies to be used for the packaging, the Business hereby warrants and represents that the Business is solely responsible for assuring that the materials and supplies are of such suitable quality and character. To the extent that the Packager chooses or acquires Materials and supplies to be used for the packaging after being provided with technical specifications for such materials and supplies by the Business, the Packager warrants only that the materials and supplies it chooses or acquires shall meet the specifications requested by the Business, and hereby disclaims any further warranty or assurance of the suitability of the materials or supplies for packaging.

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- (2) The Packager warrants that all articles it provides to the Business pursuant to this Agreement shall be, at the time of delivery, in compliance with all applicable laws
- (3) The Business agrees to indemnify, and hold the Packager harmless from and against any and all liabilities, costs, losses, judgments (including attorney's fees) caused by or arising out of (1) the Business's formulation and production of the Products, (2) contents of labels specified by the Business, if provided by the Business and created and applied in accordance with the Business' instructions, or advertising or other statements of the Business or its agents regarding the Products; or (3) the Business's failure to comply with its obligations under this Agreement.
- (4) The Business agrees to indemnify and hold the Packager harmless against all claims arising due to any intellectual property rights infringement by any trademark appearing on the labels or packaging materials specified or provided by the Business
- (5) The Packager hereby acknowledges that it does not have, and shall not acquire, any interest in any of the Business' trademarks or trade names or copyrighted material appearing in the labels or packaging materials for the Products.

6. LIMITATION ON DAMAGES

The Business hereby acknowledges and agrees that the Packager's liability for any breach of performance or of warranty under this Agreement shall not exceed the price actually paid by the Business under this Agreement, and the Business hereby waives and releases any and all claims against the Packager in excess of such price, and that in the event of any breach of performance or any warranty under this Agreement by or attributable to the Packager, the Packager shall, in no instance, be liable to the Business for any special, incidental, exemplary, indirect, or consequential damages, including but not limited to, lost sales, revenues or profit, loss or return of or damage to the Products, diminution in value of trademark or other intellectual property, loss of prospective economic advantage, loss of facilities, inventory, work-in-process, or time and materials, and the Business hereby waives and releases any such claims.

7. INSURANCE

- (1) *Packager.* The Packager shall carry and keep in force throughout the term of this Agreement insurance coverage sufficient to cover finished Products of the Business in possession of the Packager for the benefit of the Business. The Packager shall further carry and keep in force throughout the term of this Agreement insurance coverage sufficient to cover products owned, purchased, or ordered by the Business, which are in the possession of the Packager.
- (2) *Business.* The Business shall carry and keep in force throughout the term of this Agreement insurance coverage sufficient to support its obligations and potential liabilities under this Agreement.

8. CONFIDENTIALITY

All information, knowledge, technology and trade secrets (hereinafter collectively

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referred to as the "Confidential Information") of the Business, including but not limited to the information relating to the production, processing and testing of Products shall be used by the Packager only in the performance of its obligations under this Agreement. The Packager shall establish and maintain procedures to ensure that all Confidential Information disclosed to its employees is done so only on a need-to-know basis and is maintained in confidence, and not disclosed to third parties or the public. The Packager shall not use such information for its own benefit, or for the benefit of any third party.

9. TERMINATION

- (1) The Packager shall have the right to terminate this Agreement immediately and cease all work upon failure of the Business to make payments due from the Business to the Packager in accordance with this Agreement.
- (2) The Business shall have the right to terminate this Agreement in whole or in part, immediately upon written notice to the Packager, if the Business provides the Packager with notice that it believes the Packager has materially failed to deliver the packaging services in conformity with the specifications set out at the time of placing a specific order, and if the Packager is unable to remedy such alleged failure within [insert number] days.

10. OBLIGATIONS UPON TERMINATION

- (1) In the event of termination pursuant to Clause 9, the Business shall, within [insert number] days of termination, make the payments for any amount which is due from the Business to the Packager.
- (2) The Packager agrees to promptly return, at the Business's shipping cost, all of the Business' finished Products, work in process, and raw materials upon receipt of the payments described in this paragraph. If the Business fails or refuses to pay for or arrange shipping of any of its finished Products, work in process, and raw materials within [insert number] days following the termination of this Agreement, the Packager may (1) destroy them and charge any reasonable costs of doing so to the Business; or (2) use them for any other purpose not related to this Agreement, provided that no intellectual property or confidentiality obligations would be violated by doing so.

11. ASSIGNMENT

The Parties cannot transfer or assign its rights or obligations under this Agreement to any third party, without the prior written consent of the other Party. Any assignment in violation of this Agreement shall be void and without legal effect.

12. WAIVER

- (1) Failure of either Party to insist upon the strict and punctual compliance with any provision herein shall not constitute a waiver of the right to require such performance, nor shall a waiver in one case constitute a waiver with respect to a later breach whether of similar nature or otherwise.
- (2) Nothing in this Agreement shall prevent a Party from enforcing its rights by such remedies as may be available in addition to termination.

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13. GOVERNING LAW AND SOLE JURISDICTION

- (1) This Agreement shall be governed by the laws of Pakistan.
- (2) This Agreement is made at [insert place] and the courts at [insert place] shall have exclusive jurisdiction in respect of all matters arising under or pertaining to this Agreement.

14. DISPUTE RESOLUTION

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 [place].

15. 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 [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.

16. RELATIONSHIP OF THE PARTIES

In the conduct and performance of this Agreement, the Packager shall be regarded as an independent entity and not as a partner, agent or employee of the Business. The Parties agree that their relationship under this Agreement shall not create an employment, agent or partnership relationship between the Packager and the Business. It is expressly agreed and understood between the Parties that unless expressly authorized in writing neither Party has the authority to bind the other Party to any third party.

17. AMENDMENT

No modification or amendment of any provision of this Agreement shall be binding unless the same is in writing and signed by the Parties.

18. SEVERABILITY

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In the event that any provision in this Agreement should under applicable law be held illegal or void, such provision shall be considered severable and the remaining clauses and provisions shall continue in full force and effect.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any oral or written representations, negotiations, or other communications of every kind heretofore made between the parties relating to the packaging services envisaged in 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 Business

For and on behalf of
The Packager

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____

SCHEDULE A List of Business' Products