

Commercial Contract

INTERNATIONAL EXCLUSIVE AGENCY AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

International Exclusive Agency Agreement

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 import and export. 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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INTERNATIONAL EXCLUSIVE AGENCY AGREEMENT

THIS INTERNATIONAL EXCLUSIVE AGENCY 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];

(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").

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WHEREAS the Business based in [insert country] is engaged in the manufacturing, marketing and selling of [insert description of the products] (hereinafter referred to as the "Products", and described more particularly in Schedule I of this Agreement.

AND WHEREAS the Business is based in [insert country], and wishes to expand its customer base.

AND WHEREAS having no presence or customer base in Pakistan, the Business has agreed to expand its business in [insert country].

AND WHEREAS the Business has agreed to appoint the Agent, which appointment the Agent hereby accepts, as its agent for the promotion, marketing and sale of the Products in [insert country] (hereinafter referred to as the "Territory").

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 marketing and sales of the products in the Territory.
- (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
- (3) For the period of the Agreement, the Agent shall be the exclusive agent of the Business for the promotion and sale of the Products in the Territory, and the Business hereby agrees that it shall not appoint any other agent in the Territory.

2. OBLIGATIONS OF THE PARTIES

- (1) The Agent shall be responsible for the promotion of the marketing and sales of the Products in the Territory, and for performing all acts incidental to the purposes and objectives of this Agreement. The Agent shall also be responsible for incurring the expenses in relation to the advertisement and sales of the

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Products in the Territory and shall not be entitled to any reimbursement by the Business, unless otherwise agreed in writing by the Business.

- (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, and for the promotion, marketing and sales of the Business' Products pursuant to this Agreement. The Business shall also be responsible for providing initial training to the Agent and its employees with respect to the Products.
- (3) The Agent shall, at all times, maintain in its inventory no fewer than [insert number] of each of the Products. In this regard, the Agent shall inform the Business of the prospective decrease in the number of Products 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.

3. COMMISSION

- (1) The Agent agrees that it shall not sell the Products of the Business at prices higher than the price list provided by the Business.
- (2) Similarly, the Agent agrees that it shall not offer discount to any of its customers beyond [insert percentage]% of the Product price provided by the Business.
- (3) The Business shall, against the sale of each Product sold by the Agent, pay to the Agent [insert percentage]% of the price of the respective Product, provided that the Product has not been sold at a discount. If so, the payment against each unit shall be decreased in proportion to the discount offered.
- (4) The Agent shall, on the [insert number] day of every month, make the payment to the Business in lieu of the sales after adjustment of the payments due from the Business to the Agent, along with the detailed account of the sales during the preceding month.

4. NON-COMPETITION

The Agent agrees to execute a Non-Competition Agreement with the Business, which shall be treated as an integral part of this Agreement.

5. CONFIDENTIALITY

- (1) The Agent 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

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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 Agent 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 Agent;
 - 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.

6. 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' authorized 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.

7. INDEMNIFICATION

- (1) The Agent 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 Agent 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 Agent.
- (2) 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.

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8. 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.

9. 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.

10. 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.

11. 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 UNCITRAL Arbitration Rules [or insert any other applicable rules] , subject to the exclusive jurisdiction of the Courts of [insert place].

12. 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.

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- (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.
- (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 Agent

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____

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SCHEDULE I

PRODUCTS OF THE BUSINESS