

# Commercial Contract

## AGREEMENT TO APPOINT SELLING AGENT FOR A PROVINCE OR A DISTRICT



**Small and Medium Enterprises Development Authority**

**Ministry of Industries & Production**

**Government of Pakistan**

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## 1. INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. *Creating a Conducive Environment*; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. *Cluster/Sector Development*; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. *Enhancing Access to Business Development Services*; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewellery, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

## **2. ROLE OF SMEDA LEGAL SERVICES CELL**

The Legal Services Cell (LSC) is a part of Business Development Services Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world. LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs, Service Providers, Companies and Firms with information pertaining to requisite format and content of a business to business commercial contract. Entrepreneurs interested in enhancing their understanding about the nature and form of an Agreement for appointing a selling agent for a particular province of district can also use the document.

## **3. DISCLAIMER**

Form of this document and the contents therein are provided only for general information purpose and on "as is" basis without any warranties of any kind. Use of this document is at the user's sole risk. SMEDA assumes no responsibility for the accuracy or completeness of this document, its form and any of the information provided therein and shall not be liable for any damages arising from its use. The information contained in this document is not an alternate to the legal advice. The users are advised to always consult a legal service provider before using or relying upon this document or any of the content or information contained therein.

**Agreement to Appoint Selling Agent for a Province or District.**

This agreement is made this \_\_\_\_\_ (give date) day of \_\_\_\_ (give month), 200\_\_\_\_\_

**Between**

A B C (Give Name of the firm / company etc.), having registered office at \_\_\_\_\_ (place of office) through its authorized partner / representative namely \_\_\_\_\_ (herein after called the “Principal” which expression shall mean and include its successors and assigns) of the one part.

**And**

X Y Z, etc. (Give Name of the firm / company etc.), having registered office at \_\_\_\_\_ (place of office) through its authorized partner / representative namely \_\_\_\_\_ (herein after called the “Agent” which expression shall mean and include its successors and assigns) of the second part.

**WHEREAS** the Principal is a firm / company registered under the laws of \_\_\_\_\_ (Give name of the country) and is engaged in the business of manufacturing / trading \_\_\_\_\_ (Give nature of the business such as garments, crockery etc.).

**AND WHEREAS** the Agent is a firm / company registered under the laws of \_\_\_\_\_ (Give name of the country) and is engaged in the business of trading services.

**AND WHEREAS** the Principal intends to hire the services of the Agent to act as a selling Agent for the Principal in \_\_\_\_\_ (Give name of the Province or the District) subject to the terms and conditions set forth herein.

**AND WHEREAS** the Agent has shown his consent to act as a selling Agent for the Principal in \_\_\_\_\_ (Give name of the Province or the District) subject to the terms and conditions set forth herein.

**NOW THEREFORE** the parties have set forth their hands as follows:

**1. Appointment**

The Principal hereby appoints the Agent as its sole Agent for the District(s)/Province \_\_\_\_\_ hereinafter called the agency District(s)/Province) for the purposes of making sales of the Principal's goods for the period of \_\_\_year(s) commencing from the date of signing of this agreement and on the terms and conditions set forth herein.

**2. Commission on Sales**

The Agent shall be entitled to a commission at the rate of \_\_\_\_ per cent of the list price of all the goods sold for and on behalf of the Principal. The Agent shall keep the record of all sales and shall remit to the Principal regularly on each Saturday all the sums received by the Agent in respect of such sales less \_\_\_\_\_ per cent his commission.

**3. Sales to be on Cash**

Unless otherwise allowed by the Principal in writing to sell goods on credit to any one or more of the purchaser, all sales shall be made by the Agent for cash against delivery of goods. However, In the case of credit sales the Principal may direct for such increase in the price of his goods over and above the current price list of the Principal and or may impose such conditions as he may deem fit.

**4. List Price to be followed**

The goods of the Principal shall be sold by the Agent only at the full current price list of the Principal published by him from time to time. However, the Agent may while selling principal's goods allow a discount or rebate \_\_\_\_\_ (**give percentage of the discount or rebate i.e. 5% or 10%**) percent on the listed price of the goods being sold.

**5. No Warrantee by Agent**

While selling the goods for and on behalf of the Principal the Agent shall not make or give any representation, warrantee or guarantee in the trade either express or implied other than those contained in the Principal's printed price list of the goods being sold by the agent or other document relating to such goods duly stamped and issued by the Principal in relation to such goods.

**6. Sale to Traders**

While selling goods of the Principal to the persons in the trade or business the Agent shall obtain the purchaser's signature to an agreement to the following:

- i. That the goods sold shall not directly or indirectly be resold outside the agency District / Province by the purchaser;
- ii. That the purchaser shall not resell the said goods to the public below the full list price for the time being of such goods.

The Agent hereby undertakes that all purchasers to whom he may sell the Principal's goods in accordance with this clause shall duly enter into, and carry out the aforesaid agreement referred in this clause and a breach by any purchaser of any such

agreement shall for the purpose of this agreement be deemed to be a breach of clause 6 of this agreement by the Agent and give the Principal the rights and remedies against the agent for breach by the Agent of this agreement.

Provided that and notwithstanding anything contained in this agreement a breach of the condition prescribed in this clause shall entitle the Principal to put an end to this agreement forthwith and also to recover from the said Agent by way of liquidated damages the sum of Rs.\_\_\_\_\_ for each such article sold in bread of such clause.

#### **7. Covenants by the Agent**

- i. Except with the consent in writing of the Principal the Agent shall not make purchases on behalf of nor in any manner pledge the credit of the Principal.
- ii. All expenses relating to the agency shall be born by the Agent from his own resources.

#### **8. Agency Premises**

With the prior approval of the Principal in writing as to the terms of tenancy the Agent shall at the expense of the Principal rent and occupy premises suitable for the purposes of agency. The Agent shall keep insured for the full value against all risks of all the goods entrusted to his custody by the Principal and shall produce to the Principal receipts for all the rent, rates and taxes paid of the said premises and for the premium on insurance policies showing that the same have been paid on or about their respective due dates.

That the Agent shall bear all the expenses relating to or identical to the said agency.

#### **9. Mode of Delivery**

All the goods sold by the Agent pursuant to this agreement shall be delivered by the Agent at the agency premises/place of business. However, the Agent shall at his own expense have the right to deliver goods to purchasers at their places of business.

#### **10. Stock of Goods**

Subject to the availability of the goods the Principal shall keep with the Agent a stock of his goods free of all expenses of delivery to the sufficient and reasonable quantity and Principal further undertakes to replenish such stock on the close of each month so as to keep it at the agreed value.

**Provided** always that the Agent shall have no right of action against the Principal for delay resulting from shortage of stock, delays in transit, accidents, strikes or other unavoidable occurrence in replenishing such stock. The Principal shall always have the right without any prior notice to cause a stock checking of the said goods and on any shortage or deficiency found on such stock taking, the Agent shall on demand pay to the Principal the list price of such shortage or deficiency less the deduction by way of the commission or rebate receivable by the Agent. The Agent shall not alter, remove or tamper with the marks or numbers on the goods so entrusted into his custody.

**11. Dispute between Agent and Purchaser**

In case of any dispute between the Agent and a purchaser of the Principal's goods, the Agent shall immediately inform the Principal of the same and shall not without Principal's approval or consent in writing initiate or defend any legal proceedings in respect of or compromise such dispute or make any statement or grant a release to any purchaser of the Principal's goods regarding such dispute.

**12. Description of Agency**

In respect of the goods of the Principal the Agent shall in all his commercial dealings and documents and on the name plate or letter head indicating his place of business describe himself as selling Agent of the Principal.

**13. Termination**

- (1) Subject to the provisions contained in Clause 6 of this agreement and unless terminated earlier with mutual consent in writing, either party may terminate this agreement at his option at any time after the expiration of \_\_\_\_\_ (**give time period such as 2 year or 5 years etc.**) years by giving to the other one month' notice in writing. Provided that such termination shall not affect any liability as to payment of commission to the Agent or payment of goods and return of goods to the Principal by the Agent that might have accrued under this agreement.
- (2) Notwithstanding and without prejudice to the above and any other remedy he may have against the Agent for any breach or non-performance of any part of this agreement the Principal shall have the right summarily to terminate this agreement:
  - (i) On the Agent being found guilty of a breach of any or all the provisions of this agreement, or
  - (ii) The Agent being guilty of misconduct or negligence of his duties, or
  - (iii) On the Agent absenting himself from his business duties entrusted to him under this agreement for one week without the Principal's prior permission in writing, or
  - (iv) The Agent becoming or declared bankrupt by a Court of Competent Jurisdiction.

**14. Agent Not to ask Orders on Termination**

The Agent hereby specifically undertakes that on the termination of this agreement for any reason whatsoever the he shall not for the period of **one year** ask or require from the person who had been purchasers of the Principal's goods and the Agent shall not for a period of one year engage or be interested as Agent of servant in any business, firm or company manufacturing, selling or dealing in goods similar to those transacted by the Principal.

**15. Return of Stocks etc. on Termination**

In the event of termination of this agreement in accordance with the provisions of this agreement for whatever reason the Agent shall immediately deliver to the Principal

all the unsold stock goods and shall pay to the Principal for shortage, damage or deficiency of stock at list prices less commission and rebate allowable to the Agent. The Agent shall also deliver to the charge of the Principal all books of account and documents of the agency, cash cheques, bills of exchange or other securities he may have received during the normal course as a result of sales of Principal's goods and shall transfer, assign or negotiate in favor of the Principal all such securities on demand.

**16. Agent to Perform Duties Honestly**

The Agent shall during the existence of the agreement always perform his duties under this agreement diligently and honestly for pushing the sale of the Principal's goods and shall in all dealings act honestly and faithfully to the Principal and shall carry out orders and instructions and shall not engage or be interested either directly or indirectly as agent or servant in any other business or trade without prior written consent in writing of the Principal.

**17. Principal Not to Receive Direct Orders**

During the existence of this agreement the Principal shall not receive direct orders or inquiries from the agency District/Province for his goods and in the event any such inquiry or order is received by him he shall immediately redirect such inquiries or orders to the Principal. Where the Principal supplies goods on such order he shall allow the Agent the same commission or rebate as the Agent would have been entitled to retain if he had carried out such transactions. A certificate under the signatures of the principal's accountant of the amount of such commission or rebate payable to the Agent shall be the conclusive evidence of such amount. Such remuneration shall be payable to the Agent monthly/half yearly.

**18. No Assignment**

Neither the benefits nor any of the rights arising out of this agreement shall be assignable to the third parties.

**19. Dispute Settlement**

If any dispute arises between the parties hereto regarding any matter provided herein or as to the interpretation of the provisions of this agreement the same shall in the first instance be settled though bilateral negotiations. In case of failure of the parties to settle the dispute through negotiations the same shall be resolved through third party mediation or arbitration in accordance with the provisions of the Arbitration Act, 1940.

**IN WITNESS WHEREOF** the parties have put their signatures as follows on the date mentioned above.

1. \_\_\_\_\_  
Party A

2. \_\_\_\_\_  
Party B

Witness:

1. \_\_\_\_\_

2. \_\_\_\_\_