

Commercial Contract

AGREEMENT FOR PURCHASE OF PRODUCT DESIGN



*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 on Purchase of Product Design

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 manufacturing. 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.

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

A4. AGREEMENT FOR PURCHASE OF PRODUCT DESIGN

THIS AGREEMENT FOR PURCHASE OF PRODUCT DESIGN (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 "Designer", 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 "Purchaser", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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(The Designer and the Purchaser are hereinafter collectively referred to as the “Parties”, and individually as the “Party”).

WHEREAS the Purchaser is in the business of manufacturing of [insert description of the products] (hereinafter referred to as the “Product Design”).

AND WHEREAS the Designer is the creator of a new design of [insert description of the product] (the design is described more particularly in Schedule I along with sketches of the product design, and hereinafter referred to as the “Product Design”).

AND WHEREAS the Purchaser wishes to purchase the Product Design from the Designer to be used in the production of the Purchaser’s products.

AND WHEREAS the Designer has agreed to sell the Product Design to the Purchaser in accordance with the terms of this Agreement.

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

1. SALE

- (1) The Designer does hereby irrevocably sells to the Purchaser all rights, title, and interest (including but not limited to all registration rights with respect to the Product Design, all rights to prepare derivative designs, and the use of the Product Design and any derivatives thereof in the manufacturing of the Products or any other use.
- (2) The Designer agrees that from the date of execution of this Agreement, the Designer shall have no right whatsoever in the Product Design, including that to receive any royalties pertaining to the use thereof, and that all the rights and interests of the Designer with respect to the Product Design shall stand sold, conveyed and transferred to the Purchaser.

2. CONSIDERATION

- (1) The Designer shall transfer the ownership, rights and title in the Product Design to the Purchaser against a consideration of Rs. ____/- (Rupees _____) (insert amount) (hereinafter referred to as the “Consideration”) to be paid by the Purchaser to the Designer.
- (2) Of the Consideration Amount, the Purchaser shall pay an amount of Rs. ____/- (Rupees _____) (insert amount) to the Designer at the time of execution of this Agreement. The remaining of the Consideration Amount of Rs. ____/- (Rupees _____) (insert amount) shall be paid by the Purchaser to the Designer on the date of registration of the Product Design in the name of the Purchaser with the relevant authorities.

3. REPRESENTATIONS AND WARRANTIES

- (1) The Designer represents and warrants to the Purchaser:

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- i. that the Designer has the right, power and authority to enter into this Agreement;
- ii. that the Designer is the exclusive owner of all right, title and interest, including all intellectual property rights, in the Product Design;
- iii. that the Product Design is the original work of the Designer, and does not infringe upon the rights of any third party;
- iv. that the Product Design is free of any liens, security interests, encumbrances or licenses;
- v. that there are no claims, pending or threatened, with respect to Designer's rights in the Product Design;
- vi. that the Designer has not entered into any agreement with any other party which may be in conflict with this Agreement, or which shall prejudice the interest of the Purchaser with respect to its title and ownership of the Product Design as conveyed to it by the Designer under this Agreement;
- vii. that the Designer is not subject to any agreement, judgment or order inconsistent with the terms of this Agreement;
- viii. that from the date of execution of this Agreement, the Designer shall cease to have any rights, title or ownership in and to the Product Design, and shall not act in a manner so as to convey to any third party any impression to the contrary in.

4. 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.

5. 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].

6. 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, lightning, 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.

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- (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.

7. INDEMNIFICATION

If either party is found to be in breach of this Agreement, the offending Party will indemnify the offended Party for any losses accrued as a result of the breach. Lost profits incurred as a result of any such breach shall be repaid by the offending Party to the offended Party.

8. AMENDMENTS

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

9. SEVERABILITY

If a court of law finds any provision of this Agreement invalid or unenforceable at law for any reason, the remainder of this Agreement shall not be affected, and shall be interpreted so as best to effect the intent of the Parties.

10. AGREEMENT TO PERFORM NECESSARY ACTS

The Designer hereby agrees and undertakes to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement, and for the registration of the Product Design in the name of the Purchaser with the relevant authorities.

11. ENTIRE AGREEMENT

This Agreement, contains the entire understanding and agreement between the Parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

12. NONWAIVER

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.

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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 Designer**

**For and on behalf of
The Purchaser**

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

SCHEDULE I DESCRIPTION OF PRODUCT DESIGN