

Commercial Contract

LICENSE FOR OVERSEASE MANUFACTURING AND SALES



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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License for Overseas Manufacturing and Sales

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.

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

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

B17. LICENSE FOR OVERSEAS MANUFACTURING AND SALES

THIS AGREEMENT FOR LICENSE OF OVERSEAS MANUFACTURING AND SALES (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];

OR

Mr/Mrs/Ms [insert Name], son/wife/daughter of [insert Name], r/o [insert Address] CNIC # [insert Number]

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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

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

WHEREAS the Business is involved in the manufacturing of [insert description of products] (hereinafter referred to as the "Products", and more particularly described in Schedule I of this Agreement) in Pakistan.

AND WHEREAS the Manufacturer has a manufacturing facility for the manufacturing of similar products in [insert country].

AND WHEREAS the Business wishes to expand its business in [insert country], and for this purpose, it wishes to license the manufacturing of the Products, along with the trademarks of the Business associated with such Products, to the Manufacturer.

AND WHEREAS the Business has agreed to grant the Manufacturing License for the Products to the Business, and the Manufacturer has agreed to accept the license.

NOW THEREFORE the Parties have agreed to the terms and conditions of this Agreement on the following terms and conditions:

1. TERM

This Agreement shall become effective on [insert date], and shall remain in full force and effect for a period of [insert number] years unless terminated earlier by the Parties under the terms and conditions of this Agreement.

2. LICENSE

(1)The Business hereby grants to the Manufacturer the license to manufacture the Products and use the Business' trademarks associated with the Products (hereinafter referred to as the "Trademarks" and more particularly described in Schedule II of the Agreement) and sell the Products in the [insert country].

(2)Apart from the Products given in Schedule I and the Trademarks given in Schedule II of the Agreement, the Manufacturer shall not manufacture any of the Business' products or trademarks.

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

- (3) In undertaking the manufacturing of the Products, the Manufacturer shall abide by the quality standards of the Business, as communicated by the Business to the Manufacturer from time to time. The Business shall have the right to inspect the quality standards of the Manufacturer's products to ensure the strict compliance of the Manufacturer with the Business' quality standards.
- (4) The Manufacturer shall be at liberty to sell the manufactured Products in the market in [insert country].
- (5) The procurement of the necessary permissions from the relevant authorities of [insert country] for the purposes of carrying out the manufacturing and sale of the Products in [insert country] shall be the sole responsibility of the Manufacturer, and any charges incurred in the procurement of such permissions and licenses from the relevant authorities shall be borne by the Manufacturer, exclusively.

3. TERRITORY

The License granted by the Business to the Manufacturer under this Agreement shall be valid for the Manufacturer only to the extent of [insert country] (hereinafter referred to as the "Territory") and the Manufacturer shall not undertake the sale of the Products of the Business outside the Territory.

The Manufacturer shall also not sell the goods to any person or entity that the Manufacturer has reasons to believe would sell the Products outside of the Territory.

4. PAYMENTS

The Manufacturer shall pay to the Business an amount of Rs. _____/- (Rupees _____) (insert amount) per month in lieu of the License to manufacture the Products (hereinafter referred to as the "License Fees"). Other than the License Fees, the Business shall be entitled to receive from the Manufacturer an amount of [insert percentage]% of the respective Product Price for each unit of the Product sold by the Manufacturer as Royalty.

The Royalty shall be payable by the Manufacturer to the Business at the end of each month, in arrears, along with the monthly License Fees.

5. ACCOUNTING AND AUDIT

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

(1) Reports. The Manufacturer shall provide the Business with a written statement (hereinafter referred to as the "Royalty Report") setting forth:

- i. the number of Products sold; and
- ii. the amount of royalties due,

within [insert number] days of the end of each calendar month.

(2) Records. The Manufacturer shall maintain and keep, for a period of at least [insert number] years, complete and accurate records, in accordance with generally accepted accounting principles, in sufficient detail, to enable the determination of any Royalties which shall have accrued hereunder for such period.

(3) Audits. Upon the request of the Business , but not exceeding [insert number] in one year, the Manufacturer shall permit, during normal business hours, an independent public accountant, selected by the Business and reasonably acceptable to the Manufacturer , to have access to all such records of the Manufacturer as may be necessary to verify the accuracy of the Royalty Reports and payments submitted to Business under the terms of this Agreement.

(4) Audit Expenses. Any audit of the Manufacturer's records under Clause 5 (3) shall be at the expense of the Business , except that if any such inspection reveals a deficiency of [insert number] percent or more of the amount of the Royalties actually due to the Business as against the Royalties actually paid to the Business under this Agreement in any year, then the expense of such audit, plus any shortfall amounts, shall be borne promptly by the Manufacturer .

(5) Surplus. If any audit under Clause 5 (3) reveals a surplus in royalties actually paid to the Licensor by the Manufacturer , the Licensor shall refund to the Licensee the surplus amount within [insert number] days after such audit.

6. NON-COMPETITION

The Manufacturer shall not directly or indirectly, during the term of this Agreement, and for a period of [insert number] months after the expiry or termination of this Agreement, manufacture, sell or deliver any product to any other entity which might reasonably be considered to compete with the Business' Products, or enter into any business, in whatsoever capacity, which may conflict with the interest of the Business.

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

7. ASSIGNMENT

Neither Party may assign any right or obligation under this Agreement to any third Party without the prior written consent of the other Party.

8. TERMINATION

Either Party may terminate this Agreement, with or without cause, upon serving a [insert number] months' prior written notice to the other Party.

9. INDEMNIFICATION

The Manufacturer shall indemnify the Business against any and all claims, losses, damages, costs, charges and expenses (including court fees and lawyers fees and expenses) suffered or incurred by the Business as a consequence of breaching the terms of this Agreement or due to its failure to abide by the Business' product specifications and standards.

10. CONFIDENTIALITY

- (1) Each party shall at all times during the continuance of this Agreement and after its termination keep confidential all trade secrets, know-how or other confidential information (hereinafter referred to as the "Confidential Information") made available under or in connection with this Agreement.
- (2) Notwithstanding the assignment of its rights in accordance with Clause 11 below, the Manufacturer shall be responsible and liable for maintaining the secrecy of the Confidential Information provided by the Business for the processing activity and also for ensuring compliance of all the terms and conditions of this Agreement.

11. ASSIGNMENT

None of the Parties shall assign or transfer or purport to assign or transfer any of their rights or obligations under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

12. RESOLUTION OF DISPUTES

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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 any other applicable laws/rules), subject to the exclusive jurisdiction of the Courts of [insert place].

13. 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.

14. 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.

15. MISCELLANEOUS

- (1) This Agreement represents the complete agreement between the Parties with regard to the subject matter and supersedes any prior

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

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

(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**

**For and on behalf of
The Manufacturer**

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

SCHEDULE I
List of Products

License for Overseas Manufacturing and Sales

Pro-Gole (Right to do Business)

Legal Services, B&SDS

SCHEDULE II **List of Trademarks**