

Commercial Contract

MANUFACTURING SUBLICENSE AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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Manufacturing Sublicense 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 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.

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B5. MANUFACTURING SUBLICENSE AGREEMENT

THIS MANUFACTURING SUBLICENSE 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 "Sublicensor", 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

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

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

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

WHEREAS, the Sublicensor is the [exclusive]Licensee [insert name of the master licensor] (hereinafter referred to as the "Master Licensor") rights to manufacture and sale of the products of the Master Licensor (hereinafter referred to as the "Products" and more particularly described in Schedule I), and the use of the Master Licensor's trademarks in connection therewith (hereinafter referred to as the "Trademarks" and more particularly described in Schedule II hereto) in [insert territory] pursuant to that the Manufacturing License Agreement, dated [insert date] (hereinafter referred to as the "Master License").

AND WHEREAS the Sublicensee wishes to acquire the sublicense to manufacture and sell the Products within [insert territorial boundary] and use the Trademarks, on and in connection with the manufacture and sale of the Products in the stated territorial boundary.

AND WHEREAS, the Sublicensee has represented that it has the ability to manufacture and sell the Products and to use the Trademark on or in association with the Products.

AND WHEREAS, the Sublicensor has agreed to grant to Sublicensee such license under and subject to the terms and conditions hereinafter set forth, and the terms and conditions of the Master License.

NOWHEREFORE in consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

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

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conditions of this Agreement, or if the Master License is terminated before the expiry of this Agreement, then this Agreement shall cease to exist on the date of the termination of the Master License.

2. SUBLICENSER

The Sublicensor hereby grants to the Sublicensee an exclusive, non-transferable, non-sublicensable license, during the Term of this Agreement, and subject to all the terms and conditions contained in this Agreement and the Master License, to manufacture and sell the Products of the Master Licensor, and use the Trademarks in relation thereto [insert detail of the territorial boundary of the Sublicensee] (hereinafter referred to as the "Territory").

3. RESERVATIONS

It is understood and agreed that this Sublicense shall pertain only to the Products and does not extend to any other products or services of the Master Licensor or the Sublicensor. All rights not specifically granted herein are hereby expressly reserved by Sublicensor.

4. EXCLUSIVITY

The Sublicensee shall not make or authorize, any use, direct or indirect, of the Products in any area outside the Territory and shall not sell the Products to persons who intend or are likely to resell them in any area outside the Territory.

5. PAYMENTS

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

(2) The Royalty shall be payable by the Sublicensee to the Sublicensor at the end of each month, in arrears, along with the monthly License Fees.

6. ACCOUNTING AND AUDIT

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

(4) Audit Expenses. Any audit of the Sublicensee's records under Clause 6 (3) shall be at the expense of the Sublicensor, 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 Sublicensor as against the Royalties actually paid to the Sublicensor under this Agreement in any year, then the expense of such audit, plus any shortfall amounts, shall be borne promptly by the Sublicensee.

(5) Surplus. If any audit under Clause 6 (3) reveals a surplus in royalties actually paid to the Licensor by the Sublicensee, the Licensor shall refund to the Licensee the surplus amount within [insert number] days after such audit.

7. WARRANTIES AND REPRESENTATIONS OF SUBLICENSOR

(1) The Sublicensor hereby represents and warrants that:

- i. it has the full right, power and authority to enter into this Agreement and to grant the sublicense granted herein;

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- ii. there are no other agreements with any other party in conflict herewith;
- iii. it has no actual knowledge that the Trademarks infringe any valid right of any party;
- iv. it has obtained the necessary approvals from the Master Licensor to grant the sublicense to the Sublicensee, and an acknowledgement to this effect from the Master Licensor is attached herewith this Agreement as Schedule III.

8. WARRANTIES AND REPRESENTATIONS OF SUBLICENSEE

(1) The Sublicensee hereby represents and warrants that:

- i. it has the full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder;
- ii. it is financially capable of undertaking the business operations which it conducts and of performing its obligations hereunder.

9. NON-COMPETITION

The Sublicensee 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 Sublicensor's Products, or enter into any business, in whatsoever capacity, which may conflict with the interest of the Sublicensor.

10. 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.

11. TERMINATION

- (1) Either Party may terminate this Agreement, with or without cause, upon serving a [insert number] months' prior written notice to the other Party.
- (2) Upon termination, the Sublicensee shall immediately cease the manufacturing of the Products and the use of the Trademarks of the Sublicensor. The Sublicensee shall only be allowed to sell such Products

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which have already been manufactured till the time of the receipt of the notice of termination of the Agreement under Clause 11(1).

(3) In case of termination of this Agreement due to the termination of the Master License, the Sublicensor shall notify the Sublicensee in writing within [insert number] days of the receipt of the Notice of termination by the Sublicensor from the Master Licensor.

12. INDEMNIFICATION

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

13. 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 14 below, the Sublicensee shall be responsible and liable for maintaining the secrecy of the Confidential Information provided by the Sublicensor for the processing activity and also for ensuring compliance of all the terms and conditions of this Agreement.

14. 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.

15. 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,

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1940, subject to the exclusive jurisdiction of the Courts of [insert place].

16. 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.

17. 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.

18. MISCELLANEOUS

- (1) This Agreement represents the complete agreement between the Parties with regard to the subject

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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.

(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 Sublicensor**

**For and on behalf of
The Sublicensee**

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

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Date: _____

Date: _____

SCHEDULE I
List of Products

SCHEDULE II
List of Trademarks

SCHEDULE III
ACKNOWLEDGMENT OF THE MASTER LICENSOR