

# Commercial Contract

## DISTRIBUTION AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

[www.smeda.org.pk](http://www.smeda.org.pk)

#### HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,  
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7  
[helpdesk@smeda.org.pk](mailto:helpdesk@smeda.org.pk)

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 <sup>rd</sup> Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 <a href="mailto:helpdesk.punjab@smeda.org.pk">helpdesk.punjab@smeda.org.pk</a>	5 <sup>th</sup> Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 <a href="mailto:helpdesk-khi@smeda.org.pk">helpdesk-khi@smeda.org.pk</a>	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 <a href="mailto:helpdesk-pew@smeda.org.pk">helpdesk-pew@smeda.org.pk</a>	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 <a href="mailto:helpdesk-qta@smeda.org.pk">helpdesk-qta@smeda.org.pk</a>

**January 2013**

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Pro-Gole (Right to do Business)

Legal Services, B&SDS

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### **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 sales. 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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### DISTRIBUTION AGREEMENT

**THIS DISTRIBUTION AGREEMENT** (hereinafter referred to as the "Agreement") is made 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]

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

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

**WHEREAS** the Business produces and sells [insert description of the products] (hereinafter referred to as the "Products").

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**AND WHEREAS** the Distributor is a willing distributor of the Products, subject to the terms and conditions of the Agreement;

**AND WHEREAS** the Distributor desires to distribute the Products within [insert description of the territorial boundary] (hereinafter referred to as the "Territory");

**AND WHEREAS** the Business desires to grant the Distributor, which it is willing to accept, an exclusive right to distribute the Products pursuant to the terms and conditions set forth hereunder;

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

### **1. APPOINTMENT**

- (1) The Business appoints the Distributor as its exclusive distributor for the Products within the Territory, and the Distributor accepts such appointment, subject to the terms and conditions of the Agreement.
- (2) The Business has represented to the Distributor that it has not appointed, and will not appoint during the term of this Agreement, any other company, person, agent, distributor or representative for the distribution of the Products in the Territory.
- (3) The Distributor shall not seek customers, solicit business, nor establish any branch or maintain any distribution depot outside the Territory with respect to the Products, unless otherwise mutually agreed between the Parties.
- (4) The Distributor shall enter into all sales contracts for the Products in the Territory as a principal and all such sales shall be for its own account and shall make clear in all dealings with customers and prospective customers that it acts as a distributor of the Products and not as an agent of the Business.
- (5) The Business reserves the right in its sole discretion to discontinue or add models to the Products, and to change the design of any model of the Products at any time and from time to time, but any orders that have been accepted by the Business shall be fulfilled without any change to the Products. In this connection, the Business shall not incur any liability thereof or any obligation to alter, change or repurchase the Products previously sold by the Business to the Distributor.
- (6) The Distributor shall not appoint any sub-distributor or agent for the sale of the Products without the prior written consent of the Business, and on such conditions that the Parties may agree upon.
- (7) Either party may change the Territory, subject to the prior written consent of the other Party.

### **2. TERM**

The Agreement shall come into effect on [insert date], and shall continue to remain in effect unless terminated earlier by either of the Parties in accordance with Clause 7 of this Agreement.

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### **3. ORDERS**

- (1) The Distributor shall place orders for the Products with the Business from time to time. All orders are subject to acceptance by the Business, which shall not be unreasonably withheld by the Business.
- (2) Title to the ordered Products shall be deemed to have passed to the Distributor upon completion of payment for the full amount of the Products covered by each Purchase Order.

### **4. DELIVERY, PRICES AND PAYMENT**

- (1) The prices for Products, and any discounts applicable thereto, and the minimum quantities per order are set forth in Exhibit A.
- (2) If the price for any Product is not set forth on Exhibit A, and Distributor nevertheless orders such a Product from the Business, the Parties hereby evidence their intention to conclude a contract for the sale of that Product at a reasonable price to be determined by the Parties mutually negotiating in good faith.
- (3) The prices of the product are subject to change by the Business giving to the Distributor a prior written notice to this effect of [insert number] days.
- (4) Title and Risk of loss for the Products shall pass from the Business to the Distributor when the Products are left by the Business at the Delivery Point in accordance with the agreed mode and method, decided at the time of the Distributor's placing an order with the Business.
- (5) Payment shall be made by the Distributor via Irrevocable and Confirmed Letters of Credit upon receipt of the Bill of Lading in a form and manner acceptable to the Business for the full amount of each purchase order or any other mode settled between the parties from time to time.
- (6) The Distributor, in addition to the prices, shall bear all taxes or duties imposed by the government or taxing authority of the Territory, as well as all costs and expenses of the bank or otherwise related to the payments under this Agreement.

### **5. SALES PROMOTION AND ADVERTISEMENT**

- (1) Sales promotion, publicity and advertisement, including without limitation participation in trade fairs, shall be made by the Distributor upon the Business's prior written approval.
- (2) The budget for the purpose of carrying out advertisement and sales promotion for each year shall be determined through mutual discussion and agreement and the Business shall make its firm commitment to provide the Distributor with funds amounting [insert percentage]% of the annual advertising budget.
- (3) The Distributor shall provide the Business with the annual advertising and sales promotion plan by the end of December, each year for the Business's review and approval.
- (4) The Business reserves the right to make its own advertising of its name, trademarks and products in the Territory at any and all times.

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- (5) If in a delivery of Products, more than [insert number] units do not conform to the quality standards and specifications, the Distributor shall notify the Business within [insert number] days of the receipt of the delivery.
- (6) Upon the receipt of the notice of defected products, the Business shall, within [insert number] days, at the Distributor's option:
- i. Replace the defected products with new products;
  - ii. Repair all defected products at its own costs;
  - iii. Reimburse the Distributor for its reasonable expenses incurred in repairing or repairing the defected products;
  - iv. Accept return at the Business's expense of the defected products.
- (7) Notwithstanding the provisions hereof, the Business shall not be liable for any defect in the products arising any cause or causes for which the Business is not responsible.

### **6. MARKET INFORMATION**

- (1) The Distributor shall provide the Business with any and all information on competitive conditions in the market, among other things, information on prices, new products, and any other information deemed by the Business to be materially important to the Products, including but not limited to newspaper clippings and magazines, catalogues and samples. The Distributor may invoice the Business for cost of samples obtained for this purpose, provided however before purchasing samples, the Distributor shall first obtain the Business's written approval.
- (2) The Distributor shall provide the Business with any and all other information which may materially affect the Products and the Business, including but not limited to governmental orders, ordinances, rules and regulations on product safety, sanitation, marking, labeling, foreign exchange control, and foreign investments.
- (3) The Business shall keep the Distributor updated with any information which the Business may consider useful or helpful to the Distributor in promoting the sales of the Products in the Territory.

### **7. TERMINATION**

- (1) Either Party may terminate the Agreement by giving a [insert number] months prior written notice to the other Party in any of the following events:
- i.
  - ii.
  - iii.
- (2) If either party defaults in any of the other terms of this Agreement and fails to cure the default within [insert number] days of receipt of a notice given by the non-defaulting party, the non-defaulting party may forthwith terminate this Agreement by giving a written notice thereof.

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- (3) In the event the Business replaces the Distributor with another distributor, the Business shall buy or have such new distributor purchase all stock, both in the warehouse, in transit or on order from the Distributor.

### **8. CONFIDENTIALITY**

- (1) The Distributor 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 (the "Confidential Information"), and shall not at any time disclose such Confidential Information to 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 Distributor 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 Distributor;
  - 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.

### **9. OWNERSHIP OF INTELLECTUAL PROPERTY**

- (1) The Distributor 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 Distributor shall not claim ownership rights to the Intellectual Property by virtue of being appointed the Business' Distributor under this Agreement.
- (2) The Distributor agrees that nothing in this Agreement shall give the Distributor any right, title, or interest in the Intellectual Property other than the right to use the same in accordance with this Agreement.

### **10. INDEMNIFICATION**

- (1) The Distributor 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 Distributor 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

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the negligence of the Business.

- (2) The Business shall fully indemnify, defend, and hold harmless the Distributor from and against any and all claims, losses, damages, expenses and liability, including claims of copyright infringement arising out of the Distributor's authorized use of the Intellectual Property. The Business does not agree to indemnify the Distributor 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 Distributor.

### **11. 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.

### **12. INDEPENDENT BUSINESS RELATIONSHIP**

- (1) The Business and the Distributor are independent contractors, and nothing contained in this Agreement shall be construed to be a relationship of joint venturers, partners, employer/employee, or agency between the Parties.
- (2) Neither Party shall have the power to bind or obligate the other, except as set forth in this Agreement.

### **13. 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.

### **14. 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.



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### 15. 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 Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

### 16. 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.
- (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 Pakistan 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.
- (5) The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties to the Agreement, shall be governed by the laws of Pakistan.

**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 Distributor

#### WITNESS NO. 1

#### WITNESS NO. 2

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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### **EXHIBIT A**

**Product Description**

**Price/unit  
(units)**

**Minimum Order Quantity**

- 1.**
- 2.**
- 3.**