

# Commercial Contract

## RETAIL AGREEMENT



*Empowered lives.  
Resilient nations.*



### Small and Medium Enterprises Development Authority

### Ministry of Industries & Production

### Government of Pakistan

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**January 2013**

## **Retail Agreement**

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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### **RETAIL AGREEMENT**

**THIS RETAIL 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 "Retailer", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents).

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

**WHEREAS** the Business is the manufacturer of [insert description of the products] (hereinafter referred to as the "Products").

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**AND WHEREAS** the Retailer owns a retail shop at [insert address] (hereinafter referred to as the "Retail Outlet").

**AND WHEREAS** the Retailer has demonstrated to the satisfaction of the Business that it has the capacity and will to display and sell the Products to the consumers in the manner and subject to the conditions hereafter provided, and by executing this Agreement, the Retailer is prepared to warrant and represent that it shall at all times during the effective period hereof continue to maintain such capacity by meeting the qualifications and conditions set forth in this Agreement.

**AND WHEREAS** the Retailer understands that it is critical that the Business establishes and maintains highly reputable Retailer outlets of the Products, and the Retailer acknowledges that it will be to the advantage of the consumer, the Retailer and the Business if the Products are presented in an environment where they can be displayed, demonstrated, adjusted, and explained by knowledgeable personnel.

**AND WHEREAS** the Business and the Retailer recognize that both the maintenance of quality of Products and the professionalism of the Retailer are essential to their mutual success.

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

### **1. RETAIL SALES AT AUTHORIZED LOCATION ONLY**

- (1) The Business hereby appoints the Retailer, on a non-exclusive basis, to display, sell and promote the sales of the Business' such Products as the Business may deem fit, in accordance with the terms and conditions of this Agreement.
- (2) The Retailer shall not offer Products for sale at any location other than the Retail Outlet.
- (3) The Retailer shall not, without the Business' consent, sell the Product to any person who the Retailer otherwise has reasons to believe may offer the Products for resale.

### **2. TERM**

The Agreement shall come into effect on [insert date] and shall continue to remain in force for a period of [insert number] years, unless terminated earlier by either of the Parties in accordance with Clause 5 of this Agreement.

### **3. PAYMENTS**

- (1) The Retailer agrees that it shall not sell the Products of the Business at prices higher than the price list provided by the Business.
- (2) Similarly, the Retailer agrees that it shall not offer discount to any of its customers beyond [insert percentage]% of the Product price provided by the Business.
- (3) The Business shall, against the sale of each Product sold by the Retailer, pay to the Retailer [insert percentage]% of the price of the respective Product, provided that the Product has not been sold at a discount. If so, the payment against each unit shall be decreased in proportion to the discount offered.
- (4) The Retailer shall, on the [insert number] day of every month, make the

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payment to the Business in lieu of the sales after adjustment of the payments due from the Business to the Retailer, along with the detailed account of the sales during the preceding month.

### **4. OBLIGATIONS OF THE RETAILER**

- (1) The Retailer and its staff shall be intimately conversant with the technical language conventional to the Products in general, and shall possess complete knowledge concerning the Business' Products and their specifications.
- (2) The Retailer shall conduct appropriate sales and related training of its personnel to ensure that such knowledge is imparted to them and shall cooperate in any product education programs that the Business may establish.
- (3) The Retailer shall consistently encourage the purchase of the Products by the Retailer's customers to the best of its ability, and shall at all times represent the products fairly in comparison with competitive products of other manufacturers.
- (4) Minimum stocking/display requirements: The Retailer shall, at all times, maintain in its inventory at the Retail Outlet no fewer than [insert number] of each of the Products. In this regard, the Retailer shall inform the Business of the prospective decrease in the number of Products at the Retail Outlet [insert number] days in advance, based on the extrapolation of the sales of the preceding month.
- (5) The Retailer agrees to make available to the Business such statements of the Retailer's financial conditions as the Business may periodically and reasonably request.
- (6) Any Product returns/repairs are subject to prior approval, inspection and acceptance by the Business, and subject to the warranty of the Business applicable to each Product. The Retailer must contact the Business' office for approval and for a return authorization number.

### **5. TERMINATION**

- (1) Either the Retailer or the Business may terminate this Agreement with or without cause; provided, however, that in the event the termination is without cause, at least [insert number] days prior written notice must be given to the other Party.
- (2) The termination for cause may be effected forthwith and without any advance written notice, and may be effected in any of the following events:
  - i. If either Party breaches any provision of this Agreement.
  - ii. In the event that the Business, in its sole discretion, determines that the Retailer is not employing its best efforts to promote the sales of the Products.
  - iii. [insert any other causes as may be agreed between the Parties.]

### **6. CONFIDENTIALITY**

- (1) The Retailer 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 (hereinafter referred to as the "Confidential Information"), and shall not at any time disclose such Confidential Information to

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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 Retailer 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 Retailer;
  - 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.

### **7. OWNERSHIP OF INTELLECTUAL PROPERTY**

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

### **8. INDEMNIFICATION**

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

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### **9. 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.

### **10. INDEPENDENT BUSINESS RELATIONSHIP**

- (1) The Business and the Retailer 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.

### **11. 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.

### **12. 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.

### **13. 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].

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### 14. 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 [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.
- (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 Retailer

#### WITNESS NO. 1

#### WITNESS NO. 2

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

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

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

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

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

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

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

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