

Commercial Contract

AGREEMENT TO FINANCE (ISLAMIC BANKING)



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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 with respect to banking transactions. 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.

AGREEMENT TO FINANCE (ISLAMIC BANKING)

THIS AGREEMENT TO FINANCE (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

[Insert Name of the Bank], a banking company incorporated under the laws of Pakistan having its Registered Office at _____ (insert address of registered office) and a Branch at _____ (insert address of the branch) transacting, inter alia, Islamic Banking in Pakistan (hereinafter referred to as the "Bank" which expression shall, where the context so permits, include its successors in interest and assigns),

AND

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

OR

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];

(hereinafter referred to as the "Customer" which expression shall, wherever the context so permits mean and include its/his/her heirs, successors in interest and permitted assigns)

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

WHEREAS the Customer has approached the Bank with the request to provide a Bank Guarantee and/or open an Irrevocable Letter of Credit and/or Murabaha/ Musharaka/ Ijara/ Istisna/ Musawama facilities as per its request, from time to time, and to grant other banking facilities under the laws of Pakistan as permissible under law up to a maximum limit of Rupees _____ (Rs. _____) (insert amount) (hereinafter referred to as the "Facility", and is more properly defined in Clause 1 of this Agreement) and in consideration thereof has undertaken to pay to the Bank all such amounts as are

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found due from the Customer to the Bank as per the accounts of the Bank (the "Obligation") as demanded.

AND WHEREAS the Bank has agreed to this proposal and in this regard has further agreed to extend to the Customer the Facility more fully defined in Clause (1) of this Agreement.

AND WHEREAS the Parties are desirous of reducing in writing the terms and conditions governing the granting of Facility by the Bank to the Customer.

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

1. FACILITY DEFINED

The term "Facility/Purchase Price" as used herein shall include any and all obligations and liabilities of any kind of the Customer or any associated concern of which the Customer is a member, arising out of the purchase of the Goods by the Bank on the recommendation of the Customer and the subsequent sale of the Goods by the Bank to the Customer on deferred payment basis, arising out of the Bank's issuance on behalf of the Customer Letters of Credit, Guarantees, granting Musharaka, Ijara, Istisna or Musawama or other facilities relating to contracts, torts or by operation of law or otherwise whether absolute or contingent, indirect, liquidated and whether incurred by the Customer as principal, surety, endorser, guarantor or otherwise.

2. SECURITY DEFINED

The term "Security" as used herein shall include all present and future claims of the Customer against the Bank and any interest in any property, rights and interests of the Customer, and evidences thereof, which have been or at any time shall be delivered to or otherwise come into possession, custody or control of or be in transit to or from or set apart for the Bank or another acting in its behalf, for any purpose.

3. PLEDGE

As security for the Facility, the Customer hereby pledges with the Bank all of the Security and hereby bargains, sells, assigns and transfers to the Bank and gives to it a general lien upon, and a right of set off on all rights, title and interest of the Customer in and to any of the Security.

4. GENERAL RIGHTS OF THE BANK

- (1) The Bank may, without notice and without incurring any liability, whether or not any of the Facilities be due for payment by the Customer, and without discharging or otherwise affecting any liability of the Customer:
 - i. exercise any or all powers with respect to any Security with the same force and effect as an absolute owner thereof;

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- ii. transfer any Security to the name of the Bank or any nominee of the Bank;
- iii. exercise all voting powers;
- iv. remove any security from any state or country to any other state or country;
- v. demand and receive all payments and distributions on any security;
- vi. demand, sue for, collect and receive any money, Securities or other property at any time due, payable or receivable on account of or in exchange for any Security or make any compromise or settlement deemed by the Bank to be desirable with respect thereto;
- vii. apply the net cash proceedings of any Security towards adjustment of any part of the Facility;
- viii. surrender or release any Security to the Customer, or exchange any Security for another Security provided by the Customer.

(2) The Bank shall be under no duty to send notices, perform services or take any action of any kind in connection with the management of any Security.

5. INSURANCE

(1) The Customer shall satisfactorily insure all Securities with reputable companies offering protection under the Islamic Concept of Takaful. Until the Islamic Insurance Concept of Takaful is not available, the Securities shall be comprehensively insured (with a reputable insurance company to the satisfaction of the Bank) against all insurable risks, which may include fire, arson, collision, vandalism, riots and acts of terrorism, and to assign all policies of insurance in favor of the Bank to the extent of the amount from time to time due under this Agreement, and to cause the notice of the interest of the Bank to be noted on the policies of insurance, and to punctually pay the premium due for such insurances and to contemporaneously therewith deliver the premium receipts to the Bank.

(2) Should the Customer fail to insure or keep insured the Securities and/ or to deliver such policies and premium receipts to the Bank, then it shall be lawful for the Bank but not obligatory to pay such premia and to keep the Securities so insured and all cost charges and expenses incurred by it for the purpose shall be charged to the Customer and shall be paid by the Customer to the Bank within [insert number] days of a demand being made by the Bank.

6. ADDITIONAL SECURITY

The Customer will, upon demand of the Bank, at any time or from time to time, furnish such further security or make such payment on account as will be satisfactory to the Bank.

7. ACCELERATION OF MATURITY

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(1) In the event:

- i. the Customer shall fail to perform any agreement herein contained; or
- ii. the Customer shall (i) die, (ii) become insolvent (however evidenced), (iii) commit any act of insolvency, (iv) default in any payment on any indebtedness or in the performance of any instrument relating to any indebtedness, (v) make a general assignment for the benefit of creditors, (vi) suspend the transaction of the Customer's usual business, (vii) be expelled from or suspended by any exchange or trade association, (viii) admit in writing the inability of the Customer to pay the Customer's debts generally as they become due, or
- iii. the Customer, being a corporation, a Resolution for its winding up is passed or any order is made for its winding up, or
- iv. any warrant, order of attachment, tax, lien or levy, distraint or garnishment be issued against any of the property of the Customer, or

then and in any such event, all amounts due to the Bank shall become due and payable forthwith without presentation or demand for payment which are hereby expressly waived and, if not paid immediately, the Customer shall be liable for any loss to the Bank provided, however, that the Bank by notice in writing may waive, suspend or modify the effect of any such event upon any amount due to it either before or after the same shall have occurred.

8. REALIZATION OF SECURITY

- (1) Upon non-payment of any part or whole of the Purchase Price or any other amount when due or becoming due as above the Bank may, without demand of payment or notice of intention, (which are hereby expressly waived) force, collect and realize upon any Security by sale, assignment, set off, application and otherwise. Any such sale, assignment or other realization may be at any time and place, public or private, with or without advertisement or notice of the time or place or otherwise (all of which are hereby expressly waived), in one or more sales or parcels at such price or prices as the Bank may deem best, for cash or on credit or for future delivery, without assumption of any credit risk.
- (2) The Bank may be a purchaser at any such sale and each purchaser of Security so sold (including the Bank) shall hold the same absolutely free from any claim or right of any kind or equity of redemption of the Customer, which are hereby expressly waived and released.

9. EXPENSES

The Customer will pay all expenses including legal fees of every kind of or incidental to the enforcement of any of the provisions hereof or of any actual or attempted sale, or of any exchange, enforcement, collection compromise or settlement of any of the Security, and of the receipt of the proceeds thereof, and for the care for the

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Security (including insurance) and any such expense incurred by the Bank shall be in addition to the Purchase Price or any other amount due and will be billed on the basis of actual expenses incurred.

10. LIABILITY FOR UNPAID BALANCE/RETURN OF SECURITY

- (1) Notwithstanding the realization by the Bank upon the entire Security or the retention by the Bank of any Security regardless of its value, the Customer shall remain liable for the unpaid balance of all Purchase Price and other amounts.
- (2) After the Purchase Price or other amounts due and expenses under Clause 10 have been paid in full, any Security remaining and any remaining proceeds of any Security shall be returned to the Customer.

11. RIGHTS CUMULATIVE/NO WAIVER

- (1) The rights and remedies herein expressly specified are cumulative and not exclusive of any right which the Bank would otherwise have.
- (2) No delay by the Bank in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right.

12. AMENDMENTS

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

13. PAYMENTS

Unless otherwise agreed, the amounts owing in respect of the Purchase Price or any other amount due by the Customer to the Bank shall be repayable upon demand at that branch of the Bank through which the Facility was made available to the Customer.

14. CONTINUING AGREEMENT

This Agreement shall apply to all existing and future transactions, whether or not of the character contemplated at the date hereof and if all transactions between the Bank and the Customer shall at any time or times be closed, this Agreement shall be applicable to any new transactions thereafter. The acceptance of this Agreement shall not be deemed a commitment by the Bank to provide any Facility in future.

15. INFORMATION

The Customer shall furnish financial statements half yearly and shall give prompt notice ([insert number] days in advance when possible) of any bulk sale of assets or change in management, control or business policies or any meeting of creditors or any judgment against the Customer or occurrence of any event mentioned in Clause

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7 hereof and shall provide additional information and permit inspection of books and records and the making of extracts and copies therefrom on request.

16. 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.

17. 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.

18. 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.

19. 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].

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20. 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.

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 Bank

For and on behalf of
The Customer

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____