

Commercial Contract

AGREEMENT TO FINANCE



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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

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

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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 in documenting transaction with reference 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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Information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

AGREEMENT TO FINANCE (TRADITIONAL 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) (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 requested the Bank to purchase movable/immovable property (hereinafter referred to as the "Property", and more particularly described in Schedule 1 of this Agreement) for the sum of Rs. _____ (Rupees _____ Only) (insert amount);

AND WHEREAS the Bank, pursuant to the above and at the request of the Customer has agreed to the sell back the Property to the Customer on the basis of markup in price, on terms and conditions hereinafter appearing.

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

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1. SALE PRICE

The Bank confirms having bought from the Customer the Property for a sum of Rs. _____ (Rupees _____ Only) (insert amount). The price to be paid by the Bank to the Customer (hereinafter referred to as "Sale Price") shall be made available for utilization by the Customer in his Account No. [insert account number] (hereinafter referred to as the "Account") with the Bank, and such withdrawal (s), from time to time, shall constitute payment of the Sale Price.

2. PURCHASE PRICE

The Customer confirms having immediately purchased the Property from the Bank at a price of Rs. _____ (Rupees _____ only) (hereinafter referred to as "Purchase Price") (insert amount) which is payable to the Bank in terms of this Agreement. Deposits by the Customer from time to time in the Account shall constitute payment towards Purchase Price.

3. NO LIABILITY OF THE BANK

The Bank shall not be liable under the law or otherwise in respect of the Property sold under and in terms of this Agreement with regard to quality, quantity, value or otherwise fitness for use or on any other account whatsoever.

4. PAYMENT OF THE PURCHASE PRICE

- (1) The Purchase Price shall be payable by the Customer to the Bank on or before [insert date], provided that in the event of the Customer paying the entire Purchase Price on the date in terms of this Agreement, the Bank shall pay to the Customer a sum up to Rs. _____ (Rupees _____ Only) (insert amount), as and by way of prompt payment bonus or grant adjustment of this amount. If the Customer fails to pay purchase price due under and in terms of this Agreement, the Bank shall be entitled and authorized to debit its Account with the amount of Purchase Price due in terms above, and the Bank may, in its discretion either debit the said account with the Purchase Price without prejudice to its claim for outstanding dues as reflected in the said Account, or demand payment of the Purchase Price without prejudice to any other outstanding liability of the Customer for payment of other amounts due and payable to the Bank.
- (2) At any point of time when the total of the Customers credit enters in the Account are in excess of, or equal to the Purchase Price (less prompt payment bonus) then in such event:
 - i. This Agreement and all documents executed in purchase of or in connection with this Agreement shall stand automatically renewed, and

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- ii. The Customer shall pay to the Bank such portions of the Purchase Price, as may be advised by the Bank in writing, and if the Customer fails to pay such amount, the Bank is hereby authorized to debit the said amount to the Customer's Account and to transfer and pay to itself the said amount as part payment of the ultimate Purchase Price due/owing to the Bank.

In the event of the automatic renewal of this Agreement as mentioned in Clause 4(2) (i) above, all subsequent withdrawals by the Customer under this renewed Agreement shall constitute payment of the Sale Price and deposits shall constitute payment towards the Purchase Price and , in which event the date of payment of full Purchase Price shall stand extended for each successive period in point of time as aforesaid up to [insert date] for payment of the ultimate Purchase Price reflected as outstanding in the Customer's statement of account.

- (3) The Bank shall retain the absolute right to reduce the total Sale Price under this Agreement from time to time. If due to this reduction, the Customer's outstanding in the Account are in excess of the reduced Sale Price at the time, the Customer shall deposit/pay differential amount immediately, without prejudice to the Customer's liability for payment of the entire Purchase Price as specified above. Failure to do this shall constitute a default under this Agreement and further withdrawals from the Account by Customer shall be stopped even if the Account is in credit. Additionally, the Bank shall be entitled to demand immediate repayment of the entire Purchase Price.

5. COVENANTS OF THE CUSTOMER

(1) The Customer hereby further covenants as follows:

- i. Not to borrow any money or moneys or avail any other finance or mark up facility from any bank, financial Institution or any other person and not to repay any existing debt or financial liability to anyone without obtaining prior written approval from the Bank.
- ii. Upon demand by the Bank, at any time or from time to time, to execute or cause to be executed all such instruments, deeds or documents which the Bank may in its sole discretion require.
- iii. As security for payment of the Purchase Price, the Customer undertakes to give the following security (ies), the terms and conditions of which shall be such as the Bank may determine:
 - Hypothecation
 - Pledge
 - Mortgage

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- And such other securities as the Bank may at any time require (hereinafter collectively referred to as the 'Security").
- iv. To furnish all such information, as the Bank may at any time and from time to time require, relating to the position of the Security and pecuniary liabilities of the Customer or otherwise whatsoever.
 - v. To keep the Security duly insured with an insurance company approved by the Bank for a sum not less than the amount of Purchase Price due and payable to the Bank and deliver to the Bank, copies of receipts evidencing payment of premium.
 - vi. To pay the Bank the Purchase Price on its due date (s).
 - vii. The sums owing from the Customer to the Bank shall be such as may be certified by a duly authorized officer of the Bank and the Customer agrees to the same being conclusive, and waives his right to challenge the same.
 - viii. It is hereby agreed between the Parties hereto that were the Purchase price is payable in installments, failure on the part of Customer to pay any Installment on its due date will entitle the Bank to demand immediate payment of the entire balance of the Purchase Price remaining due, notwithstanding anything to the contrary contained in this Agreement, and for recovery thereof to take possession of the Property and sell the same.
 - ix. Notwithstanding anything contained hereinabove, it is hereby agreed that the Bank shall at all times, be at liberty and shall have the right to cancel the facilities under this Agreement, without assigning any reason, and demand immediate payment of the Purchase Price without assigning any reason thereof. The customer undertakes to pay the Bank liquidated damages at [insert percentage]% of the amount demanded by the Bank if not paid by the Customer.
 - x. That it is further agreed between the parties that the Demand Promissory Note executed by the customer and delivered to the Bank shall be a continuing security for the payment of the ultimate balance of the aforesaid Purchase Price remaining unpaid and that the customer shall remain liable on the said promissory note notwithstanding the fact that by payments made to the Bank from time to time, the liability may be reduced or extinguished or even that the account may at any time have been in credit.

6. 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.

7. SEVERABILITY

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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.

8. 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.

9. 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].

10. 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.

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For and on behalf of

The Bank

WITNESS NO. 1

Signature: _____

Name:

Designation:

Date: _____

For and on behalf of

The Customer

WITNESS NO. 2

Signature: _____

Name:

Designation:

Date: _____

**SCHEDULE 1
DESCRIPTION OF THE PROPERTY**