

Commercial Contract

CONTRACT NEGOTIATION, WRITING & MANAGEMENT GUIDELINES/TIPS



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

April 2011

1. INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. *Creating a Conducive Environment*; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. *Cluster/Sector Development*; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. *Enhancing Access to Business Development Services*; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewellery, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

2. ROLE OF SMEDA LEGAL SERVICES CELL

The Legal Services Cell (LSC) is a part of Business Development Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world. LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs, Service Providers, Companies and Firms with information pertaining to requisite format and content of a business to business commercial contracts. Entrepreneurs interested in enhancing their understanding about negotiating and drafting of a contract can use this document for guidelines and tips.

3. DISCLAIMER

Form of this document and the contents therein are provided only for general information purpose and on an "as is" basis without any warranties of any kind. Use of this document is at the user's sole risk. SMEDA assumes no responsibility for the accuracy or completeness of this document, its form and any of the information provided therein and shall not be liable for any damages arising from its uses.

Contract Negotiation, Writing & Management Guidelines/Tips

Contracting is at the heart of business development. Although, a simple telephone call or a face to face discussion and understanding can constitute a legally binding contract, yet, it is not an alternate to a written contract. Apart from creating an evidence of the intentions and promises of the parties, a written contract brings in following benefits, amongst others, in comparison to an oral understanding:

- a) Minimum chances of dispute about quantity, quality, price or payment in business transactions.
- b) Chance of out of court settlement due to availability of the option of alternate dispute resolution within the contract.
- c) Written contracts have greater force of evidence and enforceability as against oral agreements in the event of dispute.
- d) In the event of insolvency or merger of businesses, written contracts are implemented with relative ease and convenience.
- e) Banks and investors form a better opinion of businesses

The above noted benefits can, however, be maximized only when the terms of the contract are thoroughly negotiated and put in the contract document in an appropriate manner to avoid any potential litigation or dispute. In order to enable the legal service providers and small business owners to effectively negotiate and write a comprehensive contract, following guidelines / tips are being listed below:

1- Negotiating Guidelines /Tips

- Prepare a draft agreement and share the same with the other party before meeting for negotiation.
- Following receipt of other party's views on the draft, identify and make a list of points to be negotiated with the other party.
- Do the related research to know the relevant legal position as well as market research to get some facts and figures about product price, quality or other related matters.

- Clearly spell out the areas where you can get the maximum from the other party and also the areas you are willing to compromise on.
- While meeting, carefully listen to the other party and their concerns.
- Build trust with the other party. Trust will aid communication.
- During meeting try to keep the discussion focused and to the point. Taking notes of issues being discussed and the decisions taken during the negotiation will be of great help in finalizing the terms of the contract.

2- Contract Drafting Guidelines / Tips

Knowing the basics of a business to business contract is helpful not only in writing a contract but also improves your capacity to better review and interpret a contract in which you are a party. Here are some of the guidelines / tips for writing an effective contract:

a) For Entrepreneurs / businesses

- i. Ascertain, understand and consolidate the information about:
 - o the nature & objective of the transaction;
 - o product price, quality & quantity;
 - o mode & time of payment and delivery;
 - o warranties, guarantees & penalties;
 - o mode and manner of dispute settlement;
- ii. Look at a sample contract template at www.smeda.org.pk Although you will have to personalize your contract keeping in view uniqueness of your situation, however, the sample template may help you to understand how to structure your contract, the

type of language and any other clause that you may not have thought about.

- iii. Write your own contract document keeping in view the above guidelines (para i) and without relying on or reproducing the sample contract.
- iv. Get the draft contract checked / vetted by a legal service provider to ensure that all relevant information is appropriately reflected. This will be much less costly than getting the contract prepared by the legal service provider. Change or modify the draft in view of the recommendations of the legal service provider.
- v. You can use this contract document as a standard form for all of your similar transaction by simply changing the names, date, payment and the deliverables.

b) For Legal Service Providers

- i. Discuss the transaction details with your client and ascertain, understand and consolidate the information about:
 - o the nature and objective of the transaction;
 - o product price, quality & quantity;
 - o mode & time of payment and delivery;
 - o warranties, guarantees & penalties;
 - o mode and manner of dispute settlement;
- ii. Look at a sample contract document, if any, to understand how to structure the contract.
- iii. Draw your contract document keeping in mind following:
 - Appropriately introduce the parties in recitals;
 - Provide the objective of contract in recitals;
 - Specify the scope of goods or services to be delivered or performed;

- Specify the time and place of delivery of goods and services;
- Specify the time and manner of payments along with penalties for default or late payments;
- Duties and taxes by whom payable and whether inclusive of contract price and the effect of increase or decrease in taxes;
- Dispute resolution method (by court, third party mediation or arbitration), and the applicable Law;
- Termination---how and when to effect---notice period, if any,---effects of breach on remaining payments, goods or services;
- Trade restrictions in respect of sale of goodwill;
- Indemnity clause;
- Effect of force majeure;
- Confidential and or proprietary information;
- Amendment or modification procedure;
- Sentences should be *short* to avoid unnecessary complexity and ambiguity;
- As with any business writing, proofread very carefully

3- Contract Management Guidelines / TIPS

Contract management is the process of managing any or all the business transactions. As against a verbal contract, a written contract gives an edge to the parties to manage and oversee the fulfillment of respective rights and obligations as per the mode and manner agreed by them in such contract. The process however, requires greater sense of responsibility, diligence, understanding and organization. Following are some of the guidelines / tips, which may be helpful to businesses for effective contract management:

- i. Read and understand, rather absorb the contract objective, scope and the stipulations provided in the document.
- ii. Identify and write down the dates and time of deliverables / milestones/quality/quantity of goods & services along with persons / parties by whom such deliverable are to be completed as provided in the contract document.
- iii. Identify and write down the conditions, if any, attached with the performance of a deliverable or milestone and the party by whom such conditions are to be fulfilled.
- iv. Identify the documents such as invoices, profiles, warrantees, and sureties etc. to be submitted or exchanged by the parties.
- v. Identify the kind of guarantees along with the formats in which they are to be submitted by the parties. Also identify the dates of submission and validity of such guarantees along with the banks/insurance companies or other business entities or natural persons by whom such guarantees are required to be furnished.
- vi. Identify the taxes, duties or impositions to be leviable and by whom payable or deductible for deposit in the government treasury.
- vii. Identify and understand the mode and manner of settlement of disputes, the forums available and the penalties or damages that could be imposed or awarded consequent to a dispute or breach of contract.
- viii. Make a checklist of all the requirements / obligations under the contract, such as listed above, and keep that checklist at a prominent place in your office.
- ix. Always look at the checklist and the contract whenever you receive or are required to submit a document/performance report/supply report or any thing in connection with the contract to satisfy and ensure yourself that such

document/performance/supply report or other things
are done in accordance with the contract.