

Commercial Contract

CONSTRUCTION CONTRACT



*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 in documenting transactions with reference to employment matters. 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.

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

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10. CONSTRUCTION CONTRACT

THIS AGREEMENT FOR THE PROVISION OF SERVICES FOR CONSTRUCTION (hereinafter referred to as the "Agreement"), is made at [insert place] on the ____ (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];

(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];

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

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(The Business and the Contractor shall hereinafter collectively be referred to as the "Parties" and individually as the "Party")

WHEREAS the Business seeks certain professional services, as defined in Clause 2 below (hereinafter referred to as the "Services") with respect to the planning, architectural and engineering designing and supervision of all the buildings, infrastructure works and detail construction for its office building located at [insert address] (hereinafter referred to as the "Project").

AND WHEREAS the Contractor has represented to the Business that it possesses the necessary expertise, skills, capabilities, equipment, finance, organization and personnel to carry out and provide the Services with respect to the Project.

AND WHEREAS in reliance on the aforementioned representation of the Contractor, the Business has agreed to accept the Services from the Contractor, on certain terms and conditions, which the Parties are desirous of reducing into writing.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties do hereby mutually agree as follows:

1. APPOINTMENT

- (1) The Business, subject to the terms and conditions of this Agreement, hereby appoints the Contractor to provide the Services for the Project and the same is duly accepted by the Contractor.
- (2) The Parties hereby agree that the satisfactory completion of the Project as a whole is of the essence of this Agreement.

2. SCOPE OF SERVICES

The scope of services for the project to be furnished by the Contractor will be as follows:

1. [Reconnaissance and Field Survey]
2. [Land Survey of the Project Area Phase]
3. [Finalization of Requirements]
4. [Master/Layout Planning Phase]
5. [Schematic/Conceptual Architectural Design Phase]
6. [Design Approval by Building Authorities]
7. [Design Development Phase]
8. [Detailed Design Drawings Phase]
9. [Tender Documents, Bills of Quantity and Cost Estimate]

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10. [Pre-Construction Stage- Bidding Assistance]
11. [Detailed Supervision] (These are sample heads which may be included. Please insert heads according to the requirements of the Contract)

3. CONTRACTOR'S FEE, MODE OF PAYMENT

In consideration of the provision of the Services to the satisfaction of the Business, the Contractor shall be paid a total fee of Rs. _____/- (Rupees _____ only) (insert amount) according to the terms, and following the completion of the stages, as given below:

- | | | | | | | |
|------|--|-----------------|---------|----------|------|----|
| i. | [insert Description of Deliverable]
completion] | [insert Amount] | [insert | Expected | date | of |
| ii. | [insert Description of Deliverable]
completion] | [insert Amount] | [insert | Expected | date | of |
| iii. | [insert Description of Deliverable]
completion] | [insert Amount] | [insert | Expected | date | of |

4. TIME SCHEDULE

- (1) The time schedule for the provision of the Services by the Contractor for each phase indicated in Clause 2 in relation to the Project shall be as per Schedule 1 (the "Time Schedule"), to which the Contractor hereby strictly agrees to comply with.
- (2) If the scope of Contractor's Services is increased by the Business, then additional time would be allowed to the Contractor as mutually agreed upon between the Parties.
- (3) The time period shall be counted from the date of release of first payment to the Contractor or signing of Agreement, whichever is later (hereinafter referred to as the "Effective Date").

5. CONTRACTOR'S OBLIGATIONS

- (1) The Contractor shall depute competent consultancy team possessing technical knowledge and having relevant previous experience in all of the required architectural and engineering disciplines that will ensure the implementation of an acceptable, comfortable, functional and durable facility.
- (2) The Contractor shall fulfill their part of this Agreement, in letter and spirit, with the highest professional ethics, skill and efficiency.
- (3) The Contractor shall, at all times, act in a manner designed to safeguard the interests of the Business.

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- (4) The Contractor shall furnish the Business such information relating to the Services as the Business may from time to time reasonably request.
- (5) Except with the prior written approval of the Business, the Contractor shall not assign or transfer his obligations under this Agreement nor engage any other independent consultant or sub-contractor to perform any part of the Services.
- (6) The Contractor agrees that no proprietary and confidential information received by the Contractor from the Business shall be disclosed to a third party unless the Contractor receives the prior written permission of the Business to do so.

6. CLIENT'S OBLIGATIONS

- (1) To provide in clear and detailed terms, facilities/requirements of the Project on signing of this Agreement.
- (2) The Business shall not hold approval and/or comments beyond a period of 15 (fifteen) days after receipt of document, whenever these are applied for by the Contractor.
- (3) All payments due to the Contractor shall be paid by the Business within a period of 15 (fifteen) days after the submission of invoice by the Contractor. The Contractor shall be entitled to stop work for the next stage of Project in case the Contractor's remunerations are not paid for the previous stage within a period of 15 (fifteen) days after submission of invoice. The time period of performance of services by the Contractor on subsequent stage/s shall be considered as extended equivalent to the period of delay.

7. GENERAL CONDITIONS

- (1) Should the Contractor consider it expedient in the interest of the Project, it may engage specialists, sub-Contractor for any part of the work assigned to them under this Agreement subject to prior written approval of the Business, at Contractor's own cost and with no extra financial burden on the Business.
- (2) The Contractor will exercise all reasonable skill, care and diligence in the discharge of their duties and will provide Services on the basis of sound engineering and planning practices.
- (3) The Business shall give approval in writing to all the stages and phases of the work within four (4) weeks. The time taken for approval by the Business and for the information to be provided by the Business shall be excluded from the time schedule of the Services indicated in Clause 4 read with Schedule 1.

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- (4) A penalty of five percent ___% (insert percentage) of remuneration of the Services not performed by the Contractor on time shall be levied upon the Contractor if such Services (including design documents and site visits) are not completed in time. The Business may, however, at its discretion extend the time period for Services if it finds that the delay has not occurred due to the malfeasance of the Contractor.

8. FORCE MAJEURE

- (1) The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, insurrection, explosions and any similar events not within the reasonable control of either Party and which by the exercise of due diligence neither Party is able to overcome.
- (2) If either Party is temporarily unable by reason of "Force Majeure" to meet any of its obligations under this Agreement, and if such Party gives to the other Party written notice of the event within fourteen (14) days after its occurrence, such obligations of the Party shall be suspended for as long as the inability continues. However, the Party effected by any event of "Force Majeure" shall take all reasonable measures to remove such Party's inability to fulfill its obligations with a minimum of delay.
- (3) Neither Party shall be liable to the other Party for loss or damage sustained by such other Party arising from the event referred to in Clause 12.1 above or delays arising from such event.
- (4) If Force Majeure extends beyond [insert number of weeks] weeks, either Party may terminate the Agreement subject to fifteen (15) days written notice.

9. TERMINATION

- (1) The Business may, after paying in full all costs and fees due to the Contractor, for Services rendered and deliverables delivered to that point in time when notice is served, terminate this Agreement in whole by giving 15 (fifteen) days written notice of such intent to the Contractor. Following the receipt of notice of termination, the Contractor, except if the notice may otherwise provide, shall:
 - a) Terminate performance of work in process under the Agreement on the date and to extent specified in the Notice of Termination.
 - b) Place no further orders and incur no further costs of goods or services, except as necessary to complete performance of any portion of the work under the Agreement, not terminated by said notice.

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- c) Terminate all outstanding orders, contracts and sub-contracts, to the extent that they relate to the performance of work terminated by the notice of termination.
 - d) Transfer title and deliver to the Business all complete or partially completed plans, studies, reports information or other property which, if the contract had been completed, the Contractor would have been required to deliver to the Business.
- (2) This Agreement may be terminated, without cause, by the Business subject to fifteen (15) days written notice. In case of non compliance with any of the terms of the Agreement by the Business, the Contractor will serve a notice to the Business of its intention to terminate the Agreement if compliance of the said terms is not made within thirty (30) days, the Contractor may terminate the Agreement with immediate effect.
- (3) Should the Contractor abandon its obligations under this Agreement without any just cause, the Business shall be refunded any portion of the fees already paid to the Contractor, as does not fairly represent remunerations for services performed prior to such abandonment, and any unused portion of the funds placed at the disposal of the Contractor by the Business.
- (4) In case the Business decides to postpone whole or part of the work, the Contractor shall be paid actual fee for the work done by the Contractor for the whole or part (as the case may be) of the postponed work.

10. INDEMNIFICATION

The Contractor agrees that it shall indemnify, hold harmless and defend the Business and other related parties from and against any claims, demands, damages, costs, causes of action, losses, expenses, or liabilities, judgments, suits, actions or proceedings (including but not limited to the cost of litigation) arising out of the breach of this Agreement or otherwise negligence or willful misconduct by its partners, agents or employees while engaged in activities relating to this Agreement or by reason of non-compliance with laws, intellectual property infringement, and injury to employees and damage to property of the Business.

11. 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.

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12. 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].

13. TERM OF AGREEMENT

This Agreement is valid for a period of [insert number] years/months from the Effective Date and may be renewed or amended by mutual consent of the Parties.

14. AMENDMENTS

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

15. NONWAIVER

The failure of either Party to exercise any right provided in this Agreement shall not be construed as a waiver its right to subsequently enforce such provision or any other provision of this Agreement.

16. RECITALS/ANNEXURE

The Recitals of this Agreement and the Schedule 1 hereto shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and the year hereinabove mentioned.

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For and on behalf of
The Business

For and on behalf of
The Contractor

WITNESS

WITNESS

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

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SCHEDULE 1

TIME SCHEDULE FOR COMPLETION OF EACH PHASE OF PROJECT
(CLAUSE 4)