

Commercial Contract

AGREEMENT FOR THE INSURANCE OF CONSTRUCTED BUILDING



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

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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 insurance 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.

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

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7. AGREEMENT FOR THE INSURANCE OF CONSTRUCTED BUILDING

THIS AGREEMENT FOR THE INSURANCE OF CONSTRUCTED BUILDING (hereinafter referred to as the "Agreement") made and entered into at _____ (insert place) on this ____ (insert date) day of _____ (insert month) 20__ (insert year),

BY AND BETWEEN:

M/s [insert Name], a public company/corporation incorporated under the laws of Pakistan, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name] (hereinafter referred to as the "Insurer", 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 "Policy Holder", which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

(The Insurer and the Policy Holder are hereinafter collectively referred to as the "Parties", and individually as the "Party").

WHEREAS the Insurer is an Insurance company/corporation engaged in providing insurance covers to its clients.

AND WHEREAS the Policy Holder is in the Business of [insert description of the business activities).

AND WHEREAS the Policy Holder is the owner in possession of the land situated at [insert address] and the building constructed thereon (hereinafter

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referred to as the "Building", and more particularly described in Clause 2 of this Agreement).

AND WHEREAS the Policy Holder wishes to insure the Building with the Insurer.

AND WHEREAS the Insurer has agreed to insure the Policy Holder's Building.

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

1. TERM

This Agreement shall commence on [insert date], and shall continue for a period of [insert number] months, unless terminated earlier by the Parties in accordance with the terms and conditions of this Agreement.

2. BUILDING

(1) The Building, for the purposes of this Agreement, shall mean and included:

The fixed structures at [insert address], consisting of [insert number] storey's, having a total covered area of [insert covered area].

(2) Building shall not include:

- i. The plant and machinery installed therein;
- ii. Furniture and fixtures;
- iii. Any other moveable property lying or stored in the building;
- iv. Temporary structures for instance wooden sheds, etc.

3. SCOPE

(1) Subject to Clause 3 (2), during the term of this Agreement, the Insurer shall be liable to pay to the Policy Holder the expenses incurred in any of the following events (hereinafter referred to as the "Insured Event"):

- i. Damage to the Building due to fire or explosion;
- ii. Damage to the Building due to floods and excessive rain;
- iii. Damage to the Building due to earthquakes;
- iv. Damage to the Building due to internal breaks in pipes, gas connections, etc.
- v. Damage to the Building due to falling of a controlled aircraft, parts thereof or cargo on the Building;
- vi. Damage caused to the Building due to willful acts of third parties including burglary, vandalism after intrusion, or motor vehicle impact.

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- (2) Provided that the liability of the Insurer shall not, at any time, exceed [Insert Maximum Insurance Benefit] during the term of this Agreement (hereinafter referred to as the "Insurance Benefit").
- (3) The Insurer shall not be liable to pay any Insurance Benefits to the Policy Holder in case of a loss to the Policy Holder due to any of the following:
 - i. Natural depreciation of the Building and unavoidable natural processes (permanent impact and consequences of humidity, corrosion, mould, decay, fungi, odour, deterioration, natural settlement, etc.).
 - ii. Interruption in supply of water, gas, electricity, heating or other energy resources, except in cases when such interruption is caused by an Insured Event.
 - iii. Direct damage to property made by animals, insects, rodents.
 - iv. Rain when water penetrated through holes or openings (i.e. leaking roof, non-hermetic exterior walls, leaky connections of exterior structures, open windows or doors, etc.), which should not exist, except in cases when such holes are formed under impact of storm or any other insured event.
 - v. Running over or hitting a motor vehicle which belongs to and (or) is operated by the Policy Holder or persons related with the Policy Holder.
 - vi. Fire or temperature effects on the Building during production process (e.g., ironing, welding, baking, smoking), except in cases when fire spreads.
 - vii. Persistent dripping of water through pipeline junctions, other openings or accumulation of water.
 - viii. Any damage caused to the fixtures and fittings of the Building, whether attached to the Building structure or not.
 - ix. Demolition of the Building by a relevant authority due to the structure being erected without requisite permissions.

4. EXCLUSIONS

- (1) Subject to Clause 3 of the Agreement, the Insurer shall not be liable to pay any insurance benefits to the Policy Holder in the following events:
 - i. Terrorist acts (the acts involving the use of, or threatening to use, force or violence, committed by a group of persons acting independently or on behalf of any organization for the purpose of putting in fear or exerting influence on the government, public or any section of the public); losses incurred in relation to the prevention of terrorist acts shall not be compensated either.
 - ii. War, invasion, hostile acts of foreign countries or other operations attaining the same level;

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- iii. Direct or indirect nuclear explosion, nuclear power or impact of radioactive substances; direct or indirect radioactive contamination;
- iv. Other circumstances outside of the control of the Parties, 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, etc.
- v. Malicious acts by the Policy Holder or any other person acting under the instructions of the Policy Holder.

5. SECURITY MEASURES

1. The Policy Holder and persons related with the Policy Holder must manage and use the Building in observance of the following security requirements:
 - i. Observe requirements of the fire safety regulations and other normative acts regulating fire safety including the installation of fire alarms in all rooms of the Building;
 - ii. Take care that partitioning structures (roof, exterior walls, windows, doors, etc.), pipelines, and power installation are in good order and upon occurrence of failures or signs of potential failures, they must be immediately eliminated or handled;
 - iii. Windows, doors and other openings of the building shall be closed in the manner which prevents from intruding into the Building without leaving the signs of intrusion;
 - iv. All locks and alarm systems shall be in good order and operating, having lost the
 - v. keys or alarm codes, the locks/codes must be immediately replaced/reset.

6. PREMIUM

- (1) The Policy Holder shall pay an amount of Rs. _____/- (Rupees _____) (insert amount) hereinafter referred to as the "Premium") in consideration of the Insurer providing insurance cover to the Building under the terms and conditions of this Agreement.
- (2) The Premium shall be paid by the Policy Holder to the Insurer within [insert number] days of the execution of this Agreement.
- (3) If the Policy Holder fails to pay the Premium to the Insurer within [insert number] days of this Agreement, the Insurer shall be at liberty to suspend the Insurance Cover within [insert number] days subject to

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a [insert number] days' prior written notice, and without any further intimation.

- (4) Following suspension, the Insurance Cover may only be renewed after the payment of the entire dues, and the Insurer shall not be liable to pay any Insurance Benefits to the Policy Holder in case of occurrence of an Insured Event during the period of suspension.

7. POLICY HOLDER'S OBLIGATION UPON OCCURRENCE OF AN INSURED EVENT

- (1) Within [insert number] days of the Insured Event, or if not possible, as soon as it becomes possible for the Policy Holder to do so, the Policy Holder shall notify the Insurer of the nature of the Insured Event.
- (2) The Policy Holder shall, as soon as possible, report the Insured Event to the relevant/competent authority.
- (3) The Policy Holder shall take all and any possible measures which could mitigate the damage caused by the Insured Event, and prevent its increase.
- (4) The Policy Holder shall make it available for the Insurer to inspect the place of occurrence and examine witnesses of the Insured Event so as to identify the cause of occurrence, and the quantum of damage, and to provide all available information to the Insurer for this purpose.
- (5) Subject to Clause 7 (3) the Policy Holder shall preserve, where possible, the scene of occurrence unchanged while waiting for the Insurer's representative.
- (6) The Policy Holder's deliberate or negligent failure to fulfill the obligations stated in Clauses 7 (1) to 7 (5) shall entitle the Insurer to reduce or disallow the payments of the insurance benefits under this Agreement to the Policy Holder.

8. ASCERTAINMENT AND PAYMENT OF INSURANCE BENEFITS

- (1) The Insurance Benefits shall be paid by the Insurer to the policy Holder within [insert number] days of the receipt of all information required for the establishment of fact and circumstances of the Insured Event and the ascertainment of the Insurance Benefits to be paid.
- (2) The Insurer shall be entitled to reduce or withhold the amount of Insurance Benefits if:
 - i. the Policy Holder provides misleading information to the Insurer regarding the facts of the Insured Event;
 - ii. the Insured Event occurred due to the gross negligence of the Policy Holder or related persons;

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- iii. the Policy Holder failed to notify the Insurer regarding the occurrence of the Insured Event in good time;
- iv. the loss occurred due to the Policy Holder's deliberate failure to take reasonable measures to prevent the occurrence or reduction of damage.
- v. when the Policy Holder waives his right of claim to person(s) who inflicted damage or the realization of such claim has become impossible for the Insurer due to the Policy Holder's fault.
- vi. When the Policy Holder fails to take any or all of the security measures in Clause 5 of this Agreement, or other measures reasonably expected to have been taken.

9. SUBROGATION

Following payment of the Insurance Benefits to the Policy Holder, the Insurer shall acquire the right of subrogation against the person(s) at fault in the occurrence of the Insured Event. The Policy Holder shall be obligated to provide the Insurer with any and all information to properly and fully implement this right of recourse.

10. TERMINATION

This Agreement may be terminated by either Party giving a [insert number] days' prior written notice to the other Party, provided that the Parties shall be obligated to make payments of the liabilities already incurred during the term of this Agreement including the notice period.

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.

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- (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, which may include the extension in time deadlines under this Agreement.

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 Pakistan, 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].

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 Pakistan 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.

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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 Insurer

For and on behalf of
The Policy Holder

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____