

Commercial Contract

AGREEMENT FOR THE INSURANCE OF HYPOTHECATED GOODS



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

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January 2013

Agreement for the Insurance of Hypothecated Goods

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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8. AGREEMENT FOR THE INSURANCE OF HYPOTHECATED GOODS

THIS AGREEMENT FOR THE INSURANCE OF HYPOTHECATED GOODS (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)

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];

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OR

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

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

(The Insurer, the Policy Holder, and the Beneficiary 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 the owner in possession of the moveable and immovable assets including but not limited to raw materials, finished products, computers, other electric equipment, plant and machinery, etc.

AND WHEREAS the Policy Holder wished to avail certain finance facilities from the Beneficiary.

AND WHEREAS the Policy Holder has hypothecated the moveable and immovable assets with the Beneficiary as security for the repayment of the finance facility (hereinafter referred to as the "Hypothecated Assets" and more particularly described in Schedule A of this Agreement).

AND WHEREAS one of the condition of the Beneficiary's extending the finance facility to the Policy Holder is that the Hypothecated Goods shall be insured against a sum of at least [insert amount].

AND WHEREAS the Insurer has agreed to insure the Hypothecated Assets.

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. HYPOTHECATED ASSETS

- (1) The Hypothecated Assets of the Policy Holder include, but are not limited to:
 - i. Equipment – production equipment, tools, furniture, inventory, computer hardware;

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- ii. Stocks – raw materials, production in progress, finished products, goods and other material valuables;
 - iii. Investments – investments of the Policyholder into repair, reconstruction works or acquisition of new property;
 - iv. Welfare constructions – fixed structures situated in the enclosed territory where the insured immovable property is located (barriers, walls, fences, flyovers, canopies, pedestrian paths, fixed watering systems, flag sticks, outdoor lighting, fixed advertising stands, etc.).
 - v. Plant and Machinery.
- (2) An Inventory of the Hypothecated Assets is attached with this Agreement as Schedule A.
 - (3) The Policy Holder shall allow the representatives of the Insurer, at all reasonable times and upon a prior notice of [insert number] days to inspect the Hypothecated Assets of the Policy Holder to ascertain the value of the same. If the representatives of the Insurer are of the view that a fresh inventory of the Hypothecated Assets shall be made, the Policy Holder shall assist the Insurer in every possible respect in order to have a fresh inventory of the Hypothecated Assets made.

3. SCOPE

- (1) Subject to Clause 3 (2), and Clause 4 of this Agreement, during the term of this Agreement, this Agreement shall cover all types of risks which may result in damage to the Hypothecated Goods and consequently a loss in the value of the Hypothecated Assets.
- (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").

4. EXCLUSIONS

- (1) The Insurer shall not be liable to pay any Insurance Benefits to the Policy Holder/Beneficiary 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;
 - iii. Direct or indirect nuclear explosion, nuclear power or impact of radioactive substances; direct or indirect radioactive contamination;

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- 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, lightning, storms, earthquakes, etc.
 - v. Malicious acts by the Policy Holder or any other person acting under the instructions of the Policy Holder.
5. 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 Hypothecated Assets 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 a [insert number] days' prior written notice to the Beneficiary as well as the Policy Holder, 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.
 - (5) Notwithstanding Clauses 5 (3) and 5 (4), the Beneficiary shall be at liberty, without any obligation to do so, and in the event of the Policy Holder's failure to make the payments, to pay the Premium due to the Insurer on behalf of the Policy Holder, and shall be at liberty to recover the same from the Policy Holder.
6. POLICY HOLDER'S OBLIGATION UPON OCCURRENCE OF AN INSURED EVENT
- (1) Within [insert number] days of the Insured Event, 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.

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- (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 6 (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 6(1) to 6 (5) shall entitle the Insurer to reduce or disallow the payments of the insurance benefits under this Agreement to the Policy Holder.

7. ASCERTAINMENT AND PAYMENT OF INSURANCE BENEFITS

- (1) Any Insurance Benefits accruing under this Agreement shall be paid by the Insurer directly to the Beneficiary, without any recourse to the Policy Holder.
- (2) The Insurance Benefits shall be paid by the Insurer to the Beneficiary 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.
- (3) 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;
 - 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 being intoxicated with alcoholic, narcotic or psychotropic substances;
 - v. the loss occurred due to the Policy Holder's deliberate failure to take reasonable measures to prevent the occurrence or reduction of damage.
 - vi. 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.

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8. BENEFICIARY'S RIGHTS

- (1) The Beneficiary shall have an independent right to correspond with the Insurer to ascertain the state of the Insurance Cover provided to the Hypothecated Assets under this Agreement.
- (2) The Beneficiary shall have a right, independent of the Policy Holder's permission, to demand from the Insurer the any inventory reports of the Hypothecated Assets prepared by the Insurer in pursuance of this Agreement.
- (3) The Beneficiary shall, without any obligation to do so, have a right to make payments to the Insurer on behalf of the Policy Holder in order to regularize the Agreement.

9. SUBROGATION

Following payment of the Insurance Benefits to the Beneficiary under this Agreement, 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 the Insurer or the Policy Holder giving a [insert number] days' prior written notice to the other Party as well as the Beneficiary, 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: _____

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SCHEDULE A INVENTORY OF MOVEABLE ASSETS