

Commercial Contract

AGREEMENT FOR THE INSURANCE OF IMMOVABLE ASSETS



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Agreement for the Insurance of Immovable Assets

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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4. AGREEMENT FOR THE INSURANCE OF IMMOVABLE ASSETS

THIS AGREEMENT FOR THE INSURANCE OF IMMOVABLE ASSETS (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 has plant and machinery installed at its place of business at [insert address] (hereinafter referred to as the "Immoveable Assets", and more particularly described in Clause 2 of this Agreement).

AND WHEREAS the Policy Holder wishes to insure the Immoveable Assets with the Insurer.

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AND WHEREAS the Insurer has agreed to insure the Policy Holder's Immoveable 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. IMMOVEABLE ASSETS

(1) Immovable Assets shall mean and include all plant and machinery (as more specifically described in Schedule A of this Agreement) owned by or leased to the Policy Holder located at the Policy Holder's place of business at [insert address], and is ready for use in connection with the Policy Holder's business.

(2) The Immoveable Assets shall not include any of the following:

- i. Building structures;
- ii. materials being processed by or contained in the Immoveable Assets;
- iii. office machinery computers or other electronic data processing equipment;
- iv. plant or machinery which is prototype, experimental or untried;
- v. plant, machinery, pipes or cables situated underground.

3. SCOPE

(1) Subject to Clause 3 (3), 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 Immoveable Assets due to fire or explosion;
- ii. the actual breaking distortion or burning out of any part of the Immoveable Property while in use arising from mechanical or electrical defects in the Immoveable Assets causing sudden stoppage which necessitates repair or replacement before the use of the Immoveable Property can resume;
- iii. fracturing of any item of the Immoveable Assets by frost which necessitates repair or replacement before the use of the Immoveable Property can resume;
- iv. The sudden and dangerous distortion (whether or not attended by rupture) of any part of the Immoveable Assets caused by crushing stress by force of steam or other fluid pressure (other than pressure of chemical action or ignition of the contents).

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- (2) The Insurer shall further provide insurance cover to the cost incurred by the Policy Holder in taking exceptional measures that are reasonable to avoid or reduce impending loss or damage which would have resulted in a claim under this Policy.
- (3) 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) The Insurer shall not be liable to pay any Insurance Benefits to the Policy Holder in case of expenses incurred by the Policy Holder due to any of the following:
 - i. the cost of maintenance or rectification of faulty workmanship occurring during the execution of repairs, or the damage caused by direct application of tools;
 - ii. the cost of rectification of inevitable wear and tear erosion corrosion or other deterioration caused by or naturally resulting from ordinary work use or exposure or the gradual development of flaws or fractures in the Immoveable Assets which do not necessitate immediate stoppage;
 - iii. damage to any item of Immoveable Assets arising during its initial installation, erection or its final removal, and/or its final testing or commissioning;
 - iv. scratching of painted or polished surfaces of the Immoveable Assets unless accompanied by other indemnifiable damage to the item.

4. EXCLUSIONS

- (1) 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;
 - 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

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enemy, civil disturbances, 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. 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 Immoveable 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, 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.

6. 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 5 (3) the Policy Holder shall preserve, where possible, the scene of occurrence unchanged while waiting for the Insurer's representative.

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(6) The Policy Holder's deliberate or negligent failure to fulfill the obligations stated in Clauses 6 (1) to (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) 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;
- 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.

8. VOIDABILITY

This Agreement shall be voidable in the event of misrepresentation or misdescription or non-disclosure by the Policy Holder to the Insurer of any material particular.

9. ALTERATION IN RISK

The Insurance Cover provided by this Agreement shall be avoided in respect of any item of Immoveable Assets where there is any alteration after the commencement of this Agreement which increases the risk of loss or damage to the Immoveable Assets.

10. REASONABLE PRECAUTIONS

The Policy Holder shall take all reasonable precautions to safeguard the Immoveable Assets against loss or damage.

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The Policy Holder shall also maintain the Immoveable Assets in an efficient condition and take all reasonable steps to ensure that all Government and other Regulations relating to the operation and use of the Immoveable Assets are observed.

11. 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.

12. 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.

13. 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, which

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may include the extension in time deadlines under this Agreement.

14. 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.

15. 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].

16. 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 LIST OF PLANT AND MACHINERY