

Commercial Contract

AGREEMENT FOR PURCHASE OF MACHINERY



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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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 contract. Entrepreneurs interested in enhancing their understanding about the nature and form of a manufacturing Agreement can also use this template.

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 FOR PURCHASE OF MACHINERY

This Contract is signed on this _____ day of _____ 2007 between:

M/S _____ (give name of the party) Private Limited having office at _____, Lahore, Pakistan through its Chief Executive Officer, _____ (hereinafter referred to as Buyer) which expression shall include its successors, assigns and administrators of the first part;

AND

M/S _____ (Give name of the Party) limited having office at _____ Republic of _____ (give name of the country), through its Managing Director (hereinafter referred to as Supplier) which expression shall include its successors, assigns and administrators of the second part;

WHEREAS the Buyer intends to purchase from the Supplier plant and machinery for setting up a manufacturing unit of _____ (Give nature of the business i.e. textile, food processing etc.) at Pakistan.

AND WHEREAS the Supplier has shown its willingness to supply the plant and machinery to the Buyer subject to the terms and conditions set forth in this contract.

NOW THEREFORE In consideration of the covenants and the promises hereinafter set forth, the Buyer and the Supplier agree to the following terms and conditions of the contract:

1. OBJECT OF THE CONTRACT

i) The Buyer agrees to buy from the Seller and the Seller agrees to sell to the Buyer the equipment including plant and machinery, accessories, electrical equipment, spare parts, special tools, as well as technical documentation and drawings necessary for the erection and commissioning of the equipment, unloaded and loaded test runs, normal operation and maintenance of the Contract equipment (hereinafter referred to as technical documentation), services including relative information, technical assistance, engineer designing, and the training of the Buyer's personnel.

ii) The technical indexes, performance and relevant technical conditions of the Contract equipment are specified in **Annex 1** of this Contract.

2. EQUIPMENT TO BE SUPPLIED

- a) The detailed scope of supply and technical description thereof to be made by the Buyer under the contract have been set forth in **annexure 1** hereof. **Items not covered in scope of supply are listed at annexure 2.**
- b) The Seller is obliged to provide to the Buyer, at a reasonable price, all spare parts including the electronic parts necessary for the normal operation of the Contract equipment, in accordance with the Buyer's request, till 10 years of the signing of the Contract.
- c) If the parts which are not manufactured by the Seller are no longer available within this period, the Seller will cooperate with the Buyer to find a suitable alternative solution.
- d) The parties to the contract shall sign additional, independent contracts if recourse to alternative solutions concerning spare parts etc. is required.

3. PRICE

- 1) The total price for the whole project, as stipulated in Clause 1 & 2 of this Contract, is:

..... (Mention the price for example "10, 00,000/- (one) million dollars")

- 2) The above mentioned total Contract price is a fixed price for delivery **C&F Karachi Port (Pakistan)** and includes: packaging, erection and start up, training of the Buyer's people at plant site during the erection operations.

3) Buyer's personnel can visit the Supplier's factory, in order to control the progress of the works for the preparation of the equipment, as well as for testing before shipment if needed. All expenses (travels, board and lodging, personal expenses) for visits of the Buyer's personnel to the Supplier's factory shall be borne by the Buyer.

- 3) The following are excluded from the Contract price:

- a) inland/local transports, board and lodging in a comfortable hotel, for Supplier's personnel;
- b) all materials necessary for the erection and start-up of the plant listed at **annexure B**. The Supplier will deliver to the Buyer a list of all materials necessary and the listed price for each item, for the assembling operations to be performed by his personnel before the arrival of the Contract equipment at the Karachi port.

4. Payment terms

1. The payment must be carried out by opening an irrevocable Letter of Credit, confirmed by a primary German bank and shall be settled as follows:

➤ _____% at sight (**give the percentage that you would pay at sight i.e. 70 or 90% etc.**), at the cash-desks of the designated German bank, upon presentation of the following shipping documents:

- Commercial Invoice (3 originals)
- Bill of Lading (3 originals)
- Packing List (3 originals)
- Certificate of Origin issued by the Chamber of Commerce in _____ (**give name of the city**) (1 original + 1 copy)
- Pre-shipment inspection certificate

The credit must be opened by swift within 30 days from the signing of the Contract, with the following German bank:

_____ (**Give name of the Bank along with its address**)

It must have a validity of at least 30 days later than the foreseen date of delivery.

2) The remaining balance of _____% of the payment will be made after the erection, commissioning of the Contract equipment at the end-user's site and the system commissioning of the loaded machinery, as well as the performance test and acceptance of the Contract equipment through an on line bank transfer within Seven (07) days of the said loaded machinery performance test of the Contract equipment.

3) The Cost for Bank confirmation shall be born by the Supplier.

5. TAXES, DUTIES AND BANK CHARGES

1. All taxes, duties and bank charges which may be incurred within the territory of the Buyer's country on payments due to the Supplier or to his personnel as well as customs duties on the deliveries to be supplied under this Contract will be borne and paid by the Buyer.

2. All taxes, duties and bank charges which may be incurred in the country of the Supplier on the deliveries to be supplied under the Contract will be borne and paid by the Supplier.

6. CONDITIONS OF SHIPMENT

1. Delivery of the items mentioned in Clause 1 of this Contract will be affected within _____(give number of months or other time period) months of the Contract coming into force i.e. upon signature by both the parties. Partial shipment is not allowed.

2. The Supplier guarantees that the delivered equipment will be strictly in conformity with the Contract and of first-class workmanship.

3. The shipment of the Contract equipment including its condition before loading, supervision before loading or discharging to verify as to whether the goods are in conformity with the contract specifications regarding the quality and quantity shall be subject to pre-shipment inspection by an internationally recognized third party inspection company. The cost for such pre-shipment inspection shall be born by the Supplier.

4. The machinery/equipment will not demonstrate after it has been assembled according to the Supplier's written instructions nor show any defect due to faulty design, material and/or workmanship for a period of 12 months from the date of commissioning of the plant, but not later than a period of 18 months from the delivery date.

7. PACKING & MARKING

1.Packing:

a) The equipment shall be packed in containers that are suitable for long distance ocean transportation and provide protection against dampness, moisture, shock, rust and rough handling.

b) The Seller shall be liable for any damage to the goods on account of improper packing and for any rust or damage attributable to inadequate or improper protective measures taken by the Seller. In such case or cases any/ all losses and / or expenses incurred in consequence thereof shall be borne by the Seller.

2. Marking

a) Shipping Marks shall read as follows:

- Contract No.....
- Seller.....
- Final Receiver.....
- Item No.....

Parcel No.....

b) The words “fragile”, “top”, “attention”, etc. depending on the specific characteristics of the goods are to be placed on the package, if appropriate.

c) The following shall be the ports of lading and destination respectively:

Port of Loading: _____ Port (Give name of the Port).

Port of Destination: **Karachi Port (Pakistan)**

d) The Seller shall also prepare the following shipping documents:

- Packing List
- Certificate of Quality
- Certificate of Origin

8. DESIGN & TECHNICAL DOCUMENTATION

a) The Seller shall provide the general floor lay-out, water, electricity, steam etc. utility flow-diagram which is related to processing technology.

b) The Seller shall provide to the Buyer the specification requirements of units and related drawings which will be manufactured locally.

c) The Seller shall provide specifications of accessory units (water, electricity, steam, compressed air and cooling media, etc).

d) The specification of Contract equipment, relative documentation including engineering drawings, technical layout, instruction of technical designing and accessory units, written in English shall be delivered to the Buyer within 45 days after coming into force of the Contract.

e) The Seller shall provide for the operating manual and maintenance instructions of the main parts of the line in English language on CD-Rom as well as in printed form.

d) It shall be mandatory for the Supplier to provide the aforementioned documentation to the Buyer along with the Contract equipment.

9. STANDARDS & INSPECTION

1) The Seller shall manufacture the equipment, select the materials, inspect and test the equipment to be supplied by Seller. The machinery provided by the Seller shall be in accordance with the metric system. The Seller will provide to the Buyer all the necessary information for the suitable connections to utilities (water, power, steam,

compress air and etc).

2) All Contract equipment shall be inspected and tested by the Seller. The Seller shall submit a certification to the Buyer conforming to the standards and specifications according to the European Commission Declarations for all machines and also submit records of the inspections carried out by the manufacturer and/or Seller as proof of the quality guaranteed in the Contract.

10. ERECTION, COMMISSIONING, PERFORMANCE TEST & TRAINING

1) The erection, commissioning of the Contract equipment at end-user's site and system commissioning of loaded machinery, as well as the performance test and acceptance of the Contract equipment, shall be conducted by the Buyer in accordance with the stipulations of the technical documentation provided by the Seller and under the supervision and direction of the Seller's technical service personnel.

2) After the Contract equipment has been operating for 48 hours normally and meets the requirements of the Contract, and the final product also meets with International Standards i.e. **(give international standard relating to the product to be manufactured)** provided that suitable raw material has been supplied by the Buyer, the Contract equipment shall be regarded as accepted and the Buyer's and Seller's representatives will sign the Certificate of Acceptance. Each party shall hold one copy.

3) If the Performance Test conducted in accordance with **annexure 4** fails to reach the stipulated guaranteed indexes and technical performance in one or more items, due to the fault of the Seller, the Seller shall take effective measures to conduct the second performance test and to ensure its acceptance, which shall be done as quickly as possible and not later than 1 month after the completion of the first performance test.

4) The expenses for the second performance test and its acceptance shall be borne as follows:

- All the costs for the equipment and materials to be replaced and/or repaired up to the erection site to be borne by the Seller
- The expenses of the Seller's technical personnel to be borne by the Seller
- The expenses of the Buyer's personnel to be borne by the Buyer
- The costs for electricity and water required to be borne by the Buyer
- The costs for materials used for the test to be borne by the Buyer

5) If the test fails due to the fault of the Buyer in providing the required things for erection and commissioning of the Plant, the expenses of the second Performance Test and acceptance will be borne by the Buyer.

6) If, due to the fault of the Seller, the Contract equipment still fails to reach the required guaranteed technical performance stipulated in the Contract, in one or more items, after the second performance test and acceptance, the Seller will try his best to solve the problems preventing the normal operation of the Contract equipment. If it is still not possible to reach the guaranteed indexes and technical performance, the Buyer and Seller shall amicably discuss the settlement of the problem. (If can not reach agreement, will claim according to rules stipulated in Contract Clause 11(4) and 9 (10).

7. During the erection operations / process of the Contract equipment, the Seller shall impart training to the Buyer's personnel for start up and commissioning of the plant.

11 GUARANTEE

1) The Seller hereby guarantees that the goods are made of the best materials, with first class workmanship, are brand new, unused and correspond in all respects with the quality, specifications and performance indexes as stipulated in this Contract.

3) The Seller also guarantees that the technical documentation supplied by the Seller is clear, complete, and correct and delivered in time to meet the requirement of design, erection, operation and maintenance of the Contract equipment. If the technical documentation supplied by the Seller is not complete and comprehensible, the Seller shall make any corrections necessary and / or re-submit the said documentation immediately.

4) If any equipment or materials supplied by the Seller are damaged, either during the erection process, the commissioning test or the performance test of the Contract equipment, if the equipment and materials are damaged due to the wrong instructions given by the Seller's technical personnel or if there are errors and mistakes in the technical documentation provided by the Seller, the Seller shall be obliged to replace and / or repair the defective equipment and materials within 15 days free of charge on the basis of C&F on site.

5) During the guaranteed period, the Seller warrants that the goods when correctly mounted and properly operated and maintained will give satisfactory performance for a period of _____(**give period of guarantee**) months from the date of Acceptance Certificate. If the equipment is not installed, started up, or operated due to the cause of Buyer, the warranty period should be no later than 18 months starting from the date of the last shipment.

6) The guarantee does not cover mechanical faults due to misuse or insufficient maintenance of the machines on the part of the Buyer.

7) Excluded from the guarantee are also electrical motors, connections and all those

parts subject to normal wear (e.g. rubber gaskets, rubber stators, etc).

8) The guarantee stipulated under this Article does not cover normal wear and tear as well as improper handling, storage and/or operation carried out by the Buyer contrary to the Supplier's instructions.

9) The Seller will in no case be liable for consequential or indirect damages such as loss of profit or increased production costs.

10) After the acceptance of the equipment and during the warranty period, if the machines have defects, damages or problems that are caused by abnormal reason, the Seller will be responsible to replace and or repair the same within two weeks of the occurrence of such damage or problem.

12. PENALTY FOR LATE DELIVERY:

1) In case of delayed shipment, except for Force Majeure causes, the Seller shall pay to the Buyer for every week of delay a penalty amounting to 1% of the total value of the Contract equipment as mentioned in Clause 2. Punishing time will be counted 15 days after the agreed delivery date. The total amount of penalty shall not, however, exceed 15% of the total value of the Contract equipment as mentioned in Chapter 2 above and be deducted from the balance amount due to the Seller at the time of payment.

12) In case the period of delay exceeds 6 weeks after the stipulated delivery date the Buyer shall have the right to terminate this Contract but the Seller shall not thereby be exempted from the payment of penalty. The Seller shall then reimburse the amount received along with penalty payment within fifteen (15) days from the date of receipt of termination letter from the Buyer irrespective of any arbitration proceeding initiated by the Seller.

13. PERFORMANCE GUARANTEE

The Seller shall submit a performance guarantee of the value of _____ (**give percentage i.e. 10**) % of the contract amount from a first class international bank, in favor of the Buyer. The performance guarantee shall be submitted in the format attached herewith as **Annexure-5**.

14. FORCE MAJEURE

The Seller shall not be held responsible for any delay in delivery or non-delivery of the goods due to Force Majeure such as war and earthquake. However, the Seller shall advise the Buyer immediately of such occurrence, and within fourteen days thereafter, shall send by airmail to the Buyer a certificate issued by the competent government authorities of the place where the accident has occurred as evidence thereof.

Under such circumstances the Seller however, is still under the obligation to take all necessary measures to fasten the delivery of the goods.

In case the accident lasts for more than ten weeks, the Buyer shall have the right to terminate this Contract.

In case of the termination of the Contract by the Seller, the Seller shall be liable to refund the entire amount received by the Seller within Seven (07) days from the date of cancellation (**Applicable only in case of advance payment made by the Buyer**).

15. ARBITRATION

All disputes arising out of the interpretation and implementation of this Contract shall be discussed in an amicable manner between the parties. In case, an agreement cannot be reached, the dispute will be referred for final settlement to the Arbitration Court at the International Chamber of Commerce and Industry in (**give name of the country i.e. London etc.**). The arbitration Committee will include three members. Each party will appoint its own arbitrator and these two will elect the third arbitrator, who will also be the chairman. In case one of the parties does not appoint an arbitrator within thirty days after having been invited by the other, or the two parties do not agree upon the chairman of the Arbitration Committee, within thirty days after the appointment of the second arbitrator, the party concerned would ask the Chairman of the International Chamber of Commerce and Industry in Singapore to appoint the second and the third arbitrator. All disputes referred to arbitration will be settled in compliance with the procedure, stated in the Rules for Reconciliation and Arbitration of the Arbitration Court with the International Chamber of Commerce and Industry in Singapore, the text of the present Contract and the Singapore law. The decisions of the Arbitration Court are final and binding on both parties.

16 MISCELLANEOUS

All the correspondence exchanged prior to this contract between the Supplier and the Buyer except the one mentioned in the present Contract is considered void upon coming of the Contract into force.

Annexes 1 to 4 of the present Contract are integral parts of the present Contract and will have the same forces as the Contract itself.

All amendments, supplements and alterations to the terms and conditions of the present Contract shall be made in written form and signed by the authorized representatives of both parties. They shall form integral parts of the present Contract and have the same forces as the Contract itself.

All the correspondence between both parties in the course of implementation of the present Contract will be in the English language and registered airmail or e-mail and/or fax.

No assignment or transfer of any right or obligation arising under the present Contract will be made by one party to a third party without the previous consent of the other party.

Neither party undertakes any obligations or responsibilities except those stipulated in the Contract.

This Contract has been drawn up in duplicate in English language - all copies with equal legal force - one for the Supplier and one for the Buyer.

IN WITNESS WHEREOF the parties have set forth their hands on the date mentioned above.

THE BUYER
(signature & stamp)

THE SELLER
(signature & stamp)

Witnesses

1. _____

2. _____