

Commercial Contract

EQUIPMENT LEASE AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Equipment Lease Agreement

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 manufacturing. 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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B16. EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (hereinafter referred to as the "Agreement") is made at [insert place] on this ____ (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 "Lessor", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

AND

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

OR

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 "Lessee", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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(The Lessee and the Lessor are hereinafter collectively referred to as the "Parties" and individually as the "Party".)

WHEREAS the Lessor is the owner in possession of certain equipment (as more particularly described in Schedule A hereto, and hereinafter referred to as the "Equipment") used in the manufacturing of [insert products].

AND WHEREAS the Lessee wishes to acquire the Equipment on lease for the manufacturing of [insert description of products].

AND WHEREAS the Lessor has agreed to lease the Equipment to the Lessee on the terms and conditions of this Agreement.

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

1. LEASE

The Lessor hereby leases to the Lessee the Equipment for a period of [insert number] years, which period shall begin on [insert date], and shall come to an end on [insert date], unless terminated earlier by either Party in accordance with the terms and conditions of this Agreement.

2. WARRANTIES BY LESSEE & LESSOR

The Lessee and Lessor each represents and warrants that it has the power to enter into this Agreement, and that this lease is properly and lawfully authorized and executed by it.

3. LESSOR'S WARRANTIES

- (1)The Lessor and Lessee acknowledge that there are no other warranties, conditions, terms, representations of inducements, expressed or implied, statutory or otherwise, save as are expressly contained in this Agreement.
- (2)The Lessor warrants that the Equipment shall be delivered to the Lessee in accordance with the specifications contained in Schedule A.
- (3)The Lessor makes no representations with respect to the suitability of the Equipment to the Lessee's operations.

4. WARRANTIES BY MANUFACTURERS

- (1)Any warranties, conditions or guarantees by the manufacturers or suppliers of the Equipment are theirs alone, and not the Lessor's, but are for the joint and several benefit of and enforcement by the Lessee and the Lessor.
- (2)Any claims of the Lessee in connection with manufacturer's warranties, conditions or guarantees shall be made directly by the Lessor on behalf of the Lessee against the manufacturer or supplier only.

5. TITLE

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The Lessor covenants that it has good titles to the Equipment and the Lessee acknowledges the Lessor's ownership of and title to the Equipment, and hereby covenants to defend the same against any contrary claim.

6. POSSESSION, LOCATION

- (1) The Lessee shall take and, when not in default hereunder, retain exclusive control of the Equipment at the Lessee's location i.e. [insert address].
- (2) The Lessee shall not change such location without the Lessor's prior written consent, which shall not be unreasonably withheld.

7. IDENTIFICATION PLATES

The Lessor may affix plates, tags or markings to the Equipment showing its interest therein, and the Lessee may display its name and such other information as may reasonably promote its business, such Lessee's markings to be mutually approved by the Parties. All of the Lessee's markings must be removed by the Lessee upon termination of this Agreement.

8. DELIVERY AND INSTALLATION

Delivery and installations of the Equipment shall be entirely at the Lessee's risk and expense, and shall be arranged by the Lessor on behalf of the Lessee in a manner and upon terms and conditions according to the Lessee's written instructions and, to the extent of such instructions are not provided for, according to the Lessor's sole discretion but still at the Lessee's risk and expense.

9. INSPECTION

- (1) The Lessee shall inspect the Equipment prior to delivery, and accept or reject the same at that time.
- (2) Notice of rejections shall be received by the Lessor in writing within [insert number] hours from the Lessee's inspection of the Equipment, and in the absence thereof, the Lessee shall be deemed conclusively to have accepted the Equipment.
- (3) Rejection shall only occur if the Equipment is not in accordance with the specifications contained in Schedule A, or as the result of faulty materials or workmanship.

10. RE-DELIVERY, REMOVAL AT TERMINATION

- (1) Upon termination of this Agreement for any reason, the Lessee shall deliver the Equipment entirely at its own expense to an address as designated by the Lessor in the same condition as received, reasonable wear and tear from proper use accepted, within [insert number] days of the date of termination.
- (2) All damages from accident and abuse must be repaired prior to the re-

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delivery in a manner approved by the Lessor.

11. CONSIDERATION

The Lessee shall pay to the Lessor Rs. _____/- (Rupees _____) (insert amount) per month as rent (hereinafter referred to as the "Rent"). The Rent shall be paid by the Lessee to the Lessor in advance on the [insert day] day of each month.

12. UNCONDITIONAL PAYMENT

(1) The Lessee's obligation to pay Rent shall be absolute and unconditional under all circumstances and without limiting the generality of the foregoing, shall not be affected by the following:

- i. Failure of the Equipment to perform in the manner expected by the Lessee.
- ii. Damage to or destruction of the Equipment so that it is either completely beyond repair or partially so and whether or not it is economically justifiable to repair.
- iii. Theft of the Equipment or part thereof irrespective of whether the Equipment was insured by the Lessee or not.
- iv. Seizure of the Equipment by a third party (including landlord or mortgages of the premises on which the Equipment is located).

13. USE, MAINTENANCE AND REPAIR

The Lessee shall comply with all manufacturers' and Lessor's published operation and maintenance instructions and specifications, and with all terms of any insurance policy in connection with the Equipment. The Lessor may inspect the state of repair of the Equipment at any reasonable time.

14. ALTERATIONS ETC. TO EQUIPMENT

The Lessee shall not alter, add or improve the Equipment without the Lessor's prior written consent. Subject to the foregoing, the Lessee shall pay for all alterations, additions, or improvements to the Equipment all of which shall become the property of the Lessor upon termination of the Agreement.

15. LIABILITY

(1) During the term of the Lease, the Lessee assumes all liability for loss, theft or damage to the Equipment or injury to persons or property arising directly or indirectly out of the possession, use or operation of the Equipment by the Lessee whether or not caused by the Lessee's negligence unless such loss, damage or injury is attributable to Lessor or persons for whom he is responsible.

(2) The Lessee hereby indemnifies and covenants to save harmless the Lessor from any such liability and for legal and other fees and costs that the

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Lessor may incur in investigation and defending any claims, actions or proceedings in respect of such liability except where caused by the Lessor or persons for whom he is responsible.

(3)The Lessee shall, at its own expense, place, maintain and keep in force during the term of the Agreement, a comprehensive general liability insurance in the name of the Lessor and the Lessee in the amount of [insert amount] per occurrence and furnish the Lessor with certificates of such insurance.

16. NO LIENS

The Lessee shall not lease, mortgage, charge, encumber, pledge or sell the whole or any part of the Equipment or its interest therein, nor allow the same to be attached, seized or become subject to liens, encumbrance or sale.

17. DEFAULT

Default by the Lessee hereunder shall occur if the Lessee fails to fulfill any term or condition hereof, or if the Equipment is misused or abandoned.

18. LESSOR'S REMEDIES

(1)Upon default by the Lessee, each of the following remedies shall accrue immediately to the Lessor, in addition to any other remedies available to it by law:

- i. The Lessor may sue the Lessee to recover any unpaid amounts payable hereunder;
- ii. If requested to do so by the Lessor, the Lessee shall surrender possession of the Equipment to the Lessor and if the Lessee fails to do so, the Lessor may recover possession of the Equipment by process of applicable law;
- iii. After repossessing the Equipment, the Lessor may sell or re-lease the Equipment publicly or privately to such person, in such manner and upon such terms as the Lessor deems fit;
- iv. The Lessee may cure its default at any time prior to the sale or re-lease upon tendering to the Lessor the total of all amounts due and to fall due hereunder plus all the Lessor's reasonable expenses in repossession, repair and proceeding for sale or re-lease including legal costs and fees on a solicitor-and-his-client basis;
- v. Proceeds of any sale or re-sale shall, as and when received by the Lessor, be applied first to the expense of the Lessor to repossess, repair and sell or re-lease, a reasonable commission for sale or re-release, if incurred, all reasonable legal costs and fees, and then to the rentals payable hereunder.

(2)Any deficiency of the net proceeds after a sale or re-lease shall be

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payable forthwith by the Lessee to the Lessor. If the Lessee does not make good such deficiency, the Lessor may sue the Lessee for the same.

19. GOVERNING LAW AND RULES OF CONSTRUCTION

- (1) The validity, interpretation, and the performance of this Agreement shall be governed by the laws of [insert place].
- (2) If any term or provision of this Agreement is determined to be invalid, it shall not affect the validity and enforcement of the remaining terms and provisions of the Agreement.
- (3) This Agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, representatives, and heirs of the Parties herein.

20. 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 UNCITRAL Arbitration Rules [or insert any other applicable rules] , subject to the exclusive jurisdiction of the Courts of [insert place].

21. 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.

22. AMENDMENTS

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

23. 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.

24. ENTIRE AGREEMENT

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.

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

**For and on behalf of
The Lessor**

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

**For and on behalf of
The Lessee**

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____

SCHEDULE A Description of Equipment