

Commercial Contract

LETTER OF HYPOTHECATION FOR CURRENT ASSETS



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore
Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

January 2013

Letter of Hypothecation for Current 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 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.

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

B12. LETTER OF HYPOTHECATION FOR CURRENT ASSETS

This **Letter of Hypothecation** is made at [insert place] on this [insert date] day of [insert month], 20__ (insert year)

IN FAVOR OF

[Insert Name of the Bank], a banking company incorporated under the laws of Pakistan having its Registered Office at _____ (insert address of registered office) and a Branch at _____ (insert address of the branch) transacting, inter alia, Islamic Banking in Pakistan (hereinafter referred to as the "Bank" which expression shall, where the context so permits, include its successors in interest and assigns),

BY

M/s [Name], a sole proprietorship concern of Mr/Mrs/Ms [Name], having its place of business at [Address] through Mr/Mrs/Ms [Name];

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];

(hereinafter referred to as the "**Customer**" which expression shall, wherever the context so permits, include the Customer's heirs, executors, administrators and representatives).

WHEREAS, the Customer has approached the Bank to obtain finance and other banking facilities as defined in Financial Institutions (Recovery of Finances) Ordinance, 2001, and the Bank has agreed to finance, as witnessed by the agreement to finance read with sanction advice of the Bank to me/us.

AND WHEREAS in consideration of granting finance to the Customer, the Customer has agreed to hypothecate the assets, as more particularly

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described in the Schedule I of this Agreement, with the Bank. In consideration of the Bank providing/agreeing to provide to the Customer the finances as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001 and/or any other banking accommodation/arrangement/facility as aforesaid, the Customer does hereby hypothecate the assets to the Bank to hold the same as security until the payment/repayment of moneys/amounts to the extent of **Rs. _____/- (Rupees _____) (insert amount)** out of all moneys/amounts due to the Bank from the Customer under the relevant finance documents executed by and between the Customer and the Bank in relation to the finances or otherwise.

NOW THEREFORE THIS AGREEMENT WITNESSES AS FOLLOWS:

1. HYPOTHECATED ASSETS

That in pursuance of the said Agreement and in consideration of the Bank having granted finance facility to the Customer, it is hereby agreed and declared that all present and future goods, book-debts, all other movable assets of the Customer including documents of title to the goods, outstanding moneys, receivables including receivable by way of cash assistance under any other Scheme, claims including claims by way of refund of customs/excise duties under the Duty Drawback Credit Scheme, or any other Scheme, bills, invoices, documents, contracts, insurance policies, guarantees, engagements, securities, investments, rights, present equipments and accessories along with all future assets belonging to or in the possession or under the control of the Customer wherever stored and kept, whether in Pakistan or elsewhere, including all such goods, other movable assets as may be in course of shipment transit or delivery (hereinafter referred to as "the Goods and Assets") shall stand hypothecated to the Bank by way of ranking charge (subject, however, to any charge in favour of any third party which may have been notified by the Customer and accepted by the Bank as having priority over its own charge) as security for payment by the Customer to the Bank on demand of a sum of finance and all other moneys at any time payable by the Customer to the Bank under or in respect of all or some or any of the aforesaid credit facilities granted to the Customer by the Bank from its Branch or any other office/branch of the Bank (whether in Pakistan or elsewhere and whether accrued, accruing or contingent and whether solely or jointly with others).

2. CUSTOMER'S COVENANTS

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- (1) The Customer covenants with the Bank that the Customer has full rights and absolute authority to create this charge on the Goods and Assets by execution of this Agreement to secure the repayment/payment of all sums due to the Bank by the Customer in terms of the finances granted to the Customer.
- (2) That the Customer declares and confirms that all the Goods and Assets hypothecated hereunder are at present in existence and all the said Goods and Assets over which security may be created hereafter for all or some or any of the aforesaid credit facilities shall be in existence at the time of creation of such security and are or shall be the absolute property of the Customer at his/its sole disposal and free from any prior charge, lien or encumbrance except such charge, lien or encumbrance as have been notified to the Bank and accepted by it as having priority over its charge. It is hereby agreed and declared by the Customer that whenever he shall furnish security of any Goods and Assets to the Bank in future, the said Goods and Assets shall be unencumbered and disposable property of the Customer and the Customer shall not without the Bank's prior permission create any mortgage, charge, lien or encumbrance of any kind upon or over the same or on the undertaking assets except to the Bank nor suffer any such mortgage, charge, lien or encumbrance to affect the same or any part thereof, nor do or allow anything that may prejudice the security while the Customer remains indebted or liable to the Bank in any manner without Bank's prior consent in writing. The Customer shall also not borrow from other banks or financial institutions without the Bank's prior consent in writing.

3. BANK'S RIGHT TO CHARGE MARK UP

It is hereby agreed and declared that the Bank shall charge mark up, mark down, commission, cost of funds and/or other charges on the outstanding(s) in the accounts opened in respect of the aforesaid credit facilities at the rate of mark up described in terms and conditions of sanction advice above-mentioned. However, the said rate can be varied depending upon the directives issued by the State Bank of Pakistan in this regard from time to time. If the Bank charges mark up at a concessionary rate or rates because of the credit facilities being granted by the Bank to the Customer under any mark up Subsidy Scheme or any other Scheme(s) formulated by the Government and/or State Bank of Pakistan and/or any other authority from time to time, the Customer agrees, declares, confirms and affirms that in the event of the withdrawal, modification and/or variation of such Scheme(s), the concessionary rate or rates of mark up shall stand withdrawn and the Bank shall start to charge usual rate or rates of mark up as applicable to such credit facilities and the Customer shall pay to the Bank on demand the

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difference between such concessionary rate or rates and the usual rate or rates of mark up of the Bank applicable at the material time to such credit facilities and such difference shall become due and payable by the Customer to the Bank from the date of withdrawal, modification and/or variation of such Scheme(s) becomes effective, mark up shall be calculated respectively on the daily balance of such account(s) and be debited thereto on the last working day of the month.

4. MARGIN OF SECURITY

That the Customer declares and agrees that it shall maintain a sufficient quantity according to the agreed market value of the said Goods and Assets to provide the margins of security required by the Bank from time to time and if Bank feels any time that the margin of security is less, then the Customer shall provide further goods and assets to restore such margins or pay the Bank the equivalent in cash. The Bank may, in its sole and absolute discretion, change the margin of security between the market value of the said Goods and Assets and amount lent and the Customer shall be bound by it notwithstanding any margins earlier agreed to by the Bank.

5. ASCERTAINMENT OF VALUE

The Bank may get the value of the Goods and Assets hypothecated, assessed by an appraiser/evaluator appointed by the Bank and the Customer shall render/give all assistance/co-operation to such appraiser. The fees and expenses of such appraisal shall be borne by the Customer and, if not paid on demand, shall be debited to the Customer's account and shall be a charge on the security created hereunder.

6. INSURANCE

The Customer shall keep all the goods and other movable assets hypothecated or otherwise charged to the Bank as security for the aforesaid credit facilities in good condition and fully insured against loss or damages as may be required by the Bank due to any reason whatsoever and particularly the machineries hypothecated to the Bank against the fire and or such other risk(s) as the Bank may from time to time stipulate in the joint names of the Customer and the Bank, as per Bank clause, with an insurance company approved by the Bank and for such amount as the Bank may consider necessary, and that the insurance policies shall be delivered to the Bank. If the Customer fails to effect or renew such insurance, the Bank may, but without being obliged to do so, insure the said Goods and Assets against the fire and other risks in joint names and debit the premium and other charges to the Customer's account. In case of loss or damage to the Goods and Assets insured by the Customer or the Bank and the claim is made by the Customer, the amount of compensation shall be received by the Bank. The Customer hereby authorizes the Bank to adjust, settle, compromise or referred to arbitration any dispute arising under or in connection any

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insurance and such adjustment, settlement, compromise and any award made on such arbitration shall be valid and binding on the Customer and also to receive all moneys payable under any such insurance or under any claim made there under and to give a valid receipt therefore and that the amount so received shall be credited to the Customer's account and the Customer shall not raise any question that a larger sum might or ought to have been received or be entitled to dispute his liability for the balance remaining due on any account or accounts after such credit, provided that the Bank may at its own absolute and unqualified discretion waive all or any of these requirements.

7. INSPECTION

That the Customer agrees and confirms that the Bank, its Agents and Nominees shall be entitled, at all reasonable hours to enter any place where the Goods and Assets hypothecated are kept and inspect, and/or take particulars of all or any part of the said Goods and Assets and check any statements, accounts, reports, information and for the purpose of such entry to do all acts, deeds and things deemed necessary by the Bank including opening and breaking of any place where the hypothecated Goods and Assets and the books of account or other documents relating to the hypothecated Goods and Assets may be lying or stored or kept. If the Customer commits default in payment of any money hereby secured or the performance of any obligation or any incident occurs which in the opinion of the Bank endangers this security, the Bank shall be authorized to take charge of, seize, recover, receive, take possession of, *inter alia*, by putting its locks on the go downs and other places whether the hypothecated Goods or Assets, account books or other documents relating to the hypothecated book-debts are lying or kept, and to appoint receiver or receivers to take charge of the said Goods and Assets and also all books of accounts, papers, documents and vouchers and other records relating thereto. The said receiver or receivers shall also be authorized to give notices and demands to debtors and third parties liable therefore sue for recovery, receive and give receipts for the same and/or sell, realize, dispose of and deal within any manner including by tender or public auction or private contract and whether with or without the intervention of Court all or any part of the said Goods and Assets and to enforce, realize, settle, compromise, submit to arbitration and deal in any manner with any rights and debts or claims relating thereto and to complete any engagements and carry on the business of the Customer through agents, managers or otherwise. The Bank shall not be bound to exercise any of these powers or be liable for any loss in the exercise thereof.

8. EVENTS OF DEFAULT

1. Without prejudice to the legal rights and remedies available under law, it is agreed that the Bank, after giving notice in writing to the Customer as aforesaid, shall have the power to enter upon, take possession and sell

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the Goods and Assets or any part thereof either by public auction or by private treaty, including the right to purchase the same itself without the intervention of the Court and appropriate/adjust the sale proceeds towards the outstanding amount due from the Customer on the happening of any of the following events:

- (i) If the amount due from the Customer is not paid upon demand being made by the Bank; or
- (ii) If the Goods and Assets are damaged or diminished in value which has or is likely to impair the security hereby given; or
- (iii) If the Customer goes into voluntary liquidation and/or if winding up proceedings are threatened or instituted against the Customer; or
- (iv) If the Customer commits breach of any of the terms and conditions of any of the agreement(s) executed between the Bank and the Customer; or commits any breach on a duty or obligation under law.
- (v) If the Customer commits a breach of any terms or conditions of this Letter of Hypothecation; or
- (vi) If the Customer becomes bankrupt or insolvent or enters into any agreement with his creditors or takes or suffers any similar action in consequence of debt; or
- (vii) If a receiver is appointed by any person or court on the assets of the Customer including the whole or any part of the assets; or
- (viii) If the Customer makes an agreement of composition with his creditors or if the Customer's Assets are attached by any court or banking court or by any Government or other Authority; or
- (ix) If the Bank in its absolute discretion decides for any reason whatsoever and without assigning any reason to discontinue any finance.
- (x) If any warranty, representation or statement which is made by the Customer in this Deed or any other document or which is contained in any certificate, statement or communication provided by the Customers or any one on the Customer's behalf proves to be incorrect in any respect considered material by the Bank; or
- (xi) If the opinion of the Bank the security hereby created or any part thereof is in jeopardy, but so that this clause shall not be read *ejusdem generis* with clause (i) to (x) above.

9. STOCK REPORTS

That the Customer shall submit to the Bank monthly (or as the bank advises) statements of the Goods and Assets hypothecated to the Bank in form prescribed by the Bank from time to time with list of current insurance

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policies and amounts verified by certificates of the Customer that the quantities and of goods and amounts stated are correct and that all the said Goods and Assets are assets fully covered by insurance. The Customer agrees and undertakes to execute all documents and do all acts and things which the Bank may require to give effect hereto and the Customer appoints the Bank and each of its Agents and Nominees as Attorney to do acts, things and deeds under these presents for and in the name of the Customer.

10. RIGHTS OF THE PARTIES

- (1) That the Bank's rights or remedies shall not be prejudiced in respect of any present or future security, guarantee, obligation or decree for any indebtedness or liability of the Customer to the Bank.
- (2) Subject to the Bank's rights, powers and privileges under this agreement or otherwise, the Customer, in the course of business, may sell, dispose of or otherwise deal in the Goods and Assets hypothecated to the Bank, provided the margins of security are always maintained and on the terms that the Customer shall make payment or deliver the proceeds of the Goods and Assets hypothecated, disposed of or transferred and the Customer shall maintain separate accounts of the realizations, recoveries and insurance proceeds thereof of Goods and Assets hypothecated and all rights and interests in respect and all documents therefore and the Bank shall be entitled to inspect the said account at any time.
- (3) The Customer understands and agrees that in case of shortage of Goods and Assets, the Bank reserves the right to file a criminal complaint as enshrined by Financial Institutions (Recovery of Finances) Ordinance, 2001. The Customer shall assist the bank to lift the veil (in case of limited company) and shall render all possible services to hold the persons responsible. The Customer shall also initiate an inquiry to bring the culprits to justice under intimation to Security Exchange Commission of Pakistan.

11. INDEMNIFICATION

That the Bank shall not be liable for any loss or damage to the Goods and Assets hypothecated to the Bank in terms of this Agreement from or in whatever cause or manner arising, whether such Goods and Assets shall be in the possession of the Bank or not at the time of such loss or damage, or the happening of the cause thereof. The Customer shall, at all times, indemnify and keep indemnified the Bank and its agents, officers or nominees from and against all suits, proceedings, costs, charges, claims and demands whatsoever that may at any time arise or be brought or made by any person against the Bank and its agents, officers or nominees in respect of any acts, matters and things lawfully done or cause to be done by the Bank or its agents, officers or nominees in connection with the said Goods and Assets or in pursuance of the rights and power conferred to it or under

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this Agreement.

12..... CUSTOMER 'S DEFAULT

In default of payment of any amount due and payable by the Customer to the Bank, the Customer shall become liable for immediate payment to the Bank of the amount due and notwithstanding anything contained herein the Bank shall be entitled to serve written notice upon the Customer calling upon the Customer to pay the amount due and payable by the Customer to the Bank and failing such payment, the security under this Agreement may be enforced by the Bank in accordance with law for the recovery of the amount due to the Bank and cost of funds claimed by the Bank and service of the notice upon the Customer shall be conclusive evidence of the default and the Bank shall be entitled to enforce this security.

13. AUTHORITY TO DEBIT

The Customer hereby authorizes the Bank to debit its account for the Bank charges, commissions, insurance premia, legal charges, and all other charges and mark up, as the Bank deems fit and appropriate. The Customer understands and agrees that the charges levied by the Bank and debited from its account are debited as per this Agreement read with all other finance agreements.

14. REDEMPTION

On payment of all dues to the Bank, the Bank shall, at the cost of the Customer, redeem/release the hypothecated Goods and Assets from the charge, free of all obligations arising under this Hypothecation Agreement. The Customer, if applicable, may apply to Security Exchange Commission of Pakistan for satisfaction of charge after taking No Objection Certificate from the Bank.

15. REGISTRATION OF CHARGE

If applicable, the Customer shall get the charge hereunder created, registered with the Registrar of Companies, Security Exchange Commission of Pakistan, as required under law and shall do and execute all acts, deeds, documents and assurances as the Bank may reasonably require for effectively assuring the security and facilitating realization thereof.

16. MISCELLANEOUS

(1)The Parties to the Agreement agree that the columns filled in this agreement are filled before the Parties and all the contents herein filled through handwriting are part and parcel of this Agreement and are agreed by the Parties.

(2)That the Customer shall display the Bank's name on the go down, factory

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and other places, where such Goods and Assets hypothecated to the Bank and against which credit limits have been granted under these presents indicating that such Goods and Assets are hypothecated to the Bank.

- (3) The Customer shall pay all rents, rates, taxes, cesses, assessments and outgoings in respect of the said assets and machineries hypothecated to the Bank and if the Customer makes default in making such payment, the Bank may without being obliged to do so, pay the same and the said sum shall be payable by the Customer on demand, failing which the amount expended by the Bank shall be debited to the Customer's account and shall be charged on the Goods and Assets.
- (4) Any notice to be served to the Customer hereunder may be notice to the given by the Bank by sending at the address given above by post, by Customer registered acknowledgement due or by personally delivering the same to the Customer at its office.
- (5) All costs, charges and expenses incidental to these presents or of and incidental to or in connection with this security as well for the assertion or defence of the rights of the Bank as for the protection and security of the Goods and Assets hereby hypothecated or for the exercise or any of the powers contained in these presents shall be paid by the Customer on demand to the Bank with interest thereon at the rate aforesaid from the time of the same having been so incurred and that until such repayment to the same shall be a charge on the Goods and Assets.

SCHEDULE

- ✓ All present and future current assets including but without limitation to all movables, stocks, stocks in trade and related items etc. of the Customer Company.

- ✓ All present & future book debts and account receivables including outstanding moneys, bills, claims, engagements, contracts, rights and assets of the Customer Company.

IN WITNESS WHEREOF, the Customer has executed these presents.

Signature: _____

Name:

N.I.C. No.:

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WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____