

Commercial Contract

LETTER OF HYPOTHECATION FOR FIXED ASSETS



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

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January 2013

Letter of Hypothecation for Fixed 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.

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

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

B11. LETTER OF HYPOTHECATION

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 at the request of the Customer, the Bank has agreed to extend a finance facility to the Customer in the amount of Rs. _____/- (Rupees _____) (insert amount) (hereinafter referred to as the "Facility") pursuant to a Finance Agreement dated [insert date] (hereinafter referred to as the "Agreement").

AND WHEREAS to secure repayment of the Facility and all other amounts due under the Agreement, the Customer has agreed to create in favour of the Bank a security by way of hypothecation over the fixed assets of the Customer described in the Schedule hereto (hereinafter referred to as the "Hypothecated Assets").

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

NOW THEREFORE THIS AGREEMENT WITNESSES AS FOLLOWS:

1. HYPOTHECATION

In consideration of the Bank, at the request of the Customer, having provided or agreed to provide, to continue or renew, from time to time, in its absolute discretion, the Facility to the Customer, the Customer hereby hypothecates to the Bank the Hypothecated Assets by way of continuing security for securing the payment and discharge of all monies and liabilities arising out of the grant of the Facility by the Bank to the Customer.

2. ADDITIONAL FACILITY

The Customer shall not obtain any additional facility, or create any mortgage, charge, hypothecation, lien or any other encumbrance over or upon, its properties and assets without the prior written consent/no objection certificate of the Bank.

3. TITLE AND PRIORITY

The Customer hereby declares, confirms and covenants with the Bank that, upon the execution of this Agreement by the Customer and the Bank no other person, bank or financial institution shall have any mortgage, charge, hypothecation, lien, encumbrance and/or any other adverse claim or security interest whatsoever over or in respect of the Hypothecated Assets [if any prior charge, insert "except _____ (insert description of existing charges)].

4. DUTIES

The Customer shall carry on its business efficiently and will furnish and verify all statements, reports, accounts, documents and information and will also execute all documents and do all acts and things which the Bank may require from time to time to give effect to covenants contained in this Letter of Hypothecation, and the Customer hereby authorizes the Bank, its agents and nominees as attorneys for and in the name of the Customer to do whatever the Customer may be required to do hereunder.

5. MARGIN

The Customer shall not sell, transfer or dispose of, or in any manner otherwise deal with the Hypothecated Assets without the prior written consent/no objection certificate of the Bank. The Customer shall, upon demand being made by the Bank, make good any shortfall in the value of the Hypothecated Assets or in the alternate the Customer shall furnish additional security to meet the requirements of this Agreement or reduce/adjust the Facility or repay the Bank to match with the available securities and to meet all such requirements as may from time to time be imposed by the State Bank of Pakistan.

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

6. INSPECTION

(1) The Bank, its agents and its nominees shall be entitled, at all times with or without prior notice to the Customer, at the risk and expense of the Customer and as attorneys for and in the name of the Customer, to enter any premises and to inspect, value, insure, superintend and/or take particulars of the Hypothecated Assets and to check any statements, accounts, reports and information and also on any default by the Customer in payment of any monies hereby secured or in the performance of any of its obligations to the Bank hereunder or on the occurrence of any circumstances which in the Bank's sole discretion would endanger the Hypothecated Assets or other security for the Facility, to take possession of, recover, receive and/or sell or otherwise dispose of or deal with the Hypothecated Assets and to enforce, realize, settle, compromise and deal with any rights or claims relating thereto without being bound to do so and without prejudice to the rights and remedies of the Bank as to suit or other proceedings.

(2) The Customer undertakes to hand over immediate possession of the Hypothecated Assets to the Bank and/or its agents or nominees and to transfer and deliver to them all relative bills, contracts, securities and documents and agrees to accept the Bank's accounts of sale and realization as sufficient proof of amounts realized and relative expenses incurred and to pay any shortfall or deficiency thereof provided that the Bank shall be entitled at all times to recover from the Customer by suit or otherwise the balance remaining payable to the Bank.

7. TRUST

The Hypothecated Assets and all additions thereto and the sale proceeds of such of the Hypothecated Assets, if any, as may be sold in the ordinary course of business shall always be held by the Customer in trust for the Bank and any property specifically appropriated to this security shall be dealt with according to the provisions hereof.

8. CONTINUING SECURITY

This Agreement shall operate as a continuing security for the balance of all monies due by the Customer to the Bank and it is not to be considered to be determined for the purposes of the security created hereunder and that this security is not to be considered exhausted by reasons of the Facility in the accounts being brought to the credit at any time or from time to time or all monies due and owing by the Customer for the time being to the Bank having been paid in full or that on a general balance of account, the Customer shall be in credit with the Bank but, shall continue in full force and effect until satisfaction of the security hereby created is communicated by the Bank to the Customer in writing.

9. INSOLVENCY

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

The Customer undertakes not to commit any act of insolvency. If at any time the Customer be adjudicated insolvent or if the Customer executes any deed or arrangement or composition with any of its creditors or if any event shall happen which would entitle the Bank to declare the Facility or any part thereof due or require any unpaid amount to be repayable prior to the repayment schedule as may be entered into between the Customer and the Bank, it shall be lawful for the Bank forthwith or at any time thereafter, without prior notice to the Customer, and without prejudice to any right of suit or any other rights of the Bank under this Agreement or under any other law, to sell or dispose of either by public auction or private contract absolutely all or any of the Hypothecated Assets either together or in lots or separately and to apply the net proceeds of such sale in or towards liquidation of the balance then due to the Bank.

10. INDEMNIFICATION

The Customer shall indemnify and keep indemnified the Bank against all losses, damages, detriments, harms, claims, liabilities and demands, costs, charges and expenses that may be sustained by or made against or incurred by the Bank or its agent(s) or nominee(s) in the lawful exercise of any of the rights, powers or discretion herein contained.

11. WAIVER

No delay, forbearance or omission to exercise any right vested in or power or remedy accruing to the Bank under this Agreement shall impair any such right, power or remedy or be construed to be a waiver or omission of such power nor shall any action in respect thereof affect or impair any right power or remedy of the Bank in respect of any subsequent default of the Customer.

12. RECEIVER

The Bank shall be entitled to appoint and/or remove any receivers, agents, managers or other persons to exercise all or any of the powers hereby vested in the Bank with reference to the security hereby created and shall be entitled to recover and receive from the Customer the remuneration and/or charges of such receivers, agents, managers or other persons as the case may be. The Bank shall not be liable and shall be entitled to be indemnified and kept indemnified by the Customer for and in respect of all acts, omissions, defaults, negligence or mistakes, whether arising in the usual course of business or otherwise, of any such receivers, agents, managers or other persons and all losses, damages, claims, demands, suits, proceedings, costs, charges and expenses sustained or made in respect thereof.

13. INSURANCE

(1) The Customer shall at all times during the continuance of this security and as long as any money shall remain due and owing to the Bank by virtue of this Agreement insure and keep insured the Hypothecated Assets to the

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

full extent of their replacement value against such risks as the Bank may require from time to time with an insurance company as may be approved by the Bank and shall name the Bank as loss payee.

(2) The Customer shall duly and punctually pay the premium payable in respect of insurance at least one week before the same shall become due or payable and shall hand over to the Bank the policy or policies of insurance and receipts for premium paid in respect thereof.

(3) If default be made in payment of such premium or in keeping the Hypothecated Assets so insured it shall be lawful but not obligatory upon the Bank to pay such premium and to keep the Hypothecated Assets so insured and all costs, charges and expenses incurred by the Bank for the said purposes shall be charges to and paid by the Customer together with an addition of twenty percent (20%) thereto as liquidated damages as if the same were part of the amount due to the Bank under this Agreement.

14. VALUE OF HYPOTHECATED ASSETS

The Customer shall make and furnish to the Bank such statements, stock reports and returns in respect of the value, quantity and location of the Hypothecated Assets and such fully detailed description thereof and produce such evidence in support thereof as the Bank may from time to time require and shall ensure that the market value of the Hypothecated Assets (market value for the purposes of this clause shall mean the value of the Hypothecated Assets determined by the Bank from time to time, which determination shall be binding on the Customer) shall not at any time fall below the amount which may be communicated to the Customer by the Bank in writing and in no event will such value be allowed by the Customer to fall below such limits as may be prescribed by the State Bank of Pakistan or other competent regulatory authority. If at any time the market value of the Hypothecated Assets falls below the aforesaid limits, the Customer shall provide further security(ies) as may be approved by the Bank or cover the shortfall by cash payment. The Bank may at its sole discretion employ the services of any independent accountants, surveyors or valuers to verify the value of Hypothecated Assets and the cost of such valuation shall be borne by the Customer.

15. DEFAULT

The Customer shall be in default under the provisions of this Agreement if the Customer fails to comply with any of the terms of this Agreement.

16. REIMBURSEMENT

The Customer agrees, confirms and authorizes the Bank that the Bank and/or its agents and nominees shall, at all times, be at liberty to pay or incur any legal and other incidental expenses as between client and attorney in and or towards the exercising, enforcing and securing of all or any of the

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

rights and remedies of the Bank against the Customer and in taking all necessary steps towards the full realization of all the Bank's dues from the Customer and the Bank shall have the right to determine the time and manner of paying, incurring and reimbursing such expenses as well as the quantum thereof; and the Customer further agrees and authorizes the Bank and/or its agents and nominees to debit all such expenses to the accounts of the Customer and the Customer agrees to accept statements of account of such payments and expenses and/or any entries in respect thereof signed by a person authorized by the Bank as conclusive proof thereof without calling for any vouchers, document or any other evidence in support of such payments and expenses and the Customer agrees to keep the Bank at all times safe, harmless and indemnified against all such expenses, costs and charges.

17. REGISTRATION/VACATION OF CHARGE

- (1) 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.
- (2) On payment of all dues to the Bank, the Bank shall, at the cost of the Customer, redeem/release the Hypothecated Assets from the charge, free of all obligations arising under this Letter of Hypothecation. The Customer, if applicable, may apply to Security Exchange Commission of Pakistan for satisfaction of charge after taking No Objection Certificate from the Bank.

SCHEDULE I

(DESCRIPTION OF THE HYPOTHECATED ASSETS)

All the present and future plant and machinery and other movable fixed assets of the company installed/to be installed or erected/to be erected at any of the premises of the company along with the tools, equipments, accessories, electrical & mechanical fittings, fixtures, buildings, constructions, superstructures etc belonging to or in possession of or under control of the customer, stored and kept whether in Pakistan or elsewhere and also including all such goods, other movable fixed assets as may be in course of shipment transit or delivery.

Letter of Hypothecation for Fixed Assets

Pro- Gole (Right to do Business)

Legal Services, B&SDS

IN WITNESS WHEREOF, the Customer has executed these presents.

Signature: _____

Name: _____

N.I.C. No.: _____

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____