

Commercial Contract

SHIPPING AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Shipping 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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B8. SHIPPING AGREEMENT

THIS SHIPPING 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 "Business", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

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];

(hereinafter referred to as the "Shipper", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

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

WHEREAS the Business requires the services of a Shipper in order to ship [insert description of the materials to be shipped] (hereinafter referred to as the "Materials") from [insert place] to [insert place] to be used in the

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production of [insert description of the products] at the Business' manufacturing plant (hereinafter referred to as the Services").

AND WHEREAS the Shipper provides to its clients the services of shipment of goods and raw materials from one place to another.

AND WHEREAS the Shipper has offered the Services to the Business, and the Business has accepted the Services of the Shipper on the terms and conditions that the Parties are desirous of reducing into writing.

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

1. SCOPE OF AGREEMENT

- (1) The Shipper shall ship the Goods from [insert address] to [insert address].
- (2) The Agreement shall come into effect on [insert date], and shall continue to be in effect for a period of [insert number] years, unless terminated earlier by either Party in accordance with the terms and conditions of this Agreement.

2. PAYMENT

- (1) The Shipper shall be entitled to receive the Shipment Fees in accordance with the rates decided between the Parties from time to time, and according to the weight of the Materials in the respective shipment.
- (2) The Shipment Fees shall be payable by the Business to the Shipper at the time of the booking of the shipment, in advance.

3. INSURANCE

- (1) The Shipper shall, at the time of booking of a particular shipment, arrange for the insurance of the shipment in accordance with the declared value of the shipment by the Business, and in no case shall the liability of the Shipper exceed the declared value of the shipment. The Shipper shall, in no case, be held liable to the Business for any incidental damages including loss of profits in case of any damage or loss to the shipment, or due to the delay in the shipment for whatsoever reasons.
- (2) In the event that the actual value of a shipment is in excess of the amount so declared by the Business, the Business shall be regarded as being the Business' own insurer to the extent of the difference, and the Business shall bear that proportion of any loss that the undeclared amount bears to the actual value of the shipment.

4. SHIPPER'S LIEN

The Shipper shall have a general lien on any and all goods in a shipment for all charges for transportation, storage, preservation of the shipment, and the performance of other services incidental to the Shipper's performance of the

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services under this Agreement. Such lien shall also extend to such goods for all lawful claims for money advanced, interest, insurance, labor, and other charges in relation to such goods or any part thereof; for all charges and expenses for notice and advertisement of sale and for sale of the goods where there has been a default in satisfying the Business' obligations under this Agreement.

5. OWNERSHIP OF GOODS

- (1) The Business represents and warrants that the Business shall be the lawful owner of the Materials in any shipment which would be shipped by the Shipper, and has the authority to enter into and abide by the terms of this Agreement.
- (2) The Business shall indemnify the Shipper in the event of any adverse claim or in the event the Shipper is made a Party to any litigation by reason of having the shipment, or any portion thereof, transported or stored, and shall pay attorney fees and court costs, if any, incurred in connection with such litigation.

6. TERMINATION

- (1) Either Party may terminate this Agreement by giving to the other Party a [insert number] days' prior written notice to this effect.
- (2) In case of receipt of notice of termination, the Parties shall carry out their obligations under this Agreement during the notice period, and any Materials in transit shall be shipped to the destination by the Shipper even if the delivery date falls after the termination of this Agreement.

7. CONFIDENTIALITY

Except with the prior written approval of the Business, the Shipper shall treat as confidential all information which comes to its knowledge pertaining to the Business (hereinafter referred to as the "Confidential Information") and it shall not disclose such Confidential Information to any third party.

8. AMENDMENTS

Any modification or amendment in the Agreement shall be made with the written consent of the Parties.

9. 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,

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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.

10. WAIVER

(1) Failure of either Party to insist upon the strict and punctual performance of any provision herein shall not constitute a waiver of the right to require such performance, nor shall a waiver in one case constitute a waiver with respect to a later breach whether of similar nature or otherwise.

(2) Nothing in this Agreement shall prevent a Party from enforcing its rights by such remedies as may be available in addition to termination.

11. SEVERABILITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

12. ASSIGNMENT

Neither Party may transfer or assign any right or obligation under this Agreement to a third party without the prior written consent of the other Party.

13. ENTIRE AGREEMENT

This written Agreement constitutes the entire agreement between the Parties and no modifications shall be valid or enforceable except by the written amendment to this Agreement.

14. DISPUTE RESOLUTION

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

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in accordance with the Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

15. GOVERNING LAW AND EXCLUSIVE JURISDICTION

(1) This Agreement shall be governed by and construed in accordance with the laws of Pakistan.

(2) This Agreement has been executed at [insert place] and the Parties agree that the Courts of [insert place] shall have exclusive jurisdiction in all matters in respect of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed in duplicate at the place and on the date aforementioned.

for and on behalf of
the Business

for and on behalf of
the Shipper

Witnesses:

1. _____

2. _____

Name: _____

Name: _____

Address: _____

Address: _____
