

Commercial Contract

AGREEMENT FOR IMPORT OF TECHNOLOGY



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Agreement for Import of Technology

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 import and export. 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.

Agreement for Import of Technology

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Legal Services, B&SDS

AGREEMENT FOR IMPORT OF TECHNOLOGY

THIS AGREEMENT FOR IMPORT OF TECHNOLOGY (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];

OR

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

(hereinafter referred to as the “Business”, which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents)

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];

OR

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

(hereinafter referred to as the “Exporter”, which expression shall, wherever the context so provides, include its successors, assigns, nominees and agents).

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(The Business and the Exporter are hereinafter collectively referred to as the “Parties”, and individually as the “Party”.)

WHEREAS the Business is engaged in the [insert activities of the Business] in Pakistan.

AND WHEREAS the Exporter is the owner of the technology related to [insert description of the technology], registered in [insert country] (hereinafter referred to as the “Technology” and described more particularly in Schedule I of this Agreement).

AND WHEREAS the Business wishes to purchase the Technology from the Exporter, and Exporter has agreed to sell the Technology under the terms and conditions of this Agreement.

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

1. TERM OF CONTRACT

- (1) This Agreement shall come into effect on the date of execution of the Agreement, and shall expire upon the complete delivery of the Technology from the Exporter to the Business in accordance with the terms and conditions of this Agreement.
- (2) The Parties agree that in no case shall the expiry date of the Agreement be extended beyond [insert date].

2. TECHNOLOGY, MACHINERY AND PACKING

- (1) The Exporter agrees to sell, and the Business agrees to buy, the Technology, including the software and hardware (as detailed in Schedule I of this Agreement) from the Exporter.
- (2) Nothing contained herein this Agreement shall be construed to give the right of resale to the Business with respect to the Property.
- (3) The Exporter shall ensure that the packing of the Technology is in accordance with the Exporter’ standard packing procedure, and is suitable to permit the shipment of the Technology to the [insert the destination point] without damage.
- (4) The Exporter shall ship the complete hardware related to the Technology, as well as the Software, to the Business in packing suitable for the shipment of the Technology to the Business.

3. PRICING

- (1) In lieu of the Technology, the Business shall pay to the Exporter an amount of Rs. _____/- (Rupees _____) (insert amount) (hereinafter referred to as the “Price”).

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- (2) The Price shall be inclusive of the delivery charges, other charges pertaining to packaging, installation charges, and all the taxes and charges applicable on the export of the Technology in the Exporter' country, i.e. [insert country], and the Business shall not be liable to pay any other amounts to the Exporter in lieu of any such charges or taxes.
- (3) The charges and taxes applicable on the import of the Technology in the Business's country, i.e. Pakistan shall be payable by the Business directly to the relevant authorities.
- (4) The clearance of the imported Technology from the Custom or other relevant department shall be the sole responsibility of the Business, and the Importer shall not be held liable in case the Business fails to procure such clearance.
- (5) The Price shall be payable by the Business to the Exporter in the [insert currency] equivalent of Pakistani Rupees as mentioned in Clause 3 (1) above.
- (6) The payment of the Price shall be made by the Business to the Exporter through an irrevocable Letter of Credit drawn on [insert name of the Business's bank], sent to [insert name and branch of the Exporter' bank].

4. DELIVERY

- (1) The Technology shall be delivered, along with detailed instructions of use pertaining to the Technology, and the softwares related thereto by the Exporter to the Business by [insert mode of delivery], through [insert name of the Carrier].
- (2) The delivery of the Technology shall be F.O.B Delivery Port i.e. [insert delivery port], and the Business shall bear all costs and risks of loss of or damage to the Technology from the Delivery Port onwards.
- (3) The Business shall be responsible for the transportation of the Technology from the Delivery Port to its place of business.

5. INSTALLATION AND TRAINING

- (1) Upon the clearance of the Technology from the Customs and other relevant department by the Business, and the transportation of the Technology from the Delivery Port to the Business' premises, the Business shall intimate the Exporter for the installation of the Technology.
- (2) Within [insert number] days of the Exporter's receipt of the Business' intimation, the Exporter shall arrange for adequate personnel to fix/install the Technology at the Business' premises, at the sole expense of the Exporter.

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- (3) Upon the successful installation of the Technology, the Exporter shall arrange, at the sole costs of the Business, training sessions for the Business' staff/personnel to impart the technical knowledge pertaining to the usage of the Technology.

6. INSPECTION AND ACCEPTANCE

- (1) Once the installation under Clause 4 (2) is complete, the Business shall, within [insert number] days, inspect the Technology to its entire satisfaction and in case of any defect/damage in or to the Technology, the Business shall inform the Exporter, following which the Exporter shall be liable to replace the defected/damaged Technology at entirely its own costs within [insert number] days of the receipt of the notice of damage/defect.

- (2) If a notice of damage/defect is not received by the Exporter within [insert number] days of the installation of the Technology, the Technology shall be deemed to be accepted by the Business.

7. WARRANTY AND SERVICE

- (1) For a period of [insert number] months after the installation of the Technology at the Business' premises, the Exporter shall provide free of cost service to the Business with respect to the Technology, which includes semi-annual service of the hardware, and replacement of the parts of the hardware provided the subject part has been damaged during the normal business use of the Technology in accordance with the Instructions for Use provided to the Business by the Exporter at the time of export of the Technology.

- (2) The Business shall also be entitled to the periodic upgrades to the software included in the Technology.

8. EXCLUSIVE RIGHT TO TECHNOLOGY

The Exporter agrees that for a period of [insert number] years after the sale of the Technology to the Business by the Exporter, the Exporter shall not sell/assign/license the use of the Technology to any other Business or entity within Pakistan.

9. TRANSFER OF INTELLECTUAL PROPERTY

The Exporter agrees to provide such documents to the Business to enable the Business to get the Intellectual Property Rights in the Technology registered in its own name with the relevant authorities/department in Pakistan. The Intellectual Property rights shall mean and include the copyrights, trademarks, patents product design etc. pertaining to the Technology i.e. both the Software and the hardware.

10. 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].

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- (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.

11. 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].

12. 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.

13. AMENDMENTS

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

14. 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.

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15. 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 Exporter

For and on behalf of
The Business

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

SCHEDULE I Description of Technology

- | | |
|---|-------------------|
| 1. [Insert description of the Technology] | [insert quantity] |
| 2. [Insert description of the Technology] | [insert quantity] |
| 3. [Insert description of the Technology] | [insert quantity] |

SCHEDULE II Price of Technology

- | | |
|--|-------------------|
| 1. [Insert description of the Technology]
unit] | [insert price per |
| 2. [Insert description of the Technology]
unit] | [insert price per |
| 3. [Insert description of the Technology]
unit] | [insert price per |

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