

Commercial Contract

INSTALLMENT EQUIPMENT SALES AGREEMENT



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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January 2013

Installment Equipment Sales 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.

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

B18. INSTALLMENT EQUIPMENT SALES AGREEMENT

THIS INSTALLMENT EQUIPMENT SALES AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into at [insert place] on this _____ (insert date) day of _____ (insert month) 20__ (insert year),

BY AND BETWEEN:

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 "Seller", which expression shall, wherever the context so permits, mean and include its heirs, 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];

OR

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

(hereinafter referred to as the "Purchaser", which expression shall, wherever the context so permits, mean and include its heirs, assigns, nominees, agents and successors-in-interest)

(The Seller and the Purchaser shall individually be referred to as the "Party" and collectively as the "Parties")

WHEREAS the Seller is the owner in possession of the equipment (as more particularly described in the Schedule A hereto, and hereinafter referred to as the "Equipment").

AND WHEREAS the Purchaser wishes to set up a manufacturing unit, and for that purpose, wishes to purchase the Equipment from the Seller.

AND WHEREAS the Seller has agreed to sell the equipment to the Purchaser, and the Purchaser hereby agrees to purchase the Equipment in accordance with the terms and conditions of this Agreement.

1. AGREEMENT TO SELL

The Seller hereby sells, conveys and transfers to Purchaser all rights, title and interest in and unto the Equipment in accordance with the terms and conditions of this Agreement.

2. CONSIDERATION

(1)The Purchaser agrees to pay to the Seller an amount of Rs. _____/- (Rupees _____) (insert amount) in consideration for the sale of the Equipment by the Seller in favor of the Purchaser (hereinafter referred to as the "Total Consideration").

(2)Of the Total Consideration, the Seller shall pay an amount of Rs. _____/- (Rupees _____) (insert amount) to the Purchaser at the time of execution of this Agreement.

(3)The remaining of the Total Consideration shall be paid by the Purchaser to the Seller in [insert number] equal quarterly installments, payable on the

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first day of each quarter, beginning on the [insert date] day of [insert month], [insert year].

- (4)The Total Consideration shall be exclusive of any delivery and other charges applicable to the transfer of the Equipment from the Seller to the Purchaser, which shall exclusively be borne by the Purchaser.

3. DELIVERY AND ACCEPTANCE

- (1)The Seller shall be solely responsible for the delivery of the Equipment from [insert address] to the destination at [insert address], but all charges pertaining to the Delivery shall be borne by the Purchaser, exclusively.

- (2)Upon delivery, the Purchaser shall, within [insert number] days, undertake the inspection of the Equipment, and an initial test of the same after installation of the Equipment at the destination, and shall inform the Seller of any defects in the Equipment. The Failure of the Purchaser to intimate the Seller of any defects in the Equipment shall be deemed to be an irrevocable acceptance of the Equipment.

- (3)The Purchaser acknowledges that following the acceptance of the Equipment by the Purchaser, the Seller shall not be responsible for the Equipment, and any warranty, expressed or implied, with respect to the Equipment expires following the acceptance of the Equipment by the Purchaser.

- (4)In case of any material defect in the Equipment which renders the Equipment useless for the Purchaser's purpose without incurring extra charges, and such defects being notified to the Seller by the Purchaser within [insert number] days of delivery, the Purchaser may, in its sole discretion, choose either to terminate this Agreement, or else, incur the charges in the repair of the Equipment and adjust the same against the quarterly installments to the Seller.

4. TITLE TO EQUIPMENT

The Seller represents that he owns all the Equipment described herein, and his title to the Equipment is free from all and any sort of encumbrance, lien, or any other charge or interest of any third Party.

5. MAINTENANCE AND REPAIR

Following the [insert number] days' period after the delivery of the Equipment to the Purchaser, all maintenance and repair costs with respect to

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the Equipment shall be borne by the Purchaser, and the Seller is hereby relieved from any responsibility to maintain or repair the said Equipment.

6. INSURANCE AND RISK OF LOSS

The Purchaser shall acquire and maintain insurance on the Equipment in the amount of at least Rs. _____/- (Rupees _____) (insert amount) with the Seller as the Loss Payee until the time that the final installment against the Total Consideration is made by Purchaser and received by Seller in accordance with the terms and conditions of this Agreement.

7. DAMAGE TO EQUIPMENT

Notwithstanding any loss, theft, destruction or damage to the Equipment or any part thereof, the quarterly installments shall continue to be paid by the Purchaser to the Seller.

8. DEFAULT BY PURCHASER

(1) Time is of the essence under this Agreement, and any of the following events shall constitute defaults on the part of the Purchaser:

- i. failure of the Purchaser to pay any payment within [insert name] days of the same becoming due;
- ii. any breach or failure of the Purchaser to perform any of its obligations under this Agreement;
- iii. insolvency of bankruptcy of Purchaser or assignment for the benefit of creditors;

(2) Upon the occurrence of any default, the Seller may terminate this Agreement and demand back from the Purchaser all Equipment, the delivery charges being borne by the Purchaser, and rights of the Purchaser therein shall be surrendered unto the Seller. In such case, the Seller shall have the right to forfeit the Consideration Amount paid by the Purchaser to the Seller up till that time.

9. 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.

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(3) This Agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, representatives, and heirs of the Parties herein.

8. SETTLEMENT OF DISPUTE

(1) 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 Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

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, 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. 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.

11. 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.

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 Purchaser

For and on behalf of
The Seller

WITNESS NO. 1

WITNESS NO. 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

Date: _____

Date: _____

SCHEDULE A

DESCRIPTION OF EQUIPMENT