

**NOTAT**

DBA case ref. xxxxx

**DRAFT**

## **Industrial Co-operation Contract [FMS case]**

### **Article 1: Parties to the contract**

#### **The Danish Business Authority (DBA)**

Company Registration No.: 10150817  
Dahlerups Pakhus  
Langelinie Allé 17  
DK – 2100 Copenhagen  
Denmark

And

[NN]

[Company Registration no.]

[Address]

[Address]

[Address]

[Country]

#### **DANISH BUSINESS AUTHORITY**

Dahlerups Pakhus  
Langelinie Allé 17  
DK-2100 København Ø  
Denmark

Tel +45 35 29 10 00

Fax +45 35 29 10 01

VAT no. 10 15 08 17

erst@erst.dk

MINISTRY OF INDUSTRY,  
BUSINESS AND FINANCIAL  
AFFAIRS

Hereby enter into an Industrial Co-operation Contract (ICC) in connection with the future supply of [product/services] via a Foreign Military Sales case with the US government to the Danish Defence Acquisition and Logistics Organization (DALO) on behalf of the Danish Ministry of Defence, FMS case no. [letter code]. Should [NN], for any reason, not receive the connected [product/service] contract award from the US Government for this FMS case no. [letter code], this ICC shall automatically become null and void.

### **Article 2: Legal basis**

2.1 In accordance with EU law, especially with reference to Article 346 of the Treaty of the Functioning of the European Union, it has been decided that the abovementioned acquisition contract shall be subject to an obligation for industrial co-operation.

### **Article 3: Definitions**

3.1 “Industrial co-operation” is defined as a foreign supplier’s fulfilment of an obligation to co-operate with companies in Denmark.

3.2 “Defence equipment” and “defence services” are defined as the specific weapons, ammunition and war-materials that conforms to the interpretation in Article 1(6) in EU directive 2009/81/EC of 13 July 2009 as amended.

3.3 “A company in Denmark” is defined as a company registered in Denmark, and where an essential part of the industrial co-operation in question concerns competencies and capabilities to be performed and/or supported within the Danish territory.

#### **Article 4: Obligations**

4.1 By signing this ICC, [NN] shall undertake to establish industrial co-operation with companies in Denmark when [NN] is awarded the contract for the supply of [product/service] to DALO by the US Government.

4.2 The obligations of this ICC shall become effective upon the [product/services] supply contract award date from the US government to [NN]. Within 15 days of the award date of the [product/services] supply contract award to [NN], [NN] shall advise DBA in writing of the award date from the US Government to [NN] of the [product/services] supply contract.

4.3 Since the [product/services] are procured by DALO via the FMS system with the US government, the exact contract value for [NN] is not known before the conclusion of the FMS case for the [product/services]. Therefore, DBA and [NN] have agreed to adopt an *ex ante* estimation of the [NN] contract value under the [product/services] FMS case as the basis for the industrial co-operation obligation under this ICC. The parties have agreed to the following estimate, which has been indicatively verified by DALO: [value].

4.4 [NN] shall be obliged to establish industrial co-operation for [x] per cent of the [product/services] contract value share of the Danish FMS case for [product/services]. Effectively, and while taking into consideration the industrial co-operation percentage of [x] per cent, the estimate for the industrial co-operation obligation under this ICC shall be set at [value x percentage].

4.5 When the FMS case for the [product/services] is concluded, and the final [NN] contract value is known, the industrial co-operation obligation will be updated with the actual [NN] contract value under the FMS case based on information from DALO and the US government. In case the actual [NN] contract value deviates substantially from the estimated [NN] contract value, the fulfilment period will be adjusted based on DBA’s assessment. The update of the actual [NN] contract value, as well as the possible adjustment of the fulfilment period, will be included in an Addendum to be signed by both parties.

4.6 [NN] shall have [x] years from the award date of the [product/services] supply contract from the US government to [NN] to fulfil this industrial co-operation obligation. This period shall be referred to as “the fulfilment period”.

4.7 In order to ensure timely co-operation with companies in Denmark and the fulfilment of the industrial co-operation obligation, the following fulfilment milestones shall apply to [NN]:

1. *Starting date*: The award date of the [product/services] supply contract from the US government to [NN].
2. *50 per cent milestone*: The date for 50 per cent fulfilment of the industrial co-operation obligation by [NN] is the first occurring 1<sup>st</sup> of January following the first half of the fulfilment period, equalling [x] years after the starting date, cf. point 1. Effectively this date is the 1<sup>st</sup> of January [20xx].
3. *100 per cent milestone*: The date for 100 per cent fulfilment of the industrial co-operation obligation by [NN] is the first occurring 1<sup>st</sup> of January following the end of the fulfilment period, equalling [x] years after the starting date, cf. point 1. Effectively this date is the 1<sup>st</sup> of January [20xx].

#### **Article 5: Eligible Parties**

5.1 With the pre-approval of the DBA, [NN] may be assisted by other companies within the [NN] group, companies which are majority-owned by [NN] and/or major subcontractors involved in the specific supply of [product/services] to DALO, in fulfilling the obligations under this ICC. Such contracts may qualify as industrial co-operation if the conditions in Article 6 are fulfilled.

5.2 The list of eligible parties, which have been pre-approved by DBA, shall be attached to this contract (Attachment A). Any changes to the list of eligible parties must be approved in writing by DBA.

#### **Article 6: Scope and fulfilment**

6.1 The fulfilment of the industrial co-operation obligation under this ICC shall adhere to the conditions concerning the acquisition of [product/service] defined by the Ministry of Defence and described in Article 6.2 and 6.3.

6.2 The fulfilment of industrial co-operation obligations can only be approved for activities that meet all the following three conditions:

- The activities must concern defence equipment and defence services, as defined in Article 3.2;

- The activities must take place within the domain determined by the Ministry of Defence and described in Article 6.3;
- The activities may not entail a disproportionate risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes.

6.3 The Ministry of Defence has defined the domain for this acquisition of [product/services] as:

- [Udfyldes med genstandsfelt fra FMN].

6.4 The fulfilment of the industrial co-operation obligation may include, but is not limited to, the following ways of co-operation:

- [NN]'s procurement of defence equipment and defence services from companies in Denmark within the domain defined in Article 6.3;
- [NN]'s participation in development projects with companies in Denmark, which develop and maintain competencies and capabilities within the domain defined in Article 6.3.

6.5 DBA can approve the fulfilment of obligations for industrial co-operation if an essential part of the industrial co-operation relates to competencies and capabilities in Denmark. If this is not the case, DBA can approve the specific part of the industrial co-operation in question that relates to competencies and capabilities in Denmark. In this connection, information shall be obtained from the Danish company in question.

#### **Article 7: Pre-approval of development projects and multipliers**

7.1 Concerning development projects, [NN] must obtain a Pre-approval from DBA before the start of the project. The Pre-approval shall set out the time frame, milestones and documentation requirements for the development project.

7.2 [NN] must use the application form for development projects provided by DBA. Additionally, a binding confirmation in writing from the CEO of the involved company in Denmark, stating that the company in Denmark is committed to and accepts the details of the development project, as well as the conditions for DBA's pre-approval, must be attached to the application.

7.3 For DBA to process an application for Pre-approval, the development project must pass an assessment of competitiveness. The assessment will be conducted by DBA and based on DBA's screening model for development projects. The DBA's processing of an application for Pre-approval is contingent on receiving the necessary information from the relevant company in Denmark to conduct the assessment of competitiveness.

7.4 DBA will consult the Ministry of Defence concerning the development project's contribution to the defence industrial effect on which the industrial cooperation obligation is based, cf. Article 6.

7.5 DBA may approve the use of multipliers if it can be demonstrated that the contribution from [NN] to the development project contributes significantly to meeting the obligations defined by the Ministry of Defence, cf. Article 6. Multipliers may be approved up to:

- Transfer of technology, software, etc.: Maximum multiplier of 7
- Funding of development projects: Maximum multiplier of 5
- Advisory services: Maximum multiplier of 5
- Making facilities available: Maximum multiplier of 3

7.6 DBA uses the following definitions for determining potential multipliers in a development project:

- Technology transfer: The foreign supplier transfers its own technology to the company in Denmark that uses the technology in its defence industrial R&D activities pursuant to the specific development project. "Technology" is defined as the foreign supplier's own commercial knowledge and skill sets being transferred to the company in Denmark for either ownership, right of use or on loan. The purpose of a technology transfer must be to develop new or improved defence industrial products, processes or services within the domain specified in Article 6.3. DBA's valuation of technology is based on DBA's calculation principles, cf. Article 7.7.
- Funding: The foreign supplier finances the company in Denmark's defence industrial R&D activities, which helps enhance the competencies and capabilities of the company in Denmark within the domain specified in Article 6.3. The allocation of a multiplier for funding assumes that the Danish company is free to use the transferred funds for R&D activities pursuant to the specific development project without being under an obligation to deliver defence industrial products or defence services to the foreign supplier in return. The funding can also go towards the acquisition of specialised equipment and advisory services for use in the R&D activities in the specific development project.
- Advisory services: The foreign supplier advises and supports the company in Denmark's defence industrial R&D activities pursuant to the specific development project within the domain specified in Article 6.3. The advisory services are provided via the foreign supplier's own staff resources. DBA's valuation of the advisory services is based on the number of work hours and the relevant internal hourly cost of staff resources provided by the foreign supplier.

- Use of facilities: The foreign supplier places its own manufacturing or testing facilities at the disposal of the company in Denmark free of charge as part of the company in Denmark's defence industrial R&D activities pursuant to the specific development project, which is within the domain specified in Article 6.3. DBA's valuation of the facility lending is based on a market price, if such a price can be estimated. Alternatively, DBA's valuation can be based on the foreign supplier's internal pricing of the value of the use of the facilities.

7.7 As for the transfer of technology in a development project, DBA uses a fixed procedure for assessing the value of the technology based on the relief-from-royalty method.

7.8 Any changes to a pre-approved development project must be approved by DBA in writing.

7.9 If the conditions specified in the Pre-approval are not met by [NN], DBA may revise or annul the Pre-approval.

#### **Article 8: Reporting on development projects**

8.1 Concerning development projects with companies in Denmark, cf. Article 7, DBA can approve activities that are consistent with the Pre-approval as fulfilment of obligations for industrial co-operation.

8.2 The time frame for release of the approved credits shall follow the milestones set out in DBA's Pre-approval.

8.3 The documentation required shall follow the conditions specified in DBA's Pre-approval. The documentation required to approve milestones in a development project may include, but is not limited to:

- A written confirmation by the CEO of the company in Denmark.
- A statement by an authorised Danish accountant.
- Time logs.
- Test reports/certifications.
- Invoices.

#### **Article 9: Reporting on procurement**

9.1 Each year before 15 February, [NN] must report to DBA about the fulfilment of industrial co-operation obligations for the past year concerning the procurement of defence equipment and defence services from companies in Denmark.

9.2 The report must be submitted electronically in a template provided by DBA.

9.3 DBA can only approve industrial co-operation fulfilling the obligations defined by the Ministry of Defence, cf. Article 6.

9.4 DBA can only approve procurements that pass an assessment of competitiveness. The assessments will be conducted by DBA and based on DBA's screening model for procurement. The DBA's assessment is contingent on receiving the necessary information from the relevant companies in Denmark.

9.5 Concerning the procurement of sales and services from companies in Denmark, DBA can approve invoices concerning defence equipment and defence services in the previous calendar year specified with the information requested in the template provided by DBA.

9.6 Each claim shall be presented in the actual currency applied. DBA shall convert any approved claim into the currency of this ICC using the daily rate from Danmarks Nationalbank (central bank of Denmark) at the invoice date.

#### **Article 10: Sanctions for non-fulfilment**

10.1 If [NN] does not fulfil 50 per cent of the obligation for industrial co-operation before the fulfilment milestone, [NN] must pay a penalty. The penalty shall equal 15 per cent of the difference between 1) the value of the actual, approved industrial co-operation activities carried out by [NN] at the time of the 50 per cent milestone, and 2) the value of the 50 per cent milestone to DBA, cf. Article 4.7.

10.2 If [NN] does not fulfil 100 per cent of the obligations for industrial co-operation before the milestone for 100 per cent fulfilment, [NN] must pay a penalty. The penalty shall equal 15 per cent of the difference between 1) the total value of the approved industrial co-operation at the date of the 100 per cent milestone, and 2) the total obligation for industrial co-operation to DBA.

10.3 If [NN] must pay a penalty, cf. Article 10.1 and 10.2, the penalty must be paid to DBA before one month after the date of DBA's approval of the annual report and specification of the penalty, cf. Article 9.

10.4 The payment of a penalty liquidates an amount of the industrial co-operation obligation equal only to the value of the payment. The residual value of the industrial co-operation shall remain outstanding. The payment of a penalty will extend the fulfilment milestones under Article 4 based on DBA's assessment.

10.5 In case of non-fulfilment of this ICC, and if [NN] fails to fulfil the obligations for industrial co-operation despite 3 written requests from DBA, DBA may exclude [NN] from obtaining new contracts with DALO for a limited period.

10.6 Information about an exclusion of [NN], cf. Article 10.5, may be published by DBA on DBA's website.

### **Article 11: Changes to the ICC**

11.1 Any changes to this ICC shall be agreed upon by both parties. Changes will be included in an Addendum to be signed by both parties.

11.2 Any additional orders placed by DALO at [NN] within the contract referred to in Article 1 will be added to the total obligation under this ICC. Such additional orders will be included in an Addendum to be signed by both parties. The additional orders will be included in the final valuation process described in Article 4.5.

11.3 Each of the parties shall notify the other contracting party immediately in case the party changes its status as a legal person, or is subject to bankruptcy proceedings, restructuring proceedings (initiation of negotiations for an arrangement with creditors) or voluntary liquidation.

### **Article 12: Settling of disputes**

12.1 Any dispute arising from this ICC shall be governed by Danish law. If a dispute is not settled by amicable negotiations, the dispute shall be finally settled by arbitration.

12.2 The venue for arbitration proceedings shall be Copenhagen, Denmark, and the Rules for Trial of Cases by the Danish Institute of Arbitration with three judges shall apply. The language to be used in the arbitral proceedings shall be Danish and English.

### **Article 13: Contact persons**

13.1 The daily contact person in DBA will be:

Title: [Title]  
Name: [Name]  
Address: [Address]  
E-mail: [E-mail]  
Telephone number: [No.]  
DBA main e-mail: [offset@erst.dk](mailto:offset@erst.dk)

13.2 The daily contact person of [NN] will be:

Title: [Title]  
Name: [Name]  
Address: [Address]  
E-mail: [E-mail]  
Telephone number: [No.]

13.3 Changes regarding contact persons shall be notified by e-mail to the other party as soon as possible.



**Article 14: Sharing of information**

14.1 To ensure transparency in the field of industrial co-operation, DBA may publish that [NN] has entered into a contract with DALO in relation to the specific supply of [product/services]. Contact information for [NN], the aggregated amount of [NN]'s outstanding industrial co-operation obligation in Denmark, as well as the aggregated value at any time of [NN]'s pre-approved development projects, may also be published.

14.2 Any other information concerning this ICC shall only be published by DBA upon consultation with [NN].

**Article 15: Attachments**

15.1 Attachments included are:

Attachment A: List of eligible parties, cf. Article 5.

**Article 16: Effect of contract**

16.1 This ICC comes into effect upon the award date of the connected [product/services] supply contract from the US government to [NN].

16.2 [NN] may start claiming industrial co-operation when this ICC comes into effect, cf. Article 16.1.

**Date:**

For the Danish Business Authority

**Date:**

For [NN]

\_\_\_\_\_  
Signature 1

\_\_\_\_\_  
Signature 1

\_\_\_\_\_  
Signature name in block letters

\_\_\_\_\_  
Signature name in block letters

\_\_\_\_\_  
Signature 2

\_\_\_\_\_  
Signature 2

\_\_\_\_\_  
Signature name in block letters

\_\_\_\_\_  
Signature name in block letters

**Attachment A: List of Eligible Parties**

Companies within the [NN] group and companies which are majority-owned by [NN]

- 
- 
- 

Major subcontractors involved in the specific supply of [product/services]

- 
- 
-