

NOTAT

Case

DRAFT

Industrial Co-operation Contract [ACQUISITION]

Article 1: Parties to the contract

1.1. 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] to the Danish Ministry of Defence [or the Defence Acquisition and Logistics Organization (DALO) on behalf of the Ministry of Defence], [RfQ No. / DALO Contract No.].

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 above mentioned 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 if [NN] is selected by the Ministry of Defence as a supplier of [product/services] and enters into an acquisition contract with the Ministry of Defence.

4.2 [NN] shall be obliged to establish industrial co-operation for a percentage equalling [x] per cent of the total contract value of the acquisition contract with the Ministry of Defence.

4.3. After [NN]’s signature of the acquisition contract and based on notification from Ministry of Defence, DBA shall forward an Addendum to [NN], which shall be signed by both parties. The Addendum shall contain information on:

- Contract no. of the acquisition contract with the Ministry of Defence as well as the industrial co-operation percentage required. Amount of the industrial co-operation obligation, which shall be referred to as the “industrial co-operation obligation” for this ICC.
- Length of the time period for fulfilling the industrial co-operation obligation, which shall be referred to as “the fulfilment period”.
- Fulfilment dates for 50 per cent and for 100 per cent of the industrial co-operation obligation, which shall be referred to as the “fulfilment milestones”.

The template for the Addendum is annexed to this ICC as Attachment A. The addendum shall be referred to as the “activation Addendum”.

4.4 When DBA and [NN] have both signed the Addendum cf. Article 4.3, the Addendum becomes part of this ICC. The ICC is activated at the point in time referred to in, Article 16.2.

4.5. Following the signing of the Addendum, cf. Article 4.3, DBA shall forward a case summary to [NN], which will be continuously updated by DBA with all relevant information concerning the supplier’s industrial co-operation obligation.

Article 5: Eligible Parties

5.1. For the purpose of fulfilling this ICC, [NN] may, with the pre-approval of DBA, 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 the Ministry of Defence. Thus, contracts between such other companies and/or subcontractors and companies in Denmark can qualify as industrial cooperation 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 B). Any changes to the list of eligible parties must be pre-approved in writing by DBA.

Article 6: Scope and fulfilment

6.1. The fulfilment of the industrial co-operation obligations under this contract shall meet the obligations which have been defined by the Ministry of Defence in the relevant conditions concerning the acquisition of [product/services].

These obligations must support the development of long-term strategic co-operation between the foreign supplier and companies in Denmark in order to ensure the availability of the necessary competencies and capabilities and/or the security of supply concerning the specific acquisition of defence equipment and defence services or corresponding defence equipment or defence services.

The fulfilment of these obligations must take place within defence equipment and defence services as defined by EU directive 2009/81/EC of 13 July 2009 as amended.

6.2. The specific obligations defined by the Ministry of Defence regarding industrial co-operation for this acquisition of [product/services] are:

- *[To be filled in, including relevant specified strategic areas from the National Defence Industrial Strategy].*

6.3. 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,
- [NN]'s participation in development projects with companies in Denmark that develop competencies and capabilities which are necessary for the protection of Denmark's essential security interests, where [NN] contributes:
 - Transfers of technology, software, etc.
 - Funding of development projects
 - Advisory services
 - Making facilities available

6.4. 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 company in question in Denmark.

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. For this purpose, [NN] must use the application form for development projects provided by DBA, and 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.

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

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

7.4. Concerning development projects executed within companies in Denmark, DBA may approve the use of multipliers if it can be demonstrated that the contribution from [NN] in these cases in a more effective way can meet the obligations defined by the Ministry of Defence, cf. para 6.2. Multipliers may be approved up to a maximum of:

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

Article 8: Reporting on procurement

8.1. 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.

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

8.3. DBA can only approve industrial co-operation fulfilling the obligations defined by the Ministry of Defence, cf. para 6.2. Thus, co-operation with Danish companies concerning goods and/or services outside the scope of defence equipment and/or services cannot qualify as industrial cooperation as defined in this contract.

8.4. 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 prescribed for in the template provided by DBA.

8.5. 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 9: Reporting on development projects

9.1. Concerning development projects with companies in Denmark, DBA can approve activities consistent with the pre-approval of development projects as fulfilment of obligations for industrial co-operation.

9.2. Before approving the fulfilment of obligations for industrial co-operation, DBA may ask the CEO of the involved company in Denmark to confirm in writing the reported sales and development projects.

9.3. Concerning development projects, cf. Article 7, DBA may ask the involved company in Denmark to provide a statement from an authorised Danish accountant concerning the transfers of funds to the company in Denmark. DBA's approval shall be contingent on this statement.

9.4. The release of the approved credit can follow the milestones set out in DBA's pre-approval of a development project.

Article 10: Sanctions for non-fulfilment

10.1. If [NN] does not meet the 50 per cent milestone obligation, [NN] must pay a penalty of 15 per cent of the difference between the value of the actual, approved industrial co-operation activities carried out by [NN] at the time of the 50 per cent milestone, and the value of the 50 per cent milestone to DBA, cf. Article 4.3 and the activation Addendum.

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 of 15 per cent of the difference between the total value of the approved industrial co-operation at the date of the 100 per cent milestone, and the total obligation for industrial co-operation to DBA.

10.3. If [NN] must pay a penalty, cf. paras 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 8.

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 still apply. 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 the Ministry of Defence for a limited period.

10.6. Information about an exclusion of [NN], cf. para 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.

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. Danish law shall govern any dispute arising from this ICC. 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. Daily contact person in DBA is

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

13.2. Daily contact person of [NN] is

Title: [Title]
Name: [Name]

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

13.3 Changes regarding contact persons should 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 the Ministry of Defence in relation to the specific supply of [product/services]. Contact data 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. DBA may share information about this ICC with the Advisory Board for Industrial Co-operation in confidentiality.

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

Article 15: Attachments

15.1.

Attachment A: Template for the activation Addendum, cf. Article 4.3.

Attachment B: List of eligible parties.

Article 16: Effect of contract

16.1. This ICC must be signed at least 10 working days prior to the signature of the relevant acquisition contract between the Ministry of Defence and [NN].

16.2. This ICC shall come into effect upon the date of signature of the acquisition contract between the Ministry of Defence and [NN], referred to in Article 1, and effectuated by the signature of the Addendum, cf. Article 4.3.

16.3. In case [NN] is not awarded the acquisition contract referred to in Article 1, this ICC shall be nullified. DBA shall inform [NN] hereof in writing.

16.4. Upon signature of the acquisition contract with the Ministry of Defence, [NN] may start claiming industrial co-operation.

Date:

For the Danish Business Authority

Date:

For [NN]

Signature 1

Signature name in block letters

Signature 1

Signature name in block letters

Signature 2

Signature name in block letters

Signature 2

Signature name in block letters

Attachment A: Template for the activation Addendum

Addendum no. 1

to the Industrial Co-operation Contract (ICC) between the Danish Business Authority (DBA) and [NN] regarding the acquisition contract for [product/service] to the Danish Acquisition and Logistics Organization (DALO), DALO contract no. [XXX]

Article 1: Effect of contract

- 1.1 The acquisition contract between DALO and [NN] was signed on [DATE] thus putting the ICC into effect, cf. article 16.2 of the ICC.
- 1.2 This addendum forms part of the ICC and adds information regarding the industrial co-operation obligation value, the fulfilment period for the ICC as well the fulfilment milestones, cf. Article 4.3 of the ICC.

Article 2: Obligations, fulfilment period and milestones

- 2.1 Based on DALO's notification of DBA of [DATE], the value of the contract between DALO and [NN] concerning [product/services] is [contract value DKK/currency]. [NN] shall be obliged to establish industrial co-operation for a percentage equalling [x] per cent of the said amount.

[The banked credits under [NN]'s [banking/pre-qualification banking] agreement (DBA case ref. [XXXX]) will be transferred to and deducted immediately against the industrial co-operation obligation under this ICC. The value of banked credits is [value DKK/currency].]

The amount, which shall be referred to as the "industrial co-operation obligation" for the ICC, is thus [IC value DKK/currency].

- 2.2 Any additional orders placed by DALO at [NN] within DALO contract no. [XXX] will be added to the total industrial co-operation obligation under the ICC, following Article 11.2 of the ICC.
- 2.3 [NN] shall have [x] years from the date of signature of the DALO contract no. [XXX] to fulfil this industrial co-operation obligation. This time period shall be referred to as "the fulfilment period".
- 2.4 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 date of signature of the DALO contract no. [XXX].

2. *50 per cent milestone*: The date for 50 per cent fulfilment of the industrial co-operation obligation by [NN] is the first occurring 1st of January following the first half of the fulfilment period, equalling [x] years after the starting date. Effectively this date is the 1st of January [YEAR].
3. *100 per cent milestone*: The date for 100 per cent fulfilment of the industrial co-operation obligation by [NN] is the first occurring 1st of January following the end of the fulfilment period, equalling [x] years after the starting date. Effectively this date is the 1st of January [YEAR].

2.5 Reporting on the 50 per cent and the 100 per cent milestones shall follow the general reporting requirements, cf. Article 8 of the ICC.

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 B: 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]

-
-
-