

SECURITY OF SUPPLY ARRANGEMENT
BETWEEN
THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF
AMERICA
AND
THE MINISTRY OF DEFENSE OF THE KINGDOM OF SPAIN

INTRODUCTION

1. This Security of Supply Arrangement (the "Arrangement") between the Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defense of the Kingdom of Spain, hereinafter referred to collectively as the "Participants";

2. Recognizing that this Arrangement sets forth the principles that the Participants will follow to provide each other with reciprocal priority support;

3. Recognizing the Complementary Agreement Four Defense Industrial Cooperation between the Government of the United States of America and the Government of the Kingdom of Spain, which entered into force July 2, 1982, applies to this Arrangement;

4. Recognizing that this Arrangement is not intended to be binding under international law;

5. Recognizing the benefits of improving cooperation on security of supply for national defense requirements and that it is in the national interest of both Participants to extend existing cooperation by concluding an Arrangement on security of supply;

6. Noting that among the consequences of globalization and industrial restructuring are the creation of transnational defense companies, possible loss of certain domestic industrial capabilities and capacities, and increasing acceptance of mutual interdependence of supplies needed for approved national defense requirements;

7. Recognizing, in this environment, the value of dialogue, consultation, and agreements and arrangements that facilitate the supply of industrial resources and,

8. Recognizing that it is desirable that each Participant develop and/or utilize a Priorities System that enables it to provide for preferential treatment of those previously awarded defense contracts and subcontracts, in compliance with the national law of the participants, that promote national defense to each other;

Have reached the following understandings:

SECTION 1 - DEFINITIONS

9. For the purposes of this Arrangement, the following definitions will be used:

- a. Accredited Spanish Companies - Companies incorporated under Spanish law and accredited under, and participating in, the Code of Conduct.
- b. Code of Conduct - A system of conduct established in writing between the Ministry of Defense of the Kingdom of Spain and the Accredited Spanish Companies to detail and effect the Priorities System in Spain for the purposes of this Arrangement.
- c. U.S. Companies – Companies located in the United States that are subject to the DPAS.

- d. Defense Priorities and Allocations System (DPAS) – The priorities system (15 U.S. Code of Federal Regulations Part 700) administered by U.S. Department of Commerce that implements the priorities and allocations authorities under Title I of the Defense Production Act of 1950, as amended, which have been delegated to the Secretary of Commerce by the President of the United States with respect to industrial resources.
- e. Industrial Resources - Materials, services, and facilities, including construction materials, needed to meet approved defense requirements. This term includes any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service. Industrial Resources does not include commercial end items commonly available in the country of the supplier, nor does it include construction or construction material supplied under construction contracts.
- f. Priorities System - Procedures under which a Participant can assign priority, and provide preferential acceptance and performance of, certain previously awarded contracts (including subcontracts and purchase orders) over other contracts to meet approved defense requirements. As defined here, a Priorities System addresses only the Industrial Resources defined above.
- g. Security of Supply – A nation’s ability to ensure a supply of defense products, materials, and services are sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.

SECTION 2 - MAJOR PRINCIPLES

10. Security of Supply presupposes, where possible, cooperation and coordination, including the mutual acceptance and support of Industrial Resource priorities set by either Participant.

11. Complementary, mutual arrangements between the Participants are important to enable each to acquire the Industrial Resources needed to meet urgent and critical defense requirements in a timely, effective, and efficient manner. Such Priorities Systems are not designed to rectify poor provisioning and should not be used as a substitute for the normal contracting process.

12. Each Participant will provide reciprocal priority support. The Ministry of Defense of the Kingdom of Spain will provide reciprocal priorities support by utilizing a system based on a Code of Conduct to be signed by Accredited Spanish Companies. The U.S. DoD will provide priorities support by utilizing the existing Priorities System that is based on its national law.

13. If so requested, each Participant will, to the greatest extent practicable and with due regard to its international commitments, immediately consult in a spirit of cooperation with the other Participant in order to enable each to:

- a. assign or facilitate the assignment of priority designations to specified defense contracts that are issued by the other Participant, or by contractors, subcontractors, or suppliers working on an approved defense program requirement of the other Participant, to suppliers located in its territory;

- b. facilitate the acceptance and priority performance by participating contractors, subcontractors, or suppliers located in its territory of designated defense contracts as necessary to meet customer delivery requirements;
- c. provide assistance, when requested, to seek to resolve problems in order to ensure timely delivery of Industrial Resources under designated contracts; and
- d. on a reciprocal basis, endeavor to enter into security of supply arrangements, as appropriate, with other defense establishments of members of the North Atlantic Treaty Organization, the European Union, and other alliances or organizations to which the Governments of the Participants are members.

SECTION 3 - ACTIONS

Spain

14. In furtherance of the above principles, the Ministry of Defense of the Kingdom of Spain, acting within its authorities, will invite specific Spanish companies to participate in a Code of Conduct System. Pursuant to the Code of Conduct with such Spanish companies, the Ministry of Defense of the Kingdom of Spain will use its best efforts to ensure that Accredited Spanish Companies will do all they can to provide priority support to U.S. DoD contracts supporting U.S. DoD programs, when requested to do so by the U.S. DoD point of contact identified in Section 4. Priority support will include:

- a. accepting that a contract that the companies participating in the Code of Conduct are entering into, or are participating in, with the U.S. DoD or with one of its contractors, subcontractors, or suppliers, will be accepted as a contract falling under the Code of Conduct (these contracts will be known as "Code of Conduct contracts");
- b. recommendations to insert, when necessary, into any subcontract, provisions designed to ensure due performance of such a Code of Conduct contract;
- c. responding in a timely manner to requests of the U.S. DoD, transmitted through the Ministry of Defense of the Kingdom of Spain, for amendments to the timing of deliveries provided that the customer is willing to compensate the supplier, as required by the relevant contractual provisions; and
- d. informing the Participants of priority conflicts between Code of Conduct contracts and other contracts.

15. The Ministry of Defense of the Kingdom of Spain will notify the U.S. DoD of the Accredited Spanish Companies. The Ministry of Defense of the Kingdom of Spain will consult with Accredited Spanish Companies, their subcontractors, and suppliers as described below, when requested to do so by the U.S. Deputy Assistant Secretary of Defense (Manufacturing and Industrial Base Policy) and/or the involved Accredited Spanish Company.

16. In the event that an Accredited Spanish Company refuses, or intends to refuse, to provide the priorities support requested by the U.S. DoD, the Ministry of Defense of the Kingdom of Spain will, acting within its authorities as detailed in the Code of Conduct, investigate the circumstances surrounding the case. The U.S. DoD will have the opportunity to provide the

Ministry of Defense of the Kingdom of Spain with details of the case. The Accredited Spanish Company will be entitled to respond either in writing or orally. The Ministry of Defense of the Kingdom of Spain will take measures necessary to assess/evaluate the circumstances surrounding the case.

- a. If the Ministry of Defense of the Kingdom of Spain considers that the Accredited Spanish Company has complied with the Code of Conduct, the Ministry of Defense of the Kingdom of Spain will, if requested to do so by the Accredited Spanish Company, notify the U.S. DoD. The Ministry of Defense of the Kingdom of Spain will use its good offices with the U.S. DoD to resolve any remaining difficulties. Participation of the Accredited Spanish Company in the Code of Conduct and the benefits received under the system will not be affected.
- b. If the Accredited Spanish Company is deemed non-compliant with the Code of Conduct, the Ministry of Defense of the Kingdom of Spain will use its good offices to obtain assurance that the Accredited Spanish Company will take such steps considered necessary to rectify the situation and will notify the U.S. DoD. Failure to comply with this request may result in the suspension or termination of the Accredited Spanish Company's participation in the Code of Conduct.

17. In the event that an Accredited Spanish Company cannot satisfy a request to amend a contract falling under the Code of Conduct without incurring a financial loss, and the relevant customer is unwilling to reimburse it, the Accredited Spanish Company may decline the request.

18. The Participants recognize that the U.S. DoD or one of its contractors may require assistance in obtaining priority performance from a Spanish company that is not participating in the Code of Conduct. In such cases, if so requested by the U.S. DoD, the Ministry of Defense of the Kingdom of Spain will inform the Spanish company about the Code of Conduct and will use its best efforts to engage with the Spanish company to help ensure that appropriate priority is given to the request of the U.S. DoD.

United States

19. In furtherance of the above principles, and when requested to do so by the Ministry of Defense of the Kingdom of Spain's point of contact identified in Section 4, the U.S. DoD will use its best efforts to arrange for the Ministry of Defense of the Kingdom of Spain, or Spanish contractors, subcontractors, or suppliers, to use priority ratings on defense contracts placed with U.S. contractors, subcontractors, and suppliers to provide priority support. Priority will be provided in accordance with the U.S. Defense Priorities and Allocations System (DPAS), when applicable to this Arrangement.

20. The U.S. DPAS:

- a. establishes priority designations for contracts performed in the United States and provides preference in performance of those contracts;
- b. defines U.S. industry's responsibilities, setting forth rules to ensure timely delivery of Industrial Resources to meet approved national defense program requirements;
- c. provides procedures to request assistance if production or delivery problems arise;

- d. sets forth compliance procedures ; and,
- e. establishes that failure to comply with the DPAS with regard to the priority rating of contracts can result in civil or criminal penalties under U.S. law.

21. In any case and in accordance with the U.S. DPAS:

- a. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates. U.S. companies receiving rated orders must give them preferential treatment as required by the DPAS regulation.
- b. U.S. companies cannot discriminate against rated orders such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders. U.S. companies are required to treat a rated order supporting a Ministry of Defense of the Kingdom of Spain defense contract in the same manner as a rated order received supporting a U.S. Government contract.
- c. All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date. A U.S. company may not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the U.S. company must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under the DPAS regulation.
- d. U.S. companies who receive rated orders must place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders throughout the procurement chain.
- e. If a U.S. company has accepted a rated order and later finds that shipment or performance will be delayed, the U.S. company must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date.

22. The Office of the Deputy Assistant Secretary of Defense (Manufacturing and Industrial Base Policy) will serve as the point of contact for the Ministry of Defense of the Kingdom of Spain in the event problems arise in the implementation of this Arrangement.

23. The Office of the Deputy Assistant Secretary of Defense (Manufacturing and Industrial Base Policy) will keep the U.S. defense procurement sector informed of all Spanish companies participating in the Code of Conduct System.

Spain and United States

24. All activities under this Arrangement will be carried out in accordance with the respective national laws and regulations and with any other obligations that are binding upon the Participants.

25. The Participants do not intend to place the financial responsibility of implementing this Arrangement in Spain with Spanish industry or in the United States with U.S. industry.

26. In fulfilling their commitments under this Arrangement, the Participants recognize that Accredited Spanish Companies and U.S. Companies may have contracts with other customers, which the Participants do not wish to undermine.

27. Any dispute arising from the interpretation and implementation of this Arrangement, including prioritization of supply, will be resolved by means of consultation between the Participants. Each Participant reserves the right to decide final prioritization requirements within its territory, and the other Participant will give deference to such requirements.

28. Participation in the Code of Conduct System may be offered by Accredited Spanish Companies as an indication of their reliability in supplying Industrial Resources to the U.S. DoD and the contractors supplying it. Likewise, U.S. Companies may offer themselves to being subject to the U.S. DPAS as an indication of their reliability in supplying Industrial Resources to the Ministry of Defense of the Kingdom of Spain and the contractors supplying it.

SECTION 4 – DESIGNATED POINTS OF CONTACT AND REVIEW

Designated Points of Contact

29. Essential to the implementation of this Arrangement and the ability of the Participants to provide priority support to each other when needed is the designation of a point of contact for each Participant. This point of contact serves as the focal point for the implementation and administration of this Arrangement, and is the point of contact to whom all requests for priority designations, priorities assistance, and related issues should be directed for approval.

Kingdom of Spain

- a. Requests for priority designations and/or assistance in Spain should be directed to:

Subdirector General de Inspección, Regulación y Estrategia Industrial de Defensa de la DGAM
Dirección General de Armamento y Material
Calle Raimundo Fernández Villaverde 50
Madrid, 28003

- b. Copies of correspondence related to priority designations and/or assistance in the United States should be provided to:

Subdirector General de Relaciones Internacionales de la DGAM
Dirección General de Armamento y Material
Paseo de la Castellana 109
Madrid, 28046

United States

- a. Requests for priority designations and/or assistance in the United States should be directed to:

The Deputy Assistant Secretary of Defense (Manufacturing and Industrial Base Policy)
Office of Secretary of Defense Acquisition Technology & Logistics
3330 Defense Pentagon
Washington, DC 20301

- b. Copies of correspondence related to priority designations and/or assistance in the United States should be provided to:

Director, Defense Programs Division
Office of Strategic Industries and Economic Security
U.S. Department of Commerce
Room 3876
Washington, DC 20230

30. In the event of any reorganization or reassignment of responsibilities of a point of contact of either Participant, that Participant will notify the other Participant in writing of the new point of contact as soon as practicable. Such notification will not require amendment of this Arrangement.

Spain and United States – Review of Priorities Systems Policies and Procedures

31. Representatives of the Participants will review their established or developing priorities systems policies and procedures at the request of either Participant, and will adjust them and the provisions of this Arrangement as feasible and necessary to conform with evolving national priorities systems and to provide Security of Supply.

SECTION 5 - EFFECTIVE DATE, REVISION, DURATION, AND TERMINATION

32. This Arrangement will become effective on the date of the last signature below. Requests for priority assistance may be made after each of the designated points of contact in Section 4 have acknowledged receipt of notification that the respective internal procedures to effect this Arrangement have been established.

33. This Arrangement may be amended by written consent of the Participants.

34. This Arrangement will remain in effect until either Participant notifies the other Participant in writing of its intent to terminate. Otherwise, this Arrangement will terminate automatically ten years after the effective date of this Arrangement.

35. If either Participant considers it necessary to terminate its participation under this Arrangement, it will notify the other Participant in writing. The Participants will immediately consult to evaluate the consequences of such termination. If satisfactory arrangements cannot be reached, this Arrangement will be terminated six months after the date of notification.

Done in two originals, in the Spanish and English languages, both texts being equally authentic.

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA



Signature

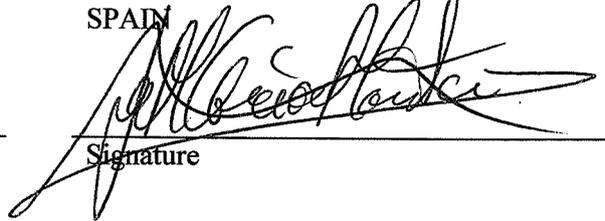
Frank Kendall

Name

Under Secretary of Defense for
Title Acquisition, Technology & Logistics

Washington DC, 19 May 2015
Place and date

DELEGATED BY THE MINISTER OF
DEFENSE OF THE KINGDOM OF
SPAIN



Signature

Juan Manuel García Montaña

Name

Director General of Armament and Materiel
Title

Washington, DC 19 May 2015
Place and date