

SECURITY OF SUPPLY ARRANGEMENT

BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

THE MINISTRY OF DEFENSE OF JAPAN

INTRODUCTION

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 Japan (Japan MOD), hereinafter referred to collectively as the "Participants";

Recognizing that this Arrangement establishes the principles that the Participants intend to follow to provide each other with reciprocal priority support;

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

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 formulating an Arrangement on security of supply;

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;

Recognizing, in this environment, the value of dialogue, consultation, and agreements and arrangements that facilitate the supply of defense articles and defense services;

Recognizing that it is desirable that each Participant develop and/or utilize a Priorities System that enables it to provide for preferential treatment of contracts and subcontracts that promote national defense to each other;

Have reached the following mutual understandings:

SECTION 1 - DEFINITIONS

The following definitions apply to this Arrangement:

- a. Accredited Japanese Companies - Companies incorporated under Japanese law and accredited under, and participating in, the Code of Conduct.
- b. Code of Conduct - A system of conduct established in writing between the Japan MOD and its contractors, subcontractors, and suppliers to detail and effect the Priorities System in Japan for the purposes of this Arrangement.
- c. Controlled Unclassified Information - Unclassified Information that requires safeguarding or dissemination controls pursuant to and consistent with applicable national laws, regulations, or Government-wide policies. It could include Information that has been declassified, but remains controlled.
- d. Defense Priorities and Allocations System (DPAS) - The Priorities System under 15 U.S. Code of Federal Regulations Part 700, administered by the Department of Commerce of the United States of America 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. Information - Knowledge that can be communicated by any means, regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, computer software, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to intellectual property rights.
- g. Priorities System - Procedures under which one Participant, with the assistance of the other Participant, may request a contractor to provide a priority to, including preferential acceptance and performance, of certain 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.
- h. Security of Supply - A nation's ability to ensure a supply of defense products, materials, and services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.

SECTION 2 - PRINCIPLES

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

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

Each Participant should provide reciprocal priorities support, including any necessary exchange of Information relative to such reciprocal priorities support, to the other. The Japan MOD may provide reciprocal priorities support to the U.S. DoD by utilizing a system based on a Code of Conduct to be signed by Accredited Japanese Companies. Similarly, the U.S. DoD may provide reciprocal priorities support by utilizing the existing Priorities System that is based on applicable U.S. law.

A Participant should, to the greatest extent practicable and with due regard to its international commitments, consult with the other Participant upon request to enable each Participant to:

- a. assign or facilitate the assignment of priority, through its Priority Systems, 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. endeavor as appropriate, to enter into Security of Supply arrangements, on a reciprocal basis, with the defense establishments of members of other alliances or organizations to which the Governments of the Participants are members.

SECTION 3 - ACTIONS

Japan MOD

In furtherance of the above principles, the Japan MOD, acting within its authorities, intends to invite specific Japanese companies to participate in a Code of Conduct. Pursuant to the Code of Conduct with Japanese companies, when requested to do so by the U.S. DoD Designated Point of Contact identified in Section 5, the Japan MOD should use its best efforts to ensure that Accredited Japanese Companies do all they can to provide priority support to U.S. DoD contracts supporting U.S. DoD programs, including:

- a. Accepting that a contract it enters into, or is a part of, with the U.S. DoD or with one of its contractors, after approval by the Designated Point of Contact of the Japan MOD, be accepted as a contract falling under the Code of Conduct (these contracts will be known as “Code of Conduct contracts”);
- b. Inserting 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 Japan MOD, for modifications to the timing of deliveries, provided that the customer is able to compensate them, as required by the relevant contractual provisions; and
- d. Informing the Participants of priority conflicts between Code of Conduct contracts and other contracts.

The Japan MOD should notify the U.S. DoD of the Accredited Japanese Companies. The Japan MOD should consult with Accredited Japanese Companies, their subcontractors, and suppliers as described below, when requested to do so by the U.S. Assistant Secretary of Defense (Industrial Base Policy) and/or the involved Accredited Japanese Company. The Japan MOD should use its best efforts to facilitate U.S. DoD requests for priority.

In the event that an Accredited Japanese Company refuses to provide priority support requested by the U.S. DoD, the Japan MOD, acting within its authorities as detailed in the Code of Conduct, should investigate the circumstances surrounding the refusal of such request. The U.S. DoD should have the opportunity to provide the Japan MOD with details of the request. The Accredited Japanese Company may respond either in writing or orally. The Japan MOD should take measures necessary to assess/evaluate the circumstances surrounding the request for priority and subsequent refusal of such request.

- a. If the Japan MOD considers that the Accredited Japanese Company has complied with the Code of Conduct, the Japan MOD, if requested to do so by the Accredited Japanese Company, should notify the U.S. DoD. The U.S. DoD may act on that notification as it considers appropriate. The Japan MOD may use its offices with the U.S. DoD to resolve any remaining difficulties. Participation of the Accredited Japanese Company in the Code of Conduct and the benefits received under the system should not be affected.
- b. If the Accredited Japanese Company is deemed non-compliant with the Code of Conduct, the Japan MOD should use its offices to obtain assurance that the Accredited Japanese Company takes such steps considered necessary to rectify the situation, and notifies the U.S. DoD. Failure to comply with this request may result in the suspension the suspension

or discontinuation of the Accredited Japanese Company's participation in the Code of Conduct.

In the event that an Accredited Japanese 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 Japanese Company may decline the request.

The Participants recognize that the U.S. DoD or one of its contractors may require assistance in obtaining priority performance from a Japanese company that is not participating in the Code of Conduct. In such cases, if so requested by the U.S. DoD, the Japan MOD should request the company join the Code of Conduct, or otherwise provide priority for the U.S. DoD defense order.

U.S. DoD

In furtherance of the above principles, and when requested to do so by the Japan MOD Designated Point of Contact identified in Section 5, the U.S. DoD should arrange for the Japan MOD, or Japanese contractors, subcontractors, or suppliers, to use priority ratings on defense contracts placed with U.S. contractors, subcontractors, and suppliers. Priority performance should be provided in accordance with the U.S. DPAS. 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, establishing 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; and
- d. Determines compliance procedures.

The Office of the Assistant Secretary of Defense (Industrial Base Policy) should keep the U.S. defense procurement community informed of all Japanese Companies participating in the Code of Conduct System.

Japan MOD and U.S. DoD

All activities under this Arrangement should be carried out in accordance with the respective national laws and regulations of the Participants' Governments and subject to their respective budgetary appropriations.

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

In fulfilling their mutual understandings under this Arrangement, the Participants recognize that Accredited Japanese and U.S. companies may have contracts with other customers, which the Participants do not intend to undermine.

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

Participation in the Code of Conduct System may be offered by Accredited Japanese 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 being subject to the U.S. DPAS as an indication of their reliability in supplying Industrial Resources to the Japan MOD and the contractors supplying it.

SECTION 4 – EXCHANGE OF INFORMATION

No classified Information may be transferred under this Arrangement. Transfer of Information should be consistent with the furnishing Participant's applicable export control laws and regulations, defense priority and allocation laws and regulations, as well as other laws and regulations pertaining to the protection of Information. Information should be furnished without charge and used for information and evaluation purposes only.

Controlled Unclassified Information should be transferred only through official government-to-government channels. The Designated Points of Contacts identified in Section 5 should ensure that any Information provided in accordance with this Arrangement is used only by the Participants and then only for the purposes for which it has been provided. Information may not to be used for any other purpose without the prior written consent of the furnishing Participant.

SECTION 5 – DESIGNATED POINTS OF CONTACT AND REVIEW

Designated Points of Contact

Essential to the implementation of this Arrangement and the ability of the Participants to provide priority support to each other when needed are the designation of Designated Points of Contact for the Participants. The Designated Points of Contact serve as the focal point for the implementation and administration of this Arrangement, and are the points of contact to whom all requests for priority support and related issues should be directed for approval.

Japan MOD

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

Director General, Department of Equipment Policy
Acquisition, Technology and Logistics Agency, Japan Ministry of Defense
5-1 Ichigayahonmura-Cho
Shinjuku-Ku, Tokyo, 162-8870

U.S. DoD

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

The Assistant Secretary of Defense (Industrial Base Policy)
Office of the Under Secretary of Defense Acquisition & Sustainment
3330 Defense Pentagon
Washington, DC 20301

- b. Copies of correspondence related to priority support 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

In the event of any reorganization or reassignment of responsibilities of a Designated Point of Contact of either Participant, that Participant should notify the other Participant in writing of the new Designated Point of Contact as soon as practicable. Such notification does not require a modification of this Arrangement.

Japan MOD and U.S. DoD – Review of Priorities Systems Policies and Procedures

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

SECTION 6 - DATE OF COMMENCEMENT, MODIFICATION, DURATION, AND DISCONTINUATION

This Arrangement commences 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 5 have acknowledged receipt of notification that the respective internal procedures to effect this Arrangement have been established.

This Arrangement may be modified by written consent of the Participants.

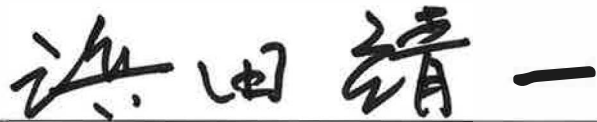
If either Participant considers it necessary to discontinue its participation under this Arrangement, it will notify the other Participant in writing. The two Participants should immediately consult to evaluate the consequences of such discontinuation. If satisfactory arrangements cannot be reached on the way forward, this Arrangement discontinues six months after the date of notification.

Signed in duplicate in the English language.

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA

FOR THE MINISTRY OF DEFENSE OF JAPAN


Signature


Signature

Lloyd J. Austin III
Name

HAMADA, Yasukazu
Name

Secretary of Defense
Title

Minister of Defense
Title

Pentagon, Washington, D.C.
Place and Date

JAN 12 2023

Pentagon, Washington, D.C.
Place and Date

JAN 12 2023