

Figure C5.F22. Basic Retransfer Assurances of Participating Nations

Basic Retransfer Assurances and Letter of Offer and Acceptance (LOA) Standard Terms and Conditions for Participating Nations

This Letter of Offer and Acceptance (LOA) is implemented under SAMM [Section C5.7.](#), guidance for Lead Nation Procurements. Transferees agree to be bound by these Standard Terms and Conditions for Transferees under Lead Nation Procurement for LOA XX-X-XXX. Transferees are defined as a North Atlantic Treaty Organization (NATO) organization or nations that are named in this LOA, other than the Lead Nation. The Lead Nation is defined as a NATO organization or nation that is bound by all Standard Terms and Conditions of this LOA, including but not limited to [Part 4](#), and other special notes.

[Country Name] _____
Transferee

Sections:

1. Conditions - USG Obligations
2. Conditions - General Transferee Agreements
3. Indemnification and Assumption of Risks
4. Financial Terms and Conditions
5. Transportation and Discrepancy Provisions
6. Warranties
7. Amendment and Dispute Resolution
8. Subsequent Retransfers Among the Lead Nation and Transferees

1. Conditions - United States Government Obligations

1. The USG may incorporate Anti-Tamper (AT) protection into weapon systems and components that contain Critical Program Information (CPI). The AT protection will not affect operational capability, maintenance, or logistics provided that all terms delineated in the system technical documentation are followed.
2. Under unusual and compelling circumstances, when the national interest of the United States requires, the USG reserves the right to cancel or suspend all or part of this LOA at any time prior to the delivery of defense articles or performance of defense services. The USG will be responsible for termination costs of its suppliers resulting from cancellation or suspension under this section. Termination by the USG of its contracts with its suppliers, other actions pertaining to such contracts, or cessation of deliveries or performance of defense services are not to be

construed as cancellation or suspension of this LOA itself under this section.

3. U.S. personnel performing defense services under this LOA will not perform combat duties, including duties relating to training and advising that may engage U.S. personnel in combat activities outside the United States in connection with the performance of these defense services.
4. The assignment or employment of U.S. personnel for the performance of this LOA by the USG will not take into account race, religion, national origin, or sex.
5. Unless otherwise specified, this LOA may be made available for public inspection consistent with the national security of the United States.

2. Conditions - General Transferee Agreements

1. The Transferee agrees, except as may otherwise be mutually agreed in writing by the Transferee and the USG, to use the defense articles sold hereunder only:
 - a) for internal security;
 - b) for legitimate self-defense;
 - c) for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons;
 - d) to permit the Transferee to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the Transferee to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security;
 - e) for the purpose of enabling foreign military forces in less developed countries to construct public works and to engage in other activities helpful to social and economic development;
 - f) for purposes specified in any Mutual Defense Assistance Agreement between the USG and the Transferee; or
 - g) for purposes specified in any other bilateral or regional defense agreement to which the USG and the Transferee are both parties.
2. The Transferee agrees that the USG retains the right to verify reports that defense articles and services have been used for purposes not authorized or for uses not consented to by the USG.
3. The Transferee will not transfer title to, or possession of, the defense articles, components and associated support materiel, related training or other defense services (including plans, specifications, or information), or technology furnished under this LOA to anyone who is not an officer, employee, or agent of the Transferee (excluding transportation agencies) or of the USG, and shall not use or permit their use for purposes other than those authorized, unless the written consent of the USG has first been obtained, except as permitted under Condition 8. For subsequent retransfers among the Lead Nation and Transferees, the Transferee will ensure, by all means available to it, respect for proprietary rights in any items and any plans, specifications, or information furnished, whether protected by patents

or trade secrets or not. The Transferee also agrees that the defense articles offered will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus, and recognizes that the U.S. Congress is required to be notified of any substantial evidence that the defense articles sold under this LOA have been used in a manner that is inconsistent with this provision.

4. The Transferee agrees not to divert articles and services received under this LOA for purposes or uses other than those for which it was furnished, including, but not limited to, any use that could contribute to the acquisition, design, development, or production of a "missile," as defined in section 74 of the Arms Export Control Act (AECA) ([22 U.S.C. 2797c](#)). The items will be used only for the purposes stated, and such use will not be modified nor the items modified or replicated without the prior consent of the USG; neither the items nor replicas nor derivatives thereof will be retransferred without the consent of the USG. The USG has the right to take action under section 73(a) of the AECA ([22 U.S.C. 2797b\(a\)](#)) in the case of any export or transfer of any Missile Technology Control Regime (MTCR) equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent.
5. The Transferee will maintain the security of such article or service and will provide substantially the same degree of security protection afforded to such article or service by the USG. To the extent that items, including plans, designs, specifications, technical data, or information furnished in connection with this LOA may be classified by the USG for security purposes, the Transferee certifies that it will maintain a similar classification and employ measures necessary to preserve such security, equivalent to those employed by the USG and commensurate with security agreements between the USG and the Transferee. If such security agreements do not exist, the Transferee certifies that classified items will be provided only to those individuals having an adequate security clearance and a specific need to know in order to carry out the LOA program and that it will promptly and fully inform the USG of any compromise, or possible compromise, of U.S. classified material or information furnished pursuant to this LOA. The Transferee further certifies that if a U.S. classified item is to be furnished to its contractor pursuant to this LOA:
 - a) the item will be exchanged through official USG channels,
 - b) the specified contractor will have been granted a facility security clearance by the Transferee at a level at least equal to the classification level of the U.S. information involved,
 - c) all contractor personnel requiring access to such items will have been cleared to the appropriate level by the Transferee, and
 - d) the Transferee is also responsible for administering security measures while the item is in the contractor's possession.

If a commercial transportation agent is to be used for shipment, the Transferee certifies that such agent has been cleared at the appropriate level for handling

classified items. These measures will be maintained throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Transferee if the classification is changed.

6. Pursuant to section 505 of the Foreign Assistance Act (FAA) of 1961, as amended ([22 U.S.C. 2314](#)), and section 40A of the AECA ([22 U.S.C. 2785](#)), the USG will be permitted, upon request, to conduct End Use Monitoring (EUM) verification with respect to the use, transfer, and security of all defense articles and defense services transferred under this LOA. The Transferee agrees to permit scheduled inspections or physical inventories upon USG request, except when other means of EUM verification shall have been mutually agreed. Upon request, inventory and accountability records maintained by the Transferee will be made available to U.S. personnel conducting EUM verification.
7. The USG is not a party to any offset agreements/arrangements that may be required by the Transferee in relation to the sales or transfers made in this LOA. The USG assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs. To the extent that the Transferee requires offsets in conjunction with this sale or transfer, offset costs may be included in the price of contracts negotiated under this LOA. Such costs will be determined or deemed to be reasonable in accordance with [SUBPART 225.77 of the Defense Federal Acquisition Regulation Supplement \(DFARS\)](#). If the Transferee desires visibility into these costs, the Transferee should raise this with the contractor during negotiation of offset arrangements.
8. The Transferee acknowledges that it will receive through this LOA only defense articles that are approved as appropriate for release and use for all other transferees.
9. The Transferee agrees that it will not share title, ownership, or possession of any defense article acquired through this LOA with any other Transferee, other foreign government, international organization, or other third party.

3. Indemnification and Assumption of Risks

1. The Transferee recognizes that the USG will procure and furnish the items described in this LOA on a non-profit basis for the benefit of the Lead Nation Purchaser and Transferee. The Transferee therefore undertakes to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) that might arise in connection with this LOA because of:
 - a) Injury to or death of personnel of the Transferee or third parties;
 - b) Damage to or destruction of (a) property of DoD furnished to the Transferee or suppliers specifically to implement this LOA, (b) property of the Transferee (including the items ordered by the Transferee pursuant to this LOA, before or after passage of title to the Transferee), or (c) property of third parties; or
 - c) Infringement of intellectual property or technical data rights.
2. Subject to express, special contractual warranties obtained for the Transferee, the

Transferee agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of, loss or damage to:

- a) The Transferee's property (including items procured pursuant to this LOA, before or after passage of title to Transferee); and
- b) Property of DoD furnished to suppliers to implement this LOA, to the same extent that the USG would assume for its property if it were procuring for itself the items being procured.

4. Financial Terms and Conditions

- 1. Any articles, equipment, materials, supplies, goods, or other commodities purchased with USG assistance funds appropriated and allocated pursuant to foreign operations, export financing, and related-programs appropriations acts in support of this LOA, whether provided directly by the USG or through procurement contracts or otherwise in support of this LOA, will be exempt from all value-added taxes and customs duties imposed by the recipient country or the full amount of the tax or customs duty must be reimbursed by the Transferee. This exemption is in addition to any other tax exemption provided by the Transferee through separate agreements or other means.

5. Transportation and Discrepancy Provisions

- 1. The USG agrees to deliver and pass title to the Lead Nation Purchaser at the initial point of shipment unless otherwise specified in this LOA. With respect to items procured for sale to the Lead Nation Purchaser, this will normally be at the manufacturer's loading facility; with respect to items furnished from USG stocks, this will normally be at the U.S. depot. Articles will be packed, crated, or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified as a place other than the initial point of shipment, the supplying U.S. department or agency will arrange movement of the articles to the authorized delivery point as a reimbursable service, but will pass title at the initial point of shipment. The USG disclaims any liability for damage or loss to the items incurred after passage of title to the Lead Nation Purchaser irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System (DTS).
- 2. The Transferee agrees to accept [DD Form 250](#) or other delivery document from the Lead Nation Purchaser as evidence that title has passed and items have been delivered. [Standard Form 364 \(Supply Discrepancy Report \(SDR\)\)](#) will be used in submitting claims to the USG for damage, item deficiency, improper identification, improper documentation, or non-performance of defense services. The [Standard Form 364](#) will be submitted promptly by the Transferee to the Lead Nation Purchaser. The USG will disallow any claim, including a claim for nonperformance, received more than one year after initial delivery to the Lead Nation Purchaser or more than one year after initial passage of title to the defense articles to the Lead Nation Purchaser, whichever comes first, or received more than one year after the end of the scheduled period of performance for defense services, unless the USG

determines that unusual and compelling circumstances involving latent defects justify consideration of the claim. The USG will not accept claims from Transferees for non-shipment or non-receipt of any defense articles or equipment. The Transferee agrees to return discrepant articles to the USG's custody through the Lead Nation Purchaser promptly in accordance with any direction provided by the USG or the Lead Nation Purchaser. The Transferee may submit SDRs for documentation purposes regardless of the dollar value, but only SDRs valued at \$200 or more will be reviewed for possible compensation regardless of the type of discrepancy. This minimum value includes the value of the item plus any transportation and handling costs.

6. Warranties

1. The USG does not warrant or guarantee any of the items sold pursuant to this LOA except as provided in [SAMM Section 6.1.1](#). DoD contracts include warranty clauses only on an exception basis. If requested by the Lead Nation Purchaser, the USG will, with respect to items being procured, and upon timely notice, attempt to obtain contract provisions to provide the requested warranties. The USG further agrees to exercise, upon the Lead Nation Purchaser's request, rights (including those arising under any warranties) that the USG may have under contracts connected with the procurement of these items. Additional costs resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, will be charged to the Lead Nation Purchaser.
 - a) The USG warrants the title of items sold to the Lead Nation Purchaser hereunder, but it makes no warranties other than those set forth herein. In particular, the USG disclaims liability resulting from infringement of intellectual property or technical data rights occasioned by the use or manufacture outside the United States by or for the Transferee of items supplied hereunder.
 - b) The USG agrees to exercise warranties on behalf of the Lead Nation Purchaser to ensure, to the extent provided by the warranty, replacement or correction of such items found to be defective, when such materiel is procured for the Lead Nation Purchaser.
2. Unless the condition of defense articles is identified to be other than serviceable (for example, "as-is"), DoD will repair or replace at no extra cost defense articles supplied from DoD stocks that are damaged or found to be defective in respect to materiel or workmanship when it is established that these deficiencies existed prior to passage of title to the Lead Nation Purchaser, or found to be defective in design to such a degree that the items cannot be used for the purpose for which they were designed. Qualified representatives of the USG and of the Lead Nation Purchaser will agree on the liability hereunder and the corrective steps to be taken.

7. Amendments and Dispute Resolution

1. This LOA is subject to U.S. law and regulation, including U.S. procurement law.
2. The USG and the Transferee agree to resolve any disagreement regarding this LOA by consultations and not to refer any such disagreement to any international

tribunal or third party for settlement.

3. The Transferee agrees that the USG will not negotiate, manage, or enforce any arrangement that the Transferee has with the Lead Nation, including, but not limited to, any financial arrangements. The Transferee will not use this LOA or any contracts carrying out this LOA as a means to implement any financial relationship with the Lead Nation.
4. Amendments to the LOA. Any change to the Lead Nation Purchaser or any addition to the initial Transferees must be approved by the USG. Other amendments to the LOA must be approved by the Lead Nation Purchaser. The USG will determine whether transferees must approve any other amendment to the LOA.

8. Subsequent Retransfers Among the Lead Nation and Transferees

1. The Transferee agrees, with respect to any subsequent retransfer of defense articles to it by the NATO Organization or countries named on the current version of Foreign Military Sales (FMS) Case XX-X-XXX, that it shall not, unless the prior written consent of the Government of the United States of America has been first obtained.
 - a) Permit any use of defense articles originally provided on FMS Case XX-X-XXX, including related data and information, by anyone not an officer, employee, or agent (excluding transportation agencies) of the Transferee; and
 - b) Transfer or permit any officer, employee, or agent (excluding transportation agencies) of the Transferee to transfer such commodity, including related data and information, by gift, sale, or otherwise to anyone other than the NATO Organization or countries named on the current version of FMS Case XX-X-XXX.
 - c) That the Transferee will seek advance consent from the U.S Department of State (State) prior to any subsequent retransfer to a NATO member country or country identified in Section 3(d)(5) of the AECA and named on the current version of FMS Case XX-X-XXX if the original acquisition value of the articles being retransferred is \$25M or more of Major Defense Equipment (MDE) or \$100M or more in total value, or prior to any subsequent retransfer to a NATO Organization or non-NATO member country named on the current version of FMS Case XX-X-XXX if the original acquisition value of the articles being retransferred is \$14M of MDE or \$50M in total value. For retransfers below these thresholds, advance consent is not required. In each case, the Transferring NATO Organization or country will report all retransfers to the Lead Nation in order for the Lead Nation to provide the information by email to PM_RSAT-TPT@state.gov in a quarterly report to the State by the 15th of each month following the end of each quarter in which a retransfer has occurred.
2. That the Transferee will maintain the security of such commodity while in its possession, including related data and information, and will provide substantially the same degree of security protection afforded by the Government of the United States of America.
3. That, unless prior written consent of the Government of the United States of America has first been obtained, the Transferee will use such commodity, including

related data and information, solely for internal security, for legitimate self-defense, for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons, to permit the Transferee to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the Transferee to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security.

For and on behalf of [Name],

Signature

Date

Typed Name and Title

Agency