ACQUISITION AND CROSS-SERVICING AGREEMENT
(US-SZ-01)
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND
THE SWISS FEDERAL DEPARTMENT OF DEFENSE, CIVIL PROTECTION, AND SPORTS

04-418

PREAMBLE

The Department of Defense of the United States of America and The Swiss Federal Department of Defense, Civil Protection, and Sports, hereinafter referred to as the "Parties," desiring to further the interoperability, readiness, and effectiveness of their respective military forces through increased logistic cooperation, have resolved to conclude this Acquisition and Cross-Servicing Agreement (the "Agreement").

ARTICLE I
PURPOSE

This Agreement is entered into for the purpose of establishing basic terms, conditions, and procedures to facilitate the reciprocal provision of "logistic support, supplies, and services" as that term is defined in Article III of this Agreement.

ARTICLE II
APPLICABILITY

1. This Agreement is designed to facilitate reciprocal logistic support between the Parties to be used primarily during combined exercises, training, deployments, operations, or other cooperative efforts, and for unforeseen circumstances or exigencies in which one of the Parties may have a need of logistic support, supplies, and services.

2. This Agreement applies to the reciprocal provision of logistic support, supplies and services to the military forces of one Party by the other Party in return for either cash payment or the reciprocal provision of logistic support, supplies, and services to the military forces of the other Party.

3. Acquisitions and transfers under this Agreement and any implementing arrangements executed hereunder are made subject to the availability of appropriations for such purposes and acquisition and transfer limitations established by law and regulations of the United States and Switzerland.

4. The following items are not eligible for transfer under this Agreement and are specifically excluded from its coverage:

a. weapon systems;

b. major end items of equipment (except for the lease or loan of general purpose vehicles and other nonlethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List);

c. initial quantities of replacement and spare parts associated with the initial order quantity of major items of organizational equipment covered in tables of allowances and distribution, tables of organization and equipment, and equivalent documents.

5. Also excluded from transfer by either Party under this Agreement are any items the transfer of which are prohibited by its laws or regulations. Specifically excluded from transfer by United States laws and regulations under this Agreement are the following:

a. guided missiles;
b. naval mines and torpedoes;
c. nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition;
d. cartridge and aircrew escape propulsion system (AEPS) components;
e. chaff and chaff dispensers;
f. guidance kits for bombs or other ammunition;
g. chemical ammunition (other than riot control agents);
h. source, byproduct, or special nuclear materials or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (title 42, United States Code, section 2011, *et seq.*).

ARTICLE III
DEFINITIONS

As used in this Agreement and in any implementing arrangements that provide specific procedures, the following definitions apply:

a. Logistic support, supplies and services. Food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communication services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. Such term also includes the temporary use of general-purpose vehicles and other nonlethal items of military equipment, which are not designated as significant military equipment on the U.S. Munitions List.

b. Implementing Arrangement. A written supplementary agreement related to the specific acquisition and/or transfer of logistic support, supplies, and services, which sets forth additional details, terms and conditions which further define and carry out this Agreement.

c. Order. A written request, in an agreed format and signed by an authorized individual, for the provision of specific logistic support, supplies, and services pursuant to this Agreement and any applicable implementing arrangement.

d. Invoice. A document from the supplying Party which requests reimbursement or payment for specific logistic support, supplies, and services rendered pursuant to this Agreement and any applicable implementing arrangement.

e. Transfer. Selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing logistic support, supplies, and services under the terms of this Agreement.

f. Replacement-in-kind. An exchange transaction conducted under this Agreement in which the receiving Party replaces logistic support, supplies, and services which it has received with logistics, support, and services of an identical, or substantially identical, nature.

g. Equal Value Exchange. An exchange transaction conducted under this Agreement in which the receiving Party replaces logistic support, supplies, and services which it has received with logistic support, supplies, and services of an equal monetary value.

h. United States Munitions List. U.S. Defense articles and defense services that are designated by the U.S. President under the Arms Export Control Act as subject to export and import controls. The U.S. Munitions list is published in Part 121 of Title 22 of the U.S. Code of Federal Regulations

ARTICLE IV
TERMS AND CONDITIONS

1. Each Party shall make its best efforts, consistent with national priorities, to satisfy requests from the other Party under this Agreement for logistic support, supplies, and services. When an implementing arrangement contains a stricter standard for satisfying such requests, it shall apply over this paragraph.

2. Transfer of logistic support, supplies, and services between the Parties shall be accomplished by Orders issued and accepted under this Agreement and any applicable implementing arrangements.

3. An Order may be issued against this Agreement alone without an implementing arrangement only when logistic support, supplies, or services are urgently required, provided the Parties (or their designated representatives) agree.

4. Headquarters, U.S. European Command (HQ USEUCOM), the Headquarters of other U.S. Unified Commands, or their designated subordinate commands may negotiate implementing arrangements under this Agreement on behalf of the U.S. Department of Defense. Implementing arrangements may be negotiated on behalf of the Swiss Federal Council by the Chief of the Federal Department of Defense, Civil Protection and Sports . Implementing arrangements must identify points of contact (POCs) and their specific authorizations or limitations.

5. When operations are conducted outside USEUCOM, or with U.S. forces from another unified command, the respective USEUCOM Service Components will assist in processing the requirement with Switzerland.

6. Whether the transfer is accomplished by an Order under this Agreement alone or in conjunction with an implementing arrangement, the documents taken together must set forth all necessary details, terms, and conditions to carry out the transfer as listed in the Annex.

7. In all transactions involving the transfer of logistic support, supplies, and services, the receiving Party agrees that such logistic support, supplies, and services shall not be re-transferred, either temporarily or permanently, by any means to other than the forces of the receiving Party without prior written consent of the supplying Party.

ARTICLE V
REIMBURSEMENT

1. For any transaction undertaken pursuant to this Agreement, the Parties shall negotiate for payment either in cash in the currency specified by the supplying Party (a "reimbursable transaction") or in equal value to be defined in monetary terms only (an "exchange transaction"). The receiving Party shall pay the supplying Party under the conditions set out in either paragraph 1a or 1b of this Article. Both parties shall maintain records of all transactions.

a. Reimbursable Transaction. The supplying Party shall submit Invoices to the receiving Party after delivery or performance of the logistic support, supplies, and services. Bills shall be accompanied by necessary support documentation and will normally be paid within 30 days of the date received. Each Party, however, shall provide for the final payment of outstanding accounts not less frequently than every 3 months. In pricing a reimbursable transaction, the Parties agree to the following reciprocal pricing principles:

(1) In the case of specific acquisition by the supplying Party from its contractors for a receiving Party, the price shall be no less favorable than the price charged the armed forces by the contractor of the supplying Party for identical items or services, less any amounts excluded by Article VI of this Agreement. The price charged may take into account differentials due to delivery schedules, points of delivery, and other similar considerations.

(2) In the case of transfer from the supplying Party's own resources, the supplying Party shall charge the same price it charges its own forces for identical logistic support, supplies, and services, as of the date the Order is accepted, less any amounts excluded by Article VI of this Agreement. In any case where a price has not been established or charges are not made for one's own forces, the Parties shall agree on a price in advance, excluding charges that are precluded under these reciprocal pricing principles.

b. Exchange Transaction. Both Parties shall maintain records of all transactions. The receiving Party shall pay by transferring to the supplying Party logistic support, supplies, and services that are agreed between the Parties to be of equal monetary value to the logistic support, supplies, and services delivered or performed by the supplying Party. If the receiving Party does not complete the exchange within the terms of a replacement schedule agreed to or in effect at the time of the original transaction, within time frames which may not exceed one (1) year from the date of the original transaction, the transaction shall be deemed reimbursable and governed by paragraph 1a above, except that the price shall be established using actual or estimated prices in effect on the date payment would otherwise have been due. Exchange transactions may be by replacement-in-kind (RIK) or equal-value-exchange (EVE).

c. Establishment of Price or Value. Consistent with reciprocal pricing principles, the following provisions regarding establishment of price or value shall apply: The price established for inventory stock materiel will be the supplying Party's stock list price. The price for new procurement will be the same price paid to the contractor or vendor by the supplying Party. The price for in-shop repair or technical assistance services rendered will be based on only the direct costs associated with providing the services, for example, supply stock-list prices and actual labor charges. The price for services rendered by military personnel or full-time government employees of the Parties in a temporary duty status will be based on incremental costs, such as per diem and transportation. Prices charged will exclude all taxes and duties which the receiving Party is exempted from paying under other agreements which the Parties have concluded. Upon request, the Parties agree to provide information sufficient to verify that reciprocal pricing principles have been followed and that prices do not include waived or excluded costs.

2. When a definitive price for the Order is not agreed upon in advance, the Order, pending agreement on final price, shall set forth a maximum limitation of liability for the Party ordering the logistic support, supplies, and services. The Parties shall then promptly enter into negotiation to establish the final price.

3. The Invoice shall contain an identification of the applicable implementing arrangement or in the absence thereof, refer to this Agreement and shall be in the format set forth by the supplying organization. The Invoice shall be accompanied by evidence of receipt by the Party receiving the logistic support, supplies, and services.

4. The Parties agree to provide documentation to verify, when applicable, that reciprocal pricing principles have been followed and prices do not include waived or excluded costs. Points

of contact will be identified on each implementing arrangement to validate expenses or research charges on an as-required basis.

5. No provision in this Agreement shall serve as a basis for an increased charge for logistic support, supplies, and services, if such logistic support, supplies, and services would be available without charge or for a lesser charge under the terms of another agreement.

ARTICLE VI
WAIVED OR EXCLUDED COSTS

The provisions of any tax and customs relief agreements applicable to the acquisition of materials, services, supplies, and equipment by the receiving Party shall apply to logistic support, supplies, and services transferred under this Agreement. The Parties shall cooperate to provide proper documentation to maximize tax and customs relief. The supplying Party shall inform the ordering Party whether the price charged for logistic support, supplies, or services includes taxes or customs duties that the supplying Party cannot recover. In such cases, the price paid by the receiving Party shall include only those taxes or customs duties not recoverable by the supplying Party.

ARTICLE VII
INTERPRETATION AND REVISION

1. Any disagreements regarding the interpretation or application of this Agreement, any implementing arrangements, or transactions executed hereunder shall be resolved through consultation between the Parties and shall not be referred to any international tribunal or third party for settlement.

2. Either Party may, at any time, request revision of this Agreement by giving the other Party 90 days' advance written notice. In the event such a request is made, the two Parties shall promptly enter into negotiations. This Agreement may only be amended by written agreement between the Parties.

ARTICLE VIII
EFFECTIVE DATE AND TERMINATION

This Agreement, which consists of a Preamble, Articles I-VIII, and an Annex, shall become effective on the date of the final signature. It shall remain in effect for a period of ten years and shall be automatically extended annually thereafter unless terminated. Either Party may terminate this Agreement at any time by giving the other Party written notice, at least 90 days in advance, of its intent to terminate this Agreement. Notwithstanding termination of this Agreement, all reimbursement obligations incurred pursuant to its terms shall remain binding on the responsible Party until paid.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this agreement.

DONE in duplicate in the English language.

FOR THE DEPARTMENT OF DEFENSE OF THE UNITED STATES

Elizabeth A Harrell

ELIZABETH A. HARRELL
Brigadier General, USAF
Director of Logistics and Security Assistance

23 March 2001
Date

Stuttgart Germany
Location

FOR THE SWISS FEDERAL DEPARTMENT OF DEFENSE, CIVIL PROTECTION, AND SPORTS

H.R. Fehrlin

HANSRUEDI FEHRLIN
Lieutenant General
Commander In Chief,
Swiss Air Force

[illegible]
Date

Bern, Switzerland
Location

ANNEX

MINIMUM ESSENTIAL DATA ELEMENTS

1 Implementing Arrangements or support Agreement if no Implementing Arrangement

2 Date of Order

3 Designation and address of office to be billed

4 Numerical listing of stock numbers of items, if any

5 Quantity and description of material/services requested

6 Quantity furnished

7 Unit of measurement

8 Unit price in currency of billing country

9 Quantity furnished (6) multiplied by unit price (8)

10 Currency of billing country

11 Total Order amount expressed in currency of billing country

12 Name (typed or printed), signature and title of authorized ordering or requisitioning representative

13 Payee to be designated on remittance

14 Designation and address of office to receive remittance

15 Recipient's signature acknowledging service or supplies received on the Order or requisition or a separate supplementary document

16 Document number of Order or requisition

17 Receiving organization

18 Issuing organization

19 Transaction type

20 Fund citation or certification of availability of funds when applicable under Parties' procedures

21 Date and place of original transfer; in the case of an exchange transaction, a replacement schedule including time and place of replacement transfer

22) Name, signature and title of authorized acceptance official

23 Additional special requirements, if any, such as transportation, packaging, etc.

24 Limitation of government liability, if applicable.

25 Name, signature, date and title of supplying Party official who actually issues supplies or services.