

DEFENSE

Acquisition and Cross-Servicing

Agreement Between the
UNITED STATES OF AMERICA
and POLAND

Signed at Warsaw November 22, 1996

with

Annexes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

POLAND

Defense: Acquisition and Cross-Servicing

*Agreement signed at Warsaw November 22, 1996;
Entered into force November 22, 1996.
With annexes.*

**ACQUISITION AND CROSS-SERVICING AGREEMENT
(US-PO-01)
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND
THE MINISTRY OF NATIONAL DEFENSE
OF THE REPUBLIC OF POLAND**

PREAMBLE

THIS AGREEMENT, by and between the Department of Defense of the United States of America and the Ministry of National Defense of the Republic of Poland (hereinafter referred to as the Parties);

NOW, THEREFORE, the Parties mutually agree as follows:

**ARTICLE I
PURPOSE**

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

**ARTICLE II
SCOPE**

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 the recipient may have a need of logistic support, supplies, and services.
2. This Agreement applies to the reciprocal provision of charged logistic support, supplies, and services to the military forces of one Party by the other Party. Reimbursement shall be made in accordance with Article V.
3. Acquisitions and transfers under this Agreement and any implementing arrangements executed hereunder are made subject to the availability of appropriations and acquisition and transfer limitations established by the laws of the United States and the Republic of Poland.

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

1) weapon systems

2) major armaments and military equipment end items (except for the lease or loan of general purpose vehicles and other items of nonlethal military equipment not designated as part of the United States Munitions List);

3) sets 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 other documents of this type.

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 and Republic of Poland laws and regulations under this Agreement are the following:

1) guided missiles;

2) naval mines and torpedoes;

3) nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition;

4) cartridge and air crew escape propulsion system (AEPS) components;

5) chaff and chaff dispensers;

6) guidance kits for bombs or other ammunition;

7) chemical ammunition (other than riot control agents);

8) source, byproduct, or special nuclear materials or any other materiel, 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

1. As used in this Agreement and in any Implementing Arrangements which provide specific procedures, the following definitions apply:

1) 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 thereto), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and airport and seaport services. Such term also includes the temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List.

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

3) Order. An order, when in proper form and signed by an authorized official (see Article IV, paragraph 2 below), is a request for the provision of specific logistic support, supplies, and services pursuant to this Agreement and any applicable Implementing Arrangement.

4) Invoice. A document from the supplying Party which includes a request for reimbursement or payment for specific logistic support, supplies, and services rendered pursuant to this Agreement and any applicable Implementing Arrangements.

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, during peacetime and during periods of national emergency, international tension or active hostilities. When an implementing arrangement contains a stricter standard for satisfying such requests, it shall apply over this paragraph.

2. The parties agree that the 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 Arrangement.

3. An Order may be issued against this Agreement alone without an Implementing Arrangement only in those cases set forth in Annex A.
4. An Implementing Arrangement may be negotiated on the part of the United States by HQ US European Command (EUCOM) or designated component commands for operations conducted within the EUCOM area of responsibility or with EUCOM units. When operations are conducted outside EUCOM or with U.S. forces from another Unified Command, the respective EUCOM Service Components will assist in processing the requirement with the Republic of Poland.
5. Whether the transfer of logistic support, supplies, and services 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, including the data elements in Annex B.
6. The parties shall endeavor to adopt a standard Order form. An Implementing Arrangement shall generally identify those personnel authorized to issue and accept Orders under that agreement. The Parties shall notify each other of specific authorizations or limitations on those personnel able to issue or accept Orders directly under this Agreement or under an Implementing Arrangement when the Implementing Arrangement does not state this information. In the case of the United States, these notifications shall go directly to the Component Command concerned. In the case of the Republic of Poland, these notifications shall go to the individual Service Command concerned or to the concerned department of the Ministry of National Defense.
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 retransferred, 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 logistic support, supplies, and services transactions, 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 1(1) or paragraph 1(2) of this Article.

1) Reimbursable transaction. The supplying Party shall submit Invoices to the receiving Party after delivery or performance of the logistic support, supplies, and services. Both Parties shall maintain records of all transactions, and each Party shall provide for the payment of outstanding accounts not less frequently than every twelve months, starting from the date of provision of logistic support, supplies, or service. Bills prepared by the supplying party shall be accompanied by necessary support documentation and paid within 30 days from the date received. In pricing a reimbursable transaction, the Parties agree to the following reciprocal pricing principles:

a) 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 amount 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.

b) 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.

2) 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 1(1) above, except that the price shall be established using actual or estimated prices in effect on the date payment would otherwise have been due.

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 Parry ordering the logistic support, supplies, and services. The Parties shall then promptly enter into negotiations to establish the final price.

3. The Invoice shall contain 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 proper institution of the supplying party. The Invoice shall be accompanied by evidence of receipt by the party receiving the logistic support, supplies, and services.

4. The Parties agree to grant each other access to documentation and information sufficient to verify, when necessary, 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 logistics 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 relief. In the case where taxes or customs duties for which a receiving Party would ordinarily have an exemption have already been paid by the supplying Party and cannot be recovered, the supplying Party shall advise the receiving Party prior to agreement to the transaction. In such a case the receiving Party may, if practicable, replace the supplies as an exchange transaction in lieu of reimbursement for the supplies. If exchange is not practicable, 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. Each party agrees to resolve disagreements between the Parties with respect to the interpretation or application of this Agreement. Any disagreements regarding the interpretation or application of this Agreement or any implementing arrangements 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.
3. Classified information and material provided or generated pursuant to this Agreement shall be protected in compliance with the General Security of Military Information Agreement between Poland and the United States of America of 17 February 1995.¹

¹ TIAS 12247.

ARTICLE VIII
EFFECTIVE DATE AND TERMINATION

1. This Agreement, which consists of a Preamble, Articles I-VIII, and Annexes A and B, shall become effective on the date of the signatures affixed below and shall remain in force for an indefinite period of time unless terminated by one of the Parties upon 180 days written notice.
2. This agreement is signed in four (4) originals, two in the Polish language¹ and two in the English language, all texts being equally authentic.

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

**FOR THE DEPARTMENT
OF DEFENSE OF
THE UNITED STATES**

**FOR THE MINISTRY
OF NATIONAL DEFENSE OF
THE REPUBLIC OF POLAND**

JOHN M. McDUFFIE
Major General, U.S. Army
Director of Logistics and
Security Assistance
HQ U.S. European Command

KRZYSZTOF WEGRZYN
Under Secretary of State
in the Ministry of National
Defense for Armaments and
Military Infrastructure

at: WARSAW, POLAND

on: 22 Nov 1996

¹Polish text not received.

ANNEX A

Pursuant to Article IV, paragraph 3, Orders or support requests may be filled against this Agreement alone in the following circumstances:

1. Orders for logistic support, supplies, and services placed during times of active hostilities.

2. Orders for logistic support, supplies, and services urgently required and not covered by an Implementing Arrangement, provided the Parties to the transaction (or their designated representatives) agree.

ANNEX B
MINIMUM ESSENTIAL DATA ELEMENTS

- 1) Implementing Arrangement, or Mutual Support Agreement (ACSA) 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 institution
- 18) Issuing institution
- 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
- 25) Name, signature, date, and title of supplying Party official who actually issues supplies or services