

Code of Conduct establishing NL DPAS between the Netherlands Government and the Netherlands Industry

1. This Code of Conduct is pursuant to Annex IX of the Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Cooperation in the Research and Development, Production and Procurement of Defense Equipment, which came into effect on 26 October 2005 (hereinafter: "**Annex IX**");
2. The overall obligations and responsibilities of the respective Governments are set out in Annex IX.
3. The purpose of this Code of Conduct is to establish a Netherlands Defense Priorities and Allocations System (hereinafter: "**NL DPAS**") by implementing the relevant provisions set out in Annex IX.
4. NL DPAS is the mechanism between the Netherlands Government and Netherlands companies designed to facilitate priorities support by Netherlands' companies to U.S. Department of Defense programs through the timely, effective and efficient provision of Industrial Resources. In Annex IX '**Industrial Resources**' are defined as: "materials, services, and facilities, needed to meet approved critical and urgent defense requirements"; the term includes: "any in process or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly or product of any kind and related technical information, process or service" and excludes: "commercial end items commonly available in the country of the supplier".
5. In the event that the US Department of Defense or a US company requests priorities support from a Netherlands company with regard to Industrial Resources that are needed to meet Netherlands critical and urgent defense requirements, or in case of such requests by other foreign nations and/or companies coinciding with a US request, the Netherlands Government decides final prioritization requirements within its territory.
6. Netherlands companies may apply for participation in this Code of Conduct establishing NL DPAS as an indication of their reliability in supplying Industrial Resources to the US Department of Defense and its contractors when requested to do so in accordance with Annex IX.
7. Application for participation in NL DPAS is voluntary and is open to all companies with a registered office in the Netherlands who are prepared to comply with the conditions of this Code of Conduct. The application form included in the Annex to this Code of Conduct may be sent to the Commissioner for Military Production of the Ministry of Economic Affairs and Climate Policy (hereinafter: "**CMP**"). CMP shall check the applicant's public registration data available at the Netherlands Chamber of Commerce in order to verify whether the applicant has its registered office in the Netherlands, in which case the application shall be accepted. CMP strives to perform this check within 8 weeks after receipt of the application form. Upon acceptance of the application, the applicant shall be considered an "**Accredited Netherlands Company**" in the context of Annex IX and a participant in NL DPAS.
8. CMP shall notify an Accredited Netherlands Company's participation in NL DPAS to the US defense procurement authority.
9. As a participant in NL DPAS, an Accredited Netherlands Company shall do all it reasonably can to provide preference to contracts supporting US Department of Defense Programs. It shall do so by accepting contracts (including subcontracts and purchase orders) as NL DPAS contracts and priority performance of said contracts, in case of such request by the US Department of Defense (hereinafter: "**Priority Request**"). NL DPAS contracts are those contracts where the US Department of Defense or a US Company has notified the Accredited Netherlands Company that the contract would be rated under the US DPAS when entered into with a US Company.
10. Specifically, an Accredited Netherlands Company which accepts a contract under NL DPAS, will do all it reasonably can to provide preference to contracts supporting US Department of Defense Programs, including:

- a) that contracts it is entering into or is party to with the US Department of Defense or with a US company are NL DPAS contracts covered by this Code of Conduct when that contract would be covered by US DPAS if it was entered into with a US company;
- b) using its best commercial efforts to insert into any (sub-) contract provisions designed to ensure due performance of such contract;
- c) responding in a timely manner to requests of the US Department of Defense for amendments to the timing of deliveries provided that the US Government entity or US Company is willing to compensate the Accredited Netherlands Company as required by the relevant contractual provisions, and
- d) bringing to the attention of CMP conflicts between NL DPAS contracts and other contracts.
11. Under no circumstances shall an Accredited Netherlands Company be required to suffer a loss without compensation from the US Government entity or US Company in order to comply with this Code of Conduct. At all times the legal mechanism for prioritization of supply will be the contract between the Accredited Netherlands Company and the US Government entity or US Company.
12. In the event that an Accredited Netherlands Company and its US counterparty cannot agree on the Accredited Netherlands Company's compensation with regard to financial loss due to compliance with a Priority request, the Accredited Netherlands Company may reasonably decline the Priority Request.
13. In the event that an Accredited Netherlands company cannot satisfy a request to amend an NL DPAS contract without incurring a financial loss, and the US Counterparty is unwilling to reimburse it, the Accredited Netherlands Company may reasonably decline such request.
14. In the event that a Priority Request would seriously imperil future client-customer relations and/or endanger future business, the Accredited Netherlands Company is may reasonably decline such Priority Request.
15. If an Accredited Netherlands Company is unable to fulfill a Priority Request, it shall immediately inform CMP and provide CMP with alternative proposals for meeting the Priority Request in terms which the US counterparty is reasonably able to accept, including the costs of implementing such proposals.
16. In case of alleged non-compliance the US Deputy Under Secretary (Industrial Policy) can request that CMP and the Netherlands Ministry of Defense liaise with the Accredited Netherlands Company and use their best efforts to facilitate the Priority Requests.
17. When an Accredited Netherlands Company and/or its US counterparty brings a conflict relating to a Priority Request to the attention of CMP, CMP and the Netherlands Ministry of Defense endeavor to resolve the conflict by consultation. The Netherlands Material Attaché in Washington serves as first point of contact.
18. Accredited Netherlands Companies may only request consultation with regard to issues that are directly related to the Priority Request. Pending the issue, CMP and the Netherlands Ministry of Defense act as 'honest brokers' to examine any such conflict of interest. The consultation takes into account the long term viability and interest of the Accredited Netherlands Company. If CMP and the Netherlands Ministry of Defense agree with the Accredited Netherlands Company's concern, they shall, if requested to do so by the Accredited Netherlands Company, do all they reasonably can to resolve the issue with all interested parties through the use of their good offices. This assistance is only available to the Accredited Netherlands Company. Other companies within the Accredited Netherlands Company's corporate group structure cannot invoke these services merely on account of their connection to the Accredited Netherlands Company.
19. Since participation in NL DPAS is voluntary, neither CMP nor the Netherlands Ministry of Defense nor the Netherlands Material Attaché in Washington accept any potential liability with regard to 'honest broker' activities and the use of their good offices.

20. Nothing in this Code of Conduct shall prejudice any Accredited Netherlands Company from entering into any similar undertaking or joint cooperation regarding security of supply with other parties.

21. Netherlands companies not participating in NL DPAS shall not be precluded from receiving defense contracts from the Netherlands Government.

22. The Stichting Nederlandse Industrie voor Defensie en Veiligheid (Netherlands Defense Manufacturers Association (hereinafter: "**NIDV**") functions as an independent advocate for the Netherlands defense manufacturers industry. It shall on a cost-free basis promote participation in the NL DPAS and include other industry associations in their promotion activities, when requested to do so by CMP or the Netherlands Ministry of Defense. With regard to these promotion activities, NIDV shall not discriminate between its associated companies and other companies.

Ministry of Defense

Ministry of Economic Affairs
and Climate Policy

Netherlands Defense
Manufacturers Association

R.F. de Jong
Director Material
Programs

J.C. Dicke
Commissioner of Military
Production

R. Nulkes
Managing Director

Signature

Date

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