

No. 4018

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Exchange of notes constituting an agreement relating to
the purchase of certain military equipment, materials,
and services. Washington, 8 October 1956**

Official texts: English and German.

Registered by the United States of America on 18 October 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Échange de notes constituant un accord relatif à l'achat
d'équipement, de matériel et de services pour les
forces armées. Washington, 8 octobre 1956**

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 18 octobre 1957.

No. 4018. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO THE PURCHASE OF CERTAIN MILITARY EQUIPMENT, MATERIALS, AND SERVICES. WASHINGTON, 8 OCTOBER 1956

I

The Ambassador of the Federal Republic of Germany to the Secretary of State

[GERMAN TEXT — TEXTE ALLEMAND]

BOTSCHAFT DER BUNDESREPUBLIK DEUTSCHLAND

Seiner Exzellenz
Herrn John Foster Dulles
Secretary of State
Department of State
Washington, D.C.

Washington, D. C., 8. Oktober 1956

Exzellenz,

ich beehre mich, auf die Besprechungen zwischen den Vertretern unserer beiden Regierungen Bezug zu nehmen, die vom 3. bis 16. August 1956 in Washington über den Verkauf bestimmter militärischer Ausrüstungen, Materialien und Dienstleistungen durch die Vereinigten Staaten von Amerika an die Bundesrepublik Deutschland gemäss § 106 des Gesetzes über Gegenseitige Sicherheit von 1954 in seiner geänderten Fassung und gemäss dem Abkommen zwischen den beiden Regierungen vom 23. November 1953, abgeändert durch Artikel I, Absatz (4), des Abkommens über Gegenseitige Verteidigungshilfe vom 30. Juni 1955, stattgefunden haben. Als Ergebnis dieser Besprechungen wurden folgende Abmachungen getroffen :

(1) Jedesmal, wenn die Regierung der Bundesrepublik einen Antrag mit dem Ziel des Ankaufs derartiger militärischer Ausrüstungen, Materialien und Dienstleistungen stellt, wird die Regierung der Vereinigten Staaten, falls die beantragten Gegenstände und Dienstleistungen für diesen Zweck zur Verfügung gestellt werden können, die Bundesrepublik durch Angebotsschreiben oder sonstige zweckdienliche Mitteilungen entsprechend benachrichtigen. Diese Mitteilungen werden Preis und Lieferzeit der betreffenden Gegenstände oder Dienstleistungen sowie sonstige Bedingungen enthalten.

¹ Came into force on 8 October 1956 by the exchange of the said notes.

der Vereinigten Staaten und der Regierung der Bundesrepublik Deutschland darstellt, das mit dem Datum Ihrer Note in Kraft tritt.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Heinz L. KREKELER

[TRANSLATION — TRADUCTION]

EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY

His Excellency
John Foster Dulles
Secretary of State
Department of State
Washington, D.C.

Washington, D.C., 8 October 1956

Excellency,

[See note II]

Heinz L. KREKELER

II

The Acting Secretary of State to the Ambassador of the Federal Republic of Germany

DEPARTMENT OF STATE
WASHINGTON

Oct. 8, 1956

Excellency :

I have the honor to acknowledge the receipt of your note of October 8, 1956, the text of which in English is as follows :

“ I have the honor to refer to the conversations between the representatives of our two Governments which took place in Washington from August 3 to August 16, 1956, concerning the sale by the United States of America to the Federal Republic of Germany of certain military equipment, materials, and services pursuant to Section 106 of the Mutual Security Act of 1954, as amended, and pursuant to the agreement between the two Governments of November 23,¹

¹ United Nations, *Treaty Series*, Vol. 224, p. 107.

1953, as modified by Article I, paragraph 4, of the Mutual Defense Assistance Agreement of June 30, 1955.¹ As a result of these conversations the following arrangements have been formulated :

"1. On the basis of requests submitted by the Government of the Federal Republic for the purchase of such military equipment, materials and services, the Government of the United States will, in cases where such items and services can be made available for the purpose, so inform the Federal Republic through letters of offer or other appropriate communications. Such communications will indicate the price and time of delivery of such items or services, and other conditions.

"2. The Government of the Federal Republic will inform the Government of the United States in writing in the manner indicated in the letters of offer or other communications of the items or services which it wishes to purchase pursuant to such communications or agreed modifications of same. This will constitute a firm order on the part of the Government of the Federal Republic. In cases where no order is placed there will be no charge to the Government of the Federal Republic.

"3. The Government of the Federal Republic of Germany will pay in full to the Government of the United States the total price of the items and services ordered and any damages incident to cancellation of contracts in the following manner :

"a) With a view to facilitating the execution of such orders and in order to provide a reasonable working fund (deposit), the Government of the Federal Republic will make payments in United States dollars into an account to be established with the Secretary of the Treasury, which account is to be maintained on the books of the United States Treasury and to be designated as "Secretary of the Treasury, Department of Defense, Military Purchases by Federal Republic of Germany". The Secretary of the Treasury of the United States will administer such account as a custodian and free of charge. A deposit will be made in this account, at the time of the placing by the Government of the Federal Republic of each firm order, in an amount not less than 15% of the total estimated price indicated in the letter or other communication of offer pursuant to which such order is placed. In order that the account may be maintained at all times at not less than 15% of the aggregate price of items and services firmly ordered and remaining undelivered, the Government of the Federal Republic will make subsequent deposits to this account, based upon notifications from the Department of Defense, in amounts required to cover the price of anticipated services and deliveries of equipment and materials, necessary advances and progress payments, as well as any damages and costs that may accrue from the cancellation of any contracts or rehabilitation work. Such notification will be made to the German Embassy in Washington at the beginning of each month and will specify the amount required to be deposited to cover such withdrawals for the next following month, which deposit shall be made within thirty days after receipt of each such notification. In order to assist the Government of the Federal Republic in anticipating future deposit requirements, the Department of Defense will also provide the German Embassy, one month before the beginning of each calendar quarter, a tentative estimate of the amounts which are expected to be requested under this procedure during the succeeding calendar quarter. Payments will be made out of

¹ United Nations, *Treaty Series*, Vol. 240, p. 47.

this account by the Secretary of the Treasury to the United States Department of Defense in such amounts as are certified to him by designated representatives of the Department of Defense to be payable to that Department under the terms of the present agreement. The amounts so payable to the United States Department of Defense during any calendar month shall be equal to the estimated deliveries, etc., contained in the monthly notification, given to the Federal Republic of Germany by the Department of Defense as set forth above, in connection with the deposit required to be made at the beginning of the same month. Any questions by the Federal Republic regarding deposits required under these estimates will be discussed by representatives of the two Governments and any necessary adjustments will be made in subsequent monthly deposits.

"It is understood that in lieu of cash deposits in United States dollars in the above described account, the Federal Republic may deliver to the Secretary of the Treasury United States Treasury bills, or other marketable United States Government securities maturing within one year from the date of deposit, equivalent at face value to the amounts required to be deposited. The Secretary of the Treasury will, on the basis of instructions from the Government of the Federal Republic, invest or reinvest in United States Treasury bills, or in other marketable United States Government securities maturing within one year from date of purchase, any dollar funds in this account (including proceeds from redemption or sale of Treasury bills or other securities) which are not required for payments out of the account. The Secretary of the Treasury for the purpose of making payments out of this account, may use the proceeds of maturing Treasury bills or other securities and may, to the extent necessary, cause Treasury bills or other securities to be sold at the market prior to maturity. The Secretary of the Treasury shall in such case have sole discretion in determining the particular bills or other securities to be sold. The proceeds of redemption of such bills or other securities at maturity or from sale of such securities prior to maturity shall be credited to the account. Any interest accruing from any of the above investments shall be credited to the account.

"After final settlement with the United States Department of Defense of amounts due as a result of all orders placed by the Government of the Federal Republic pursuant to the present arrangements, the Secretary of the Treasury will return to the Government of the Federal Republic any balances of cash or Treasury securities remaining in the working fund.

"b) In addition to the working fund provided for above, the Government of the Federal Republic will provide to the Government of the United States a guarantee of the Bank Deutscher Laender, in a form mutually agreeable to the two Governments, at the time of the placing of the first firm order, in an amount of not less than 25% of the estimated total price of the items and services ordered, as indicated in the letter or other communications of offer pursuant to which the order is placed. This guarantee will be increased at the time each additional firm order is placed in an amount representing 25% of the total estimated price indicated for such additional order. The guarantee will, however, be revised by mutual agreement from time to time in order to reflect the price of liquidated obligations against which it is no longer necessary to maintain the 25% security for which such guarantee is issued. The Government of the United States may have recourse to the banker's guarantee if the Federal Republic fails to make the deposits into the working account, in accordance with paragraph 3 (a) above, required to cover anticipated prices of services, deliveries of equipment and materials, necessary advance and progress payments, and costs and damages accruing from cancellation of any contracts or rehabilitation work.

"4. It is understood by the Government of the Federal Republic that for the time being quality control and inspection of equipment and materials covered by orders placed by the Federal Republic will be accomplished in accordance with the terms and conditions under which such equipment and materials are provided to the United States military services.

"5. In the discussions concerning the condition of equipment and materials, the German representatives noted with satisfaction that, pursuant to normal United States practice, alleged defects not attributable to circumstances arising after delivery to the agent of the Federal Republic would be examined by the MAAG, and, as mutually agreed, such defective equipment or materials would be repaired or replaced free of charge by the Government of the United States.

"6. The United States representatives indicated that under existing legislation the Federal Republic would enjoy the same exemptions from United States Federal taxation as the United States Government with respect to orders placed pursuant to these arrangements.

"7. The two Governments have agreed that the delivery of the equipment or materials to be furnished under this agreement shall be effected f.o.b. U.S. supply point, commercial or government, except for aircraft and except for high explosive ammunition, which would be delivered f.o.b. vessel at ammunition loading facilities under military control. The Government of the United States will facilitate the issuance of export licenses.

"8. Under these terms of sale the German Government would designate a shipping agent and/or freight forwarder to make all arrangements for shipment to Germany from the United States supply point, commercial or government. Title to the equipment or materials would pass to the German Government at the United States supply point at the time of acceptance by the commercial carrier or the freight forwarder. Loading of the equipment or materials on board the carrier's equipment would be accomplished by the United States Government. This service will be covered by accessorial charges (packing, crating and handling).

"9. Cancellation of contracts, failure to complete contracts, indemnification, or any other details involved in the implementation of these arrangements not specifically covered in this agreement are to be settled in due course through the MAAG, taking into account, where applicable, the provisions of the Offshore Procurement Agreement of April 4, 1955, with a view to developing solutions in the spirit of that agreement.

"10. The Government of the Federal Republic took notice that, except as may be otherwise agreed, the Military Assistance Advisory Group attached to the Embassy of the United States at Bonn will be available as a consulting and liaison body for questions arising from the implementation of this agreement or further arrangements.

"I have the honor to propose that this note, together with your reply confirming these arrangements, constitute an agreement between the Government of the United States and the Government of the Federal Republic of Germany, effective on the date of your note.

"Accept, Excellency, the renewed assurances of my highest consideration. "

The Government of the United States of America confirms these arrangements and concurs with your proposal that your note of October 8, 1956, together with this note, constitutes an agreement between the Government of the United States of America and the Government of the Federal Republic of Germany, effective on the date of this note.

Accept, Excellency, the renewed assurances of my highest consideration.

Herbert HOOVER, Jr.
Acting Secretary

His Excellency Heinz L. Krekeler
Ambassador of the Federal Republic of Germany