
ANNEX H

PARENT COMPANY GUARANTEE

Draft revision accounting (to be deleted prior to effective contract)		
Invitation To Tender	<CONTRACTNUMBER	<CONTRACT
Project	<PROJECTNUMBER	<PROJECTNAME
Issued by	<ISSUER	<ISSUEDATE
Revision	Author	Date
1.1	<AUTHOR	<DATE

Parent Company Guarantee

THIS DEMAND GUARANTEE (Nw. "påkravsgaranti", the "**Guarantee**") is issued on this date perforce of signature below by:

- **[full legal name of the guarantor/parent]** (registered in **[jurisdiction (country)]**) No. **[business registration no]** whose registered office is at **[address]** (the "**Guarantor**" which expression shall include its successors, permitted assigns and permitted transferees); in favour of
- **The Norwegian Defence Materiel Agency** (registered in Norway No. 916 075 855) whose registered office is at Grev Wedels Plass 1, NO-0151 Oslo, Norway (a government agency under the Norwegian Ministry of Defence, the "**Beneficiary**", which expression shall include its successors, permitted assigns and permitted transferees); in respect of the obligations and liabilities of
- **[full legal name of the subsidiary/contractor]** (registered in **[jurisdiction (country)]**) No. **[business registration no]** whose registered office is at **[address]** (the "**Subsidiary**") being a direct or indirect subsidiary of the Guarantor under Contract No. **[CONTRACTNUMBER]** (the "**Contract**") dated **[date]** and made between the Subsidiary and the Beneficiary.

The Guarantor hereby irrevocably and unconditionally declares as follows:

1. The Guarantor:

- a) guarantees as principal obligor the due and punctual performance by the Subsidiary of all present and future deliverables, performances, liabilities and obligations, whether contingent or absolute, matured or unmatured, at any time or from time to time due or accruing due and owing by or payable by the Subsidiary under or in relation to the Contract (the "**Guaranteed Obligations**");
- b) shall provide such resources and facilities to the Subsidiary, whether financial in form or otherwise, to enable the Subsidiary to duly fulfil its obligations in and arising out of the Contract;
- c) undertakes with the Beneficiary that within 15 calendar days after receipt of first written demand from the Beneficiary, which demand shall assert the nature of one or more non-performance(s) or improper performance(s) by the Subsidiary of any Guaranteed Obligations, then, without contestation, the Guarantor shall (1) pay any sum of monies that may be payable to the Beneficiary on the basis stated in the demand and any supporting documents, and in addition, (2) upon being instructed to do so by the Beneficiary, perform or procure the performance by the Subsidiary of the relevant Guaranteed Obligations;
- d) shall, with respect to Guaranteed Obligations being obligations to pay, make such payments to such bank account(s) as the Beneficiary shall designate in writing;
- e) is not obliged to comply with a demand under this Guarantee if it is proved by present evidence that the demand clearly and manifestly has no conceivable basis; and

- f) agrees that if any Guaranteed Obligations become or are deemed unenforceable, invalid or illegal, the Guarantor will, as an independent and primary obligation, indemnify the Beneficiary no later than 15 calendar days after receipt of demand against any cost, loss or liability it incurs as a result of the Subsidiary not performing a Guaranteed Obligation which would, but for such unenforceability, invalidity or illegality, have been due.
- 2. The liability of the Guarantor pursuant to this Guarantee shall not in any event be greater than the ultimate liability of the Subsidiary under the Contract.
- 3. This Guarantee is independent and separate from the obligations of the Subsidiary and is a continuing guarantee. The Guarantee shall extend to any additional obligations of the Subsidiary resulting from any amendment, restatement, extension, modification, replacement or supplement of the Contract (however fundamental). The Guarantor's obligations hereunder shall be in full force and effect until all Guaranteed Obligations have been performed in full, regardless of any intermediate performance or discharge in whole or in part.
- 4. The Beneficiary may present an unlimited number of demands, constituting full or partial claims, under this Guarantee. Any demand by the Beneficiary to the Guarantor shall be given in writing at the registered office of the Guarantor set out above. Demands shall be deemed to be duly given at the time of delivery if delivered in person, or on the third calendar day after posting if sent by prepaid first class post. The Beneficiary shall not be obligated to take any steps before making a demand against the Guarantor. The Guarantor waives all such formalities or rights to which it would otherwise be entitled or which the Beneficiary would otherwise first be required to satisfy or fulfil before proceeding or making demand against it hereunder, except as required hereunder or by mandatory law. Subject to the other provisions of this Guarantee, no failure to exercise or delay in exercising on the Beneficiary's part any right of remedy under this Guarantee, under the Contract or under any other agreement shall operate as a waiver of such right or remedy.
- 5. Subject to article 2, the Guarantor's liability and obligations to the Beneficiary under this Guarantee shall not be discharged, impaired or otherwise affected by reason of any of the following events or circumstances:
 - a) any time, waiver, consent, forbearance or other indulgence given or agreed by the Beneficiary with the Subsidiary or any third party with respect to any of the Guaranteed Obligations, including, but not limited to, any postponement of any Guaranteed Obligations;
 - b) any legal limitation, disability or incapacity of the Subsidiary or any third party related to the Contract or the Guaranteed Obligations;
 - c) any invalidity, irregularity, unenforceability, imperfection or avoidance of the duties or obligations of any party to the Contract, or any amendment to or variation thereof, however substantial, or of any other document referred to therein or related thereto;
 - d) the liquidation, bankruptcy, dissolution or proceedings analogous thereto, or the appointment of a receiver for the Subsidiary or any third party, or the occurrence of any

circumstances whatsoever affecting the liability of any party to discharge or perform its obligations under or in relation to the Contract including, without limitation, winding up, administration, receivership, bulk transfer or administrative receivership, amalgamation, reconstruction, change of name, ownership, control or status;

- e) any challenge, dispute or avoidance by any liquidator of a Subsidiary or any third party with respect to any claim by the Guarantor or any third party by right of subrogation in any such liquidation; and
 - f) any other act, matter or thing which might otherwise constitute a legal discharge of the Guaranteed Obligations, save for discharge in full and in writing by signatory duly authorised by the Beneficiary of all of the Guaranteed Obligations.
6. The Guarantor undertakes with the Beneficiary that as long as this Guarantee is effective and in force until the Guaranteed Obligations have been performed in full, the Guarantor will not take any action which would result in the Guarantor sharing in or succeeding to or benefiting from, by subrogation or otherwise, any rights which the Beneficiary may have in respect of any moneys owing or due and payable by the Subsidiary to the Beneficiary, security therefore or proceeds of such rights or security.
7. Without affecting the obligations of the Guarantor hereunder, the Beneficiary may take such action as the Beneficiary in its own discretion may consider appropriate against any other person or parties to recover moneys due and payable with respect to the Guaranteed Obligations or otherwise to procure the performance thereof.
8. All payments by the Guarantor under this Guarantee shall be made without and free and clear of any deduction for set-off or counterclaim. Payments shall also be made free and clear of and without deduction or withholding for or on account of any taxes, unless a tax deduction or withholding is required by law or regulation to be made by the Guarantor. If so required, the net amount payable by the Guarantor to the Beneficiary under this Guarantee shall nevertheless be equal to the full amount which the Beneficiary would have received had payment not been made subject to any such deduction or withholding.
9. The Beneficiary may assign or transfer the right hereunder to any person to which any part of the Guaranteed Obligations is assigned or transferred to.
10. The Guarantor shall not have the right to assign or transfer any or all of its rights or obligations under this Guarantee except with the prior written consent of the Beneficiary. In the event that that the Guarantor disposes of all or part of its shareholding or the business and assets in the Subsidiary, the Beneficiary may, subject to the new owner of that shareholding or business and assets providing a guarantee in this form and being of satisfactory financial standing in the opinion of the Beneficiary, release the Guarantor from its obligations hereunder proportionate to the disposition.
11. The Guarantor shall be bound by all court judgements relating to the Contract.
12. This Guarantee and any non-contractual obligations arising out of or in relation to the Guarantee shall be governed by Norwegian law and the venue shall be Oslo District Court (*Oslo tingrett*).

Guarantee No.: _____

_____, _____. _____. _____

For and on behalf of

[full legal name of the guarantor / parent]

By: _____

Name: _____

Title: _____

Alternative: Example Performance Guarantee from a first-class international bank / financial institution satisfactory to the Purchaser

PERFORMANCE DEMAND GUARANTEE UNDER URDG 758

To: Norwegian Defence Materiel Agency

Type of Guarantee: Performance guarantee

Guarantee No.: [No.]

The Guarantor: [First Class Bank ASA, Norway Branch, Example Street 1, 0001 Oslo, Norway (organisation number XXX XXX XXX)]

The Applicant: [Contractor ASA, Example Street 1, 0001 Oslo, Norway (organisation number XXX XXX XXX)]

The Beneficiary: Norwegian Defence Materiel Agency (Forsvarsmateriell), Grev Wedels plass 1, 0151 Oslo (organisation number 916 075 855)

The Underlying Relationship: The Applicant's obligation in respect of Contract No. [Insert Contract No.] entered into between the Applicant and the Beneficiary on [Insert Contract Date], as amended and modified from time to time.

Guarantee Amount and currency: [NOK X,- (xx xx million Norwegian Kroner)]

Any documents required in support of the demand for payment, apart from the supporting statement that is explicitly required in the text below: N/A

Language of any required documents: English or Norwegian

Form of presentation: The written demand with accompanied documents shall be sent by the Beneficiary by registered letter with acknowledge of receipt to the following address to the guarantor.

Place of presentation:

[First Class Bank ASA, Po.box. 1, 0001 Oslo, Norway. Attn.: L,C&I]

Expiry: [Expiry date and / or expiry event]

As Guarantor, we hereby irrevocably undertake to pay the Beneficiary any amount up to the Guarantee Amount upon presentation of the Beneficiary's complying demand, in the form of presentation indicated above, supported by such other documents as may be listed above and in any event by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, indicating in what respect the Applicant is in breach of its obligations under the Underlying Relationship.

Variation of amount of guarantee:

1. The Guarantee Amount will be increased upon presentation to the Guarantor of the Applicant's statement stating that the Underlying Relationship was amended or called-off to increase the scope or value of the [works/advanced payment] and specifying the amount and currency of the new Guarantee Amount.
2. The Guarantee Amount will be decreased upon presentation to the Guarantor of the Beneficiary's statement stating that the scope or value of the [works/advance payment] in the Underlying Relationship is reduced pursuant to request by the Applicant and specifying the amount and currency of the new Guarantee Amount.
3. The Guarantee Amount will be increased when it is determinable by the Guarantor that an increase is triggered based on the following index figure: [insert index figure triggering increase in the Guarantee Amount].
4. The Guarantee Amount will be decreased to [30] % – [thirty percent] – of the Guarantee Amount at the time of presentation upon presentation to the Guarantor of the Beneficiary's statement stating that delivery in accordance with milestone No. [Final delivery milestone number – Name] in the Underlying Relationship has been accepted.

Any demand under this Guarantee must be received by us on or before Expiry at the Place for presentation indicated above.

This Guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication No. 758.

This Guarantee shall be governed and construed in accordance with Norwegian law, with Oslo District Court as the exclusive legal venue.

[Place, ____ Month Year]
[First Class Bank ASA, Norway Branch]
