

EXPORT LICENCE

Open General Export Licence (Certified Companies) dated 10 August 2012 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Article 26 of the Export Control Order 2008^(a) ("the Order"), hereby grants the following Open General Export Licence:

Licence

1. Subject to the following provisions of this Licence, items specified in Schedule 1, may be exported or transferred from the United Kingdom to:
 - (1) certified companies in European Union Member States that have been established under the certification procedures in Article 9 of Directive 2009/43/EC for a "permitted use".

Exclusions

2. This licence does not authorise the export or transfer of items:
 - (1) if the exporter or transferor has been informed by a competent authority that the items are or may be intended, in their entirety or in part, for a use **other than** a permitted use;
 - (2) if the exporter or transferor knows that the items are intended, in their entirety or in part, for a use **other than** a permitted use;
 - (3) if the exporter or transferor has grounds for suspecting that the items might be used, in their entirety or in part, for a use **other than** a permitted use unless he has made all reasonable enquiries as to their proposed use and satisfied himself that they will not be so used;

(a) S.I. 2008/3231, as amended

- (4) Except in the case of an export of technology by telephone, fax or other electronic media , to a Customs Free Zone within a destination specified in Schedule 2;
- (5) in the case of exports of goods or technology in tangible form, if the exporter has been informed by a competent authority, or is otherwise aware, (e.g. from information received from the manufacturer), that they have been classified by the Ministry of Defence as having a protective marking of CONFIDENTIAL or above, **unless:**
- (a) the proposed export has been approved by the Ministry of Defence under an F680 for supply (this begins at RESTRICTED or above for security cleared company sites (List X) or F1686 and a written letter of clearance has been issued under the appropriate procedure or work for which the export is required has been agreed under the Project Security Instruction (PSI) and the consignee company has been cleared to the appropriate level through DE&S Security Advisers Office, and
 - (i) the clearance approval is not time expired at the time the export takes place, and
 - (ii) the "goods" are identical to those for which the clearance was given; and
 - (b) they are exported in accordance with the procedures laid down in the Security Policy Framework, issued by the Cabinet Office, appropriate to the grading of the material;
- (6) in the case of intangible technology transfers, if the technology has a protective marking RESTRICTED or above **unless:**

- (a) the transmission medium is protected by approved encryption appropriate to the protective marking of data, and
 - (b) the transferor holds clearance from a government accreditation authority which can be produced to the Compliance Officer.
- (7) where the exporter has, at the time of export, been served with a notice which suspends or revokes his ability to use this Licence pursuant to article 32(1) of the Order, unless the period of suspension or revocation has expired.

Conditions and Requirements

3. The exporter or transferor shall comply with the following Conditions and Requirements:

- (1) before first using this Licence, he shall inform the Secretary of State of his intention to do so, specifying the his name and the address at which copies of records maintained pursuant to paragraph 3(2) may be inspected;

This notification must be made via the Export Control Organisation's electronic licensing system, SPIRE, at www.spire.bis.gov.uk

- (2) subject to paragraph 3(3), the exporter or transferor shall maintain the following records in respect of all his exports and transfers of items under this Open General Export Licence:
 - (a) the date and destination of each;
 - (b) the name and address of the certified company and end-user;
 - (c) a description of the items exported or transferred;

- (d) MOD F680 or F1686 clearance letter or proof of PSI clearance referred to in paragraph 2(5)(a) (*in the case of "goods" protectively marked CONFIDENTIAL or above, MOD F680 or F1686 clearance letter or proof of PSI clearance referred to in paragraph 2(5)(a)*);
- (e) the clearance from a government accreditation authority referred to in paragraph 2(6) (b) (in the case of intangible technology transfers where the technology has a protective marking RESTRICTED or above);
- (f) all documentation obtained pursuant to paragraph 1(1);

and any such records shall be maintained for at least six years after the date of the relevant export or transfer and the exporter or transferor shall permit the records to be inspected and copied by any person authorised by the Secretary of State;

- (3) in the case of goods and/or technology specified in Schedule 2 to the Order which have any of the functions or characteristics of information security described in Category 5 Part 2 of Annex 1 to Council Regulation (EC) No. 428/2009^(c), a copy of the records specified in paragraph 3(2)(a) and 3(2)(b) shall be presented to the Secretary of State for inspection every twelve months;
- (4) Except in the case of a transfer of technology by telephone, fax or other electronic media, official and commercial export documentation accompanying the goods or technology shall include a note stating either:
 - (a) "the goods/technology are being exported under the OGEL (Certified companies)"; or

(c) O.J.L134 29.5.2009

- (b) the SPIRE reference (in the form 'SPIRE reference GBOGE 20XX/XXXXX') of the exporter's registration in respect of this licence

which shall be presented to an officer of UK Border Agency if so requested;

- (5) the exporter or transferor shall notify the Secretary of State of any change in the address referred to in paragraph 3(1) within 30 days of that change. This notification must be made via the Export Control Organisation's electronic licensing system, SPIRE, at www.spire.bis.gov.uk
- (6) Where the exporter has received a warning letter sent on behalf of the Secretary of State which identifies failure to comply with this Licence or a provision of applicable export control legislation, the exporter shall take such steps as are identified in that warning letter (within the timescale stated) in order to restore compliance with the Licence. Without prejudice to article 34 of the Order, failure to comply with this condition may result in this Licence being revoked or suspended until the exporter can show compliance to the satisfaction of the Export Control Organisation. The exporter will be notified in writing of any such suspension or revocation and the initial period of such suspension or revocation. Where at the end of this initial period, the exporter has not shown compliance to the satisfaction of the Export Control Organisation, the period of suspension or revocation may be extended. The exporter will be notified of such an extension in writing.

Prohibitions not affected by this Licence

4. Nothing in this Licence shall affect any prohibition or restriction on the exportation or transfer or carrying out of any other act with respect of the exportation or transfer of any items concerned under, or by virtue of, any enactment other than a prohibition or restriction in the legislation under which this licence was issued, as set out in the licence itself.

Interpretation

5. For the purpose of this Licence:
 - (1) "the Act" means the Export Control Act 2002^(b)
 - (2) "cluster munitions" means conventional munitions designed to disperse or release "explosive submunitions";
 - (3) "explosive submunitions" means conventional munitions, weighing less than 20 kilograms each, which in order to perform their task are dispersed or released by another conventional munition and are designed to function by detonation of an explosive charge prior to, on or after impact;
 - (4) "explosive bomblets" means conventional munitions, weighing less than 20 kilograms each, which are not self propelled and which, in order to perform their task, are specially designed to be dispersed or released by a dispenser affixed to an aircraft, and are designed to function by detonating an explosive charge prior to, on or after impact;
 - (5) sub paragraphs (2) and (3) above do not include the following conventional munitions,

^(b) 2002 c.28

- (a) a munition or submunition designed to disperse flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
 - (b) a munition or submunition designed to produce electrical or electronic effects;
 - (c) a munition that has all of the following characteristics:
 - (i) each munition contains fewer than ten “explosive submunitions”;
 - (ii) each “explosive submunition” weighs more than four kilograms;
 - (iii) each “explosive submunition” is designed to detect and engage a single target object;
 - (iv) each “explosive submunition” is equipped with an electronic “self destruction mechanism”;
 - (v) each “explosive submunition” is equipped with an electronic “self deactivating feature”.
- (6) a "Customs Free Zone" is a part of the territory of a country where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory of that country, and are not subject to the Customs controls that would otherwise apply;
- (7) "MOD Form 680" procedure is a means by which exporters can become informed of any objections or problems associated with the marketing or supply of particular military goods or technology;
- (8) “MOD Form 1686” is a means by which companies obtain clearance to sub contract or team on MOD projects with overseas companies;
- (9) “MANPADS” – Man-Portable Air Defence Systems means – surface-to-air missile systems designed to be man-portable and carried and fired by a single individual; and other surface-to-air

missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals;

- (10) "permitted use" means use of items specified in Schedule 1 by certified companies established in accordance with the procedures set out in Article 9 of Directive 2009/43/EC for incorporation in their own production of final defence equipment or for use as spares or replacement parts; and the re-export or re-transfer of items specified in Schedule 1 is not permitted as such unless for incorporation by certified companies in Member States. Items can be re-exported or re-transferred in circumstances where they are for the purpose of maintenance or repair of previously exported equipment that had already been supplied under this licence and incorporated by a certified company.

Permitted use does not include

- (a) use in connection with the development, production, handling, operation, maintenance, storage or dissemination of chemical, biological or nuclear weapons, or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;
- (b) use that would be inconsistent with the terms of a UN, OSCE or EU arms embargo or any other arms embargo observed by the UK; or
- (c) incorporation in goods or technology that:
 - (i) are to be exported, re-exported or transferred to a person or entity destination **other than** one specified in Schedule 2; and

- (11) unless the context otherwise requires, any other expression used in this Licence shall have the meaning it has in the Act or the Order.

Entry into Force

6. This Licence shall come into force on 10 August 2012.

**An Official of the Department for Business,
Innovation and skills authorised
to act on behalf of the Secretary of State**

SCHEDULE 1

GOODS CONCERNED

Equipment, components, materials, unfinished products, forgings and castings specified in the following entries in Schedule 2 to the Order:

1. ML4.a., ML4.b.1., ML4.b.2., and ML4.c., other **than**:
 - (1) Anti-personnel landmines, and specially designed components therefor;
 - (2) Anti-vehicle mines, and specially designed components therefor;
 - (3) Rockets, missiles capable of a range of at least 300 km;
 - (4) Components usable in item (3) above as follows:
 - (a) Individual rocket stages;
 - (b) Reentry vehicles, and components therefor as follows:
 - (i) Heat shields and components therefor;
 - (ii) Heat sinks and components therefor; or
 - (iii) Electronic equipment for reentry vehicles;
 - (c) Rocket engines;
 - (d) Thrust vector control systems;
 - (e) Weapon or warhead safing, arming, fuzing and firing;
 - (5) Complete MANPAD systems (with or without missiles, including related launching equipment and rockets) and specially designed components therefor;
 - (6) Missiles for MANPAD Systems (including missiles which can be used without modification in other applications);
 - (7) Cluster munitions and specially designed components therefor;
 - (8) Explosive bomblets and specially designed components therefor;

- (9) Explosive submunitions and specially designed components therefor;
2. ML5;
3. ML6 **(other than complete vehicles);**
4. ML7.g.; **other than** when deployed in conformity with para 1(2)(b) of the licence;
5. ML9 **(other than complete vessels);**
6. ML10, **other than**;
- (1) Complete aircraft;
 - (2) Complete unmanned airborne vehicles and any components specially designed or modified for unmanned airborne vehicles;
7. ML11, **other than**;
- (1) Guidance sets capable of achieving a system accuracy of 3.33% or less of the range, usable in rockets or missiles capable of a range of at least 300 km;
 - (2) Goods relating to entries excluded by this Schedule (e.g., Test equipment for MANPAD systems;
8. ML13.c. and d.;
9. ML14, **other than**;
- training equipment for MANPAD systems;
10. ML15;
11. ML16, as it relates to entries specified in this Schedule;
12. ML17, **other than**;
- (1) ML17.f., and g;

(2) ML17.n insofar as they are for use in connection with cluster munitions, explosive submunitions and explosive bomblets;

13. ML18, **other than;**

(1) Production equipment for MANPAD systems.

(2) Production equipment for cluster munitions, explosive submunitions and explosive bomblets;

14. ML21, software as follows, as it relates to entries specified in this schedule,

(1) ML21.a., **other than;**

(a) “Development” or up-dating of “software” embedded in military weapon systems;

(2) ML21.b.1.;

(3) ML21.c.,

(4) ML21.d.;

15. ML22 Technology as it relates to entries specified in this schedule – Source Code can only be exported where it relates to permitted software listed above (e.g., does not apply to Source Code relating to ML17.f.).

SCHEDULE 2

DESTINATIONS CONCERNED

This export authorisation is only valid for those certified companies in European Union Member States listed on the export control pages of the Business Link website

<http://www.businesslink.gov.uk/exportcontrol>

for re-transfer in the EU or re-export from the EU for the ultimate end –use to a government of the following countries;

Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland (Republic of), Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom and USA.

Other than for the authorised purposes set out in paragraph 2(4), the destinations specified in the previous paragraph do not include any Custom Free Zone within the territory of that destination.

EXPLANATORY NOTE

(This Note is not part of the Licence)

1. This new licence has been introduced to comply with the UK's obligations under the European Union Directive 2009/43/EC of 6 May 2009 (also known as the "Intra-Community Transfer "or "ICT Directive").

2. This Open General Export Licence permits, without further authority but subject to certain conditions, the export or transfer of items specified in Schedule 1 to the licence, to those certified companies listed on the export control pages of the Business Link website <http://www.businesslink.gov.uk/exportcontrol> in Schedule 2 which have been established in accordance with Article 9 of Directive 2009/43/EC by individual Member States, for the ultimate end-use of a government listed in Schedule 2.

3. The licence allows the certified companies in Schedule 2 to use the items received under this licence for the purpose of incorporation in their own production of final defence equipment. Items can also be used by these certified companies for use as spares or replacement parts. Items cannot be re-exported or re-transferred as such unless for use in maintenance or repair of previously supplied main equipment.

3. There are a number of conditions on the licence which an exporter must comply with before making use of this licence. These include where the goods are classified as CONFIDENTIAL or above the export must have obtained written approval from the Ministry of Defence. However, to meet the MOD Form 680 requirement security-cleared company sites (List X) are required to have in place written approval for goods or technology which are protectively marked RESTRICTED or above, as set out by the Cabinet Office Security Policy Framework.

Application forms can be obtained from:

(a) MOD Form 680 applications can be made via Export Control Organisation's electronic Licensing System, SPIRE, at: www.spire.bis.gov.uk

(b) Overseas Government site clearances, F1686 and Security Transportation Plan approvals can be obtained from:

Principal Security Adviser
Security Advice Centre
Defence Equipment and Support
Ministry of Defence
Poplar - # 2004
Abbey Wood
Bristol
BS34 8JH

Tel: 030 6793 4378
Fax: 0117 913 4925

4. F1686 Procedure:

This procedure is applicable to List X companies and is laid out in the Cabinet Office Security Policy Framework, Appendix 5 to contractual Process Chapter - Application to Subcontract or collaborate on protectively marked work.”

5. Advice on approval for associated technology transfers in intangible form at a protective marking of RESTRICTED or above may be obtained from:

Defence Security,
Floor 1 Zone I,
Main Building,
London SW1A 2HB.

6. Security-cleared company sites (List X contractors) are considered to know the end-user of goods or technology which is protectively marked RESTRICTED or above, by virtue of having to have a valid MOD Form 680 approval in place, and in respect of such items should maintain a record of the end-user as required under Paragraph 3(2)(b).

7. An exporter who exports goods under the authority of this Licence must before his first exportation under the Licence, inform the Secretary of State of his intention to export goods under this Licence and of the address where copies of the said records may be inspected. The same applies to transfers of technology. This notification must be made via the Export Control Organisation's electronic licensing system, SPIRE, at www.spire.bis.gov.uk

8. The Secretary of State has the power to suspend or revoke licences at any time and in such circumstances and on such terms as he thinks fit. If an exporter receives written notice to this effect, he will be prevented from relying on this Licence. The power to suspend may be used in addition to criminal prosecution or as an alternative. Suspension may occur for example where an exporter is being investigated or prosecuted in relation to a possible criminal offence, or has been found guilty of a criminal offence under the export control legislation. It may also be used in situations where an exporter has breached the conditions of the Licence and failed to take corrective action within a reasonable period (see condition 3(6)).

9. Where, the ECO identifies failures in compliance with licence conditions or the legislation during a compliance visit, the ECO may send a warning letter to the exporter listing the improvements that need to be made to ensure compliance. The letter will set out the timeframe within which these improvements must be completed. Failure to complete these improvements may lead to the exporter's ability to use the licence being suspended for a period of time.

10. The exporter may apply for Standard Individual Export Licences during the period of suspension. Suspension will not automatically prevent him from using another OGEL so long as he meets all its terms and conditions and that he has not received a letter suspending or revoking his ability to use that licence.

11. An exporter who exports goods which have any of the functions or characteristics of information security described in Category 5 Part 2 of Annex 1 to Council Regulation (EC) No. 428/2010 shall present a copy of the export records to the Secretary of State every twelve months. The same applies to transfers of technology. This notification should be given in writing or by facsimile transmission to:

Export Control Organisation
Compliance Unit
Department for Business, Innovation and Skills
3rd Floor
1 Victoria Street
London SW1H 0ET
Fax: 020 7215 3830

12. The provisions of this Licence only apply for the purposes of the Export Control Order 2008, in particular, this Licence does not extend to prohibitions in other legislation implementing United Nations sanctions.