

EXPORT LICENCE

Open General Export Licence (Export After Repair/replacement under warranty: Dual-Use Items) dated 8th January 2010 granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by Articles 9(2) and (4) of Council Regulation (EC) No. 428/2009 ("the Regulation")^(a) and Article 26 of the Export Control Order 2008 ("the Order")^(b), hereby grants the following Open General Export Licence:

Community Licence

1. This is general export authorisation under the terms of Article 9(2) of Council Regulation (EC) No. 428/2009. This authorisation, in accordance with Article 9(2) of that Regulation, is valid in all Member States of the European Community and is a Community Licence for the purposes of the Order.

2. Subject to the following provisions of this Licence, any items specified in Part A of Schedule 1 hereto, other than any specified in Part B of that Schedule, which have been imported into the European Community for the purpose of repair or replacement under warranty may be subsequently exported from the United Kingdom, or from any other Member State by any person established in the United Kingdom, to any destination except a destination in a country specified in Schedule 2 provided the item is being exported for delivery:
 - (1) to the person who sent them to the European Community for repair/replacement under warranty, and

(a) O.J. No. L134, 29.5.09. p.1.

(b) S.I. 2008/3231

- (2) to the country from which they were imported into the European Community.

Exclusions

3. This Licence does not authorise the export of items:

- (1) if the exporter has been informed by a competent authority of the Member State where he is established that they are or may be intended, in their entirety or in part
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification 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) for a military end use and the purchasing country or country of destination is subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council of the European Union or a decision of the OSCE or imposed by a binding resolution of the Security Council of the United Nations, or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in violation of an authorisation prescribed by national legislation of that Member State;
- (2) if the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in sub-

paragraph (1);

- (3) if the exporter has grounds for suspecting that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (1)(a), unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that the items will not be so used;
- (4) to a destination within a Customs Free Zone;
- (5) if their export is controlled by virtue of any entry in Annex I to the Regulation not specified in Schedule 1; or
- (6) 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

4. The authorisation in paragraph 1 is subject to the following conditions:
 - (1) on exportation of any goods pursuant to this Licence, the exporter shall produce to an officer of HM Border Agency, if so requested, documentary evidence of the date of their importation into the European Community, of any repairs to them carried out in the European Community and that the items are being returned to the person and the country from which they were imported into the European Community;
 - (2) except in the case of an export of technology by telephone, fax or other electronic media, official and commercial export

documentation accompanying the items shall include a note stating either:

- (a) "These items are being exported under the OGEL (Export After Repair/replacement under warranty: Dual-Use Items)"; or
- (b) the SPIRE reference (in the form 'SPIRE reference GBOGE 20XX/XXXXX') of the exporters registration in respect of this licence,

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

- (3) 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.

Registration

5. The requirements of Article 28 of the Order **shall** apply to this licence.

Prohibitions not affected by this Licence

6. Nothing in this Licence affects any prohibition or restriction on the export of any items other than under the Regulation or the Order, and this licence does not confer any licence or permission under, or for the purposes of, any enactment other than the Regulation and the Order.

Interpretation

7. For the purpose of this Licence:
 - (1) "Customs Free Zone" means 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;
 - (2) "entry" includes part of an entry;
 - (3) "repair" means making good any remediable defects and work of maintenance or restoration. This may involve coincidental improvement upon the original items, i.e. resulting from the use of modern replacement components or from use of a later build standard for reliability or safety reasons; providing that this does not result in any enhancement to the functional capability of the items or provide the items with new or additional functions. It may involve improvements of a purely cosmetic nature, e.g., paint finish;

- (4) "replacement under warranty" shall not include any enhancement to the functional capability of the original goods or provide new or additional functions; and
- (5) unless the context otherwise requires, any other expression used in this Licence has the same meaning as in the Regulation or the Order as appropriate.

Entry into Force

8. This Licence comes into force on 15th January 2010.
9. The Open General Export Licence (Export After Repair/replacement under warranty: Dual-Use Items) dated 12 August 2009 is revoked.

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

SCHEDULE 1

ITEMS CONCERNED

PART A

Items specified in any entry in Annex I to Council Regulation (EC) No. 428/2009 or Schedule 3 of the Order.

PART B

Items specified in any of the following entries in Annex I to Council Regulation (EC) No. 428/2009:

All entries in Category 0

1A004.d

1A006

1A007

1A008

1A102

1B226

1B231

1B233

1C001

1C012

1C101

1C233

1C235

1C239

1C351

1C352

1C353

1C354

1D003

1D103

1E001

1E002.g

1E101

1E102

1E201

3A001.b.10

3A001.h

3A002.g.1

3A201

3A228

3A229
3A231
3A232
3E201

5A001.h
5E001.c.6
5E001.d
5E001.e

5A002.a.2 equipment designed or modified to perform cryptanalytic functions.

5A002.a.7

5D002.c.1 only software having the characteristics, or performing or simulating the functions, of equipment specified in 5A002.a.2.

5E002 only technology for the development, production or use of goods specified in 5A002.a.2 or 5D002.c.1.

6A001.a.1.b
6A001.a.2.a.1
6A001.a.2.a.2
6A001.a.2.a.3
6A001.a.2.a.5
6A001.a.2.a.6
6A001.a.2.b
6A001.a.2.c
6A001.a.2.e
6A001.a.2.f
6A001.c
6A008.j.3
6A203
6A225
6A226
6B008
6B108
6D003.a
6D003.c
6E201

7A117

7B001 Test, calibration or alignment equipment specially designed for equipment specified in 7A117.

7B003 Equipment specially designed for the production of equipment specified in 7A117.

- 7B103 Production facilities specially designed for equipment specified in 7A117
- 7D101 Software specially designed for the use of equipment specified in 7B003 or 7B103.
- 7E001 Technology for the development of equipment or software specified in 7A117, 7B003, 7B103 or 7D101.
- 7E002 Technology for the production of equipment specified in 7A117, 7B003 and 7B103.
- 7E101 Technology for the use of equipment specified in 7A117, 7B003, 7B103 and 7D101.
- 7E104
- 8A002.o.3
8A002.p
8D002
8E002.a
- 9A004
9A005
9A007.a
9A008.d
9A009.a
9A104
9A105.a
9A106.c
9A108.c
9A116
9A117
9A119
- 9B115 Specially designed production equipment and production facilities for the systems, sub-systems and components specified in 9A005, 9A007.a., 9A008.d., 9A105.a., 9A106.c., 9A108.c., 9A116 and 9A119.
- 9B116 Specially designed production facilities for the systems, sub-systems and components specified in 9A004, 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116 and 9A119.
- 9D101 Software specially designed for the use of items specified in 9B116.

- 9E001 Technology for the development of equipment or software specified in 9A004, 9A005, 9A007.a., 9A008.d., 9B115, 9B116, and 9D101.
- 9E002 Technology for the production of equipment specified in 9A004, 9A005, 9A007.a., 9A008.d., 9B115 and 9B116.
- 9E101 Technology for the development or production of equipment specified in 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116 or 9A119.
- 9E102 Technology for the use of items specified in 9A004, 9A005, 9A007.a., 9A008.d., 9A104, 9A105.a., 9A106.c., 9A108.c., 9A116, 9A119, 9B115, 9B115 or 9D101.

SCHEDULE 2

DESTINATIONS CONCERNED

This export authorisation is valid for exports to the following destinations:

All destinations other than in:

- Afghanistan, Albania, Angola, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, India, Iran, Iraq, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Malta, the Former Yugoslav Republic of Macedonia, Moldova, Mongolian People's Republic, Netherlands, New Zealand, North Korea, Norway, Pakistan, People's Republic of China (excluding Hong Kong Special Administrative Region), Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Socialist Republic of Vietnam, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Turkmenistan, Ukraine, USA, and Uzbekistan.

NOTE:

Exports of items covered by this licence may be made under the authority of the Community General Export Authorisation, subject to certain conditions and restrictions, to the following destinations:

Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA.

EXPLANATORY NOTE

(This note is not part of the licence)

This Open General Export Licence has been amended by adding Sri Lanka to the list of excluded destinations. This follows a review of the scope of the licence in view of ongoing concerns with the situation in country.

2. This Open General Export Licence permits the export from the United Kingdom, or from any other Member State of the European Community, of items specified in Part A of Schedule 1 to the Licence, other than those specified in Part B of that Schedule. The licence is valid to any destination other than one listed in Schedule 2 to the Licence. The licence is subject to certain restrictions and conditions including that the item has been imported into the United Kingdom or another Member State of the EC for repair or replacement under warranty.

3. An exporter must be established in the United Kingdom to qualify to use this licence.

4. The Export Control Order 2008 (“the Order”) contain certain registration and record keeping requirements which apply to persons using this Licence.

(a) Under Article 28 of the Order, an exporter who exports items under the authority of this Licence must, before or within 30 days after the first occasion he makes use of the licence, provide details to the Secretary of State of his name and the address where copies of the records referred to above may be inspected.

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

(b) Under Article 29 of the Order, any person established in the United Kingdom who exports items from the United Kingdom or another Member State under the authority of this Licence must maintain and retain certain records relating to each such export for at least three years from the end of the calendar

year in which the export takes place, and must permit such records to be inspected and copied by any person authorised by the Secretary of State.

5. 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 4(3)).

6. 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.

7. 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.