

EXPORT LICENCE

Open General Export Licence (Military Goods:

Collaborative Project Typhoon) dated 24 February 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, goods (including software and technology), specified in Schedule 1 may be exported from the United Kingdom to any destination in a country specified in Schedule 2 provided that;

(1) in the case of an export to a destination other than Saudi Arabia, the goods are for the production, development or maintenance of Typhoon or, in the case of a final export to Saudi Arabia, the goods are for the maintenance of Typhoon (for the avoidance of doubt, this does not prevent exports for the development or production of Typhoon for end-use in Saudi Arabia); and

(2) the goods are exported pursuant to an eligible contract (approved under paragraph 3(2)).

(3) the goods are exported either to a main contractor that is a member of the consortium or to a sub-contractor to a member of the consortium or in the case of maintenance directly to a Partner Nation or Permitted Export Customer; and

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

(4) in the case of an export to a sub-contractor, the exporter must obtain copy documentation (e.g.. an email, letter or excerpt of a contract) that establishes that the goods being supplied are required for Project Typhoon'; and.

(5) the goods are **not** intended to be re-exported, or to be incorporated into other goods which are or may be intended to be exported, unless to a destination in a country specified in Schedule 2 and for a purpose consistent with sub-paragraph (1) and(6); and

(6) the goods are for the end-use of the Government of Germany, Italy, Spain, UK, Austria or Saudi Arabia.

Exclusions

2. This Licence does not authorise the export of goods:

(1) if the exporter has been informed by a competent authority that the goods are or may be intended, in their entirety or in part, to be used in connection with the development, production or dissemination of chemical, biological or nuclear weapons, or other nuclear explosive devices or the development, production or storage of missiles capable of delivering such weapons;

(2) if the exporter knows that the goods are intended, in their entirety or in part, to be used in connection with one of the activities referred to in sub-paragraph (1); or

(3) if the exporter has grounds for suspecting that the goods might be used, in their entirety or in part, in connection with an activity referred to in sub-paragraph (1), unless he has made all reasonable enquiries as to their proposed use and satisfied himself that they will not be so used;

(4) if the exporter has been informed by a competent authority, or is otherwise aware (e.g. from information received from the manufacturer), that the goods have been classified under the Project Security Instructions as having a protective marking of CONFIDENTIAL or above, **unless:**

- (a) the exporter has, where appropriate, a current written Security Transportation Plan and has applied for and obtained a current (dated within the period of one month ending with the date of the export) written letter of clearance issued by the MOD Defence Equipment and Support (DE&S) Security Adviser which relates to all goods associated with the particular export of the goods which have a protective marking of CONFIDENTIAL or above; and
- (b) for non-government consignees, the proposed export has been approved by the Ministry of Defence under MOD F1686;

(5) unless required for Project Typhoon;

(6) to a destination in a Customs Free Zone.

(7) for aircraft production licensed to take place outside the Partner Nations, or for exports to local companies engaged by a Permitted Export Customer to assemble or maintain aircraft.

Conditions and Requirements

3. The exporter must comply with the following conditions and requirements:

- (1) before first exporting goods under this Licence, the exporter must have informed the Secretary of State of their intention to export goods under this Licence, specifying the name of the exporter and the address at which copies of records of their exports may be inspected under condition 3(5) below;

(2) the exporter must obtain, prior to making any exports pursuant to this Licence, written approval from the Ministry of Defence Export Policy and Assurance (EPA) confirming that an eligible contract is in place and the goods to which it relates may be exported to a country of destination covered by this Licence.

(3) for final exports to Permitted Export Customers –

(a) List X companies must also have the proposed export of goods that have a protective marking of RESTRICTED or above, approved by the Ministry of Defence under MOD F680 and, in the case of goods that have a protective marking of CONFIDENTIAL or above, the consignee company must have been cleared to the appropriate level through the DE&S Security Adviser, and

- (i) the clearance approval must not have expired at the time the export takes place, and
- (ii) the goods must be identical to those for which the clearance was given; and

(b) the exporter must comply with the procedures laid down in the Security Policy Framework, issued by the Cabinet Office, appropriate to the protective marking of the material (this includes technology in tangible form).

(4) in the case of intangible technology transfers it is prohibited to export technology with a protective marking of RESTRICTED or above unless:

(a) the transmission is protected by approved encryption appropriate to the protective marking of data, and

(b) the exporter holds clearance from a government accreditation authority.

(5) the exporter shall maintain the following records in respect of the export of goods under this Licence:

(a) the date of export;

(b) the name and address of the consignee to whom the goods are to be exported;

(c) a description of the goods exported;

(d) any copy documentation obtained by the exporter under paragraph 1(4)

(e) MOD DE&S Security Adviser clearance letter referred to in 2(4) above (in the case of goods with a protective marking of CONFIDENTIAL or above) and, for non-government consignees, confirmation that the proposed export has been approved by the Ministry of Defence under MOD F1686;

(f) MOD confirmation of eligibility – see paragraph 3(2); or

(g) For final exports to Permitted Export Customer end-users – the MOD F680 clearance letter and other documentation referred to in paragraph 3(3),

(h) For intangible technology transfers (in the case of technology with a protective marking of RESTRICTED or above), the clearance referred to in paragraph 3(4)

and any such records shall be maintained for at least five years after the date of the relevant export and the exporter shall permit the records to

be inspected and copied by any person authorised by the Secretary of State or the Commissioners;

(6) any release of information must be made in accordance with NETMA and Partner Nation procedures;

(7) Except in the case of an export of technology by telephone, fax or other electronic media, official and commercial export documentation accompanying the goods shall include a note stating either,

(a) "the goods are being exported under the OGEL (Military Goods: Collaborative Project Typhoon)"; or

(b) the SPIRE reference (in the form 'SPIRE reference GBOGE 2010/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;

(8) the exporter shall notify the Secretary of State of any change in the address referred to in paragraph 3(1) above not later than 30 days after that change.

(9) 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 carrying out of any other act in respect of the exportation, of anything in Schedule 1 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^(d) ;

(2) "collaborative project", means a programme in which the UK Government is a participant.

(3) "the consortium" means Eurofighter Gmbh and each of the following is a "member of the consortium": Alenia (Italy), BAE Systems (UK), EADS Casa (Spain), EADS Deutschland (Germany) and Eurojet;

(4) a "Customs Free Zone" is a part of a territory of a country where any goods introduced are generally regarded, in so far 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;

^(d) 2002 c.28

- (5) “export” includes transfer by electronic means and cognate expressions shall be construed accordingly;
- (6) “goods” includes software and technology;
- (7) “MOD F680” is a MOD security process to protect information or equipment that is deemed to be security sensitive that is planned to be released to a foreign third party through export sales. It provides a mechanism for Government to consider the release of protectively marked material and is managed by Export Policy and Assurance (EPA) in the Ministry of Defence;
- (8) “F1686” is a MoD security process for UK MOD Contractors when sub-contracting or collaborating on protectively marked work on UK MoD contracts. It provides a mechanism to confirm the security clearance of the recipient contractor and is managed by DE&S ISS in the Ministry of Defence.
- (9) “NETMA” means the NATO Eurofighter and Tornado Management Agency.
- (10) “Partner Nation” means the Government of Germany, Italy, Spain or the United Kingdom.
- (11) “Permitted Export Customer” means the Government of Austria or Saudi Arabia;
- (12) “Project Typhoon” means the development and production by NETMA and Eurofighter GmbH within the framework of a collaborative project of an advanced multi-role twin-engine fighter aircraft (referred to in this Licence as “Typhoon”).
- (13) “maintenance” means any phases of through life support i.e., including supply of replacement components for the six end-users.

(14) “Typhoon” has the meaning set out in sub-paragraph (11).

(15) Unless the context otherwise requires, any other expression used in this Licence shall have the meaning it has in the Order or, if not defined there, the Act.

Entry into Force

6. This Licence shall come into force on 9 March 2012.

7. The Open General Export Licence (Military Goods: Collaborative Project Typhoon) dated 11 August 2010 is revoked.

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

SCHEDULE 1

GOODS CONCERNED

Any of the following goods, software or technology (excluding complete aircraft), specified in Schedule 2 to the Order:

1. **ML2.a:** 27mm Cannon for Typhoon;
2. **ML4.b:** Aircraft armament role equipment (including missile release units, eject release units and missile launchers), specially designed for military use, used on the Typhoon;
3. **ML5:** Fire control equipment, specially designed for Typhoon, and specially designed components therefor;
4. **ML10.a:** Typhoon Components;
5. **ML10.d:** Typhoon engines and specially designed components therefor;
6. **ML10.e:** Typhoon airborne equipment and components therefor;
7. **ML10.f:** Ground-based equipment specially designed for the operation, handling, maintenance, checking, repair, overhaul and refurbishment of aircraft and aero engines and test equipment to support the Typhoon;
8. **ML10.g:** Equipment for Typhoon;
9. **ML10.h:** Parachutes for Typhoon;
10. **ML11.a;** Electronic equipment for Typhoon;
11. **ML14:** Typhoon training simulators and specially designed components therefor;
12. **ML15:** Imaging or countermeasure equipment, for Typhoon, and specially designed components therefor;
13. **ML16:** Castings, forgings and other unfinished products for use on the Typhoon;
14. **ML17.c:** Fittings, coatings and treatments for signature suppression, for Typhoon;

15. **ML17.f;** Libraries (parametric databases) specially designed for Typhoon and related ground equipment;
16. **ML17.h;** Goods and material, coated, treated or prepared to provide signature suppression for Typhoon;
17. **ML17.i:** Containers for Typhoon equipment;
18. **ML18.a:** Typhoon production equipment and specially designed components therefor;
19. **ML18.b:** Typhoon environmental test facilities and specially designed equipment therefor;
20. **ML21:** Software for the above equipment;
21. **ML22.a:** Technology for the above equipment;
22. **ML22.b.1:** Technology for production installations for the above equipment.

SCHEDULE 2

DESTINATIONS CONCERNED

This export authorisation is only valid for the following destinations:

Australia, Austria, Germany, Italy, Luxembourg, Norway, Poland, Spain, South Africa, Switzerland, UK, USA and (in relation to exports for maintenance purposes only) Saudi Arabia.

EXPLANATORY NOTE

(This Note is not part of the Licence)

1. This Open General Export Licence has been amended to broaden the scope of paragraphs 1 (4) (exporting to subcontractors), 5 (3) (consortiums), and for clarification purposes 5 (7) (definitions), to the licence.

2. This Open General Export Licence permits, without further authority but subject to certain conditions, the export of goods specified in the Schedule 1 to the licence, in support of collaborative Project Typhoon to the countries specified in Schedule 2.

3. The goods may only be exported under this Licence if they satisfy certain conditions. These include that they are intended for end-use by the Governments involved in collaborative project Typhoon (Germany, Italy, Spain or the UK) or the Permitted Export Customer end-users (Austria or Saudi Arabia) and exported for work in pursuance of the project to a company or maintenance in an eligible destination; that the export is eligible under that project – see para 3(2) of licence; and for final exports to Permitted Export Customers if protectively marked CONFIDENTIAL or above must have obtained in writing approval from the Ministry of Defence. However, List X companies are obliged to follow the Cabinet Office Security Policy Framework which, in respect of this licence in the case of final exports to Permitted Export Customers, requires them to obtain MOD Form 680 approval for goods protectively marked RESTRICTED or above.

4. Confirmation of eligible status can be obtained from:
Export Policy and Assurance
Ministry of Defence
2nd Floor Zone D, Main Building
Whitehall

London SW1A 2HB
Tel: 020 7218 9080
Fax: 020 7218 0428
e-mail: CapEPA-CW2C2@mod.uk

5. **(a) Application for F680s can now be made via Export Control Organisation's electronic Licensing System, SPIRE, at: www.spire.bis.gov.uk.**

(b) Application forms for Overseas government site clearances, F1686 and Security Transportation Plan approvals can be obtained from:

Principal Security Adviser
Security Advice Centre
Defence Equipment & Support
Ministry of Defence
Poplar - 1#2004
Abbey Wood
Bristol BS34 8JH
Tel: 030 679 34378
Fax: 0117 913 4925

6. 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.

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

7. 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(9)).

8. 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.

9. 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.

10. The provisions of this Licence only apply for the purposes of the Export Control Order 2008. They do not affect the need to obtain other consents that may be required for the export of particular technology, whether under other statutory provisions (such as the Official Secrets Act 1989) or otherwise (such as under contractual obligations). In addition, this Licence does not extend to prohibitions in other legislation implementing United Nations sanctions.