

F.No.1(10)/2018-D(EPC)  
Government of India  
Ministry of Defence  
Department of Defence Production  
D (Export Promotion Cell)

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Dated 21<sup>st</sup> October 2019

**NOTICE**

The Department of Defence Production, Ministry of Defence, pursuant to the authority granted to it by the Directorate General of Foreign Trade, vide Public Notice No. 4/2015-20, dated 24<sup>th</sup> April 2017, hereby **notifies issuance of Open General Export License ("OGEL") for Intra Company Transfer of Technology.**

**Section 1. Purpose**

(1) Allow the export or transfer of software or technology of the Munitions List Items specified in Section 2 below from India to any of the countries listed in Section 3 of this license subject to the **condition that the export is an intra-company transfer from an Indian subsidiary (applicant exporter) to its foreign parent company and /or to subsidiaries of the foreign parent company and where the transfer fulfills the conditions mentioned at (a) to (d) below:-**

(a) The items/software/technology to be exported, by Indian subsidiary, have been imported from the country of the parent company abroad or from subsidiaries of the parent company abroad.

b) The items / software/technology to be exported is based on a Master Service Agreement/Contract between the parent company and the Indian subsidiary for carrying out certain services including design/encryption/research/development/delivery/validation/testing;

Note: As a result of the service carried out by the Indian exporter, the items/software/technology should not undergo change in functionality and classification.

c) These items/software/technology is/are to be exported to the foreign parent company and /or subsidiaries of foreign parent company;

d) The applicant exporter declares that the exported items would be used for the purposes for which it is intended by the parent company and /or its subsidiaries

(2) Application for grant of OGEL, shall be considered by DDP on case to case basis, subject to the following:

- i. The applicant exporter should have a valid IE Certificate.
- ii. **The applicant Exporter should have established an appropriate/certified approved Internal Compliance Programme (ICP) or Export Compliance Programme of its own, or should be compliant with an ICP of its subsidiary/principal abroad to which the software/technology will be exported.**
- iii. **Submission of documentary proof of the corporate relationship between the foreign parent company and/or its subsidiaries abroad with the Indian subsidiary (applicant exporter)**
- iv. The exporter agrees to receive an on-site inspection by DDP or its authorized representative, whenever desired for the auditing/verification of ICP;
- v. The exporter must comply with post shipment reporting documents, which must include submission of annual report to Export Promotion Cell of DDP, latest by 15th April of a year, in respect of the exports made against a specific OGEL, in the prescribed format, providing details of the SCOMET items (category/sub-category number) exported along with complete details of all consignees, end users, technical specification of the items and destination countries, in respect of each export consignment;
- vi. The quarterly & end of the year reports on all the transaction done under this OGEL, shall be submitted to DDP for examination and post-export verification;
- vii. **The exporter shall submit a declaration to the effect that they have internal controls in place to prevent transfer of goods to countries/ entities facing UNSC sanctions or arms embargo;**
- viii. **The exporter shall submit a declaration that the end user will allow for further checks, if necessary, by the authorized representatives of Government of India.**
- ix. Once an application is made, DDP would examine the same and provide authorization under this OGEL.

(3) The Competent Authority reserves the right to audit and to ensure correct usage of the OGEL.

(4) Failure to use the OGEL correctly may lead to suspension or withdrawal of authorization by DDP.

## Section 2. Technologies or Software that can be transferred under this license

(1) The description of the technologies or software in the table below has the same meaning as those described in Appendix 3 of ITC (HS) Schedule 2, Export Licensing Schedule, Table A (i.e., list of SCOMET items), Category 6.

Control list classification	
6A021 and 6A022	(1) Technologies or software related to items listed in 6A010 of Munitions List except <ul style="list-style-type: none"><li>• complete aircraft; or</li><li>• complete unmanned aerial vehicles (UAVs) and any components specially designed or modified for UAVs.</li></ul> (2) Technologies or software related to items listed in category 6A005 of Munitions List. (3) Technologies or software related to items listed in category 6A013 of Munitions List.

## Section 3. Countries or destinations allowed under this license

- (1) Belgium, France, Germany, Japan, South Africa, Spain, Sweden, UK, USA, Canada, Italy, Poland and Mexico.
- (2) Export or transfer of the above Items to a **Special Economic Zone** is not permitted. (A **'Special Economic Zone'** is a part of the territory of a country where any technology/software introduced are generally regarded, as far as import duties and taxes are concerned, as being outside the customs territory of that country, and so the usual customs controls do not apply.)

## Section 4. Other restrictions that apply

- (1) The exporter must only transfer technologies or software
  - (i) to their parent/subsidiary companies as long as they are based in one of the countries listed in Section 3.
  - (ii) related to items as mentioned in Section 2 above.
- (2) The exporter must not transfer technologies or software
  - (i) related to items which is not mentioned in Section 2 above.
  - (ii) related munitions list which are deemed "restricted", "confidential", "secret" or "top secret".
- (3) Weapons of Mass Destruction (WMD).

The firm must not transfer technologies or software as specified in Section 2, if the company is aware or suspects that these technologies or software may be used, in whole or in part, for WMD or their means of delivery.

(4) A comprehensive set of internal controls is in place to ensure that the company does not transfer or share software & technology without the necessary authorizations, including procedures requiring: (i) that the items are properly classified prior to export, (ii) that the technologies & software are not transferred to or shared with a denied party in contravention of any embargo, sanction, debarment or denied party designation maintained by any government or union of states (e.g. European Union); and (iii) that robust access controls are in place to protect the items from unauthorized access.

(5) The DDP has the power to vary or withdraw authorization at any time.

(6) The authorization under this OGEL will be valid for a period of 2 years from the date of issue.

**(7) Where the exporter senses that items could be covered under catch-all, then they should follow regular procedure of SCOMET to get export authorization**

#### **Section 5. Actions to be taken before exporting or transferring Items under this license**

- (1) Register with the Department of Defence Production on [www.defenceexim.gov.in](http://www.defenceexim.gov.in) and take authorization from DDP for using this OGEL.
- (2) The company must be satisfied that the Software & Technology proposed to be transferred can meet all the requirements set out in this license.
- (3) The Company has in place a system for keeping records of transfers for inspection by the Government of India or any authorized person.
- (4) The Company must ensure that:
  - a. they have an original End User Certificate in the prescribed format.
  - b. they have original Agreement/purchase order, excerpt of contract from the person or entity (consignee) receiving the Items which states the export is for a permitted use .
  - c. the documents include the name & contact number and email id of the authority signing the EUC.
  - d. the destination of software or technology is not a UN embargoed destination.

#### **Section 6. Actions to be taken when exporting or transferring Items under this license**

- (1) For all transfers of technology or software as mentioned in Section 2 of this OGEL, the Company must make sure that the commercial documents that are generated and

sent to entities located in the countries listed in section 3(1) include a declaration stating that 'the technology and software are being exported under the OGEL No. ----- dt. ----- (Military Goods and items intended for a military use)'.

(2) The Company should present the documents to Indian Customs or other competent Indian authority when asked, together with the information and documents listed in Section 7(1) below.

(3) The Company must submit a quarterly & end of the year usage report as per **Appendix 1**, for all exports or trade carried out under this OGEL within a Financial Year. The report must be submitted within 15 days of the deadline as expressed above.

### **Section 7. Records to keep**

(1) Pursuant to sub para 2.73(c) of the Handbook of Procedures, 2015-20 (re: Maintenance of Records), the following records must be kept, manually or electronically, relating to exports or transfer of technology and software under this license for five (5) years and make them available for any person authorized by the Government of India to inspect.

1. The date and destination of transfer.
2. The name and address of the person or entity (the consignee) you are transferring software or technology to.
3. A description of software or technology.
4. The original undertaking from the person or entity (consignee) receiving software or technology, or documents described in 5(4) above (for example a purchase order or an excerpt of the contract).
5. The classification in Appendix 3 of ITC (HS) Schedule 2, Export Licensing Schedule, Table A (i.e., list of SCOMET items), Category 6.
6. Documents referred to in section 6 above.
7. All other records as required by sub para 2.73(c) of the Handbook of Procedures, 2015-20 (re: Maintenance of Records).
8. Value of export.

### **Section 8. Other legal requirements**

(1) The Company must comply with all requests for information received before an audit visit by the Government of India and return it by the stipulated date.

(2) The Company must not export or transfer technology/software if their use would be inconsistent with the terms of a United Nations (UN) arms embargo or any other arms embargo.

(3) In addition to the requirements of this license, the Company must adhere to any other relevant laws and acts in force at the time of export.

### **Section 9. Responsibilities of OGEL holder**

As OGEL holder, an exporter should comply with the following:

- a. Notify DDP of any changes in the ICP, company structure, internal process or trade compliance team, within 15 days of the change;
- b. Ensure that all transactions made under the OGEL are within the scope of approval;
- c. Make reasonable enquiries to ensure that the technology/software to be exported, re-exported, transshipped or transmitted under the OGEL are not intended or likely to be used, wholly or in part, for or in connection with a WMD and their delivery system;
- d. Ensure that any technology/software transferred under made under the OGEL is not transferred to UNSC-sanctioned countries or other disapproved entities/countries;
- e. Maintain records as specified in Section 7.

### **Section 10. Recall/Revocation**

1. The authorization under this OGEL shall be liable for recall/termination by the DDP on receipt of an adverse report in respect of any of the export consignments or for non-submission of mandatory annual reports or for non-compliance with the conditions for grant off OGEL or assessment of proliferation concerns;
2. Failure to comply with the terms and conditions of OGEL may lead to cancellation of IEC, imposition of financial penalties and initiation of criminal prosecution as per the extant provisions of FTDR Act 1962 as amended, Customs Act 1962 and any other act that may be applicable.

### **Glossary**

Expressions used in this license have the same meaning here as they do under Indian laws. The legislation referred to in this license is updated from time to time and you will need to check that you have the most up-to-date version when using this license.

For the legislation that applies to Indian exports, please visit: <http://dgft.gov.in/>

The following terms and acronyms used in this license have the following meanings.

1. 'Competent authority' means the DDP, or other stakeholders delineated in Paragraph 6 of the DDP's Standard Operating Procedures or any other body acting under the authority of one of these bodies / agencies.
2. A 'consignee' may be a company or a government.
3. 'Declaration' means a commercial document completed for an official of the Government of India which meets the conditions set out in section 6(1).
4. 'Government' as it relates to a contract includes direct contracts with governments, armed forces of a government, government agencies and companies working on behalf of government (and there is evidence of them doing so).
5. An 'original EUC' means one that has a person's original signature and has not been copied, faxed or converted into an electronic format. An undertaking template is available on [ddpmod.gov.in](http://ddpmod.gov.in).
6. 'Permitted use' means use of the items specified in section 2 of this license, by a company in a destination specified in section 3 and which meets the conditions set out in this license.

### APPENDIX 1

OGEL Registration Number	Destination	End User Type	Importer	Software/ Technology of Items	Value	Purpose of export	Remarks

**Note:** Purpose of export should be declared as (i) actual export or (ii) For exhibition or (iii) for testing and evaluation or (iv) For tender participation, whichever applicable.