

# Gem Cable Solutions

## Standard Terms and Conditions of Purchase (Goods and Services) January 2020

**DEFINITIONS** The 'Company' means Gem Cable Solutions Ltd, Unit C, 156 St Albans Road, Sandridge, St Albans, Herts, AL4 9LP. 'Order' means the purchase order placed by Gem Cable Solutions Ltd for the supply of Goods and/or Services together with any letter of engagement or other document attached to the purchase order. 'Supplier' means the person, firm or company to whom the Order is addressed. 'Goods' means the goods or unless the context otherwise requires, any deliverables to be supplied as part of the Services as described in the Order. 'Services' means the services to be supplied by the Supplier as described in the Order. 'Contract' means the Order and these terms and conditions.

**PREVAILING** These terms and conditions together with any special conditions set out in or by reference in the Order are the only terms and conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms and conditions (including without limitation any other terms and conditions the Supplier has on its quotation or subject to which the Supplier accepts or purports to accept the Order). Each and every order issued on the Company's order form and displaying a valid purchase order number shall be deemed to be an offer by the Company to buy the Goods and/or Services subject to these conditions and by proceeding with the supply of the Goods and/or Services the supplier will be treated as having accepted these conditions.

**CONDITIONS** No amendments to the Company's Order (including without limitation, these terms and conditions) shall form part of the Contract unless agreed to in writing by a representative of the Company's Purchasing Department. In the event of a conflict between the Contract documents provided by the Company, the order of precedence shall be 1) the face of the purchase order, 2) the supply Agreement between the Supplier and the Company, 3 these terms and conditions, 4) specifications, 5) manufacturing drawings.

**TITLE AND RISK** Title to and property in all goods and materials supplied against this Contract shall pass to the Company when delivery (including offloading and stacking) is made to the premises specified by the Company, without prejudice to any right of rejection which the Company may have under these terms and conditions or otherwise.

**TIME** Delivery time shall be of the essence. (Goods and/or Services may be delivered up to 5 days prior to the date of delivery specified in the Order provided written authorisation has been obtained from the Company in advance). Failure by the Supplier to adhere to any provision as to time contained in the Contract shall entitle the Company (without prejudice to any other right or remedy it may have) at its option to treat the Contract as repudiated. The Company shall be entitled to exercise its option at any time after the period of time specified shall have elapsed and shall not be prejudiced by any delay or by giving time or other indulgences to the Supplier in exercising such option. Notwithstanding any repudiation of the Contract, as hereinbefore provided, the Company shall be entitled (without

prejudice to any other right or remedy it may have) to damages in respect of all costs, losses and expenses sustained by reason of the failure of the Supplier to meet the time agreed (including without limitation expenditure reasonably incurred by the Company in obtaining the Goods and/or Services in substitution from another supplier).

**DELIVERY** Unless the Company agrees otherwise in writing, all Goods and materials supplied are to be delivered by the Supplier DDP (Incoterms 2010) to the address for delivery specified in the Contract (or as otherwise agreed in writing). Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in its normal business hours. Items delivered in advance of schedule without written authority from the Company, may (without prejudice to any other right or remedy the Company may have) be returned at the supplier's cost and subject to a £100 administration charge.

The Company shall not be deemed to have accepted the Goods until it has had a reasonable period of time to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for a reasonable period of time after any latent defect in the Goods has become apparent.

The Supplier shall obtain and maintain all necessary licenses' and consents and at all times comply with all statutory and regulatory requirements in relation to the performance of its obligations under the Contract including without limitation the supply of the Goods and/or Services.

Any signature by an employee or officer of the Company on documentation presented in connection with the delivery of the Goods and/or Services shall be evidence only of the receipt of the Goods and/or Services and is not evidence that the correct quantity or quality has been delivered and, for the avoidance of doubt, does not constitute contractual acceptance. Acceptance of the Goods and/or Services by the Company at law shall not affect the Company's rights and remedies detailed in the Contract (including without limitation those detailed under the 'Remedies' section below).

**QUANTITY TOLERANCE** If the Goods are delivered to the Company in excess of the quantities ordered, the Company shall not be bound to pay for the excess and any excess shall be and remain at the Suppliers risk and shall be returnable at the Supplier's expense.

**PRICE** The price of the Goods and/or Services shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of VAT but inclusive of all other charges related to the supply of the Goods and/or Services. No payment of or on account of the Contract price shall constitute any admission by the Company as to the performance by the Supplier of his obligations under the terms and conditions hereof. All prices as stated on the Order are firm and not subject to increase.

**PAYMENT** The liability for payment shall arise in the case of Goods on delivery of Goods in accordance with the Contract and in the case of Services on the dates specified in the Order in respect of Services supplied by the Supplier or where no such dates are supplied, on completion of the Services (without taking into account any deduction for set-off of counterclaim). Payment terms are 60 days from date

of receipt of invoice (which may be dated no earlier than the date of delivery), subject to the satisfactory delivery of the correct quantity, at the correct price to the correct technical specification. Proof of delivery will be required in all cases. Time for payment shall not be of the essence of the Contract. The Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier whether under the Contract or otherwise. If any sum payable under the Contract is not paid when due, then without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full both before and after any judgment, at 2% per annum over the Royal Bank of Scotland base rate from time to time. The Supplier is not entitled to suspend deliveries of the Goods and/or Services as a result of any sums being outstanding.

**INVOICE** Any advice notes and invoices are to be addressed to Gem Cable Solutions Ltd and must quote the order number, line number and item number as printed on the front of the Order.

**SUBCONTRACTING** The Supplier shall not, without the Company's consent in writing, assign, sublet, sub contract or makeover this Contract or any part thereof to any other person or company.

**FREE ISSUE** The Supplier shall be responsible for the safe custody of any material which the Company may send to the Supplier on a free issue basis, in conjunction with this Order, and replace any that may be damaged or destroyed by fire or any other cause. Ownership of such material shall remain with the Company and such material shall be returned promptly on request by the Company.

**TOOLING AND SPECIFICATIONS** Any jigs, tools, moulds, or equipment ("Tooling") supplied by the Company for use in conjunction with this Order, will remain the property of the Company. The Supplier will be responsible for the safe custody of all such Tooling and adequately insuring the Tooling against loss or damage however caused. All Tooling shall be maintained to a standard fit for purpose or similar to that in which it was received, whichever is better. All copyright, design rights, other forms of intellectual property rights in drawings, specifications or data supplied by the Company for use in conjunction with this Order ("Specifications") will remain the property of the Company and shall only be used as authorised by the Company in writing. Tooling and/or Specifications are to be returned, upon request or on completion of this Order (whichever is the earlier).

**IPR** All intellectual property rights originated or developed by the Supplier at any time in the course of supplying Products to the Company pursuant to this Contract shall belong to and vest in the Company absolutely to the fullest extent permitted by law. The Supplier assigns, by way of present assignment of future rights, all copyright, database rights and design rights in all works made, originated or developed by the Supplier pursuant to this contract and any other proprietary rights capable of assignment by way of present assignment of future rights for the full term of these rights. The Supplier undertakes, at the expense of the Company, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Company, be necessary or desirable to vest the intellectual property rights in, and register or obtain patents or registered designs in, the name of the Company.

In the event of termination for reasons described under "Termination" of this Contract or the discontinuance of supply by the Supplier, the Supplier agrees to grant the Company a royalty-free, non-exclusive, worldwide licence in the Intellectual Property and tooling developed or owned by the Supplier to use, have used, sell, manufacture, certify, or sub-licence for the purposes of fulfilling the Company's obligations to its customers.

**QUALITY** The Goods and/or Services supplied pursuant to the Order will be subject to the following quality assurance requirements in addition to those notified on the front of the Order.

**ASSURANCE** - Upon Request

1. Upon request, each delivery of Goods must be supported by a certificate confirming the Goods comply with the requirements of this Contract and ISO 9000 series (latest issue) ("Certificate of Conformance") signed by a senior member of the Supplier's staff responsible for Quality Assurance/Inspection, stating his own position or status in the Supplier's Quality Assurance/Inspection organisation.
2. The Supplier shall ensure that this Order is carried out in conformity with the requirements of ISO 9000 series (latest issue).
3. Upon request, each delivery of material shall be supported by a Certificate of Chemical and Mechanical Analysis in a form approved by the Company, or an authenticated copy of same.
4. This Order may be in aid of an M.o.D. contract and may be subject to Quality Assurance Activity at the Suppliers works/premises by the M.o.D. Q.A.R. who will advise the Supplier accordingly.
5. Upon Request Subject to Q.A. special instructions as detailed on the front of this Order.
6. Subject to inspection and verification at the Supplier's premises
7. The supplier will be responsible for all licenses required for the transport of Goods to the Company.
8. The Goods will be of satisfactory quality, fit for purpose and compliant with the stipulated specification detailed in the Order. The Supplier shall not change the specification of the Goods or the production process without the prior written approval from the Quality Assurance Officer of the Company. Where the Supplier seeks to deliver a consignment of Goods that differ to the specification supplied by the Company, the Supplier must in advance of delivery provide the Company with full and accurate details of the nature of the deviation from the specification and obtain the Company's approval to such deviation (which the Company may in its sole discretion decide to give or not). If such approval is given by the Company, the Company will agree to such a deviation in writing.
9. The Services will be performed by the Supplier with all reasonable care, skill and diligence in accordance with good recognised commercial practices and standards in the industry for similar services and in compliance with the specification detailed in the Order.

10. The Supplier shall maintain records relating to the sourcing and manufacturing process and any other information as may reasonably be specified by the Company for all Products during the term of this Contract and for a period of ten years following expiry, termination or fulfilment of this Contract. The Supplier shall not destroy such records without the written permission of the Company's Quality Assurance Officer.

11. Upon request, A First Article Inspection Report (FAIR) shall be required with the Goods demonstrating compliance with all of the procurement specifications. A FAIR shall be completed for either i) all new parts introduced, or ii) where there has been an agreed change to the manufacturing process, materials or place of manufacture, or iii) where there has been a break in production of at least 24 months.

**ACCESS** The Company, their customers, and any regulatory authority shall be granted right of access to review, inspect and test the quality systems, product covered by this Order, and applicable records, at any time, subject to an agreed or reasonable period of notice. The right of access shall extend to operations carried out by the Suppliers' sub-contractors. If as a result of such review, inspection or testing the Company believes that the Goods and/or Services do not conform or are unlikely to conform with the Order or the requirements of this Contract, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity. Notwithstanding any such review, inspection or testing, the Supplier shall remain fully responsible for the Goods and/or Services and any such review, inspection or testing shall not diminish or otherwise affect the Supplier's obligations or the Company's rights and remedies under the Contract. Irrespective of whether the right of review, inspection or testing under this Contract has been exercised the Company shall have the right to reject the Goods and/or Services (in accordance with the terms of this Contract) if the Goods and/or Services do not comply with the conditions of this Contract.

**WARRANTY** In addition to any rights or remedies hereunder or implied by statute or implied at common law if any Goods are not supplied in accordance with the quality requirements of the Contract (including without limitation those detailed under the 'Quality Assurance Requirements' section above, the Supplier shall at the option of the Company undertake either to repair or replace within seven days (or such other period as may be agreed in writing), the relevant defects or defective parts arising from such non-compliance (whether this is due to faulty design, materials, workmanship or otherwise) during the period of 24 months from delivery to the Company (fair wear and tear excepted). In addition, (without prejudice to any other right or remedy the Company may have) items returned to the Supplier will be subject to a £100 charge covering administration and carriage payable by the Supplier.

**CONTINUITY** The Supplier agrees to monitor the availability of its products and, where discontinuance of manufacture is identified, the Supplier shall provide the SUPPLY Company with a written notice no later than thirteen (13) months prior to the intended date of discontinuance



The Company shall be entitled to place order(s) to fulfil its own contractual obligations and to secure its own needs and requirements, within thirteen (13) months after such notification is received by the Company

In addition, the Company shall have the option to purchase at a reasonable cost drawing's and any unique tooling

Where applicable for those products in support of an Aircraft programme, the Supplier shall not enter into any agreements that may prejudice the supply of product for the life of the aircraft, but in any case, the supplier agrees to support for at least 25 years.

**SPARE PARTS** The Supplier shall ensure that spares for the Products are made available to the Company for the duration of this agreement and for 10 years thereafter. Any such spares shall be supplied i) under the terms of this agreement ii) at a price to be agreed, but which the Supplier shall endeavour to keep within the original price making a reasonable allowance for movement in commodity prices, and labour rates

**INDEMNITIES** The Supplier will indemnify and keep indemnified the Company from and against any claim, action or demand alleging that the use or sale of the Goods (supplied by the Supplier pursuant to this Contract) by the Company infringes the patent, registered design or other rights (including without limitation other intellectual property rights) of any third party ("Claim"). This indemnity shall extend to all expenses, costs (including, but not limited to, legal and other professional fees and expenses on a full indemnity basis), damages, losses and other liabilities (of whatever nature, whether contractual, tortious or otherwise) that are suffered or incurred by the Company as a result of or arising out of or in connection with any such Claims.

The Supplier shall indemnify and keep indemnified the Company from and against all costs, expenses (including, but not limited to, legal and other professional fees and expenses) losses, damages and other liabilities (of whatever nature, whether contractual, tortious or otherwise) suffered or incurred by the Company and arising out of or in connection with any breach of this Contract by the Supplier, any activities of the Supplier under or in connection with this Contract, any claims, actions or demands made against the Company by any third party as a result of any breach or alleged breach of this Contract by the Supplier.

**CONFIDENTIALITY** All technical information, technical and commercial information and drawings or other information of a confidential nature supplied by the Company to the Supplier or obtained by the Supplier in the course of performing the Contract ("Confidential Information") is confidential between the Company and the Supplier and the Supplier shall safeguard such Confidential Information and keep it confidential. No Confidential Information is to be disclosed by the Supplier to any third party, without the written consent of the Company. The Supplier shall not use or disclose the Company's confidential information except to the extent that such use or disclosure is necessary for the purposes of performing its rights and obligations under the Contract. The Supplier shall ensure that its officers

and employees and any other persons to whom the Confidential Information is made available comply with the provisions of this paragraph. The obligations in this paragraph shall not apply to any information to the extent that it is publicly available or becomes publicly available through no act or omission of the Supplier or is otherwise required to be disclosed by law. The

Supplier shall comply with all requirements of security of the United Kingdom and United States of America Governments including but not limited to NATO classification to the extent that they are applicable hereto.

**GUARANTEE** Goods and/or Services shall be supplied strictly in accordance with the quantities, specifications and stipulations of this Order and the Contract.

**REMEDIES** Whether or not any part of the Goods and/or Services have been accepted by the Company as a matter of law without prejudice to any other right or remedy which the Company may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Company shall be entitled at its discretion to take any one or more of the following steps:

(1) rescind the Order;

(2) at the option of the Company, give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(3) claim damages as may have been sustained in consequence of the Suppliers breach/breaches of the Contract,

(4) in respect of Goods, reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

(5) in respect of Services, refuse to accept the provision of any further Services by the Supplier and to require immediate repayment by the Supplier of all sums previously paid by the Company to the Supplier under the Order/Contract.

**TERMINATION** This paragraph applies if any one or more of the following events occurs, or has occurred prior to the date of the Contract and is continuing: -

(1) the Supplier commits a material breach of any of the provisions of the Contract;

(2) the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a firm) has one of its partners becomes bankrupt or (being a body corporate) enters administration or goes into liquidation.

(3) a security holder takes possession, or a receiver or administrative receiver is appointed, overall or any of the property or assets of the Supplier and/or

(4) the Supplier ceases, or threatens to cease, to carry on business;

(5) anything analogous to any of the foregoing occurs to the Supplier under the laws of any jurisdiction.

If any of the above events applies the Supplier shall notify the Company immediately and without prejudice to any other right or remedy available to the Company, the Company will be entitled to terminate the Contract in whole or in part or (without prejudice to its right to terminate subsequently) suspend any further delivery of Goods and/or further provision of Services without any liability to the Supplier; and/or

The Company shall also have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

The Company may terminate this Contract by giving written notice to the Supplier within 6 months of becoming aware that control of the Supplier or any holding company of the Supplier has passed to any other person or persons, other than the person or persons in control of the Supplier at the date of this Contract, (unless the Company has given its written consent before such transfer of control). For the purposes of this clause, "control" shall mean the power of a person (or persons acting in concert with him) to secure directly or indirectly that the affairs of a body are conducted in accordance with the wishes of that person (and any persons acting in concert with him), whether by means of the exercise of voting power or any other contractual right or otherwise.

The termination of the Contract, howsoever arising shall be without prejudice to the rights and remedies of the Company accrued prior to termination. The provisions concerning title, choice of law and jurisdiction, remedies, termination, quality assurance requirements, access, warranties, confidentiality and indemnity shall survive expiry or termination of the Contract/Order.

**LAW** This Order shall, in all respects, be deemed to be made under and shall be interpreted according to English Law and the parties submit to the exclusive jurisdiction of the English courts, on the understanding that the United Nations Convention on Contracts for International Sale of Goods (CISG) shall not apply.

**WAIVER** The rights and remedies of the Company under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company, in asserting or exercising any such rights or remedies. The rights and remedies provided under the Contract are cumulative and are additional to any rights or remedies provided by law.

**SEVERANCE** If any provision in the Contract is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall



to the extent of such invalidity or unenforceability be deemed severable and all other provisions of the Contract not affected by such invalidity or unenforceability shall remain in full force and effect.

**VARIATION** No variation to this Agreement shall be effective unless made in writing and signed by authorised representatives of both parties.

**ITAR** It shall be a condition precedent to the coming into force of any Order, that the Supplier shall notify the Company, should all or any part of the Goods including technical documentation, be subject to any United States export control regulations, including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

If the Supplier does not notify the Company that Goods are subject to ITAR and/or EAR prior to supplying the Goods to the Company, such failure to notify shall be deemed to be an express declaration by the Supplier that the Goods, including technical documentation, are not subject to ITAR and/or EAR.

The Supplier represents and warrants that all information provided to the Company by the Supplier under this Contract shall be complete and accurate and the Supplier shall notify the Company immediately, of any changes in the United States export control regulations which will affect the supply of Goods and/or Services under this Contract. The Supplier acknowledges that the Company is relying upon the accuracy of the information provided by the Supplier in deciding whether to place an order with the Supplier.

Should the export and/or sale of all or any part of the Goods, including technical documentation, be subject to the granting of a licence by the US government authorities, the coming into force of any Order shall be conditional upon such licence being obtained. The Supplier shall keep the Company informed of the status of the licence application and shall promptly communicate to the Company any delays in the process. The Company reserves the right to cancel an order if it considers the time period taken by such licensing process to be unreasonable.

It shall be the responsibility of the Supplier to obtain in a timely manner and maintain all import/export licence and approvals required to perform any of its obligations under this Contract. The supplier shall promptly advise the Company, of any foreign/export control licence restrictions that may affect the delivery or use of any component/part/technology.

The Supplier shall provide a copy of all relevant licenses to the Company at the time of issue.

Should a licence be withdrawn, not renewed or no longer valid for any reason, the Company shall be entitled to rescind the relevant Order and/or this Contract without prejudice to any other rights and damages made available to the Company against the Supplier.

The Supplier shall indemnify and hold the Company and its clients harmless from any and all liabilities, costs and damages resulting from the Supplier's failure to comply with any of the obligations set out in this section.

RoHS / REACH the Supplier shall be responsible for ensuring the Goods and/or Services supplied comply with European regulations in force regarding health, safety and environmental including but not limited to RoHS, REACH, WEEE. The Supplier undertakes to inform the Company of any non-compliance of these regulations referred to above, shall notify the Company if any Goods supplied contains >0.1% weight by weight (w/w) of any of the REACH 'Substances of Very High Concern and shall indemnify the Company for any consequences arising from failure by the Supplier in complying with said regulations, except where the scope of supply is specifically excluded from such regulations. The Company may request the Supplier to provide a statement confirming that Goods and/or Services are compliant.

**COUNTERFEIT GOODS** The Supplier warrants that Goods or Services supplied to the Company are new, unused and of original manufacture, and where third-party components are incorporated the duty is upon the Supplier to satisfy itself of the authenticity of the components or raw materials, and of the accompanying Certificate of conformity or similar documents.

The Supplier may only purchase or source components directly from Original Component Manufacturer ("OCM"), OCM authorised distributors or its aftermarket manufacturers. Use, purchase or sourcing of Items from non OCM authorised independent distributors or brokers is not permitted unless first approved in writing by the Company.

The Supplier shall maintain a method of traceability tracking the supply of components or raw materials used in the provision of the Goods or Services to the Company clearly identifying all supply chain intermediaries from the manufacturer to the direct source of each component for the Supplier and shall include the manufacturer's batch identification for the component, such as but not limited to date codes, lot codes, serialization, or other batch identification back to the original manufacturer. Upon request, this information shall be made available for audit and investigative purposes to the Company, its customer or customer's representatives.

The Supplier shall flow down these requirements through its own supply chain for any items that are intended to be used in the supply of Goods or Services to the Company.

The Supplier shall notify the Company as soon as it becomes aware of any counterfeit supplies or suspected counterfeit supplies which arise in relation to any of the Goods

This condition applies in addition to any quality provision, specification, statement of work, or other provision included in the Order addressing the authenticity of the Goods. To the extent that such provisions conflict with this condition, this condition contained in these Standard Terms and Conditions of Purchase shall prevail.

**CONFLICT MATERIALS** If the Goods supplied against this Order contain the minerals Tin, Tantalum, Tungsten or Gold, then the Supplier shall warrant that any items or materials forming part of the Goods have been sourced from legitimate and responsible sources which are in compliance with United Nations resolutions and which are not in any way involved in funding conflict. If requested by the Company, the Supplier shall provide all relevant information and documentation showing the

source of such items and materials. The Supplier undertakes to flow down this requirement to its suppliers.

**IMPORTS** The Supplier shall be responsible for ensuring that all import documentation including despatch notes and advice notes clearly and correctly displays the International Customs Commodity Code (CCCN number) for all goods entering the United Kingdom

**BUSINESS CONTINUITY** The Supplier shall implement a business continuity plan to identify, analyse, evaluate and/or mitigate risks related to business continuity. The assessment should consider the loss of such items as facilities, key plant, unique skills/processes, key sub-tier suppliers, computer data and IT systems and any other topics that would prevent the Supplier operating for a significant time.

**ETHICS** The Supplier shall ensure its suppliers, employees and their supply chain operate to a high standard of quality and integrity in their relationship with their employees, suppliers and customers.

The Supplier shall demonstrate compliance with the minimum standard of business behaviours', health safety and environmental practices, applicable laws and regulations and act in a way that is ethical and corporate responsibility.

The Supplier undertakes that it will ensure that applicable anti-bribery and corruption laws are not breached.