

## Gem Cable Solutions Limited– Standard Terms and Conditions of Sale

### 1. Definitions

- 1.1 Goods - Means all Goods and Services which the Customer agrees to buy from Gem Cable Solutions Ltd. (hereinafter referred to as Gem) including replacements for defective Goods.
- 1.2 Contract - Means the Contract between Gem and the Customer for the sale of Goods by Gem to the Customer.
- 1.3 Gem - Means Gem Cable Solutions Ltd. ("Gem") whose principal place of business is Unit C, 156 St Albans Road, Sandridge, St Albans, Hertfordshire, AL4 9LP
- 1.4 Customer - means the person or any company that purchases or agrees to purchase Goods.
- 1.5 Catalogue - means any published promotional material produced by Gem

### 2. General

- 2.1 All orders for Goods are accepted by Gem subject to these conditions of sale which may change at any time. Any changes will take effect on the date of issue (see above). Unless otherwise specifically agreed in writing by a Director of Gem, these conditions of sale override and exclude any other terms stipulated or incorporated or referred to by the Customer, whether in a purchase order or Catalogue or during any negotiations or any course of dealing established between Gem and the Customer. These conditions constitute the entire understanding between Gem and the Customer for the sale of Goods.
- 2.2 All descriptions and illustrations contained in the Catalogue or any price list or otherwise communicated to the Customer are intended merely to present a general idea of the Goods and nothing contained in any of them shall form any part of the Contract.
- 2.3 Any Catalogue published or quotation made (whether written or verbal) by Gem is an invitation to treat and not an offer to supply.
- 2.4 Subject to clause 2.5 any advice or recommendation given by Gem or its employees or agents to the Customer as to the storage, application or use of the Goods is followed or acted upon entirely at the Customer's own risk and accordingly (except in the case of manifest error, gross negligence or contractual misrepresentation by such persons) Gem shall not be liable for any such advice or recommendation which is not confirmed in writing by a Director of Gem.
- 2.5 Where any Contract involves work being carried out on the Customer's premises the Customer, its employees, agents, and sub-contractors shall observe all statutory rules and regulations and all of Gem's rules and regulations.

### 3. Prices

- 3.1 All prices for the Goods are in pounds Sterling and subject to Value Added Tax ("VAT") at the relevant rate ruling on the date of dispatch and do not include the cost of carriage, package, invoice or other charge which becomes payable under this Contract.
- 3.2 Whilst every endeavour will be made to maintain the prices in the Catalogue, Gem reserves the right to alter prices at any time without prior notice.
- 3.3 All prices for goods produced to the Customer's requirements are based on the specifications and information supplied by the Customer and on the costs of any constituent element of manufacturing the goods (including materials, utilities, wages, and currency movements) ruling at the date of acceptance by Gem of the Customer's order and, if the specifications and information of these costs shall vary between the date of order and the date of delivery, any prices quoted may be amended by Gem without prior notice and to provide for such variations.
- 3.4 Prices of goods offered on a resale basis, being the products of other manufacturers are sold at Gem's current prices ruling at the date of despatch or negotiated with the Customer.

### 4. Orders

- 4.1 All orders should be made using Gem part numbers.
- 4.2 Written confirmation is required for a telephone order, but if sent it must be marked "Confirmation Only" to avoid liability for a duplicated delivery. Any resulting duplication of delivery shall be the responsibility of the Customer and Gem reserves the right to treat such duplication as it sees fit.
- 4.3 Gem reserves the right to deliver part orders, or hold orders until all items are available. Credit cards are only charged when Goods are dispatched for delivery or collected from Gem. The only exception is when Gem has been requested to build Goods to special order or where payment is specifically requested in advance of despatch of goods which Gem reserves the right to do for any order.
- Gem reserves the right to deliver above or below the quantities ordered by the Customer, as may be reasonably considered having regard to the quantities ordered.
- 4.4 Gem reserves the right to decline to trade with any person or organisation. In addition, and notwithstanding any other provisions of these conditions of sale, Gem may decline to accept any order, whether or not payment has been received, by giving notice of non-acceptance to the Customer by email, facsimile or telephone, usually within 48 hours (excluding weekends and public holidays) of receipt by Gem of an order. In the event that Gem declines to accept an order in respect of which payment has been received, the full amount of such payment will be refunded.
- 4.5 No orders shall be deemed accepted by Gem until confirmed by fax or email with an official acknowledgement.
- 4.6 Any errors or omissions made by Gem in processing the Customer's order will only be rectified free of charge provided that the Customer has placed a written order with Gem. Telephone and oral instructions will only be accepted and processed on the strict basis that Gem will not be held liable for any mistakes or misunderstandings arising therefrom and that such orders so processed will be at the risk and cost of the Customer.

### 5. Payments

- 5.1 Payment shall be made by the Customer for all monies owed to Gem in respect of orders for Goods and/or Services.
- 5.2 Non-credit account Customers: Payment shall be made on order and is acceptable by cash, cheque or all major credit and debit cards. Cheques and Postal Orders should be made payable to Gem Cable Solutions Ltd and crossed "payee only"
- 5.3 Credit Account Customers: Credit terms are available on request and subject to status, satisfactory references and acceptable trading history with Gem. Payment is due 30 days from the date of invoice without any deductions whether arising by way of lawful or alleged right of set off or counterclaim or otherwise whatsoever. If the Credit Account Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Gem, it shall be entitled to:
- i) Cancel the order and suspend further deliveries of Goods.
  - ii) Appropriate any payments made by the Customer to such of the Goods (or Goods supplied under any other order) as Gem may think fit.
  - iii) Charge an administration fee for any legal or other actions required to recover monies due.
  - iv) Charge interest on the unpaid amount from the due date at a rate of 2% per month above base rate of the NatWest from time to time in force.
  - v) In addition to suspension in accordance with paragraph 5.3.i above, Gem shall be entitled claim damages from the Customer.

### 6. Ownership/Risk

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6.1 The risk of damage to or loss of Goods supplied by Gem will pass to the Customer when the goods are loaded on to the delivery vehicles at Gem premises. However, the property in the Goods shall not pass from Gem to the Customer until:

- i) The Customer shall have paid the price of the Goods including VAT in full, and
- ii) No other sums whatever shall remain owing to Gem.

6.2 Until property in the Goods passes to the Customer, the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for Gem. The Customer shall store the Goods (at no cost to Gem) separately from all other Goods in its possession and marked in such a way that they are clearly identified as Gem property. Notwithstanding that the Goods (or any part of them) remain the property of Gem the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of Gem. Any such sale or dealing shall be a sale or use of Gem property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until property of the Goods passes from Gem the entire proceeds of sale or otherwise of the Goods shall be held in trust for Gem and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as Gem money. Gem shall be entitled to recover the price of the Goods (including VAT and all other monies due to Gem from the Customer) notwithstanding that property in any of the Goods has not passed from Gem.

6.3 Until such time as the property in the Goods passes from Gem, the Customer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to Gem. If the Customer fails to return Goods, Gem may apply to enter any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the goods.

6.4 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods that are the property of Gem. Without prejudice to the other rights of Gem, if the Customer does so all sums whatever owing by the Customer shall forthwith become due and payable.

6.5 The Customer shall insure and keep insured the Goods to the full value against "all risks" to the reasonable satisfaction of Gem until the date that property in the Goods passes from Gem and shall, whenever requested by Gem, produce a copy of the policy of insurance and evidence of payment of premium. Without prejudice to the other rights of Gem, if the Customer fails to pay any sums whatever owing by the Customer on the due date, all sums due to Gem shall forthwith become due and payable.

## 7. Despatch & Delivery

7.1 Any despatch date quoted by Gem is approximate only and Gem shall not be liable for the consequences of any delay in delivery. Time for delivery shall not be of the essence.

7.2 If any delivery is late, the Customer must notify Gem and Gem will endeavour to ascertain if the product has been delivered or the expected delivery time to the Customer. If a revised delivery time is not acceptable to the Customer, Gem will at its discretion offer an alternative delivery option. These are the Customer's exclusive remedies for late delivery.

7.3 Same day despatch is normally achieved irrespective of method of carriage, if the goods are in stock, the products are available ex-stock and are on standard despatch. This does not apply to Goods requiring production, special modification and all orders which are too large to be despatched by a Gem contracted carrier.

7.4 Unless specifically agreed otherwise with the Customer, delivery shall be charged to the Customer at standard rates (details of which are available from Gem) and shall be acknowledged for each order. Only one delivery charge shall be levied, if appropriate, in respect of each order, unless Gem agrees with the Customer to make multiple deliveries. Multiple deliveries shall each be chargeable, if applicable and shall be acknowledged by Gem as such in advance.

## 8. Courier Delivery

All items, unless otherwise agreed by Gem will be despatched by courier and normally delivered next working day after the date of dispatch.

## 9. Postal Delivery

Delivery of items despatched by post cannot be guaranteed. Gem accepts no liability for late or lost deliveries by post. Replacement of such Goods is at the discretion of Gem.

## 10. Premium Next Day Delivery

Gem can offer premium delivery services. All such orders for premium deliveries attract extra charges. Details of premium delivery services and charges are available from Gem.

## 11. Export

11.1 Carriage will be charged on orders involving Export at the appropriate rate.

11.2 The Customer is responsible at their own expense to obtain any import or export license, or any other documentation deemed necessary by any compliant authority and for the avoidance of doubt any contract with Gem, is to be governed solely by English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.

## 12. Inspection, Shortages and Non-Delivery

12.1 The Customer must inspect the Goods as soon as reasonably practicable after delivery and shall within 3 working days of such delivery give written notice to Gem of any defect or damage in the Goods.

No liability can be accepted by Gem for goods damaged in transit. The Customer must give written notice of such damage within 3 days of the date of delivery

Liability for such damage is limited to replacement of the goods within a reasonable time.

12.2 Queries regarding shortages of Goods must be made within 3 days of despatch date and must be accompanied by a copy of the dispatch note. Queries regarding Goods invoiced but not delivered must be made to Gem within 3 days of invoice date and the invoice number must be quoted.

12.3 If the Customer fails to give such notice, the Goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be apparent on reasonable examination and the Customer shall be deemed to have accepted the Goods accordingly.

12.4 Should the Customer decide to accept a delivery in a damaged condition they must endorse the carrier's delivery documentation.

12.5 In no circumstances shall Gem be liable to compensate the Customer by way of damages or otherwise for non-delivery or late delivery of the Goods or any of them or for any loss consequential or otherwise arising from non-delivery or late delivery.

12.6 Cable lengths sold as just that, without having been subject to assembly, may vary and Gem reserves the right to deliver 5% more or less than the quantity ordered and invoiced. Nevertheless, Gem shall endeavour to minimize such discrepancies at all times.

12.6 In the case of defective goods, damaged goods or shortages, the Customer must give Gem or its representative a reasonable opportunity to inspect the goods concerned in the state and condition and location in which they were delivered.

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12.7 Admitted shortages will be credited and thereafter made good at the previously invoiced price.

### 13. Order Cancellations

13.1 No order can be cancelled without the previous written consent of Gem. Contact in the first instance must be made through Gem on +44 01727 845750 or [info@gemcable.co.uk](mailto:info@gemcable.co.uk)

13.2 In the event of part cancellation by the Customer of an order, Gem reserves the right to invoice for any difference in selling price applicable to the quantity dispatched up to the time of cancellation plus a restocking charge.

13.3 Goods that have been specifically manufactured to Customer order cannot be cancelled without full payment, whether the Order has been completely or partly manufactured. In particular and for example all coaxial cable assemblies are deemed to be specifically manufactured to Customer order and cannot be cancelled or returned for credit.

13.4 Orders (whether or not on a call-off basis) received and subsequently cancelled by the Customer will be subject to a cancellation charge of not less than the total of all reimbursed and irrecoverable costs including without limitation loss of profits, third party cancellation, stock losses and value of work in progress and expenses incurred to the date of (or as a result of) cancellation plus 20%

13.5 Gem's rights, remedies and/or damages under this clause are intended to be additional to and not in lieu of any common law or statutory rights, remedies and/or damages that Gem may have in the event of cancellation by the Customer of an order on any basis.

### 14 Warranty and Returns

14.1 Gem will not accept returns, unless prior authorisation has been approved and a Returns Number issued. To obtain an authorisation for return please contact Gem on +44 01727 845750. The Returns Number must be clearly identified on both the outer packaging and any internal paperwork when the Goods are returned.

14.2 All authorised returns must be received at Gem within 10 days of the authorisation being issued. Any item received after that time may be deemed unauthorised and therefore unacceptable.

14.3 Any defects which under proper use appear in the Goods within a period of twelve months (or as maybe otherwise previously stated by Gem) after delivery and which are due to faulty materials,

workmanship or design, will be made good by Gem either by repair or, at Gem's discretion, by replacement, provided that the Goods or the defective parts thereof are returned together with, if relevant, all accessories and in appropriate and adequate packaging, within the twelve month period and accompanied by a claim in writing which specifies the date of purchase, invoice number and details of the fault(s) identified.

14.4 Except as arising under sub-clause 14.3 hereof Goods must be returned to Gem in their original condition and in appropriate and adequate packaging within 10 days of delivery, stating the relevant dispatch number in order for the Customer to be eligible for any refund. Gem reserves the right to levy a handling charge. A charge of 20% of the invoice value, with a minimum charge of £50 will be levied on Goods "not wanted" or "incorrectly ordered", or due to duplication resulting from a "confirmation" order not being endorsed to that effect. All Goods returned under this provision must be received by Gem within 10 days of original invoice date. The Customer must bear all the costs of returning any Goods to Gem.

14.5 All warranties and conditions whether implied by statute or otherwise are excluded from this Contract provided that nothing in this Contract shall affect the statutory rights of the Customer dealing as a consumer or liability for death or personal injury caused by the negligence of Gem.

14.6 Gem reserve the right to inspect any Goods returned under the 10-day policy prior to issuing credit for those Goods.

14.7 Gem's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the costs of goods sold to the Customer (determined by net price invoiced to the Customer) in respect of any occurrence or series of occurrences. Further, Gem is never responsible for consequential loss.

### 15 General Descriptive Matters

15.1 Whilst every endeavour is made to ensure accuracy, all specifications, illustrations or other details contained in the Catalogue, price list or advertising material or otherwise communicated to the Customer are intended merely to present a general idea of the product and nothing contained in any of them shall form part of the Contract.

15.2 Gem reserves the right without prior notice to discontinue or to make design changes to any Goods as part of a continuous programme of improvement or to assist availability.

### 16 Product Performances

16.1 Unless any performance figures, tolerances or characteristics have been specifically and expressly warranted by Gem in writing on Gem headed documentation, Gem shall be under no liability whatsoever for any failure to attain such figures whether attributable to Gem, negligence or otherwise.

16.2 The responsibility for ensuring that Goods are sufficient and suitable for the Customer's requirements is that of the Customer save insofar as Gem have specifically advised the Customer in writing that the Goods are sufficient and suitable for the Customer's purposes having been fully and accurately advised by the Customer of their requirements.

### 17 Country of Origin

Goods listed in any Gem Catalogue may originate from a Non-EC source. Unless otherwise confirmed by Gem in writing, nothing published by Gem is to be taken as representation of the source of origin, manufacture or production of the Goods or any part thereof.

### 18 Copyrights, Patents, Intellectual Property and Information

18.1 Goods offered for sale in any Gem Catalogue may be subject to a patent, trademark, registered design, copyright, topography right or other right of any person. Gem owns full copyright in respect of any Catalogues whether published in paper or electronic form such as CD-ROM or through the Internet. The reproduction, storage in a retrieval system, or transmission, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, in part or in whole, is prohibited without Gem's prior written consent.

18.2 Notwithstanding any other term of these conditions of sale, title in any software program that forms part of the Goods purchased is retained and will not pass to the Customer. Such software programs may only be used by the Customer and a revocable non-exclusion licence is hereby granted for such purpose (so far as Gem are able) and must not be copied or altered or otherwise modified in any way.

18.3 Gem reserves the right to record and use Customer information supplied by the Customer including telephone conversations with the Customer.

18.4 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of Gem then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and the Customer shall indemnify Gem against the breach of such warranty accordingly.

18.5 All calls may be monitored and recorded for training and quality control purposes.

### 19 Data Protection

19.1 Gem may keep and use the Customer's personal details for the purpose of providing services to the Customer. In addition Gem may need to

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disclose the Customer's details to organisations working with them anywhere in the world (for example credit reference agencies, organisations who manage Gem IT systems, mailing houses and call centres).

19.2 Gem may send the Customer details of other Goods and services offered by Gem that may be of interest to the Customer. If the Customer does not wish to receive details of these offers then they should contact Gem either in writing at Unit C, 156 St Albans Road, Sandridge, St Albans, Hertfordshire, AL4 9LP or by facsimile on +44 (0)1727 838780, or by telephone on +44 (0)1727 845750 or by e-mail at [info@gemcable.co.uk](mailto:info@gemcable.co.uk). By accepting these conditions the Customer agrees to all information relating to them or Goods purchased being held and processed for marketing or other purposes by Gem.

#### **20 Limitation of Liability**

20.1 The Customer will be responsible for ensuring the fitness for purpose of the Goods for the Customer's application unless the purpose is previously notified to Gem in writing and accepted by Gem in writing by a Director.

20.2 Gem accepts no liability whatsoever or howsoever arising in respect of loss, damage or expense arising from errors in information or advice provided whether or not due to Gem negligence or that of its employees, agents or sub-contractors save for any loss or damage arising from personal injury.

20.3 Gem shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of Contract with the Customer, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Gem, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer.

20.4 The entire liability of Gem under or in connection with the Contract with the Customer shall not exceed the price of the Goods except as expressly provided in these terms and conditions.

#### **21 Force Majeure**

Gem shall not be liable to the Customer or deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform, any of Gem's obligations in relation to the Goods, provided that the delay or failure was due to any cause beyond Gem's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Gem's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Gem or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

#### **22 Law**

All contracts between Gem and the Customer shall be governed by and interpreted in accordance with English Law and the Customer submits to the exclusive jurisdiction of any competent Court in England.

#### **23 Consumer Protection**

Nothing contained herein shall affect a Customer's statutory rights if he/she "deals as a consumer" as defined in Section 12 of the Unfair Contract Terms Act 1977.

#### **24 Insolvency**

24.1 If the Customer fails to make payment for the Goods in accordance with this Contract or permits any other breach of this Contract for sale or if any distress or execution shall be levied upon any of the Customer's Goods or if the Customer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a Receiver, Administrative Receiver or Manager shall be appointed over the whole or any part of the Customer's business or assets or if any petition for the appointment of any administrator is presented against the Customer or if the Customer shall suffer any proceedings under foreign law, all sums outstanding in respect of the Goods shall become payable immediately. Gem may in its absolute discretion and without prejudice to any other rights which it may have:

- i) Suspend all future deliveries of Goods to the Customer and/or terminate the Contract without liability upon its part; and/or
- ii) Exercise any of its rights pursuant to clause 6.

#### **25 Headings**

All headings are for ease of reference only and shall not affect the construction of this contract.

#### **26 Severance**

Any provision of this Contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Contract.

#### **27 Waiver**

No waiver or forbearance by Gem (whether expressed or implied) in enforcing any of its rights under this Contract shall prejudice its right to do so in the future.

#### **28 Rights of Third Parties**

Save as expressly provided none of the provisions of this Contract are intended to or will operate to confer benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Contract.

Signed on behalf of Gem Cable Solutions Ltd

Authorised by: Steven Jack  
Position: Managing Director

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