

Terms and Conditions of Sale

In these Terms and Conditions of Sale, the seller of the Products means either (i) Gems Sensors Inc., having its principal place of business at One Cowles Road, Plainville, CT 06062-1198, U.S.A., or (ii) TGA Industries Limited-UK, having its registered office at Lennox Road, Basingstoke, Hampshire RG22 4AW. The actual seller of the Product to the Buyer is called "Gems." The term "Buyer" means the party who purchases or agrees to purchase Gems Products, which include but are not limited to, level switch products, pressure switches, flow switches, miniature solenoid valves, proximity switches and liquid level controls, collectively referred to herein as "Products." Gems and Buyer may also be referred to herein individually as a "Party" and together as the "Parties." The term "Contract" means the written contract of sale concluded between Gems and the Buyer (including such written specifications, quotations, drawings, and other documents as may be expressly incorporated into it by reference), and incorporating these terms and conditions of sale.

1. **Acceptance.** The following terms and conditions of sale ("Conditions") are the only terms and conditions upon which Gems is prepared to sell Products to Buyer and they shall govern the Contract to the entire exclusion of any and all other terms and conditions (including any terms or conditions the Buyer purports to apply under any purchase order, confirmation of order, specification, communication, or other document) except those which relate to prices, quantities, delivery schedules, and the description and specifications of the Products stated in Gems' quotation acknowledgement of an order or on Gems' invoice. Gems hereby objects to and rejects any other terms or conditions appearing on, incorporated by reference in, or attached to Buyer's purchase order(s). In case of a conflict between the Conditions and the terms and conditions contained on any purchase order or similar document, the Conditions of this document shall control. Buyer's acceptance of Gems Products called for in said purchase order(s) shall constitute its acceptance of these Conditions. Without limiting the foregoing, in the event that the quotation or acknowledgement follows the issuance of a purchase order from Buyer, or any other document of Buyer that purports to impose terms and conditions on the contemplated transaction (the "Buyer's Offer"), the document issued by Gems shall not operate as an acceptance of the Buyer's Offer and Gem's acceptance of any Buyer's Offer is expressly conditioned on Buyer's assent to all of Gems' Conditions set forth below.

2. **Prices.** The prices of Products sold by Gems to Buyer will be Gems' applicable published prices in effect at the time Buyer's purchase order is accepted by Gems, or such prices quoted by a Gems authorized representative; provided, however, Gems may change the prices of Products at anytime and for any reason prior to shipment. Written quotations expire automatically thirty (30) days from the date issued and are subject to change or termination prior to Buyer's acceptance during that period.

3. **Taxes.** All prices for Products are exclusive of, and Buyer agrees to pay any and all excise, sales, use, transfer, personal property and/or value-added tax (VAT), import duty and any and all other taxes and duties imposed by any national, federal, state, municipal or other governmental authority with respect to the Products or their sale, excepting only taxes based on Gems' income. Buyer must obtain and provide Gems any certificate of exemption or similar document required for any tax relief or exemption.

4. **Terms of Payment.** All invoices shall be paid in full on or prior to shipment unless Buyer has established and maintains open account credit with Gems, in which case payment in full shall be due thirty (30) days from date of invoice. Gems reserves the right, in its sole discretion, to require full or partial pre-payment, letters of credit, or cash on delivery and to revoke any credit previously extended. All payments must be made in the currency and to the bank or address of Gems indicated on Gems' invoice. Gems reserves the right to assess, and Buyer agrees to promptly pay, service charges of one and one-half percent (1½%) per month on overdue accounts, or the maximum amount permitted by law, whichever is lower. Undisputed amounts owed by Buyer must be paid without setoff or other withholding. A payment is considered made when received by Gems in accordance with payment instructions on its invoice. If any particular invoice is not paid when due, Buyer agrees to pay all collection costs if this account is referred outside for collection or, if suit is brought to collect this account, Buyer agrees to pay all costs and reasonable attorneys' fees, including all costs and reasonable attorneys' fees incurred on any appeal to an appellate court.

5. **Place of Delivery and Method of Tender/Risk of Loss.** All prices are FCA (Incoterms 2010) Gems' facility. Buyer agrees to pay all transportation charges incurred after the Products are delivered to the carrier and to reimburse Gems for any transit insurance or freight pre-paid for the Products by Gems. The date of delivery is the date on which the carrier collects the Products from Gems. Gems reserves the right to deliver the Products in any order and to make partial deliveries. All shipping dates are approximate only. Where Buyer furnishes special transportation instructions, any special expense is to be borne by the Buyer, including special handling, packaging and additional freight charges. When export instructions or special packing are required and have been agreed upon by the parties, any extra charges such as export duties, licenses, fees and the like shall be borne by Buyer. Title to (subject to the next sentence below), and the risk of loss of or damage to the Products or any part thereof shall pass to the Buyer upon the earlier of delivery to carrier at the point of shipment or delivery to the Buyer, and Buyer shall have the responsibility of filing any claims for loss, damage, delay or otherwise, with the carrier, insurer or other related third parties; provided, however, for international shipments from the United States, title and risk of loss of the Goods will pass to Buyer when the Goods enter international waters, airspace or cross international borders. Subject to applicable law, Gems, upon notice to Buyer, may retain title to the Product until such time as Gems receives payment in full from the Buyer.

6. **Installation / Maintenance.** Unless otherwise specified in writing on a quotation provided by an authorized representative of Gems, Buyer assumes responsibility for installation of the Products and for any required maintenance on the Products.
7. **Proprietary Rights.** Gems shall retain all rights to technical data and information, technical processes and business methods, whether patentable or not, arising out of or evolving as a result of Gems rendering engineering services (including installation) to, and designing systems and/or Products for, Buyer.
8. **Delays.** Gems is not liable for loss, damage, detention or delay due to causes beyond its reasonable control, including but not limited to, Acts of God, acts of Buyer, acts of civil or military authority, fires, strikes, floods, terrorism, epidemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, manufacturing facilities or transportation due to such causes. In the event of a delay due to any cause beyond Gems' control, Gems may allocate production and deliveries among its customers, the time for delivery to Buyer will be extended for a period equal to the duration of the delay, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of the delay. In the event of a delay in delivery in excess of ninety (90) consecutive days, the Buyer and Gems each have the right upon written notice to terminate the Contract or any undelivered portion thereof without penalty. Products for which delivery is delayed due to any cause within Buyer's control may be placed in storage by Gems at Buyer's risk and expense and for its account. Buyer will be liable for all costs and expenses incurred by Gems in holding or storing Products for Buyer or at Buyer's request. Gems reserves the right to withhold shipments in whole or in part if Buyer fails to make any payment to Gems when due or otherwise fails to perform its obligations hereunder.
9. **Cancellations/Changes.** Upon order acceptance and acknowledgement of delivery schedule by Gems, the Buyer may not subsequently cancel the order or any part thereof, nor change or delay the scheduled delivery date(s).
10. **Product Return.** After shipment of product against accepted order(s), whether shipments are partial or complete, the Buyer may not return products except as allowed under Section 11 Warranty. Further, if Buyer, fails, refuses, or for any reason is unable or unwilling to accept delivery of any of the products it has ordered, or if Buyer requests the diversion of a delivery from Gems, Buyer shall be liable for and pay to Gems, promptly on demand, the full purchase price and all costs and expenses incurred by Gems in filling and shipping Buyer's order or by reason of such diversion, including costs of demurrage and storage.
11. **Warranty.**
- a) **Warranty.** Gems warrants that the Products provided to Buyer shall for a period of one (1) year from the date of delivery from Gems' facility ("Warranty Period") (i) meet the specifications for the Products if any provided by Gems; and (ii) be free from defects in workmanship and material.
 - b) **Remedy.** If a Product is defective in workmanship or material or does not meet the specifications, if any, provided Buyer provides prompt written notice of the defect within the Warranty Period, Gems will at its option, during the Warranty Period, (i) repair or replace the Product at no charge to Buyer; or (ii) provide to Buyer a credit equal to the purchase price of the Product.. Freight charges for Products returned to Gems for repair/warranty analysis are the responsibility of Buyer, and upon such return, Buyer must properly package such Product to protect against risk of loss and damage, including damage from electrostatic discharge. Such repair, replacement or issuance of a credit shall be Buyer's sole and exclusive remedy with respect to a breach of the warranty set forth herein. All costs of de-installation or re-installation of the Product shall be borne by Buyer. Products that are repaired or replaced during the Warranty Period are warranted for a period of six (6) months from the date of repair or replacement or the unexpired term of the original Warranty Period, whichever period is longer. Where Products are replaced pursuant to this Section, Buyer shall be invoiced for the replaced Products and then issued a credit for such Products. If it is determined by Gems that the Product returned is not defective, Buyer agrees to pay Gems an evaluation fee of Two Hundred (USD 200) Dollars per return.
 - c) **Warranty Exclusions.** If, however, upon inspection of any of the Products to which this warranty applies, Gems determines that a claimed defect resulted from (i) normal wear and tear, including corrosion; (ii) installation and/or maintenance by Buyer or a third party; (iii) misuse or abuse, whether willful or negligent, of any of the Products by any person other than Gems; (iv) modifications, alterations, service, repair or replacement made by Buyer or a third party during the Warranty Period that were not requested or authorized by Gems; (v) any combination or use of the Products with any incompatible equipment or ancillary products that may be connected to the Products; (vi) failure of Buyer to maintain environmental conditions in accordance with Gems specifications or instructions, including but not limited to, adequate electrical power, temperature and humidity control; (vii) failure to follow all instructions provided by Gems (whether oral or written); (viii) customized equipment manufactured by third parties for incorporation into any of the Products; (ix) defects or errors in any

custom specifications provided by Buyer; (x) causes beyond Gems reasonable control; or (xi) causes other than our workmanship or materials, then the warranty shall be null and void and cease to apply. Gems shall have the sole right to determine whether Products are actually defective and the cause of the alleged defect.

THE WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR A SPECIFIC APPLICATION BY BUYER, PERIOD OF SERVICE AND NON-INFRINGEMENT. NO EMPLOYEE OR AGENT OF GEMS, OTHER THAN AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF GEMS, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING. Without limiting the foregoing, Gems does not warrant that the Products will be suitable for Buyer's specific needs, will work in any particular environment, will perform without interruption or be error free, or will work in conjunction with Buyer's equipment.

12. **Evaluation Products.** From time to time, Gems may provide Buyer with sample or prototype Products for test and evaluation purposes only ("Evaluation Products"). During the evaluation period, Gems is the owner of and retains title to the Evaluation Products. All Evaluation Products shall be provided "AS IS" without warranty of any kind. Buyer agrees that any use of the Evaluation Product is at Buyer's sole risk. Under no circumstances shall the Evaluation Products be used in any production or commercial environment, technology, device or other machinery and Gems shall assume no liability for such unauthorized use.

13. **Patent Indemnification.** Gems shall have no liability for infringement of any United States patents, trademarks or copyrights (hereinafter collectively referred to as the "Intellectual Property Rights") except as specifically provided in this Section. Any liability of Gems shall be limited as set forth elsewhere in the Conditions. Gems will defend and indemnify Buyer against allegations of infringement of Intellectual Property Rights subject to the limitations and conditions set forth in this Section. Gems will defend, at its expense, and will pay the cost of any settlement or damages awarded in any action brought against Buyer based on an allegation that a Product sold to Buyer infringes the Intellectual Property Rights of a third party. Gems obligation to defend and indemnify Buyer is contingent on Buyer notifying Gems within ten (10) days after Buyer becomes aware of such allegations of infringement, and Gems having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If a Product is subject to a claim that it infringes the Intellectual Property Rights of a third party, Gems may, in its sole discretion, procure for Buyer the right to continue using the Product, replace or modify the Product so as to make it non-infringing, or offer to accept return of the Product and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Gems shall have no liability for claims of infringement based on information provided by Buyer, or directed to Products for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of the Products. The foregoing provisions of this Section shall constitute Gems' sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights. If a claim is based on information or designs provided in whole or in part by Buyer, Buyer shall defend and indemnify Gems for all costs, expenses or judgments resulting from any claim that such Product infringes the Intellectual Property Rights of a third party.

14. **Buyer Indemnity.** Buyer agrees to defend, indemnify and hold Gems harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by the Products while in possession or under the control of Buyer or Buyer's customer except as expressly set forth elsewhere in these Conditions.

15. **Disclaimer of Certain Damages.** IN NO EVENT SHALL GEMS BE LIABLE (AND BUYER WAIVES ALL CLAIMS AGAINST GEMS) FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, COSTS OR EXPENSES BASED UPON NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, FROM PRODUCTS THAT ARE THE SUBJECT OF THIS CONTRACT, OR THE USE OR FAILURE THEREOF, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PRODUCTION, PROFITS OR INJURY TO PERSONS OR PROPERTY. THIS DISCLAIMER SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL FAIL OF ITS ESSENTIAL PURPOSE.

16. **Limitation of Liability.** GEMS' MAXIMUM LIABILITY SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCT(S) THAT GAVE RISE TO ANY SUCH LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE CONTRACT AND SHALL APPLY REGARDLESS OF THE BASIS OF BUYER'S CLAIM, BE IT IN CONTRACT, WARRANTY, TORT OR OTHERWISE. THE REMEDIES OF BUYER CONTAINED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO BUYER UNDER APPLICABLE LAW.

17. **Compliance.**

- a) Buyer shall comply with all applicable governmental laws, ordinances, codes, rules, regulations and orders in its performance hereunder, and shall obtain all permits or licenses required in connection with the purchase, transfer, shipment, installation or use of any of the Products.
- b) The export or re-export of the Products and related technical data supplied hereunder, if any, may be subject to regulation or restriction under the United States Export Administration Act, the Arms Export Control Act, the U.K. Export Control Organization, or other similar laws. Buyer shall not sell, re-export, transfer or otherwise dispose of the Products or any related technical data in violation of U.S., U.K. laws or any other applicable export laws. Buyer shall have sole responsibility for obtaining all applicable licenses or authorizations at its sole cost and expense.

18. **Inspection and Acceptance of Products.** Final inspection and acceptance of Products provided under this Contract shall be made by Buyer within ten (10) days of receipt of the Products at Buyer's facility, except in the case where Buyer's source inspector or authorized representative inspects the Goods at Seller's facility. Failure of Buyer to inspect and reject in writing said Products within the above time period (where source inspection is not applicable) shall be deemed to mean acceptance has occurred.

19. **Assignment.** Buyer may not delegate any duties nor assign any rights or claims hereunder without Gems' prior written consent, and any such attempted delegation or assignment shall be void.

20. **Buyer's Default; Insolvency.** If Buyer becomes insolvent or if Buyer is in default for any reason under the terms of this Contract or any other agreement between Buyer and Gems, Gems shall be entitled, at Gems' option, to discontinue further performance of all or part of the Contract, to withhold shipments, in whole or in part, and/or to recall Products in transit, retake same, and repossess all Products which may be stored with Gems for Buyer's account, without the necessity of taking any other proceedings.

21. **Governing Law.** The rights and obligations of the Parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of (i) the State of Connecticut if the seller is Gems Sensors Inc. and the Parties hereby irrevocably submit to the jurisdiction of any court of competence, federal and state, in New York; or (ii) English law if the seller is TGA Industries Limited-UK and the Parties irrevocably submit to the exclusive jurisdiction of English courts. The Parties expressly reject the application to this Contract of the United Nations Convention on Contracts for the International Sale of Goods. No actions arising out of the sale of the Products, other than in an action to recover the purchase price of the Products, may be brought by either party more than one (1) year after the cause of action accrues.

22. **Severability; Remedies; Waiver.** In the event that any one or more provisions contained herein (other than the provisions obligating Buyer to pay Gems for the Products) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Gems' failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

23. **Notices.** Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three days after being sent via registered mail with return receipt requested, by courier (for example DHL or FedEx), by first-class mail, postage prepaid, or via email (with evidence of receipt required) to Gems or Buyer at the address specified in the Contract or at such other address, including email addresses, as either party may from time to time designate to the other in writing.

24. **Entire Agreement.** This is the complete and exclusive statement of the agreement between Gems and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Gems and Buyer.