

Terms & Conditions of Sale.

1. GENERAL

- a) In these Terms and Conditions, the phrase "the Company" shall mean Gemco Equipment Ltd, and/or its associated Companies. The phrase "the Customer" shall mean any company, organisation or individual seeking to purchase goods or services from the Company.
- b) Unless otherwise expressly agreed in writing, these Terms and Conditions shall apply to all agreements and deliveries from the Company for the supply of Goods "the Goods" to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. ACCEPTANCE AND VARIATION OF PRICE

- a) All quotations whether verbal, or in writing, do not constitute offers and are subject to the Company's confirmation on receipt of the customers' order. A quotation shall only be valid for a period of 30 days from its date of issue. Quotes from Gemco will become void if the customers' acceptance has not reached Gemco within 30 days of the submission of the quote. Amendments or additions to an original agreement are not binding on Gemco without their written confirmation
- b) All prices quoted, or listed, by the Company are based on the prices of the Company's suppliers at the time of quotation, or listing, and are subject to adjustment prior to despatch to cover any increase in such prices, or in taxation, or duty which might take place prior to delivery and such prices are exclusive of packing, carriage, installation and VAT.
- c) Where Goods are to be imported the Company reserves the right to vary the price quoted to reflect the rate of exchange for purchase of the relevant currency in pounds sterling.
- d) Information given in catalogues, pricelists and other product information provided by the Company is only binding on the Company to the extent that the agreement with the buyer expressly refers to such information. The Company reserves the right to change the information contained in the above material without notice.

3. DELIVERY AND INSTALLATION

- a) Unless otherwise agreed in writing by the Company, the goods shall be delivered ex works 153-165 Bridge Street, Northampton NN1 1QG - as defined in INCOTERMS 2010. The buyer bears the risk once the goods have been delivered. Goods shall be deemed to be delivered ex works notwithstanding that installation (where applicable) is done at a later date.
- b) Agreed time of delivery is only valid if the customer has a credit account, prepayment has been received into Gemco's bank account, or a letter of credit has been received.
- c) The Company will use its best endeavours to deliver at the time stated but delivery dates shall be regarded as estimates only. The Company is entitled to deliver goods up to five working days before agreed delivery date and is entitled to make partial delivery and will cover all additional costs incurred. The Company shall not be liable for any delay occasioned by any cause whatsoever beyond the Company's control.
- d) The Company does not accept postponed delivery requests from the customer, unless notice has been made in writing at the latest 3 weeks before agreed delivery of standard products or 6 weeks before agreed delivery of specialised products or orders which combine both standard and specialised Products. If timely notice is not given, the Company shall invoice the customer on the date of agreed delivery. The customer will be charged a handling fee and storage fee of 2% of the total order value per commencing month, if goods are stored at the Company's premises for more than 14 days.
- e) Subject to the above sub-clause (c) if the delivery date specified is exceeded, the customer may submit a written request to the Company for delivery within a reasonable deadline which cannot be shorter than three weeks. The minimum deadline is six weeks, however, for products manufactured specifically for the customer or goods which are normally not held in stock by the Company. If the Company does not deliver within this extended deadline, the customer may cancel the agreement by written notification to the Company as far as the part of the delivery not delivered is concerned.
- f) As for Goods manufactured specifically for the customer or goods not normally held in stock by the Company, the customer's right to cancel the agreement is furthermore conditional upon the customer proving that the material purpose of the purchase no longer exists as a consequence of the delay. The customer cannot raise any other claims against the Company as a result of delays.
- g) The Company shall (at its sole option and subject to the parties entering into a separate written agreement) install the Goods provided that the site has been prepared in accordance with the Company's instructions and all necessary facilities are freely available. If installation is not possible at the time of delivery due to no fault of the Company, the Company shall be entitled to make an additional charge in respect of any further visit to the site to install the goods.
- h) In the case of delivery of goods by instalments, the customer will not be entitled to treat the delivery of faulty goods in any one instalment, or the late delivery, or non- delivery of any one instalment, as a repudiation of any contract with the Company.

4. RISK AND TITLE TO GOODS

- a) The risk in the Goods passes to the customer upon delivery but property in the goods remains vested in the Company and shall only pass from the Company to the customer upon full payment being made by the customer of all sums due on whatsoever account or grounds to the Company from the customer.
- b) In the event of the Goods being sold by the customer in such manner as to pass to a third party a valid title to the Goods, whilst any such sums are due as aforesaid, the customer shall be the Trustee for the Company of the proceeds of such sale or to the claim for such proceeds and the customer shall place such proceeds in a separate bank account.
- c) The Company's rights under this clause 4 shall attach to the proceeds of such sale. Nothing herein shall constitute the customer the agent of the Company for the purposes of any such sale.
- d) The customer agrees that prior to full payment being made as aforesaid the Company may at any time enter upon the customer's premises and remove the Goods there from (and dispose of the same in any manner it may decide) and that prior to such payment the customer shall keep such Goods separate and identifiable for this purpose.
- e) In the event of the Goods becoming constituents of, or being converted into other products whilst sums are due as provided in sub clause (b) hereof the Company shall have the ownership of and title to such other products as if they were the Goods and accordingly this Clause 4 shall, so far as appropriate, apply to such other products, subject to the customer's right to the surplus of any moneys realised by the said products in excess of those due to the Company as provided herein.
- f) Any implied authority that the customer shall be entitled to sell the Goods and pass property in the same to third parties, in the normal course of its business, or manufacture products out of the same, or sell such products will continue until otherwise notified to the customer, by the Company, or until the happening of any of the following events.
 - i) Any notice to the customer that an administrator, administrative receiver or other receivers are to be, or have been, appointed in respect of its undertaking or a material part thereof or other property or assets.
 - ii) Any notice to the customer that a petition for an Administration Order is to be, or has been, presented to the customer.
 - iii) Any notice to the customer that a petition to wind up the customer is to be, or has been, presented to the customer or the passing, by the customer, of a resolution to wind up the customer (including any proposal by the customer to do so).
 - iv) A decision by the customer that the customer intends to make any arrangement or composition with its creditors.
 - v) Presentation to the customer of a petition for bankruptcy, or notice to the customer that a petition for bankruptcy, is to be presented to it, and upon the happening of any such events the customer shall immediately notify a Director, or other authorised officer of the Company.
- g) On receipt of notice from the Company, or on the happening of any event set out in (f) above the customer's implied authority to sell the Company's Goods shall be immediately withdrawn and such Goods and products there from shall immediately be delivered the Company.

5. CANCELLATION AND RETURNS

Cancellation of orders for standard products manufactured, or in production, will incur a cancellation fee of 50% of order value unless otherwise expressly agreed in writing by Gemco.

Cancellation of orders for specialised products, at any stage after production has started, will incur a cancellation fee of 80% of order value unless otherwise expressly agreed in writing by Gemco. Returns are only accepted by prior written agreement with the Company and only against payment of a return charge corresponding to up to 50% of the Goods' invoice price.

6. PAYMENT

- a) Unless otherwise stated, payment is strictly net cash to be made 30 days from date of invoice. Where payment is not received, for any Goods or services provided, by the specified date the Company reserves the right to refuse to attend any further calls to site to either complete works or to calibrate other equipment, even if previously paid for, until the account is paid up to date. Failure to make due payment in respect of goods supplied, or services provided, in accordance with these terms and conditions or any contract between the customer and the Company shall entitle the Company to delay, suspend or cancel deliveries in whole, or in part, at its option. Interest shall be charged on outstanding balances at the rate of 2% per month, or part of a month, until payment after as well as before judgement. There will also be an administration charge and the customer will be liable for additional costs should legal action be necessary.
- b) Payment shall be due whether or not property in the Goods has passed by virtue of Clause 4 hereof and the Company shall (without prejudice to any other right or remedy) accordingly be entitled to sue for the price, once the same is due, even if property in the Goods has not passed.
- c) All payments to be made by the customer must be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the customer is required by law to make any such deduction or withholding. The customer must pay any amount not under dispute and cannot hold back payment of full invoice amount in the event, that the invoice contains products or services not under dispute.

7. LIABILITY AND WARRANTY

- a) The customer shall thoroughly inspect the Goods upon delivery to establish whether they are consistent with the purchase agreement and promptly report any deficiencies discovered during such inspection. The customer cannot at a later date claim deficiency which could have been discovered during the inspection. The Company will make good, at its option, by repair or replacement, any defects in the Goods due solely to defective workmanship or materials which are notified to the Company within twelve months from the date of delivery to the customer, and in the case of any defect not discoverable upon reasonable examination such notification must be made as soon as such defect is actually discovered provided that:
 - i) the aforesaid obligations on the Company shall not extend to defects caused by wilful damage, negligence (other than by servants or agents of the Company), incorrect storage or application, movement, installation (if not installed by the Company), or defects caused by fair wear and tear and
 - ii) the Goods are made available for inspection and repair within 14 days of notification of the defect, or if required by the Company, the Goods are returned within 14 days of notification of the defect; and
 - iii) a service contract must be obtained from either the Company or the manufacturers fully trained & approved supplier; and
 - iv) all routine maintenance must be carried out to the manufacturers recommended intervals;
 - v) the Company at all times reserving the right to decide which items are deemed as accidental damage, misuse or general wear and tear and will not be covered under warranty. Most new equipment comes as standard with a 12-month warranty unless otherwise stated at point of sale but any exceptions such as emission testers should be supported with the relevant documentation
- b) Save as herein set out and for liability for death or personal injury resulting from negligence on the part of the Company and save for breach of the Company's statutorily implied undertakings as to title all express or implied conditions representations or warranties as to quality or fitness of the Goods or otherwise are expressly excluded.
- c) Save for liability for death or personal injury resulting from negligence of the Company, the Company accepts no liability under any claims whatsoever arising (be it by negligence or otherwise) for operating losses, loss of earnings or other indirect losses and consequential losses, including costs incurred to ascertain or locate deficient products or damage.
- d) Save for liability for death or personal injury resulting from negligence of the Company, the general limitation of any other claim against the Company shall not exceed the value of the Company's Sales Invoice for the Goods or Services, including consultancy fees, provided by the Company, and in any event not exceeding £1,000,000.

8. FORCE MAJEURE

The Company shall be excused from liability to the customer if performance hereunder is prevented or hindered (in particular if an agreed delivery date is delayed) by any cause whatsoever beyond the company's control and, in particular, but without prejudice to the generality of the foregoing by act of God, war, riot, commotion, Government controls and restrictions or prohibitions or any other Government act or omission whether local or national, fire, flood, subsidence, sabotage, accident, strike or lockout and shall not be liable for any loss or damage resulting therefrom suffered by the customer.

9. GENERAL DISCLAIMER

The Company cannot be held liable for delays and deficiencies other than those stated in Clauses 3 and 7. If the Company incurs liability in damages as a result of the customer's use of the delivered Goods or Services, including a resale, which exceeds the Company's liability under this provision, the customer is obliged to indemnify the Company for such liability and the customer is also obliged to accept a lawsuit against him at the court dealing with the claim against the Company.

10. VARIATION

Except as set out in these terms and conditions, no variation of the agreement between the Company and the customer for the sale and purchase of the Goods in accordance with these terms and conditions including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by a Director of the Company. The Company reserves the right to terminate without notice the variation agreement and revert to the Company's standard Terms and Conditions of Sale.

11. INTELLECTUAL PROPERTY RIGHTS

- a) All drawings and technical documentation, all intangible property rights, including software, and similar materials and information supplied by the Company to the customer the "Intellectual Property Rights", remain the property of the Company and shall only be used in connection with the use and maintenance of the Goods delivered by the Company and may not be copied, reproduced, assigned or otherwise entrusted to an unauthorized third party by the customer.
- b) Nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the customer in relation to the Intellectual Property Rights.
- c) Any reputation in any trademarks affixed or applied to the Goods shall accrue to the sole benefit of the Company or any other owner of the trade marks from time to time.

12. LEGAL INTERPRETATION

These terms and conditions shall be construed in accordance with English Law. Any dispute arising out of, or in connection with these Terms and Conditions shall be determined by the English Courts.

13. SEVERENCE

In the event of any part of these Terms and Conditions being ineffective, for any reason, the remainder thereof shall constitute the Terms and Conditions binding upon the parties.