

Terms and Conditions

1. Definitions

"Company"	means Gemco Service Limited, Brearley House, Burnley Road, Halifax HX2 6JB.
"Customer"	means the other party to this Agreement.
"Equipment"	means the equipment (including the description and location) shown overleaf.
"Fees"	means the fees and charges payable for the Services as set out overleaf.
"Force Majeure"	means in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other industrial action).
"Liability"	means any liability arising by reason of any representation (unless fraudulent) or any breach of any implied term or any duty at common law, or under any statute, or under any express term of this Agreement.
"Services"	means the services set out overleaf and agreed between the parties from time to time in writing.

2. Services Provided

- 2.1. During the period of this Agreement, the Company shall provide the Customer with the Services providing the customer has complied with their obligations defined under clause 4 of the Agreement.
- 2.2. If the Company's performance of any its obligations under the Agreement is prevented or delayed by any act or omission by the Customer of failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 2.2.1. The Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default and to rely on the Customer Default to relieve it from the performance of any its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations; and
 - 2.2.2. The Company shall not be liable for any costs or losses incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform the obligations as set out in this clause 2.2.
- 2.3. Unless otherwise agreed, the essence of this Agreement shall apply to all further matters and services agreed from time to time between the parties and the Fees for the Services shall be adjusted accordingly.
- 2.4. The Customer shall not allow any person, firm or company other than the Company to service the Equipment or allow any products other than those supplied by the Company to be used in connection with the Equipment (other than routine user maintenance specified by the manufacturer).
- 2.5. The Company may use sub-contractors to provide the Services any liability caused by a subcontractor will be the responsibility of the subcontractor not of the Company.

3. Payment Terms

- 3.1. The terms of payment for all Fees are as specified overleaf. Payment shall be made in advance, together with VAT at the appropriate rate, within 30 days of the invoice date unless the Company has agreed that the Customer may pay these Fees via instalments or Direct Debits, in which case payment shall be made as specified overleaf or on the renewal notice or the invoice (as appropriate).
- 3.2. Where there is any delay or default of any payment for more than 30 days, the Company may suspend or terminate the Services and will be entitled to recover all items supplied and raise any charges applicable under clauses 3.3 and 5.1 of this Agreement. The amount due under this clause shall have added to it such interest and charges from the date payment became due under clause 3.1 until payment is made to the Company (both before and after any judgment) in accordance with the Late Payment of Commercial Debts Regulations 2002. The Customer's obligations during this period shall remain unaffected.
- 3.3. The Company reserves its right to charge, at its applicable rates, for any work which it carries out at the request of the Customer which is not covered by this Agreement and for any work carried out after the expiry or termination of this Agreement.
- 3.4. The Company reserves its right to increase the Fees on each anniversary of this Agreement and shall notify the Customer in writing 30 days prior to the increase taking place. Where the proposed increase is more than 10% of the last annual fee, the Customer shall be entitled to serve notice, within 14 days of notification of the proposed increase in Fees being received, on the Company that it wishes to terminate the Agreement.

4. Customer's Obligations

- 4.1. The Customer shall:
 - 4.1.1. ensure that the terms of any order and the information it provides in the Services is complete and accurate;
 - 4.1.2. at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
 - 4.1.3. not move the Equipment from the location (as referred to overleaf) without obtaining the prior written consent of the Company; and
 - 4.1.4. use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by the Company.
 - 4.1.5. ensure the equipment is maintained in accordance to the manufacturer's recommendations and instructions.
- 4.2. The Customer shall ensure that the Company's representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable the Company to perform its duties.
- 4.3. The Customer shall provide the Company with such information concerning the Equipment, its application, use, location and environment as the Company may reasonably request to enable it to carry out its duties.
- 4.4. The Customer shall take all such steps as may be necessary to ensure the safety of any of the Company's representatives who visit any premises of the Customer.

5. Spare Parts and Replacements

- 5.1. The Company reserves the right to charge the Customer for the supply of spare parts and replacement components required to maintain the Equipment in good working order.
- 5.2. Parts will carry a minimum 3 months warranty from the date of fitting or supply providing the Customer has complied with their obligations defined under clause 4 of the Agreement.
- 5.3. All spare parts and replacement components supplied by the Company shall become part of the Equipment and any parts and components removed from it shall become the Company's property, unless otherwise agreed in writing between the parties.
- 5.4. If the Company determines that it is necessary to move the Equipment or any part of the Equipment from the Location in order to carry out any repairs, and as a consequence a significant part of the Customer's operation is affected, the Company shall use all reasonable endeavours to supply on loan to the Customer (and at the Customer's cost and risk) equivalent equipment while the Equipment or the part in question is being repaired.

6. Liability – The Customer's attention is particularly drawn to this clause

- 6.1. The Company shall have no Liability to the Customer for loss of profit or any indirect, special or consequential loss arising out of or in connection with the provision of any goods or services (including the Services) or any delay in providing or failure to provide any goods or services pursuant to this Agreement (except in respect of death or personal injury resulting from negligence) and the total Liability of the Company for any loss of the Customer so arising in any year of this Agreement in respect of any one event or series of connected events shall not exceed the Fees payable by the Customer for the Services for that year.
- 6.2. Except as set out in these conditions, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from the Agreement.
- 6.3. This clause 6 shall survive termination of the Agreement.

7. Duration and Termination

- 7.1. This Agreement shall commence on the date of acceptance by the Company and unless terminated under any other clause of this Agreement shall continue for a minimum period of 12 months (or as specified in the Agreement) from that date (the "**Minimum Period**"). Unless the Agreement is terminated by either party giving to the other, at any time, not less than 3 months' prior written notice of termination expiring at the end of that Minimum Period the agreement shall continue for an additional period equal to the initial Minimum Period.
- 7.2. If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through the Company's fault (as to whether either of which events has occurred the Company's decision shall be final and binding on the Customer) the Company reserves the right to terminate this Agreement with immediate effect, by giving written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained.

- 7.3. Further, either party may immediately terminate this Agreement by giving written notice to the other if the other commits any continuing or material breach of any of the provisions of this Agreement and, if a breach is capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other; or the other makes any voluntary arrangement with its creditors or becomes subject to an administration order; or the other goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other under this Agreement); or the other ceases, or threatens to cease, to carry on business.
- 7.4. For the purpose of clause 7.3, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 7.5. A waiver by either party of a breach of this Agreement shall not be considered as a waiver of a subsequent breach of the same or any other provision. The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach. On the termination of this Agreement for any reason, neither party shall have any further obligation to the other under this Agreement, except as otherwise provided in this Agreement except for rights which have accrued prior to termination.

8. Consequences of Termination

- 8.1. If for any reason whatsoever this Agreement or any part of it is terminated:
 - 8.1.1. the Customer shall pay to the Company all of the Customer's outstanding unpaid invoices and interest and in respect of the services supplied but not yet invoiced the Company shall submit an invoice which shall be payable immediately in receipt;
 - 8.1.2. before completion of the Minimum Period (except where termination is by operation of clause 3.4) the Company reserves the right to recover from the Customer the cost of the Services equal to the cost of provision of the Services for the unexpired period of the Agreement plus any other costs incurred by the Company.

9. Force Majeure

- 9.1. If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question. Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

10. General

1. All terms and conditions relating to the Services are set out herein. All other terms and conditions (save as may be provided by law) are excluded unless agreed in writing by a director of both parties.
2. The Customer shall not assign, sub-contract or otherwise transfer its rights and/or obligations under this Agreement without the prior written consent of the Company. The Company may, at any time, having given written notice to the Customer, assign, sub-contract or otherwise transfer the whole or a portion only of its rights, duties or obligations under this Agreement.
3. A person who is not party to this Agreement shall not have any rights under or in connection to it.
4. This Agreement shall be governed by English law and the Company and the Customer agree to submit to the exclusive jurisdiction of the English Courts.
5. Orders may be placed by the Customer verbally but such orders shall not be deemed to have been accepted by Gemco unless and until they either perform the contract or issue an acknowledgment of order. Gemco reserves the right to record telephone calls and by placing an order the customer shall be deemed to have consented to such actions.
6. Please note that all calls may be recorded to ensure we give you the highest possible service.
7. Repairs will carry a minimum 3 months warranty from the work complete providing the Customer has complied with their obligations defined under clause 4 of the Agreement.



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