

TERMS AND CONDITIONS

ULMA CONTRACT TERMS 001

Effective date: 4/12/2023

1. Definitions

- "Business Day" – any day which is not a weekend or bank holiday in England;
- "Equipment" – the equipment specified above as varied by agreement in writing between the parties.
- "Service(s)" – our preventative maintenance services.

2. Our Service

2.1 Our Service comprises maintenance visits by appropriately skilled technicians with the above-specified frequency to carry out the maintenance services specified in our relevant Equipment manual including where applicable: to check and maintain the condition of the mechanisms, controls and safety devices of the Equipment involving inspections, functional tests and lubrication and adjusting settings where required in accordance with our standard schedule.

2.2 Unless otherwise agreed in writing:

- we will use reasonable endeavours to contact you to arrange maintenance visits approximately 7 days in advance and you agree to provide reasonable cooperation;
- maintenance visits will take place on business days in England between 8am and 6pm; and
- charges for maintenance visits are based on a maximum time spent of 8 hours per day.

2.3 We are entitled to rearrange any maintenance visit if there are exceptional circumstances, e.g., illness. If so, we will give you as much notice as possible.

2.4 You are entitled to cancel any maintenance visit by giving us at least 2 Business Days' notice in writing for weekday appointments and 5 Business Days' notice in writing for weekend appointments. We are entitled to charge for the cancelled visit at our standard rate if less than the required notice is given.

2.5 We will take reasonable steps to leave the relevant area clean and tidy at the end of the maintenance visit.

2.6 Following each maintenance visit, we will send you a report setting out our observations and recommendations including any elements that need replacing. The report will be in accordance with the template in the Annex below and we reserve the right to charge extra at our standard rates if you require a variation including enhanced reporting.

3. Exclusions

3.1 This agreement does not cover the following:

- repairing or replacing Equipment or supplying spare parts whether arising from negligence, accident, misuse, wear and tear or otherwise; or
- general cleaning of Equipment.

Any such goods or services that we agree to provide are separately chargeable.

4. Your obligations

4.1 You agree:

- to ensure that the Equipment is operated by suitably qualified and trained personnel; and
- to take reasonable care of the Equipment including compliance with any cleaning, care and maintenance requirements or recommendations set out in the relevant Equipment manual or that we otherwise advise you (excluding any Services that we provide under this agreement).

4.2 You agree to inform us at the time of booking the visit if there are any faults or other issues with the relevant equipment.

4.3 You agree to provide appropriate access to our technicians as well as a safe and suitable place to work.

4.4 You agree to ensure that the Equipment is in a suitable running condition for maintenance at the time agreed for the maintenance visit including that it is fully available and not in operation.

4.5 You agree at your expense to provide materials, products and personnel reasonably required by us for testing and machine diagnosis.

4.6 You agree on our request to store in optimal conditions and otherwise take reasonable care of any maintenance-related products that we send or provide to you in connection with maintenance visits and to make them available to our technician during the relevant maintenance visit when required.

4.7 If you fail to comply with any of your above obligations in this section of the agreement, we are entitled to cancel, suspend or abort any relevant maintenance visit (which shall nonetheless remain chargeable) and/or to charge extra at our standard rates for any additional products/services that we do agree to apply beyond our standard Service.

4.8 You must tell us immediately in writing if you have any complaint relating to a maintenance visit.

5. Standard of Service

5.1 Subject to the other terms of this agreement, we agree to provide our Service with reasonable skill and care.

6. Payment

6.1 Unless otherwise agreed in writing (e.g., monthly or quarterly in advance), our fee is payable annually in advance.

6.2 Unless otherwise stated, the fee shown excludes any applicable VAT which is payable in addition.

6.3 Invoices are payable within 30 days of receipt.

- 6.4 You must make all payments without any set-off, counterclaim or any other deduction. Time shall be of the essence for all payments under this agreement.
- 6.5 If any amount due to us is unpaid, without prejudice to any other remedy that may be available to us, we may charge you: (1) a reasonable additional administration fee; (2) the amount of any third party charges imposed on us; and/or (3) interest (both before and after judgment) at 4% over the Bank of England base rate.
- 6.6 If any instalment payment is late, all the remaining instalments become immediately due and payable.

7. Term, termination and suspension

- 7.1 This contract lasts for 12 months from the date of signature.
- 7.2 Either party may terminate this agreement immediately on notice in writing if the other:
- is in material default of its obligations under this agreement and (where remediable) has failed to substantially remedy the default within 14 days after notice in writing (not email) is given to the defaulting party specifying the default; or
 - suffers, or indicates that it will suffer, any form (whether voluntary or compulsory) of insolvency, receivership, administrative receivership, administration, arrangement, moratorium, creditor meeting, liquidation, winding up, or anything similar to the foregoing, or ceases, or indicates that it will cease, to carry on business.
- 7.3 We are entitled to terminate this agreement immediately on notice in writing if our fees become overdue on at least two occasions.
- 7.4 If this contract ends:
- existing rights and liabilities are unaffected; and
 - all terms in this contract that are stated or intended to continue after termination will continue to apply.
- 7.5 We are entitled to suspend part or all of our Service if:
- we reasonably believe that you have breached the contract;
 - any fees payable by you are unpaid; or
 - any of your personnel act inappropriately towards our staff or subcontractors.

8. Warranty, liability and indemnity

- 8.1 Each party warrants that it shall comply with all applicable laws and regulations in connection with this agreement.
- 8.2 Nothing in this agreement in any way limits or excludes our liability for negligence causing death or personal injury or for fraud or fraudulent misrepresentation or for anything which may not legally be excluded or limited. In this section, any reference to us includes our officers, employees and subcontractors, who have the right to enforce this agreement.

- 8.3 To the fullest extent allowed by law, you and we exclude all terms, conditions, warranties and representations howsoever arising, whether imposed by statute or by law or otherwise, that are not expressly stated in this agreement.
- 8.4 Subject to the second paragraph in this section (“Nothing in this agreement...”), we shall under no circumstances whatever be liable under or in connection with this agreement, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any:
- loss of profit; loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings; or harm to reputation or loss of goodwill; or
 - indirect, consequential or special losses.
- 8.5 Subject to the second paragraph in this section (“Nothing in this agreement...”), our total liability in respect of all other losses arising under or in connection with this agreement whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any act or omission or series of connected acts or omissions shall in no circumstances exceed the total fees paid or payable by you to us in connection with our Service in the 12 months before the first act or omission complained of.
- 8.6 You agree to indemnify us against all claims and liabilities arising out of your breach of this agreement (except insofar as we are at fault).
- 8.7 This agreement constitutes the entire agreement between us with respect to its subject matter and supersedes any previous communications or agreements between us. We both acknowledge that there have been no misrepresentations and that neither of us has relied on any pre-contractual statements.
- 9. Your personal information**
- 9.1 You agree that we can deal with your personal information in accordance with our [Privacy Policy \[PLEASE INSERT LINK\]](#) which may change from time to time.
- 10. Non-solicitation**
- 10.1 You agree that, during this agreement and for 24 months thereafter, you will not either for yourself or for or in conjunction with anyone else solicit, employ, engage or entice away or attempt to do so any employees or subcontractors used by us, or by any company connected with us, to supply the Service.
- 11. General**
- 11.1 We are not liable for failure to perform or delay in performing any obligation under this agreement if the failure or delay is caused by any circumstances beyond our reasonable control including acts of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the contract, strike, lockout or boycott or other industrial action including those involving our or our suppliers’ workforce, or epidemics/pandemics. You are entitled to terminate the contract on written notice if the relevant event lasts for a continuous period of at least three months.
- 11.2 Any notice required by this agreement to be given by any party in writing may be given by hand or sent (by special delivery within the UK or by international signed

for post outside the UK) to another party at its registered office or such other address as that party may notify to the other party for this purpose from time to time or (unless stated otherwise) by email, subject to the email not having been returned. Notices sent by hand are deemed received on receipt of a signature at the time of delivery. Notices by special delivery are deemed received on the second English business day after posting and by international signed-for post on the fourth English business day after posting. Emails are deemed received when sent.

- 11.3 Unless otherwise expressly provided in this agreement, no amendment or variation of this agreement shall be effective unless in writing (not email), expressed to be an amendment to this agreement and signed by a duly authorised representative of each of the parties.
- 11.4 You may not assign or transfer any of your rights or obligations under this agreement without our prior consent in writing not to be unreasonably withheld or delayed except that you have the right without our consent to assign the benefit of this agreement in connection with the sale of all or substantially all of your assets. We are entitled to subcontract any of our obligations under this agreement (subject to data protection law where applicable) but remain liable to you for performance of those obligations.
- 11.5 The failure of a party to exercise or enforce any right under this agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 11.6 If any provision of this agreement is held to be unlawful, void or unenforceable in whole or in part, this agreement shall continue in force in relation to the unaffected provisions and the remainder of the provision in question, and the parties will renegotiate the offending provision in good faith to achieve the same objects.
- 11.7 Save insofar as expressly provided otherwise in this agreement, no third party may enforce any clause in this agreement under the Contracts (Rights of Third parties) Act 1999.
- 11.8 The relationship of the parties is that of independent contractors. Except as otherwise stated in this agreement, nothing in this agreement shall constitute the parties as partners, joint venturers or co-owners, or constitute any party as the agent, employee or representative of the other(s), or empower any party to act for, bind or otherwise create or assume any obligation on behalf of the other(s), and no party shall hold itself out as having authority to do the same.
- 11.9 This contract is subject to the law, and exclusive jurisdiction of the courts, of England and Wales.

ANNEX

TEMPLATE MAINTENANCE REPORT

[INSERT]