

TERMS AND CONDITIONS OF SUPPLY**1. INTERPRETATION****1.1** In these terms:

“Buyer”	means any person entering into a Contract with the Seller whether written or oral for the supply of Goods or Services or both
“Contract”	means the Contract for the supply and acquisition of the services or the sale and purchase of the Goods or both including letters quotations invoices and other documentation to which these Terms are annexed and which at all times is subject to these terms.
“Delivery address”	means the address stated on the Contract
“Goods”	means the goods (including any instalment of the goods or any parts for them) described in the Contract
“Price”	means the charges for the Services or the price for the Goods excluding Value Added Tax
“Seller”	means the Instromet Weather Systems Ltd of Lyngate Rd Industrial Estate North Walsham Norfolk NR28 0AJ
“Services”	means the services described in the contract
“Specification”	includes any plans drawings data or other information relating to the Goods or Services
“Terms”	means the standard terms and conditions of supply set out in this document
“Writing”	includes telex cable facsimile transmission and comparable means of communication

1.2 Any reference in the Terms to any provision of a statute shall be constructed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not effect their interpretation.

2. ENTIRE AGREEMENT

2.1 The Terms form the whole agreement between the Seller and the Buyer and shall not be removed, or varied in anyway. No other express terms, written or oral shall be incorporated into the Contract. No agent of the Seller shall have any authority to remove or vary any of the terms or introduce any other terms written or oral into the Contract or to make any representation, agree any condition, precedent or enter into any collateral Contract.

2.2 These Terms exclude any other terms and conditions inconsistent therewith which the Buyer might seek to impose and the Seller shall supply and the Buyer shall purchase the Goods and Services in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer or any written order of the Buyer which is accepted by the Seller subject in either case to these Terms which shall govern the Contract to the exclusion of any due terms and conditions subject to which such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer even though such terms and conditions may be submitted in a later document and / or purport to exclude or supersede any terms and conditions inconsistent to them which may be contained in any offer acceptance or counter offer made by the Buyer.

2.3 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or the document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its Terms.

3.2 The Seller reserves the right to vary the finished form and nature of any of the Goods and / or supplied under this Contract within the Terms of any specification of the buyer.

3.3 The Seller reserves the right to make any changes in the specification of the Goods and / or services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and / or Services are to be supplied to the Seller's specification which do not materially affect their quality or performance.

3.4 The Seller reserves the right to assign sub-contract or sub-let this Contract or any part thereof.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation.

- 3.6 Where the Goods are manufactured by the Seller or processed in accordance with the Specification and / or data supplied by the Buyer the Buyer shall indemnify the Seller against any loss, damages, costs or expenses incurred by the Seller as a result of any claim for infringement of third party intellectual property rights arising from use of the Buyer's specification and / or data.
- 3.7 No order shall be binding on the Seller unless or until accepted by the Seller in Writing. The Seller reserves the right to accept or reject any order.

4. PRICES AND QUOTATIONS

- 4.1 All prices estimates and quotations accepted by the Buyer are based in good faith upon costs and trade conditions ruling the date of quotation but are subject to revision where at any time before the delivery of the goods or Services there:
- 4.1.1 is an increase in the cost of raw materials or labour, or
- 4.1.2 circumstances arise before delivery which make revision necessary, such as precious metal prices/raw materials i.e. plastics subject to currency fluctuations.
- 4.2 All quotations for Goods are for delivery ex works North Walsham, and unless otherwise explicitly stated on the face of the document on which the quoted price appears do not include the costs of carriage of special packing or Value Added Tax, and nor does any price quoted for a specified supply of Goods or Services necessarily apply pro rata to any other supply. Where delivery is to a Delivery Address carriage is charged additionally to the Buyer at cost.
- 4.3 The Seller also reserves the right to charge for any handling and storage of Goods, accommodation or personnel and associated insurance costs incurred as a result of any lack or inadequacy or delivery instructions on the part of the Buyer.

5. PAYMENT

- 5.1 All sums become payable from the date of invoice in respect of those sums. All sums shall be paid within 30 days from the date they become payable and time for the payment is to be of the essence.
- 5.2 The Seller reserves the right to render interim invoices as the Contract progresses and to require payment for the same before continuing with the Contract.
- 5.3 No claims by the Buyer under any of the Terms above shall constitute a ground for withholding any payment or for setting-off any payment otherwise due to the Seller under his Contract, and no supply returned without the consent of the Seller shall form a basis for any such claim.

6. INTEREST

If any payment owing to the Seller is not paid by the due date, the Seller may (without prejudice to the Buyer's other rights and remedies) charge interest on a day to day basis (after as well as before any judgement) from the original due date at the annual rate of 4% over Santander base rate in force from time to time.

7. SECURITY

The Seller reserves the right to demand security for payment at any time before commencing with or delivery of any order.

8. SUSPENSION OF CONTRACT

The Seller reserves the right to suspend completion of this or any other Contract whenever the Seller judges that the Buyer's indebtedness to the Seller (whether or not actually due for payment) has reached or exceeds the limit to which the Seller is prepared to allow to the Buyer.

9. RISK AND TITLE

- 9.1 The Buyer owes a fiduciary duty to the Seller to store and keep safe and sound the Goods at the Buyer's premises until title passes to the Buyer under clause 9.2 hereof. Risk of Goods shall pass to the buyer when the Goods are delivered to the Buyer or once they have been consigned to a carrier or collected by, the Buyer or its agent, as the case may be.
- 9.2 Notwithstanding risk in the Goods passing accordance with the preceding clause hereof title in the Goods shall not pass to the Buyer until payment is received by the Seller for the Goods.
- 9.3 Before title has passed to the Buyer under these terms of the preceding clause and without prejudice to any of its other rights, the Seller shall have the right to recover or resell the Goods or any of them and may enter upon the Buyer's premises or any premises under the Buyer's control by its servants or agents for that purpose.
- 9.4 Should the Buyer alter the Goods by subjecting them to any manufacturing process or incorporating them into another product or mixing then in anyway then title to the resulting products ("Altered Goods") will vest in the Seller until payment due under the contract for the Goods has been made in full. The Sellers rights under this Contract shall extend to the Altered Goods.
- 9.5 Until payment due under a Contract between the Buyer and the Seller has been made in full the Buyer shall hold upon trust for the Seller the Goods and the Altered Goods relating to that Contract.
- 9.5.1 The Buyer shall hold upon trust for the Seller the Goods and Altered Goods.
- 9.5.2 In the event of the sale or hire of the said Goods or Altered Goods the Buyer shall hold the proceeds of such sale or hire on trust for the Seller in a separate bank account opened by the Buyer for this purpose.
- 9.5.3 The Seller shall be entitled to trace all such proceeds of sale together with the costs and expenses incurred by the Seller in effecting such tracing of the proceeds of sale including all legal and court fees incurred of hire charges received by the Buyer to any bank or other account maintained by the Buyer.
- 9.5.4 In the event of sale or hire of the Goods or the Altered Goods by the Buyer in the ordinary course of the business the Buyer shall assign its rights to recover the selling price or hire charges from the third parties concerned to the Seller if required to do so in writing by the Seller.

9.6 The Buyer shall not be entitled to pledge or in any charge by the way of security for any indebtedness any of the Goods or Services which remain the property of the Seller but if the buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10 INSURANCE

10.1 The Buyer shall advise its insurance company of the Seller's interest in the Goods stored at the Buyer's premises before title passes to the Buyer under clause 9.2 hereof. As soon as risk in the Goods passes to the Buyer the Buyer shall insure and keep the Goods insured against all insurable risks reasonably required by the Seller for not less than the amount of the Price of the Goods.

10.2 If the Goods are destroyed by an insured risk prior to the same being paid for by the Buyer the Buyer hereby assigns the right to claim under the policy of insurance to the Seller and shall execute all documents, deeds and undertake all acts necessary to implement this clause.

11 DAMAGE

11.1 The Buyer shall carefully examine the Goods immediately on receipt of them and shall notify the Seller in Writing of any short delivery or any defects reasonably discoverable on careful examination. Such notification, must be received by the Seller within 28 days of the Buyer's receipt of the Goods and the Buyer undertakes to allow the Seller immediate access to that supply for inspection and assessment. In the absence of such notification the Seller excludes all liability in respect of short delivery or such defects.

11.2 Each delivery shall constitute a separate Contract and any failure or defect in any one delivery shall not vitiate the Contract as to the remaining deliveries.

12 LIABILITY

12.1 Should any of the Goods become faulty or fail to operate in accordance with their published Specification within one year from the date of delivery, the Seller undertakes to repair or at its discretion replace the faulty item without charge provided that the Seller is satisfied that the failure is due to a defect of workmanship or material and that the Goods have been used solely in a manner which is normal for their type and have properly installed and commissioned and have not been misused or abused and provided the Seller receives notice in Writing of the Buyer's intention to claim against the Seller is given immediate access to that supply for inspection and assessment or at the Seller's discretion that the faulty goods are returned adequately packed and insured and carriage paid to the premises of the Seller for inspection and assessment. The Seller shall not be liable for the cost of removal of the faulty item or the cost of fitting the replacement item. The Seller will deliver at its expense the replacement or repaired item to the Buyer. For the avoidance of doubt the Seller confirms that in accepting the provisions of this sub-clause the Buyer does not diminish its statutory rights.

12.2 In the case of parts or components not manufactured by the Seller, the Buyer shall have the benefit, insofar that it may be transferred to the Buyer, or any rights which the Seller may have against the supplier of the Goods and the Seller's liability is limited to making the benefit of such rights available to the Buyer.

12.3 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from any contract, breach of duty or tort or in any other way, and shall not be liable for any damage (whether or not consequential) arising from stoppage or breakdown of the Goods for any reason whatsoever or in any other way for the performance of the Goods in operation.

12.4 Under no circumstances shall the Seller be liable for:

12.4.1 failure by the Buyer to comply with instructions or advice of the Seller

12.4.2 Goods which have been adjusted, altered adapted or repaired by any party other than the seller.

12.4.3 Descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weight and dimension submitted by the Seller contained in the Seller's quotation price lists or elsewhere which do not form part of the Contract.

12.5 Delivery dates are only estimates and are not guaranteed. Late performance does not entitle the Buyer to reject the Goods or Services, terminate the Contract or withhold payment of any part of the Price.

12.6 The Seller will not be liable to the Buyer (other than liability for death or personal injury resulting from the Seller's negligence) for any other loss or damage of any nature:

12.6.1 arising from any breach of any express or implied warranty or condition of the Contract

12.6.2 or any negligence, breach of statutory or other duty on the part of the Seller

12.6.3 or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract

12.7 Without prejudice to the foregoing the Seller reserves the right to cease work on any Contract if it should come to its notice that the goods are the subject of any Patent or Registered Design in which case the property in the work done shall not pass to the Buyer (except at the Seller's discretion) and the Seller shall be entitled to recover and be paid such sum for work done and materials supplied as shall be reasonable in the circumstances.

12.8 If the Buyer dictates the finished form and nature of any of the Goods then the Buyer agrees to indemnify and hold indemnified the Seller against any third-party claim in respect of such supply

- 12.9 The Seller reserves any and all intellectual property rights relating to the Goods vested in the Seller. Completion of this Contract shall not act as an assignment or licence of the said intellectual property rights save that the Buyer shall have the right to use and resell the Goods.
- 12.10 Without prejudice to the generality of sub clause 12.9, the title to all moulds tools and commissioned works including all intellectual property rights relating thereto shall remain vested in the Seller whether the Seller has charged for such items or whether they are included in the Price
- 12.11 Where the Seller supplies Goods, which have not been manufactured by the Seller and which carry any guarantee or warranty from their manufacturer, the Seller will, to the extent that it judges reasonably practicable, transfer or make over to the Buyer the benefit of any such guarantee or warranty
- 12.12 The Seller accepts no liability whatsoever for any failure to deliver the Goods or implement any of these circumstances outside the Sellers control. Non-exhaustive examples of such circumstances include acts of God, war, strike, fires, embargoes, refusal to grant licences and abnormal weather conditions etc.

13 CONTRACT

The Contract is between the Seller and the Buyer as principals and may not be assigned by the buyer without the Written consent of the Seller

14 TERMINATION

14.1 If the Buyer:
Commits a serious breach of these conditions (and in the case of such breach being remediable fails to remedy it within 7 days after receiving notice to do so) or

14.2 Being a Company:-

14.2.1 Has a petition presented for its winding up or passes a resolution for voluntary winding up (other than for the purpose of bona fide amalgamation or reconstruction) or

14.2.2 Compounds with its creditors, or

14.2.3 Has a receiver appointed of all or any of its assets; or

14.2.4 becomes insolvent; or

14.2.5 enters into an arrangement with his creditors or in any event commits a serious breach of these conditions

The Seller may treat the Contract as being at an end immediately

15 CANCELLATION

15.1 Where a Contract is cancelled by a Buyer the following payments (in addition to such other remedies as it may have) fall due to the Seller by the Buyer.

15.1.1 Where cancellation is prior to the commencement of the manufacture of the Goods or the performance of the Services a sum to compensate the Seller for all costs incurred prior to or resulting from such cancellation, or

15.1.2 Where cancellation is subsequent to commencement of the manufacture of the Goods or performance of the Services such sum as represents a due proportion of the order sum in respect of the Goods manufactured and / or Services performed executed up to the date of receipt of notice of cancellation plus the sum equivalent to 50% of the difference between the proportionate sum and the Price by way of liquidated damages for any actual or anticipated loss or profit and administrative costs in addition to such other remedies as it may have

16 DAMAGES

The total liability of the Seller to pay damages arising under any Contract shall not exceed a sum equal to the consideration payable by the Buyer to the Seller under the Contract

17 CONTRACT VALUE

The minimum order value acceptable to the Seller is £50

18 NOTICE

All notices and other communications hereunder shall be in Writing and shall be deemed to have been duly given:

1. when delivered, at the time of delivery
2. when sent it transmitted by telex or facsimile transmission (receipt confirmed) during normal business hours of the recipient; or
3. on the third business day following mailing by first class prepaid post to the addressees last known address