

# AxFlow General Terms and Conditions (version 2017)

## 1. Applicability

These general terms and conditions are applicable to every Agreement between AxFlow B.V. or AxFlow Systems B.V. (hereinafter referred to as: "AxFlow") and its Customers, and apply to both Products and Services to be supplied (hereinafter referred to as: "Delivery"). The general terms and conditions also apply to Agreements to be concluded in the future.

In the event of deviations between the specific provisions of an Agreement and these general terms and conditions, the specific provisions prevail.

In the event of a difference of interpretation between the general terms and conditions in the original Dutch version and a translated version of the general terms and conditions, the Dutch version prevails. AxFlow is free to decide not to rely on one or more provisions of the general terms and conditions. Any general terms and conditions applied by the Customer are excluded.

## 2. Formation and contents of Agreements

An Agreement between AxFlow and the Customer is formed as follows:

- Prior to concluding an Agreement, AxFlow sends the Customer a written Offer, in the form of a quote. The Offer remains valid for a period of 30 days.
- The Offer is accepted by the Customer by sending an Instruction (written acceptance of the offer). After AxFlow has received the Instruction, the Agreement has been concluded.

The conclusion of the Agreement is confirmed by means of AxFlow sending a Confirmation of Order. AxFlow is free to decide against sending a Confirmation of Order and instead to cancel the agreement at this stage.

The parties may deviate from this method of concluding agreements.

## 3. Inspection

If the parties have agreed that the customer can inspect a Product, the inspection must be conducted within 10 working days after the Customer's earliest opportunity to do so. After that period, the right to inspect lapses.

## 4. Delivery and transport of Products

AxFlow arranges the transport. The transport costs are at the expense of the Customer and unloading is at the expense and risk of the Customer. Transport insurance is at the expense of AxFlow. If the Customer arranges its own transport, the costs are at the expense and risk of the Customer.

AxFlow is entitled to select the method of transport and the transport company. Export and import duties, clearance charges, taxes and similar costs in connection with (international) transport to the Customer are at the expense of the Customer.

## 5. Delivery periods

AxFlow endeavours to honour the delivery date stated in the Offer.

AxFlow cannot be held liable for damage as a result of late Delivery.

## 6. Deviation from the specifications

The Customer can only derive rights from specifications set out in the Offer. The Customer cannot derive any rights from specifications from other sources (such as the AxFlow website, information from the manufacturer or advertising material).

The Customer can hold AxFlow to account only if a Product deviates from the Offer and this deviation has consequences for the correct functioning of the system of the Customer. In that case, the liability of AxFlow will be limited to supplying a replacement Product, as referred to in article 10. Any liability of AxFlow exceeding the above is excluded; see article 11.

## 7. Assembly and commissioning

If the parties agree that AxFlow is responsible for the assembly and/or commissioning of a Product to be supplied, the Customer is obliged to:

- follow AxFlow's instructions during assembly and commissioning;
- ensure that the buildings present and other systems have the correct properties in order to guarantee assembly and proper functioning;
- arrange the necessary manpower and auxiliary equipment.

If the Customer fails to meet the above requirements, AxFlow is entitled to charge additional costs.

## 8. Instructions

The Customer is obliged to follow the instructions issued by AxFlow for assembly and use of Products and instructions within the framework of Services provided, as well as to ensure that third parties (such as contract parties of the Customer) follow these instructions.

## 9. Complaints, time limit for lodging a complaint

Complaints about a Product or Service that has been supplied must be submitted to AxFlow in writing within 8 working days after Delivery. Visible damage must be reported to the transport company engaged by AxFlow immediately upon Delivery.

If the Customer has a complaint about a Product or Service, the Customer is not entitled to suspend or set off payment of invoices; if the Customer does so nonetheless, the warranty lapses.

## 10. Warranty

If a Product or Service contains a fault as a result of which it fails to meet the requirements of the Agreement, AxFlow will verify whether this is covered by the warranty.

A fault is not covered by the warranty if:

- the term of the manufacturer's warranty on the Product has expired;
- the usual number of operating hours or the usual load of the Product has been exceeded;
- the fault occurs in a part that is subject to wear;

or if the Customer:

- has made repairs or modifications to the Product;
- has used non-authentic parts;
- has failed to fulfil all its payment obligations;
- acts contrary to the instructions referred to in article 8;
- has reported the fault too late (see article 9).

If the fault is covered by the warranty, AxFlow can opt to make a replacement Product available (identical or similar), carry out repairs or provide the Service again.

If a replacement Product is made available, the costs for transport (to the agreed delivery address) and assembly or disassembly costs will not be at the expense of AxFlow, unless the transport or assembly, in accordance with the Agreement, is payable by AxFlow.

If a Product is replaced under the warranty or if the Service is provided again, the original warranty term will not be extended.

## 11. Liability of AxFlow

The liability of AxFlow is in all cases limited to the warranty obligations referred to in article 10. AxFlow cannot be held liable for other damage suffered by the Customer or third parties or for fines.

More in particular, AxFlow cannot be held liable for consequential or indirect damage, such as:

- damage to property, including the system the Product supplied forms a part of or which the Service provided relates to;
- damage as a result of a delay in the Delivery of the Product or Service;
- damage because the Customer has to deploy replacement Products, machines or (auxiliary) persons or purchase replacement Services;
- damage due to delays in the operational management of the Customer, missed savings, costs incurred or lost profits;
- personal injury and damages resulting from death;
- immaterial damage, such as the loss of customers, goodwill and reputational damage;
- damage suffered by parties with whom the Customer has entered into obligations or other third parties.

Furthermore, AxFlow is in no event liable to pay compensation in excess of the invoice amount of the relevant Product or Service.

The Customer indemnifies AxFlow against any liability from third parties (such as contract parties of the Customer) in connection with Products and Services supplied by AxFlow.

## 12. Price and payment terms

The price of the Products is exclusive of the costs for assembly or disassembly and commissioning and exclusive of VAT and other taxes and levies.

The payment term is 30 days after the invoice date. If the Customer fails to pay within the payment term, the Customer owes interest at 1% per month, unless the statutory interest referred to in Section 6:119a of the Dutch Civil Code is higher; in that case the statutory interest applies. When calculating the interest rate, part of a month is deemed a full month.

The Customer is not permitted to set off the invoice amount against a counter claim. If, in the opinion of AxFlow, the Customer is not sufficiently creditworthy, AxFlow can either terminate the Agreement or demand payment in advance.

## 13. Retention of title and prohibition on pledging

AxFlow remains the owner of any Products supplied until the Customer has paid all invoices (also for other Agreements). The Customer transferring or pledging Products that are still owned by AxFlow is excluded. The Customer must cooperate in returning Products that are the property of AxFlow, if AxFlow so requests.

If the Customer is in arrears with payment and has resold Products to third parties, the Customer is obliged to transfer or pledge its claims against those third parties to AxFlow, if AxFlow so requests.

## 14. Default

The Customer is in any case in default of fulfilling its obligations in the following situations:

- the Customer fails to fulfil its obligations under an Agreement that has been concluded;
- the Customer is bankrupt, has been granted a moratorium or has applied for one;
- the Customer (partially) suspends or transfers its business operations;
- the Customer is subject to an attachment order.

If the Customer is in default:

- AxFlow will be entitled to suspend fulfilling its obligations under one or more Agreements and/or to fully or partially terminate the Agreement;
- all claims against the Customer become immediately due and payable.

## 15. Choice of law and disputes

All Agreements are governed by Dutch law. The Vienna Sales Convention (CISG) and other international regulations do not apply. In the event of a dispute, the Central Netherlands Court (Rechtbank Midden-Nederland) has exclusive jurisdiction.