Terms and Conditions of Sale and Delivery for X-Floc Dämmtechnik-Maschinen GmbH (Last revised 2015)

I. Scope of Application

1. The following terms and conditions apply to all deliveries and performances, regardless of whether the individual case is a sales contract or a contract for work and services or a contractual relationship of yet another nature.
2. These conditions of sale and delivery apply exclusively; terms and conditions of the purchaser that oppose or deviate from these shall not be recognized by the supplier, unless it has explicitly confirmed their applicability in writing. These conditions of sale and delivery are also applicable if the supplier, in awareness of the purchaser's terms and conditions that oppose or deviate from these, carries out the delivery or service to the purchaser without reservation.
3. These conditions of sale and delivery are also applicable for all future business with the purchaser, even if they are not explicitly agreed upon.

II. Conclusion of Contract, Modifications of Contract, Assignment of Rights

1. The documents which are a part of the offer (e.g., photographs, drawings) as well as data about the extent of the delivery, appearance, performance, dimensions, weight, consump-tion of operating materials, operating costs, etc., are only approximate values unless they have expressly been designated as binding. The supplier retains rights of ownership and copyrights to cost estimates, drawings and other documents. They must not be made available to third parties and shall be returned upon request.
2. The contract shall be deemed concluded when the supplier has confirmed acceptance of the order in writing or has commenced delivery or performance. If the supplier has submit-ted an offer which is subject to a time limit, the contract shall be deemed concluded when the client has submitted written acceptance of the offer in due time.
3. Oral secondary agreements and amendments to the contract shall not become effective until the supplier has confirmed them in writing. Obvious spelling or calculation errors may be corrected retroactively.
4. The client cannot assign his rights and accordingly claims from this contract. However, § 354 a HGB remains unaffected.

III. Prices

1. The prices are given ex works, including loading in the works, but excluding packaging, plus applicable value-added tax in conformity with the applicable provisions of the delivery or performance country. To the extent that binding remuneration of the supplier has not been agreed, the supplier's prices in effect on the day of the delivery shall apply.
2. Engineer work, installation and commissioning will be billed separately. The billing may be calculated at either a flat rate or according to actual expenditure, plus travel costs, subsis-tence allowance and overnight expenses, overtime, surcharges for Sundays and public holidays.
3. Price changes are admissible if there has been a lapse of more than 6 months between conclusion of the contract and the agreed date of delivery. The supplier is entitled to adjust prices to the extent that the new price is in the same ratio to the agreed price as the price of the delivery and performance according to the valid price list on the day of the delivery is to the price of the delivery according to the valid price list on the day of the conclusion of the contract. With respect to other deliveries and performances not shown in a price list, the supplier is entitled to make a price adjustment which is reasonable in view of the circumstances.
4. If costs or charges are included in the prices and the former are raised following the conclusion of the contract, or if they become due additionally following conclusion of the contract, the supplier is entitled to bill the client for the additional amount.
5. If at the request of the client the supplier is prepared to make an exchange, the supplier is entitled to bill the incurred costs, no less, however, than the amount of the loss in value resulting from aging and use, plus 10% of the agreed price of the originally agreed object of the delivery, as compensation for the expenditures incurred by the supplier due to the exchange. The supplier may not demand the flat-rate cost compensation described in the above provision if the client proves that no, or only minor, damage or expenditure resulted for the supplier.

IV. Payment, Default of Payment, Set-Off, Retention

1. In the absence of deviating agreements, payment for the delivery of machines shall become due immediately at the delivery, for spare parts within 30 days and for services within 14 days of the invoice date without deductions.
2. Any and all outstanding receivables shall become due and payable immediately –even if an extension or other delay of payment has been granted– as soon as the client is more than 5 workdays in default of fulfilment, in whole or in part, of his obligations to the sup-plier or if circumstances arise which substantially reduce the creditworthiness of the client (e.g., deterioration of assets, delay or suspension of payments, excess debt, downgrading of credit rating by trade credit insurer, objections to bills of exchange and cheques, filing of a petition for institution of bankruptcy proceedings or the institution or dismissal thereof). The supplier may in this case refuse all further deliveries or performances and request the provision of reasonable security for his claims.
3. Payment by bill of exchange is subject to special agreement. Bills of exchange and cheques will only be accepted subject to redemption. The client shall bear collection and discount charges. No cash discount will be granted for payment by bill of exchange or in the event that there are overdue payments, even if such a discount has otherwise been agreed.
4. The client may offset supplier's claims solely against undisputed or non-appealable claims. The client has a right of retention only if his counter-claim is based on the same contractual relationship and is undisputed or non-appealable, or if the supplier has com-mitted a gross violation of his obligations from the same contractual relationship. However, this provision is without prejudice for the right of the client to retain a reasonable part of the purchase price due to defects of the supplier's performance.
5. If the client is in default of payment, interest at a rate of 9,9% above the basic interest rate shall be paid on the supplier's claims. This provision is without prejudice for the supplier's claim for compensation for additional damage.
6. If the client suffers deterioration of assets in the meaning of No. IV.2., the supplier may withdraw from the respective contract after the client has failed to provide appropriate security within an reasonable timeframe. This provision is without prejudice for further statutory claims of the supplier, e.g., damage compensation. Damage compensation claims of the client are excluded.

V. Delivery Time, Partial Performances, Delay of Acceptance, Withdrawal and Provisos by the supplier, claims for damages by the supplier

1. Delivery and installation periods do not commence until the supplier and the client have reached agreement on all details of the performance and all terms and conditions of the transaction and the supplier has confirmed the order. Said periods shall be suspended as long as the client is in default of fulfilment of his contributory obligations from this contract (e.g., provision of documents, supply of materials, permits, releases) or of an agreed ad-vance payment.
2. The delivery period shall be deemed as observed if the object of the delivery has left the works or if notification of readiness for shipping has been given before lapse of the period.
3. The delivery time shall be appropriately extended in cases of force majeure, strike, lockout and other unusual, unforeseen circumstances or delays by a preliminary supplier of the supplier for which the supplier is not answerable, provided that these circumstances have a demonstrable effect on the delivery time. In cases of absent, incorrect or late performance by a preliminary supplier for which the supplier is not answerable, the supplier can withdraw from the contract if the event renders it impossible for the supplier to perform or if it cannot perform after an appropriate extension to the delivery time as per the previous sentence. Furthermore, the supplier can withdraw from the contract if it cannot procure the performance of a preliminary supplier necessary for its own performance (for example a part, a drive, a component or a chassis) or if it cannot procure this performance on reasonable terms, for reasons that lie within the sphere of the purchaser or the terms of the performance of the supplier to the purchaser (for example, with regard to the person of the purchaser or the country to which the delivery is supposed to be made). In the case of withdrawals as described above, compensation claims by the purchaser are excluded.
4. If the supplier's performance is delayed, he shall nevertheless not be in default of per-formance to the extent that the delay is caused by circumstances which he could not foresee and prevent when taking reasonable precautions and which he could not overcome by taking reasonable measures.
5. The supplier is entitled to withhold his performance as long as the client does not fulfil his obligations to the supplier from this or another contract or due to other legal reasons.
6. Partial performance is admissible to the extent that it is reasonable for the client. Such partial performances shall be deemed independent legal transactions which may be bill separately.
7. If the terms and conditions of payment are not observed, if the delivery is not accepted in due time or if the acceptance thereof is refused or if security which has been agreed or is due in accordance with No. IV.2. has not been provided, the supplier is entitled, following fruitless lapse of a reasonable extension, to withdraw from the contract. If the client is obligated to compensate the supplier in such cases on the merit of a claim, the supplier may claim without further proof damage compensation from the client in the amount of 25% of the order total for series products and 75% of the order total for individual products, to the extent that the client does not prove that no damage, or only minor damage, has resulted. This provision is without prejudice for a claim of greater damage upon substantiation.
8. If at the request of the client the dispatch is delayed, the supplier may bill either the storage and maintenance costs actually incurred or a flat rate in the amount of ½% of the invoice amount per month; the latter is, however, not permitted if the client proves that the supplier suffered no, or only minor, damage or incurred no, or only minor, expenditures. This provision has no effect on the client's payment obligations.
9. The fulfilment of the contract on the part of the supplier is subject to the proviso that there are no obstacles resulting from national or international regulations of foreign trade legislation or embargoes (and/or other sanctions). In the case of such obstacles, compensa-tion claims by the purchaser are excluded.

VI. Transfer of Risk, Shipping and Acceptance

1. The risk shall pass to the client no later than the point in time of the dispatch of the object of the delivery. This provision shall also apply to partial performance, or if the supplier has agreed to bear the costs for shipping or installation, or if he performs the delivery himself. No liability is accepted for the most favourable freight charges or transport time.
2. If the delivery, the shipping or the acceptance of the object of the delivery is delayed by the client due to no fault of the supplier, all risks –including the risk of deterioration or loss of the object of the delivery as well as all risks resulting from the object itself– shall pass to the client as of the notification of the readiness for shipping or notification of completion.
3. Upon written request, the consignment will be insured at the client's expense for the cover sum he requests.
4. The client is liable for any and all damage which he causes by his negligence during or before acceptance of the object of the delivery (e.g., sampling, any acceptance procedure to be performed, etc.).
5. Delivered objects shall be accepted by the client, even if they are defective, without prejudice for his rights.

VII. Complaint of Defects, Guarantee, Guarantee Period

1. The client shall examine the object of the delivery immediately after receipt and lodge written complaint of any defects without delay. The client shall also examine the object of the delivery for defects before every commissioning, in particular regarding safety and suitability for use. During its use, the object of the delivery shall be monitored constantly with regard to safety and defects. If there are even slight reservations concerning the suitability for use or the slightest reservations concerning safety, the object must not be used or its operation must be shut down immediately. The supplier shall be given written notification immediately, specifying the reservations or the defect within the scope of a complaint of defects. The client shall allow the supplier the time and opportunity required to perform any and all remedies and replacement deliveries which the supplier regards as necessary. Otherwise, the supplier is released from liability for any consequences result-ing therefrom.
2. If the supplier's performance is defective at the time of the transfer of risk, the supplier shall perform subsequently, at his discretion remedying the defect or delivering a defect-free object in exchange for the defective object delivered. Replaced parts become the property of the supplier. If subsequent performance regarding a defect is not possible, has finally failed, is unreasonable for the client, or if the supplier has refused both types of subsequent performance, or if a reasonable extension for subsequent performance granted to the supplier has fruitlessly lapsed, the client may at his discretion reduce the remuneration for the supplier or withdraw from the contract. If there is only an minor de-fect, however, the client has only the right to reduce the remuneration.
3. If the supplier has fraudulently concealed a defect or given a guarantee for the quality of the object, the statutory regulation shall apply.
4. Unauthorized remedy of defects by the client or third parties shall result in the loss of all claims due to defects on the supplier. The supplier will not bear the costs for the remedy of defects by the client or third parties without the express prior agreement of the supplier. This provision does not apply in urgent cases –especially when delay is not possible– in which the operating safety is endangered or in order to prevent unreasonably great dam-age. In such cases, the supplier shall be notified immediately and shall be obligated to re-imburse only the necessary costs.
5. In particular, the supplier does not accept any guarantee or any warranty obligation for damage in the following cases: unsuitable or improper use, defective installation or com-missioning by the client or third parties, natural wear and tear, defective or negligent han-dling, improper maintenance, excessive load, unsuitable operating materials and re-placement materials, poor work, unsuitable foundation, chemical, electro-technical/electronic or electric influences. This exclusion does not apply if the supplier is responsible for the damage in conformity with the more specific provision of the regulation in VIII. No. 5. There shall also be no liability and respectively warranty obligation for the supplier in particular for the following measures and actions taken by the client or third parties and the consequences thereof: improper remedy of defects, change of the object of the delivery without the prior agreement of the supplier, addition and insertion of parts, in particular of spare parts which do not come from the supplier or which the supplier has not expressly approved for insertion, and failure to follow the operating instructions.
6. The supplier does not grant any warranty for material provided by the client or acquired on the basis of specifications predetermined by the client or for designs predetermined by the client.
7. The supplier does not grant any warranty for possible material defects for the sale of used machines, devices or parts. The supplier does not guarantee any quality and points out that used machines and parts frequently do not have the same quality as newly manufactured machines and parts, also with respect to their ability to perform.
8. The client's claims for subsequent performance as well as his possible claims for damage compensation or reimbursement for expenditures due to defects shall be time-barred after one year following delivery of the goods for deliveries, for installation after one year, following formal acceptance or –if a formal acceptance shall not be carried out-, after one year of conclusion of the installation. If the acceptance of the object of the delivery or the acceptance of the delivery and performance is delayed due to no fault of the supplier, the guarantee shall expire no later than 12 months after readiness. An analogous provision applies to subsequent performance. If the supplier has fraudulently concealed the defect or has given a guarantee for the quality of the item, the statutory regulation shall apply to the time-barring of any claims on the part of the client based thereon. The statutory regulation shall also apply to the time-barring of any damage compensation claims of the client because of defects if the supplier is guilty of intention or gross negligence or if the damage compensation claim is based on an injury to life, body or health.

9. Any and all other further claims of the client are excluded, in particular for damage compensation, including compensation concerning damage which did not result on the object of the delivery itself. No. VIII.5. applies accordingly.

VIII. Withdrawal of the client, Damage Compensation claims of the client, limitation of Actions

1. The client may withdraw from the contract if the complete performance finally becomes impossible for the supplier before the transfer of risk. A claim by the client for damage compensation due to final impossibility of the performance is excluded unless the supplier is guilty of gross negligence. Any claim for damage compensation is limited to the damage foreseeable at the time of conclusion of the contract and resulting from the usual course of events and is limited in amount to a maximum of 15% of the contract sum. The client may also withdraw from the contract if, for an order of identical items, the delivery of a part of the ordered items in terms of quantity becomes impossible and the client has a justified interest in refusing a partial delivery. If this is not the case, the client may reduce the counter-performance accordingly.
2. If the impossibility occurs during delay of acceptance on the part of the client and without it being gross negligence on the part of the supplier or by responsibility of the client, the client shall be obliged to the valuable consideration and is not entitled to withdraw from the contract in accordance with number 1 above.
3. The client may withdraw from the contract if the supplier is in default of his performance, to the extent that said performance is due, the client has previously set a reasonable ex-tension without success, and the supplier is responsible for his non-performance. A claim by the client for damage compensation due to the supplier's default of performance is ex-cluded unless the supplier is guilty of gross negligence. Any claim for damage compensation is limited to the damage foreseeable at the time of conclusion of the contract and resulting from the usual course of events and is limited in amount to 0,5% for each full week of delay, in total to a maximum of 5% of the value of that part of the total delivery which cannot be used in due time because of the delay.
4. The client's right to withdraw from the contract –beyond the cases regulated above in Nos. 1 and 3– in accordance with statutory regulations in the event of a violation of obli-gations for which the supplier is responsible and which does not result from a defect re-mains unaffected.
5. Any and all other more extensive claims of the client arising from the breach of contractual obligations and unauthorized activities carried out as part of the contract are excluded, in particular for termination and for damage compensation, including claims for damage compensation in lieu of performance and reimbursement of expenses and claims for com-pensation of damage of any type, also concerning damages which did not result on the object of the delivery itself. All further claims on the part of the client for any other legal reason, including claims on the part of the client for breach of pre-contractual obligations and unauthorized activities carried out at the initiation or conclusion of the contract are excluded. This exclusion of liability does not apply if the supplier is guilty of gross negli-gence. Furthermore, this exclusion of liability does not apply in the event of culpable vio-lation of the essential contractual obligations of the supplier (these are obligations im-posed on the supplier with regard the content and purpose of the contract and whose breach jeopardizes the achievement of the purpose of the contract; also obligations whose fulfilment mainly facilitates the proper performance of the contract and the obser-vance of which the client relies on, and may rely on, regularly). Furthermore, this exclu-sion of liability does not apply to any claim of the client for damage compensation based on an intentional or grossly negligent injury of life, body or health. Finally, this exclusion of liability does not apply in those cases in which liability is compulsory in accordance with the Product Liability Act for personal injury or material damage to privately used objects. If these cases result in the supplier's liability –or in deviation from the above provisions in other cases due to contractual or statutory basis for claim– said liability shall be limited to compensation for the foreseeable damage resulting from the usual course of events and which has been proven in each individual instance. However, this limitation of liability does not apply to any liability in accordance with the Product Liability Act due to defects of the object of the delivery for personal injury or for material damage to privately used objects. This limitation of liability also does not apply to any claim by the client for compen-sation for damages resulting from injuries to life, body or health that have been caused intentionally or due to gross negligence. Furthermore, this limitation of liability does not apply if the supplier is guilty of intention .
6. Damage compensation claims of the client on the supplier by violation of contractual obligations and by actions in tort committed during the performance of the contract shall be time-barred no later than one year after the end of the year in which the claim arose and the client learned of the circumstances substantiating the claim and of the person of the debtor, or would have learned thereof without gross negligence. This also applies to claims for compensation for damages by the client against the supplier for any other legal reason, including claims for compensation for damages for the breach of pre-contractual obligations and unauthorized activities carried out at the initiation or conclusion of the contract. If the debtor is guilty of intention or gross negligence, the statutory regulation shall apply. Furthermore, the statutory regulation shall apply to any damage compensa-tion claim based on an intentional or grossly negligent injury of life, body or health.
7. Insofar as the liability of the supplier is excluded or limited, this also applies to any personal liability of its legal representative and members of staff. The statue of limitations for claims asserted by the client against the legal representative of the supplier and its members of staff are outlined in number 6 above.

IX. Security

1. The object of the delivery remains the property of the supplier until full payment of the agreed price and of all other claims, including future claims, from the business relationship with the client. If in the context of the payment of the purchase price the supplier becomes liable on the basis of bills of exchange, the retention of title does not lapse before all bills of exchange have been completely redeemed by the client.
2. The client assigns now to the supplier the claims arising from the further sale of the objects of the delivery in the amount of the value of the objects of the delivery and all secondary rights The client is authorized to collect the claim. The authority of the supplier to collect the claims himself remains unaffected hereby.
3. The supplier obligates himself, on the request of the client, to release security at his discretion to the extent that the realizable value of his security exceeds the total of his claims from the business relationship by more than 10%.
4. As long as the client fulfils his obligations to the supplier, he is entitled to dispose of the object of the delivery in the course of orderly business and subject to retention of title, to the extent that the claims effectively pass to the supplier in accordance with No. 2. Extraordinary disposals such as pledges, transfer by way of security and any and every as-signment are not permissible. The supplier shall be given written notification immediately of any attachment by third parties on the object of the delivery or on claims assigned to the supplier, in particular pledges.
5. During the period of the retention of title, the client is in principle entitled to possess and make use as intended of the object of the delivery. In the event of actions in breach of contract by the client –in particular if the client is in default of payment– as well as in the cases of No. IV.2., however, the supplier may repossess the object of the delivery and revoke the authorization to collection of the claims resulting from the further sale. The client is –under exclusion of rights of retention– obligated to surrender the object. The client shall bear any and all costs of the repossession and exploitation. The supplier is entitled to private sale. The client shall upon request immediately submit to the supplier on the re-quest of the supplier a catalogue of the claims assigned in conformity with No. 2 to the supplier. as well as all additional information and documents necessary for exercise of the claims to which the supplier is entitled, and inform the debtors of the assignment.
6. The client shall maintain the object of the delivery in proper condition during the retention of title and allow the supplier or a workshop authorized by the supplier –with the exception of emergencies– to perform immediately all of the maintenance and repair work prescribed by the supplier.
7. The exercise of the retention of title and pledge of the object of the delivery by the supplier shall not be deemed withdrawal from the contract.
8. If the retention of title or the assignment is not effective according to the law of the country in which the goods are located, the security closest in nature to retention of title or assignment in this country shall be deemed as agreed. If a contribution of the client is required for this purpose, the client shall perform all legal actions necessary to establish and preserve such rights.

X. Industrial Property Rights

If the supplier is to perform according to drawings or models, samples, or using parts supplied by the client, the client shall warrant that industrial property rights of third parties are not infringed hereby. The client shall indemnify the supplier from any and all claims by third parties due to infringement of industrial property rights and shall compensate the supplier for any resulting damage and for his costs and expenditures. If the client is prohibited from manufacture or delivery by a third party on the basis of an industrial property right, the supplier is entitled to cease work. In this case, the supplier may withdraw from the contract and demand compensation for his damage as well as his costs and expenditures. The client is under no obligation in accordance with clauses 1 to 4 above to provide indemnification, compensation for loss expenses or reimbursement of expenses, if the client is not liable for the infringement. Other possible statutory claims and rights of the supplier remain unaffected in every case.

XI. Export controls

The purchaser must advise the supplier in writing as soon as possible, but not later than two weeks before the delivery deadline, of all information and data required by the supplier in order to comply with the applicable foreign trade legislation and for licences, provided that their procurement is the responsibility of the supplier according to the contract. Furthermore, the supplier can demand such information at any time. In the case of alterations, the purchaser shall update this data, particularly the export control and foreign trade data, as early as possi-ble, but not later than one week before the delivery date, and shall advise the supplier of this in writing. The purchaser shall bear any expenses and damages incurred by the supplier due to the absence, defectiveness or late receipt of the data.

XII. Compliance

The purchaser undertakes that it and its partners, managing directors, supervisory and advi-sory boards, employees and other representatives comply with legal regulations and in particu-lar shall act preventatively against any kind of criminal or reprehensible misconduct in the course of its business operations in the context of this contract.

XIII. Prohibited dealings

The purchaser undertakes that it and its partners, managing directors, supervisory and advisory boards, employees and other representatives shall refrain from the following dealings with the supplier's goods in all cases:

- Dealings with persons, organizations or institutions that are named on a sanctions list according to EC or EU regulations or US export provisions;
- Dealings with customers in countries under embargo, which are prohibited;
- Dealings for which the required licence is not present; and
- Dealings that in particular may have a connection with nuclear, biological or chemical weapons or a military end-use.

If the purchaser contravenes this obligation, the supplier is within its rights to withdraw immedi-ately from the contractual agreement or claim compensation at its discretion.

XIV. Use of Software

To the extent that software is included in the scope of the delivery, the client shall be granted a non-exclusive right to use the supplied software, including its documentation. It is released for use on the object of the delivery intended for this purpose. The use of the software on more than one system is prohibited.

The client may reproduce, rework or translate the software or convert from the object code into the source code only within the legally permissible scope (Sec. 69a ff UrhG, Copyright Act). The client obligates himself neither to remove manufacturer's information –in particular copyright notices– nor to change them without the prior express permission of the supplier.

All other rights to the software and the documentation, including the copies, remains with the supplier or the software supplier. The granting of sub-licenses is not permissible.

XV. Proper Law, Place of Performance, Jurisdiction, Severability clause

1. Sole proper law is that of the Federal Republic of Germany. In case of doubt, the German language version of all contractual provisions shall be decisive. The Uniform Sales Convention (Convention of the International Sale of Goods, CISG) does not apply.
2. Place of performance is 71272 Renningen.
3. If the client is a merchant, a legal person under public law or a special fund under public law, the courts of Leonberg shall have jurisdiction for any and all disputes arising under this contractual relationship, including disputes regarding its creation and its effectiveness as well as for bill of exchange and cheque litigation. The supplier may apply to any other court which has jurisdiction according to statutory provisions.
4. If one of the provisions of these terms and conditions of sale and delivery is invalid, in whole or in part, the validity of the remaining provisions shall not be affected.

X-FLOC
www.x-floc.com

X-Floc Dämmtechnik-Maschinen GmbH
Rosine-Starz-Straße 12
71272 Renningen
Germany
+49-7159-80470-30
+49-7159-80470-40
info@x-floc.com