

PROFLOATING

GENERAL TERMS AND CONDITIONS

Profloating B.V.
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The Netherlands

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Article 1: Applicability

1.1 These General Terms and Conditions of sale and delivery shall apply to all offers, quotations and contracts made by Profloating (hereinafter 'Profloating') in which Profloating undertakes to deliver products to the Client.

1.2 The applicability of general conditions of the Client or any other general conditions is expressly rejected.

1.3 Departures from these General Terms and Conditions will only be valid if expressly agreed to in writing by Profloating.

1.4 In the event of any conflicts between the substance of the agreement concluded between the Client and Profloating on the one hand and these General Terms and Conditions on the other, the provisions set out in the agreement have precedence.

1.5 Wherever these General Terms and Conditions use the term in writing, this shall mean by document signed by parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties.

1.6 Insofar as these General Terms and Conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

Article 2: Offers and conclusion of agreement

2.1 No obligations are attached to any offers, even if they contain an acceptance period.

2.2 If the Client supplies Profloating with data, drawings etc., Profloating may rely on their accuracy and shall base the offer on that information.

2.3 An agreement shall come into effect once Profloating has confirmed the order in writing. 2.4 Any offer made or undertaking given by a representative of Profloating shall only be binding insofar as the latter confirms this in writing.

2.5 In the event that agreement is reached to effect payment by means of a letter of credit, the agreement concerned shall only come into effect once Profloating accepts the relevant irrevocable (confirmed) letter of credit in writing according to UCP 600. This letter of credit will be opened by a bank subject to the acceptance in advance by Profloating.

Article 3: Prices

3.1 Unless otherwise agreed in writing, prices shall be stated in Euro, exclusive of VAT and are based on 'free carrier', Monster, the Netherlands (FCA, Incoterms 2010).

3.2 Any price cited by Profloating shall be based on the existing monetary conditions, labour costs, procurement prices, duties, taxes and other levies, subsidies and the like prevailing at the time the agreement concerned is concluded. In the event that one or more of these cost price components increase after conclusion of the agreement but before the relevant product(s) have been delivered, Profloating shall be entitled to pass on any reasonable price increase to the Client.

3.3. If the Client provides goods and Profloating is prepared to use those goods, Profloating may charge up to 20% of the market price of the goods provided.

Article 4: Intellectual property rights

4.1. Unless agreed otherwise in writing, Profloating retains all intellectual property rights to all offers, designs submitted, illustrations, drawings, trial models, programs, etc.

4.2. The rights listed in Article 4.1 remain the property of Profloating, regardless of whether costs have been charged to the Client for their production. The relevant information may not be copied, used or shown to third parties without Profloating's explicit prior consent. The Client will be liable to pay Profloating a penalty for each instance of violation of this provision, to the amount of € 25.000,-. This penalty may be demanded in addition to any compensation damages awarded by law. 4.3. The Client must return all data provided as meant in Article 4.1 on demand, within the period specified by Profloating. If this provision is violated, the Client is liable to pay Profloating a penalty of € 1.000,- per day. This penalty may be demanded in addition to any compensation damages awarded by law. 4.4

Profloating reserves all of its intellectual property rights in connection with the products which it supplies. The Client shall not be permitted to modify all or part of any product supplied, or to affix any other trademark to it, to use the relevant mark in any other way, or to register it in his own name.

Article 5: Advice, designs and materials

5.1 The Client cannot derive any rights from advice or information provided by Profloating that has no direct bearing on the engagement.

5.2 The Client is responsible for all drawings, calculations and designs made by or on behalf of the Client, for the functional suitability of all materials prescribed by or on behalf of the Client, for all technical information and all relevant other information supplied by or on behalf of the Client.

5.3 The Client indemnifies Profloating for any claims from third parties arising in connection with the use of the drawings, calculations, designs, materials, samples, models, technical information and all relevant other information etc. provided by or on behalf of the Client.

5.4 At all times the Client is responsible for a final check of all material specifications provided by or on behalf of Profloating. 5.5 The Client may examine (or arrange for the examination of) the materials that Profloating intends to use before they are processed, at the Client's own expense. Any damages incurred by Profloating as a result are for the Client's expense.

Article 6: Delivery

6.1 The delivery time stated by Profloating shall under no circumstances be deemed to constitute a fatal date. Profloating shall not be in default in respect of such delivery time until the Client notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which Profloating has the opportunity to effect delivery, and the latter still fails to do so.

6.2 In determining delivery times, Profloating assumes that the engagement can be carried out under the circumstances as they are known to Profloating at that moment.

6.3 Delivery times do not commence until the relevant agreement is concluded in accordance with the provisions of Article 2, the Parties have agreed on all commercial and technical details, all necessary data, final and approved drawings, etc. are in Profloating's possession, the (pre)payment or instalment agreed has been received, any security for payment has been accepted and the conditions necessary for the performance of the engagement have been met.

6.4 a. In the event of circumstances that are different to those known to Profloating when the delivery times were determined, Profloating may extend the delivery times by the time that is required in order to perform the engagement under those circumstances. b. In the event of contract extras, the delivery time will be extended by the time required to supply (or arrange for the supply of) the materials and parts necessary for those contract extras and to carry out the contract extras. c. In the event that Profloating's obligations are suspended, the delivery times will be extended by the duration that the obligations are suspended.

6.5 If the time for delivery is exceeded, the Client shall not be entitled to cancel or terminate the agreement, unless the time for delivery is exceeded with more than eight weeks, without the Client being entitled to any compensation.

6.6 Profloating reserves the right to effect a delivery in parts. Each partial delivery shall be deemed to represent a separate agreement. Profloating shall be entitled to demand payment for each partial delivery before proceeding with any other.

6.7 The Client's failure to comply with his duty to effect payment (or to do so on time), shall have the effect of suspending Profloating's duty to effect a delivery.

6.8 Unless otherwise agreed in writing, delivery will take place 'free carrier', Maasdijk, the Netherlands (FCA, Incoterms 2010).

Article 7: Force Majeure

7.1 Profloating is entitled to suspend the fulfilment of any obligations if any circumstances that could not be foreseen when the agreement was concluded and that are beyond Profloating's influence temporarily prevent the fulfilment of those obligations.

7.2 Circumstances that Profloating could not foresee and that are beyond Profloating's influence are understood to include (but are not limited to) the circumstance that Profloating's own suppliers and/or subcontractors fail to meet their obligations, or fail to do so in time, the weather, earthquakes, fire, loss or theft of tools, the destruction of materials to be processed, road blocks, strikes or work stoppages and restrictions on import or trade.

7.3 Where Profloating has already executed part of an agreement, the Client shall pay the purchase price for any products that have been delivered.

7.4 Either party shall be entitled to terminate the agreement by notice in writing to the other party if performance of the agreement is suspended for more than six months without the Client being entitled to any compensation.

Article 8: Liability

8.1 Profloating is liable for all damages that the Client incurs that stem directly and exclusively from a shortcoming attributable to Profloating. However, only those damages for which Profloating is insured, or should within reason have been insured, qualify for compensation.

8.2 If, when the agreement is concluded, it is impossible for Profloating to take out insurance as meant in Article 8.1 or impossible to do so at reasonable conditions, or if it is subsequently impossible to renew the insurance policy at reasonable conditions, the maximum compensation payable for damages is the amount that Profloating charged for the agreement in question (exclusive of VAT).

8.3 The following damages do not qualify for compensation: a. trading losses, including losses caused by delays and loss of profits. The Client should take out insurance to cover such damages, if such is deemed desirable; b. supervision damages, which are understood to include damages caused, during or as a result of the performance of the work, to objects on which work is being carried out to objects situated in the vicinity of the work site. The Client should take out insurance to cover such damages, if such is deemed desirable; c. damages caused by intent or gross negligence on the part of helpers or non-management employees of Profloating. d. unusual chemical effects on materials, including but not confined to weed control or fertilizing agents etc.;

8.4 Profloating is not liable for damages to materials provided by or on behalf of the Client that result from improper processing. At the Client's request, Profloating will repeat the process, using materials provided by the Client, at the Client's expense. 8.5 The Client indemnifies Profloating against all claims from third parties for product liability stemming from defects in products provided by the Client to third parties that consisted of or included products and/or materials provided by Profloating.

Article 9: Profloating BV Limited Warranty

This Profloating BV ("Profloating") limited warranty ("Limited Warranty") covers defects in workmanship and materials of the following Profloating products for the applicable warranty periods (each a "Warranty Period") set out below:

- Flotar: 15 years commencing on the earlier of (i) 4 months from the date the product is shipped from Profloating and (ii) the installation of the product at the original end-user location ("Original Location").
- Walkfloat: 15 years commencing on the earlier of (i) 4 months from the date the product is shipped from Profloating and (ii) the installation of the product at the original end-user location ("Original Location").
- Mounting bar: 15 years commencing on the earlier of (i) 4 months from the date the product is shipped from Profloating and (ii) the installation of the product at the original end-user location ("Original Location").
- Proflex Spreaderbar: 15 years commencing on the earlier of (i) 4 months from the date the product is shipped from Profloating and (ii) the installation of the product at the original end-user location ("Original Location").
- Anchoring Seaflex: 20 years. For the warranty conditions of the anchoring solution we refer to the warranty conditions of Seaflex. Warranty of Seaflex products is not covered within the Profloating Limited Warranty Conditions.

During the Warranty Period, the Limited Warranty is transferable to a different owner (“Transferee”) as long as the product remains at the Original Location, the Transferee submits to Profloating a “Change of PV Ownership Form”, and pays the applicable transfer fee within 30 days from the date of transfer to the Transferee.

This submission is a requirement for continued Limited Warranty coverage. The Transfer Fee is set forth in the Change of PV Ownership Form, and is subject to reasonable adjustment from time to time (as determined at Profloating’s discretion). The Change of PV Ownership Form and payment instructions are available at <http://www.Profloating.nl/warranty>.

During the Warranty Period, if Profloating establishes the existence of a defect that is covered by the Limited Warranty, Profloating will, at its option, either:

- (1) repair or replace the product free of charge, or
- (2) issue a credit or refund for the product to the owner of the system in an amount up to its actual value at the time the owner notifies Profloating of the defect, as determined by Profloating.

If Profloating elects to repair or replace the product, Profloating will, at its option, use new and/or reconditioned parts or products of original or improved design. If Profloating repairs or replaces a product, the Limited Warranty continues on the repaired or replacement product for the remainder of the original Warranty Period or 90 days from the date of receipt of Profloating’s return shipment of the repaired or replacement product, whichever is later.

The Limited Warranty covers a replacement unit but does not include labor costs related to (1) un-installing the product or (2) if applicable, re-installing a repaired or replacement product. To the extent applicable, the Limited Warranty also covers the costs of shipping a repaired or replacement product from Profloating, via a non-expedited freight carrier selected by Profloating, to locations in Europe where we have approved our products for installation as listed on our website at <http://www.Profloating.nl/warranty>.

The Limited Warranty does not cover, and Profloating will not be responsible for, shipping damage or damage caused by mishandling by the freight carrier.

The Limited Warranty does not apply to, and Profloating will not be responsible for, any defect in or damage to any products:

- (1) that have been misused, neglected, tampered with, altered, or otherwise damaged, either internally or externally;
- (2) that have been improperly installed, operated, handled or used, including use under conditions for which the product was not designed, use in an unsuitable environment, or use in a manner contrary to the Profloating User Manual or applicable laws or regulations;
- (3) that have been subjected to fire, generalized corrosion, biological infestations, acts of nature,
- (4) that have been subjected to incidental or consequential damage caused by defects of other components of the solar system;
- (5) if the original identification markings (including trademark) of such products have been defaced, altered, or removed.
- (6) due to lack of maintenance. The system should be subject to regular (yearly) inspections by Profloating

The Limited Warranty does not cover cosmetic, technical or design defects, or shortcomings which do not materially influence or affect energy production or degrade form, fit, or function of the products. The Limited Warranty does not cover costs related to the removal, installation or troubleshooting of the owner’s electrical systems. The Limited Warranty does not extend beyond the original cost of the products.

To obtain repair or replacement service, credit or refund (as applicable) under this Limited Warranty, the owner must comply with the Return Merchandise Authorization Procedure available at <http://www.Profloating.nl/warranty>.

Profloating expressly reserves the right to novate or assign its rights and obligations under this warranty agreement to a third party with the demonstrated expertise and requisite resources needed to effectively discharge the obligations hereunder.

THE LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY PROFLOATING AND, WHERE PERMITTED BY LAW, IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR WARRANTIES AS TO THE ACCURACY, SUFFICIENCY OR SUITABILITY OF ANY TECHNICAL OR OTHER INFORMATION PROVIDED IN MANUALS OR OTHER DOCUMENTATION. IN NO EVENT WILL PROFLOATING BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, COSTS OR EXPENSES HOWEVER ARISING, WHETHER IN CONTRACT OR TORT, INCLUDING WITHOUT LIMITATION ANY ECONOMIC LOSSES OF ANY KIND, ANY LOSS OR DAMAGE TO PROPERTY, OR ANY PERSONAL INJURY.

To the extent any implied warranties are required under applicable law to apply to the products, such implied warranties shall be limited in duration to the Warranty Period, to the extent permitted by applicable law. Some regions do not allow limitations or exclusions on implied warranties or on the duration of an implied warranty or on the limitation or exclusion of incidental or consequential damages, so the above limitation(s) or exclusion(s) may not apply.

This Limited Warranty gives the owner specific legal rights, and the owner may have other rights that may vary from region to region. The grant of this Limited Warranty by Profloating is conditioned upon agreement by the owner and any permitted Transferee to the terms, conditions and requirements herein.

Disputes will be handled by the court of The Hague (the Netherlands).

Article 10: Complaints

The Client may not invoke defects in the product or service unless a written complaint has been submitted to Profloating within fourteen days after the defect was detected or should, within reason, have been detected.

Article 11:

Failure to take delivery In the event that the Client has not taken delivery of any object after the delivery deadline has passed, those objects will remain available to the Client. Any objects of which the Client has not taken delivery will be stored for the Client's account (including costs of handling and insurance) and risk. Profloating may at any time invoke the powers granted by Article 6:90 of the Dutch Civil Code.

Article 12: Payment

12.1 Profloating shall at all times have the right to demand full or partial payment in advance. As to all other sales, payment must be made by the Client within 30 days after the relevant invoice date, unless otherwise agreed in writing.

12.2 The payment conditions specified notwithstanding, the Client is obliged, at Profloating's request, to provide security for payment, to the Client's satisfaction upon or after entering into the agreement and before its implementation. Failure on the Client's part to provide such security for payment within the period specified will immediately constitute default. In that event, Profloating is entitled to suspend or dissolve the agreement and recover any damages from the Client.

12.3 The Client's right to offset any claims on Profloating is excluded.

12.4 The full claim for payment is payable on demand in the following instances: a. if any payment deadline has been exceeded; b. if the Client has been declared bankrupt or requests suspension of payments; c. if any of the Client's assets or claims are seized; d. if the Client (if a company) is dissolved or wound up; e. if the Client (if a natural person) makes a request for judicial debt rescheduling, is placed under guardianship or dies.

12.5 If payment has not been made by the payment deadline specified, the Client shall be deemed to be in default without the need for any notice of default or judicial intervention and the Client is immediately liable to pay Profloating interest. That interest is payable at a rate of 12% per year, or at the statutory rate if that is higher. For the purposes of calculating the interest, partial months are counted as full months.

12.6 If payment has not been made by the payment deadline specified, the Client is immediately liable to pay Profloating all extrajudicial costs, to a minimum of € 75,-. The costs are calculated in accordance with the following table: over the first € 3.000,- 15% over the excess up to € 6.000,- 10% over the excess up to € 15.000,- 8% over the excess up to € 60.000,- 5% over the excess from € 60.000,- 3%. If the actual extrajudicial costs exceed those based on this formula, the Client is liable to pay the actual costs.

12.7 If judicial proceedings are decided in Profloating's favour, all costs incurred by Profloating in connection with those proceedings are for the Client's account.

Article 13: Retention of ownership and pledging

13.1 After delivery, Profloating remains the owner of the objects delivered for as long as: a. the Client fails or will fail in the fulfilment of the (payment)obligations stemming from this agreement or any similar agreements; b. the Client fails or will fail to pay for any work performed or to be performed under such agreements; c. the Client has not paid any claims arising from non-fulfilment of those agreements, such as compensation for damages, penalties, interest and costs.

13.2 As long as any objects are subject to retention of ownership, the Client may not encumber those objects in any way that exceeds the scope of the Client's ordinary activities.

13.3 Having invoked retention of ownership, Profloating may retrieve the objects delivered. The Client must allow Profloating to enter the place where those objects are located.

13.4 If Profloating cannot invoke retention of ownership because the objects delivered have been subject to confusion, deformation or accession, the Client is obliged to give the newly formed objects in pledge to Profloating.

Article 14:

Cancellation If the Client wishes to cancel the agreement without Profloating having failed in the performance thereof and if Profloating so agrees, Profloating is entitled to charge the expenses, damages and lost profit.

Article 15: Suspension and termination

15.1 In the event that the Client fails to comply with his obligations pursuant to an agreement into which he has entered, or fails to do so properly or on time, if there are grounds to fear that this will occur, or in the event that the Client applies for a suspension of payments, files for bankruptcy or liquidates his business, Profloating shall be entitled to suspend or terminate the agreement concerned without the need to give notice of default or for judicial intervention, and it shall not have a duty to provide any form of compensation.

15.2 Any claim on the part of Profloating pertaining to a part of the agreement which has already been executed, or harm suffered as a result of its suspension or termination, which shall be deemed to include loss of profit, shall fall due with immediate effect.

Article 16: Applicable law and competent court

16.1 These General Terms and Conditions and any agreements entered into by Profloating shall be solely governed by and construed in accordance with the laws of the Netherlands.

16.2 The Vienna Sales Convention (C.I.S.G.) does not apply to these General Terms and Conditions, nor do any other international regulations whose exclusion is permitted.

16.3 Only the Dutch civil court within whose jurisdiction Profloating's place of business is situated is competent to pass judgment on disputes, unless Profloating would elect to submit the dispute to competent courts elsewhere.

16.4 The provisions of article 16.3 leave intact the right of Profloating to obtain a settlement by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s). The place of arbitration will be Amsterdam, the Netherlands. The arbitral procedure shall be conducted in the Dutch or English language.