



Ihr Profi in Erneuerbaren Energien / Schrauben / Solarmontage

Our General Terms and Conditions

1. Scope

1.1 Between Profiness and the orderer and other customers for the present as well as for all contracts to be closed in the future these conditions of sale and delivery apply exclusively.

1.2 The contracts are closed in writing. Oral agreements require the written confirmation.

1.3 The integral parts of the contract that in the context of sale contracts are here designated as deliveries are to be considered as a service in the case of contracts for work or contracts for work and materials.

1.4 Our Conditions are considered as accepted with the receipt of our delivery or service at the latest.

2. Offer, order, order confirmation

2.1 All orders, also those that are preceded by an offer from us, only become a legally effective part of the sales contract with our written order confirmation. Deliveries or invoicing are considered to be acceptances of the order at the conditions detailed here. Automatically generated order confirmations in the online shop are no order confirmations in this sense.

2.2 We explicitly reserve the availability of the items offered in the shop.

3. Prices and Pricing

3.1 Our prices are ex warehouse or work, unless otherwise agreed, exclusive of packaging, in case of domestic sales they include VAT to the amount defined by law.

4. Scope of delivery, shipment, transfer of risk, packaging

4.1 All price agreements are for the delivery including the original works packaging. In case of differing quantities, we reserve the right to round up or down to the next higher or lower packaging unit, irrespective the required quantity.

4.2 In case of customized products, excess or short deliveries due to manufacturing of up to +/- 15 % are considered to be the performance quantity without the necessity of a specific agreement.

4.3 Partial deliveries are allowed.

5. Delivery periods, delayed delivery

5.1 Delivery periods are to be regarded as approximately agreed upon unless a specific delivery date was assured in writing.

5.2 A requirement for keeping the delivery period is the fulfilment of all contractual obligations by the orderer against us that arise from this or other contracts.

5.3 The agreed delivery periods start with the sending of the order confirmation, but not before all the details of the order that are necessary for the delivery (subscriptions, sample approval, opening of a letter of credit, etc.) have been clarified and they relate to the date of the dispatch of the product. The delivery date is regarded as being met when the product has left our warehouse or the work's warehouse prior to the expiry of the delivery period or when the readiness for dispatch has been declared by then.

5.4 The delivery period is extended, also when a delay has already occurred, in cases of inevitable and unforeseeable events of Force Majeure. Among these are: strike, lockout, mobilization, war, blockade, import and export bans, administrative rationing measurements, shortage of raw materials, shortage of energy, fire, transportation and traffic disruptions, and other events that are beyond our sphere of influence and that unreasonably impede the fulfilment of the sales contract or that make the fulfilment impossible for us or for our suppliers.

5.5 If we are delayed with respect to a bindingly assured delivery date, the orderer has to set us an extension. The duration of the extension depends on the product-specific difficulty in the manufacturing or procurement of such a product and must not be less than a period of 6 weeks in case that there is no specific agreement. If after the expiry of this extension we are not able to perform the delivery or the service, the orderer is entitled to cancel the contract for those quantities or services that have not been dispatched before the expiry of the extension or that have not been reported ready for dispatch. The orderer is only entitled to cancel the whole contract if the partial services that have already been delivered are demonstrably of no interest to him.

5.6 If the orderer demonstrably suffers damage because of a delay caused by us, he is entitled to claim a penalty for default. This penalty amounts to 0.5% for each full week of delay, but a maximum of 5% of the value of that part of the delivery or service that caused such damage demonstrably by a delay for which we are responsible.

5.7 If the orderer is delayed with respect to the receipt of the product, we, after the expiry of a reasonable extension, are entitled to claim damage compensation for non-performance. The amount of which is a lump sum of 20% of the contract value. We reserve the right to claim higher damage compensation in case that higher damage can be demonstrated. Furthermore, we are entitled in such a case to dispose of the delivery item otherwise and to supply the orderer after a reasonably extended period.

5.8 Products ordered on recall have to be accepted 3 months after the start of the readiness for dispatch, if no other agreement exists, without the need of a request or notification by us. After the expiry of the said period we are entitled at any time to either charge the product or to cancel the order and claim damage compensation for non-performance, at our discretion.

6. Warranty

6.1 Unless the previous paragraphs do not provide otherwise, any liability is excluded.

6.2 Relevant for the contractual condition of the product is the time of transfer of risks. For defects of the delivery that also include the lack of assured properties, our liability, excluding any further claims, is as follows:

6.3 Deficiency claims referring to properties, weights, or sizes have to be filed against us immediately after the receipt of the product at the place of destination in writing or by telex or fax. Oral deficiency claims or deficiency claims by phone require a written confirmation to become legally effective.

6.4 Other deficiency claims must be filed within 8 days after receipt or after the discovery of the defect.

6.5 In principle, the orderer can only file deficiency claims if he gives us the opportunity to convince ourselves of the nature of the defect by providing us samples of the rejected product at our request. He is not entitled to send back the whole rejected shipment without our consent.

6.6 If the orderer or a third party commissioned by him carries out a quality inspection (acceptance) of the product, a later deficiency claim concerning defects that were detectable during the agreed inspection is excluded.

6.7 Defective products must not be processed.

6.8 In case of a justified deficiency claim we are entitled, at our discretion, to carry out a cost-free rectification of the defect or to replace the defective product cost-free by a faultless product. To do so, the orderer has to give us a period appropriate for the characteristics of the product. If we are not able to carry out the rectification or to provide a replacement, the orderer is entitled to claim a reduction of the payment or the cancellation of the contract. In case of a defective customized product the orderer only is entitled to claim a reduction of the payment though. If our supplier is responsible for the defect, our liability is limited to the assignment of liability claims to which we are entitled against the supplier.

6.9 If the orderer does not fulfil his obligations against us from this contract and from all other contracts closed with him in a proper manner, we are entitled to reject the meeting of justified warranty claims.

6.10 Insofar as this is legally allowed, any further claims by the orderer, in particular claims for damage compensation of any kind, including those that did not arise from the delivery item itself, are excluded.

7. Agreement on quality, installation

7.1 The object of purchase is according to contract if it is suitable for the usual use or if it is of a quality that is normal for items of the same kind and that the customer may expect according to the kind of the item. Samples, specifications in brochures, or information from other advertising material are non-binding reference values.

7.2 An agreement on quality that deviates from these conditions or the assumption of a guarantee require the additional confirmation in writing by the Profiness company in writing. The employees of Profiness are not entitled to close agreements on quality or to give guarantees that go beyond the written contract and these conditions.

7.3 If Profiness through its personnel supports the construction management or other personnel of the customer in monitoring the installation or in the installation itself, Profiness is only liable for selecting professionally competent personnel. Profiness will not take over tasks and activities of the construction management, the specialist site management, the planning or coordination of the installation works. Profiness is also not responsible for the expertly, properly, and as per drawing installation of the purchase item.

8. Extended guarantee of durability for products in the Solar Installation Systems business unit

8.1 Insofar as Profiness gives the customer a written guarantee of the durability of the components or systems, the following conditions apply:

8.2 Unless otherwise agreed, no guarantee period for all delivered products of the Profiness company applies.

8.3 If a guarantee has been agreed, this guarantee applies to the durability of the acquired products and exclusively leads to the claims specified hereafter.

8.4 If, despite of a proper installation and handling and during normal stress, damages should occur at the acquired objects, Profiness will immediately replace the affected component during the guarantee period. The guarantee is restricted to the subsequent delivery when the damage is reported during the guarantee period. Any statutory warranty or liability claims remain unaffected.

8.5 The obligation to provide a guarantee service does not apply if the damage has occurred in the context of a faulty installation or a faulty handling of the system or in the context of extreme stress

(e.g. weather damage, effects caused by the instability of the soil, certain chemical or biological effects), unless it can be demonstrated that the damage was not caused by this but essentially by a material defect or a design fault. For the installation and the handling the technical product descriptions and installation manuals delivered by us with the respective products apply, as well as the legally required or generally recognized rules and principles of architecture and, with priority, any plans, static designs, and manuals set up by our customers.

8.6 There is no entitlement for claims insofar as the damage is covered or can usually be covered by an insurance against storm and similar events (elementary insurance).

8.7 This guarantee only establishes claims by the customer of Profiness via whom all guarantee cases must be processed. Claims by third parties are only possible if Profiness gives its consent.

9. Conditions of payment

9.1 Private customers and industrial customers normally pay per prepayment. Unless otherwise agreed, the payment by industrial customers that have already paid three orders per prepayment must occur within 14 days after invoice date cash without deduction.

9.2 The payment is considered as paid if it is received without deduction at the place of performance during this period. In case of cheques and bills of exchange only their cashing is regarded as a payment. The receipt, which must only occur with our consent, does not constitute a deferral. The receipt of cheques and bills of exchange occurs with the charging of encashment and discount charges and under the condition of proper receipt. The further transfer and the prolongation also are not considered to be a settlement.

9.3 Cash payments, bank transfers or cheque payments made against the submission of a bill of exchange issued by us and accepted by the buyer shall not count as payment until the bill of exchange has been honoured by the accepted and until we have thus been relieved from the liability. The agreed reservation of proprietary rights (notwithstanding any further reaching agreements and other reserved rights) therefore remains at least until the bill of exchange has been honoured in our favour.

9.4 Any agreed discount can only be granted after all other bills have been settled. Otherwise, the payment is assigned as partial payment a/o to the oldest maturity.

9.5 The orderer defaults at the end of the due date of the invoice without the need for a specific reminder.

9.6 In case of a delayed or deferred payment, interests and commissions customary in banking will be charged.

9.7 If it comes to a default or if we become aware of circumstances which according to judgement as a cautious businessman are likely to lead to a different assessment of the creditworthiness than at the time of the closing of the contract, we are entitled to claim the immediate payment of all claims regardless of their due date. Furthermore, we reserve the right to claim cash payment prior to the manufacturing/delivery of the product for all outstanding deliveries or to cancel the contract after the expiry of a certain extension without excluding any claims for damage compensation. The orderer already now declares his consent that in the case of a cancellation by us we will seek to regain the possession of the delivered products. The costs for the return transport and all other costs resulting from this have to be paid by the orderer. Notwithstanding the payment obligation of the orderer, we are entitled to make use of the regained delivered items by sales in the open market on account of the orderer as best as possible. The revenue is credited against the remaining debts of the orderer after deducting the costs. Every open claim of ours is considered to be a remaining debt.

9.8 The orderer is only entitled to credit undisputed and legally established claims against our payment entitlements. Any retention of payments by the orderer is forbidden insofar as the claims are based on other contractual relationships.

10. Reservation of proprietary rights

10.1 We reserve proprietary rights on all delivered items until we receive all payments for all of our claims from the business relation (main and accessory claims), including any promissory notes for refinancing and promissory notes by seller).

10.2 The orderer is obliged to insure the delivery item at his own costs against theft, fire, and other damage and to prove to us that the insurance policy was taken out. Until the payment of our claims is complete, the orderer is obliged to notify us about any change of his residence within 8 days prior to his move.

10.3 The delivery item must neither be pawned by the orderer nor be assigned by him as a security. In the case of garnishments, confiscations or other dispositions by a third party the orderer is obliged to immediately inform us about this to a sufficient extent.

10.4 The orderer is only allowed to resell the delivery item through proper business transactions. He already now assigns to us any claims he is entitled to from such a resale. The installation on a property or in installations connected with buildings or the usage as a fulfilment of other contracts for work and materials or contracts for work and services by the orderer is equated with the resale. The orderer is entitled to collect the amount receivable for the period of time during which he fulfils his obligations against us according to the contract. He is obliged to immediately pass on the collected amounts as soon as the amounts are due.

10.5 By processing the delivery item the orderer does not acquire ownership of the completely or partially manufactured items. The processing occurs on a cost-free basis for the seller. Should the reservation of property rights expire nonetheless, the orderer already now gives his consent that the ownership of the items is transferred to us when the item is processed. The orderer remains the depositary of the items on a cost-free basis.

10.6 In case of a processing with products that are still in the ownership of a third party we acquire joint ownership of the new products. The extent of this joint ownership is calculated on the basis of the proportion of the invoice value of the product delivered by us to the invoice value of the other product. The agreed advance assignment also applies for the resale of products processed in such a manner. If the processed product contains, apart from the product delivered by us, contains only such items that are either owned by the orderer or that have been delivered with a reservation of proprietary rights, the orderer assigns the whole claim for the purchase price to us. In case of the coincidence of previous cessions to several suppliers, we are entitled to the fraction of the claim that corresponds to the proportion of the invoice value of our products that are subject to such a reservation to the invoice value of the other processed items.

10.7 If we claim the reservation of property rights and/or if we take the product back, this does not constitute a cancellation of the contract; any return of products always only occurs as a precaution. This also applies if partial payments are allowed later on.

10.8 Insofar as the value of the securities to which we are entitled exceed our total claim against the orderer undisputedly by more than 25%, we will, at the request of the orderer, release the excess amount of securities according to our discretion.

11. Place of performance, jurisdiction, applicable law

11.1 Place of performance for all rights and liabilities/payments resulting from the contractual relationship is Oberhausen.

11.2 The place of jurisdiction is Oberhausen insofar as this is legally possible. We reserve the right, though, to make claims against the orderer also at any other place in the Federal Republic of Germany in case of a legal dispute.

11.3 For all contracts closed on the basis of these conditions German law applies exclusively.

12. Data protection

12.1 Following the German Data Protection Act we point out that we store those data on the orderer's company that are necessary in the context of the handling of the matter with respect to data processing and in the context of the cooperation.

13. Partial invalidity of contracts

13.1 The orderer and we oblige ourselves jointly in case that these provisions are only partially valid to consider the other provisions as remaining legally valid.

13.2 Should the contracting parties in such a case not agree on a regulation that is equivalent in terms of the economical result, within the framework of what is reasonable according to good faith, a corresponding legal provision shall apply.

14. Information in accordance with the Distance Selling Act

14.1 In accordance with the Distance Selling Act you as a consumer are entitled to cancel the contract in written form within two weeks without the requirement of stating a reason (e.g. by mail, fax, e-mail) or by sending back the product. The period starts with the receipt of the product. The timely dispatch of the cancellation or the product is sufficient for keeping the cancellation period. If you make use of your right of cancellation, you have to bear the costs for the return shipment up to an order value of 40.00 Euro, in accordance with the Distance Selling Act.

Oberhausen, January 2009

Details in accordance with Art. 6 TDG:

Firma Profiness

Owner: Alfons Schröder

Straßburger Straße 311

46045 Oberhausen