

General terms of sale and delivery for Vestolit GmbH

1. Scope
 - 1.1 These general terms of sale and delivery apply to all purchase contracts concluded between Vestolit GmbH ("Vestolit") and its customers, which are businesspeople in the sense of § 14 BGB or legal persons under public law or public law special assets.
 - 1.2 The client's own divergent terms do not apply, even if Vestolit does not expressly contradict them, unless the parties agree otherwise in writing.
2. Conclusion of contract

Vestolit provides quotes on a non-binding basis. A contract only comes into effect when it is confirmed in writing by Vestolit or if the order is carried out without undue delay.
3. Services provided by Vestolit
 - 3.1 The scope of Vestolit services varies from contract to contract.
 - 3.2 The information provided by Vestolit concerning its goods, products and devices as well as its facilities and procedures is based on extensive research and application-related experience. Vestolit communicates these results, for which it accepts no liability beyond the individual contract in question, both orally and in writing according to the best of its knowledge. Vestolit, however, reserves the right to make technical changes in the course of product development.
 - 3.3 The customer must check the suitability of Vestolit products and services for his/her own use for him/herself. This also applies to the safeguarding of third party protection rights as well as for applications and procedures.
4. Prices
 - 4.1 Full incidental expenses additionally include VAT at the current, legally applicable rate. The Collective Agreement for Austrian Trade Employees shall apply in its current respective form.
 - 4.2 The weights and measures set by Vestolit upon transfer of risk are decisive for all calculations, unless the customer indicates that the measure/weights calculated by him/her at the time of transfer of risk was correctly determined according to a generally recognised method.
5. Payments
 - 5.1 Where no special provision has been agreed, bills are payable within 30 days of the billing date.
 - 5.2 Unless special provision has been agreed the payment is to be made by bank transfer.
 - 5.3 Where cheques and bills of exchange are accepted by special arrangement, they are accepted as conditional payment. The cost of discount fees and other exchange fees are to be borne by the customer. The validity of credit notes regarding cheques or bills of exchange is subject to the entry of the equivalent value of these papers and the value date of the day on which Vestolit comes into possession of the equivalent value.
 - 5.4 Where claims are collected by Vestolit according to a special arrangement in the bank direct debit process, the customer must ensure that his/her account contains sufficient funds at the agreed payment date.
 - 5.5 In the case of export, the customer must bear any costs incurred outside Germany in connection with payment.
6. Advance payment/security
 - 6.1 Vestolit reserves the right to demand an advance payment or security equivalent to the bill value of the delivery if it becomes clear after conclusion of contract that payment of the claim is jeopardised by defective performance on the part of the customer.
 - 6.2 Should the customer fail to make an advance payment/security required of him/her within a suitable set period, Vestolit is entitled to withdraw from the contract without setting a further period for payment.
7. Place of delivery

The place of delivery is the Vestolit supply plant or delivery warehouse.
8. Dispatch/deliveries
 - 8.1 Unless special provision has been made, delivery by Vestolit occurs at the customer's own risk. Vestolit determines the dispatch method, the dispatch route and the freight carrier. Clause 7 remains unaffected.
 - 8.2 Vestolit is entitled to make partial deliveries if
 - the partial delivery is suitable for the customer within the framework of the contractual intended use, and
 - the delivery of the remaining goods is guaranteed and
 - the customer does not hereby incur any additional costs (unless Vestolit declares that it is willing to bear these costs).
 - 8.3 Should a delivery not take place by the agreed date the customer must grant Vestolit an initial grace period of 3 weeks, or a longer period where suitable, to provide the service.
 - 8.4 The right to correct and punctual self-delivery remains reserved. The delivery period will also be proportionally longer in instances of force majeure. In the event of shortages of energy or raw materials, industrial action, official orders or disturbances to traffic and business through no fault of Vestolit, Vestolit is entitled to withdraw from the contract in so far as such circumstances affect Vestolit performance obligation.
 - 8.5 Vestolit is likewise entitled to withdraw from the contract if a significant change occurs to the conditions under which the contract was concluded and affects Vestolit's performance obligation.
 - 8.6 Should the customer provide his/her own packaging, these should be supplied punctually in a defect-free, ready-to-fill condition.
9. Retention of title
 - 9.1 The sold goods remain the property of Vestolit until all Vestolit's claims arising from the business relationship have been fulfilled ("retained goods"). If the retained goods are modified or processed by the customer, the retention of title extends to the whole new item.
 - 9.2 If the goods are joined or mixed with other items by the customer Vestolit is entitled to partial ownership according to the value of the retained goods in proportion to the value of the other goods used by the customer in joining or mixing. If the retained goods are joined or mixed with a main item belonging to the customer or a third party, the customer now transfers his/her rights to the new item to Vestolit. Where the customer joins or mixes the retained goods with a main item belonging to a third party in return for payment, he/she now transfers his/her claims for payment against third parties to Vestolit. Vestolit hereby accepts the transfer.

- 9.3 A bill of sale for the retained goods to third parties is only allowed in so far as it takes place in the customer's normal course of business and the latter retains ownership of the retained goods according to the above conditions. The customer now transfers his/her claims arising from this resale as well as rights arising from the retention of title agreed by him/her to Vestolit. Vestolit hereby accepts the transfer. The customer is obliged to make the customer aware of the transfer at Vestolit's request, and to provide Vestolit with all such information as is required in the exercise of its claims against the purchaser and to hand over any documents relating to this. The customer is entitled to recall the transferred claims in his/her own name until Vestolit withdraws. The withdrawal may only be declared if the customer is in default.
- 9.4 The customer must sufficiently insure the retained goods against theft, destruction and damage at his/her own expense.
- 9.5 Where the customer takes possession of the retained goods in a sense not permitted by the preceding paragraphs, Vestolit may withdraw from the contract whilst retaining the right to further claims.
- 9.6 Where Vestolit is for any reason entitled to withdraw from the contract and exercises this right, Vestolit may reclaim the retained goods, value them and charge the customer for the revenue determined in the evaluation.
10. Rights regarding defects
- 10.1 The customer must investigate the delivered goods and report any defects without undue delay, 10 days after having received the goods at the latest, or in the event of hidden defects within ten days of discovering the defect.
- 10.2 Should a defect be reported in a timely manner in accordance with clause 10.1, it is up to Vestolit to decide whether to replace or repair the item ("rectification"). Should rectification fail after the second attempt, the customer has the right either to withdraw from the contract or to reduce payment. The customer can also exercise his/her right to compensation according to clause 11 if Vestolit is responsible for the defect.
- 10.3 The customer's rights regarding defects expire one year after delivery of the goods. Should the customer exercise claims for compensation within the framework of defect liability, however, the legal expiry periods shall apply.
11. Compensation
- 11.1 Vestolit accepts unlimited liability for such damages as are caused by the company, its legal representatives or its vicarious agents. The same applies for damages resulting from injury to life, body or health which are culpably caused by the aforementioned persons and parties. Vestolit also accepts unlimited liability for gross negligence on the part of its legal representatives and their executives.
- 11.2 Should the conditions listed in clause 11.1 not be met, Vestolit - irrespective of legal grounds - is only liable if a significant contractual obligation (cardinal obligation) has been negligently breached or if its other vicarious agents, excluding executives, cause damage through gross negligence. In these cases Vestolit's liability is limited to foreseeable damages typical for contracts. Cardinal obligations are obligations which must be fulfilled in order that the contract may be properly carried out and which the customer can usually trust will be fulfilled. A breach of these obligations would therefore endanger the purpose of the contract.
- 11.3 The above limitation of liability does not apply in cases whereby liability for personal injury or damage to property is incurred in the event of product defects according to product liability law. This is also true when a quality, which is expressly guaranteed, is absent, and if and in so far as the guarantee is directly aimed at protecting the customer from the resulting damages.
12. Account clearances
- The customer must check account clearances, especially balance confirmations, as well as other settlements and displays for accuracy and completeness. Objections to account clearances must be sent within a month of receipt. Other objections must be made without undue delay. Failure to make timely objections constitutes approval. The customer's statutory claims in the event of justified complaints after the specified period remain unaffected.
13. Applicable law/place of jurisdiction
- 13.1 The law of the Federal Republic of Germany regarding legal relationships between domestic parties applies to all legal relationships between the customer and Vestolit. UN sales law is excluded.
- 13.3 Place of jurisdiction for all litigation over the validity, formation and termination of individual contracts between Vestolit and the customer as well as all right and obligations arising from these contracts is Marl. Vestolit can also bring claims at the client's general place of jurisdiction.
14. Final provisions
- 14.1 Amendments and additions to this contract or the revocation of individual contracts require the written form to be effective.
- 14.2 Clarifications and notifications on the part of the customer are only effective if they are supplied in writing.
- 14.3 The customer may only offset claims brought by Vestolit with uncontested or legally determined claims. The customer only has a right of retention on account of uncontested or legally determined claims arising from the same contractual relationship.
- 14.4 The complete or partial transfer of rights and obligations arising from individual contracts to third parties requires the written approval of the other contract party.
- 14.5 Should individual provisions of these general terms of sale and delivery or parts thereof be or become invalid, or should a gap be discovered, the validity of the remaining provisions as well as those of individual contracts remain unaffected.