

General terms for ordering Vestolit GmbH

1. General remarks
Unless otherwise agreed in writing, these general terms for ordering apply exclusively to all future orders/appointments. Contrary or additional terms of the Contractor („CO“) are not binding for us even if these have not been expressly opposed or if the delivery has been received by us without reservation.
2. Order
 - 2.1 Every order/appointment must be confirmed in writing by the CO within 3 weeks. All agreements reached between us and the CO for the purpose of the execution of this order/appointment must be in writing.
 - 2.2 In the event of a failure of the underlying basis of the contract (Störung der Geschäftsgrundlage), an important cause within the scope of a continuous contractual relationship, if the CO suspends its payments or if insolvency proceedings are instituted against the CO and the CO has not, or not yet completely fulfilled the contract, we are, at our discretion, entitled in any case to withdraw from the contract in full or in part - in the event of a continuous obligation - to terminate the contract without notice. Quotes from the Contractor shall be free of charge; cost estimates will be paid only in accordance with a written agreement.
3. Correspondence
Our order number and the date of our order/appointment as well as our material number must appear on all of the CO's correspondence.
4. Quality assurance system
The CO must have a quality assurance system, e.g., according to DIN ISO 9001 and/or DIN ISO 14001. With prior agreement from the CO, we are entitled to check the CO's systems by way of quality audits. In relation to any purchase of energy-related services or goods, the audit shall to a certain extent be based on the energy-related performance of such services or goods.
5. Compliance
We refer to our publicised [environmental statement](#) (Umwelt-erklärung) in which our values for the Environment, Safety, Health and Quality are defined. We further refer to the ["Code of Ethics"](#) which sets out corresponding standards for our suppliers. We expect the Contractor to observe the internationally recognized minimum standards of the UN Global Compact and the international labour standards of the International Labour Organization (ILO). The Contractor shall also comply with all anti-corruption laws applicable to the contractual relationship between the Contractor and us. Without prejudice to any other rights or remedies available to us, any breach of the fourth sentence of this Section 5 in connection with this contract is deemed to be a breach of contract which shall entitle us to terminate the contract for cause.
6. Subcontractors
The employment of subcontractors requires our prior written consent. The CO must impose on the subcontractor all obligations assumed by it from us and guarantee their observance.
7. Dispatch
 - 7.1 The CO must observe the delivery address shown in the order/appointment. During transportation, the relevant tariff, transport and packaging regulations of railways, road traffic, shipping, air transport, etc., must be observed, in particular, with respect to any existing customs and hazardous goods regulations. The most favourable means of transport for us must be chosen unless we have expressly specified certain forwarding regulations.
 - 7.2 Apart from the delivery address, the shipping documents must always reflect our order data (order no., order date, place of delivery, possible name of recipient and material number).
 - 7.3 If subcontractors are employed, they must show the CO as their principal in all correspondence and shipping documents, together with the order data.
 - 7.4 The single weight must be affixed clearly and permanently to the load units (over 1 ton).
 - 7.5 Not with standing our further claims, the CO is only entitled to partial deliveries/performances with our consent.
8. Details of hazardous goods, product information
 - 8.1 The delivery items are to be marked in accordance with German, European and international hazardous goods regulations.
 - 8.2 The CO agrees to provide us with all necessary product information, in particular with regard to the composition and shelf life, e.g., safety data sheets, processing instructions, labelling instructions, assembly instructions, occupational health and safety measures, etc., including any amendments to the same, in due time before (the) delivery.
 - 8.3 The Contractor shall ensure that the goods to be delivered shall not contain any gold, tin, tantalum, tungsten or combinations of the abovementioned materials originating from the Democratic Republic of Congo or its neighbouring states. The Contractor shall, upon our request, provide us with information on the origin of the abovementioned materials and/or combinations of the same.
9. Delivery period
 - 9.1 The CO is obligated to immediately inform us in writing with no undue delay if circumstances arise and become apparent to it that will prevent it from complying with the set delivery date.
 - 9.2 The CO can only plead the absence of necessary documents/information that were to be supplied by us if it has not received them within an appropriate time despite a reminder.
 - 9.3 We may claim any agreed and forfeited contractual penalty at any time up to the time the final payment is due without having to expressly reserve this right pursuant to Section 341, Paragraph 3 of the German Civil Code (BGB).
10. Proof of performance and acceptance
Any contractually agreed proof of performance and acceptance must be carried out free of charge for us and must be recorded in writing by both parties.
11. Weights/quantities
Notwithstanding our further claims, the following applies with respect to deviations in weight: the weight determined by us on receipt of the goods is applicable unless the CO can prove that the weight it calculated at the time of the transfer of risk was determined correctly according to a generally accepted method. The same applies analogously for quantities.
12. Invoice and payment
 - 12.1 Invoices must be made out in duplicate, whereby the second copy must be clearly marked as such. The invoice must show our order number and material number. Additionally, every invoice must reflect the VAT separately. Invoices must be sent separately to the invoicing address shown in the order/appointment.
 - 12.2 Unless otherwise agreed, the invoices will be paid by us net within 45 days. The payment period begins on delivery of the goods to the place of receipt (delivery address) or acceptance of the work performance and receipt of the invoice at the invoicing address shown in the order/appointment. A payment does not constitute an approval.
13. Complaints
A complaint will be deemed to have been made in due time if the CO is notified of such within 2 weeks of delivery in the case of an obvious defect. In the case of concealed defects, it is sufficient if the complaint is made to the CO within 2 weeks of discovery of the defect.
14. Warranty claims, liability, statute of limitations
 - 14.1 In case of defects we can demand not only the statutory claims and rights but also that the CO perform the subsequent performance (Nacherfüllung) for us free of charge with no undue delay and compensate us for all expenses incurred through the subsequent performance. In urgent cases, or if the CO is in arrears with the subsequent performance, we can remedy the defect immediately ourselves or have this remedied by a third party at the CO's expense. If Vestolit has already sold the defective delivery item, Vestolit can demand a reduction in price or - if the statutory conditions are given - compensation for damages instead of the direct subsequent performance.

- 14.2 The CO is liable for warranties of title (Rechtsmängel) according to the statutory provisions, in particular, that neither the delivery nor the contractually agreed use of the items delivered and/or manufactured by it violate patents or other property rights of third parties in the agreed country of receipt. Even if the CO has industrial property rights, we or third parties appointed by us may carry out repairs to the delivery items. The Contractor shall be liable for legal defects (Rechtsmängel) in accordance with statutory regulations; in particular, it shall ensure that the delivery of the goods/performance of the services or its contractually agreed use does not infringe third-party patents or other intellectual property rights in the agreed country of delivery/performance.
- 14.3 In all other respects, the Contractor's liability shall be determined by the statutory provisions. Upon our first request, the Contractor shall release us and hold us harmless from third-party claims for compensation if the defect causing the liability claim is caused by and is the responsibility of the Contractor or its suppliers.
- 14.4 Notwithstanding any Contractor's intellectual property rights, we or third parties commissioned by us shall have the right to service and repair the delivered goods.
- 14.5 The statutory and/or contractually agreed claims and rights for defects of the object (Sachmängel) expire by statute of limitations two years after delivery or acceptance of the work or service unless the law and/or the contract provide for a longer period; they expire after thirty years for warranties of title.
- 14.6 Apart from the statutory cases of the suspension of the statute of limitations, the statute of limitations for claims and rights for defects is also suspended during the period between the complaint and remedy of the defect. The statute of limitations begins again for newly delivered, replaced or repaired deliveries and services. If a delivery or service is affected in full, the new statute of limitations applies for the delivery or service in full.
15. Insurances
- 15.1 The CO must have a public liability insurance coverage with customary terms, a minimum coverage of EURO 2 million per case of damage/loss, for the duration of the contractual relationship including the warranty period and statute of limitations. The CO must prove this to us on request; lower cover ages must be agreed with us in each individual case.
- 15.2 All consignments sent directly to us (e.g., deliveries based on purchase agreements, work supplies, maintenance orders or special constructions, though not deliveries of material for contracts for works and services to be performed by the CO in our facilities) are insured during transport by us. We waive an indemnity insurance coverage (SpV) in accordance with subsection 29.2.1 ADSp (general German terms of forwarding). Any premiums for such indemnity insurance or other insurances on the account and in the interest (Eigenversicherung) of the CO will be borne by the CO.
16. Information
- All information including drawings and other documents that we require for the installation, operation, maintenance or repair of the delivery item are to be provided by the CO in due time, voluntarily and free of charge. § 434 sub-section 2 BGB (German Civil Code) remains unaffected.
17. Access to and driving on the factory premises/building site
- The instructions issued by our specialists must be observed during access to and driving on our factory premises/building site. Access to or driving on the factory premises/building site must be announced in due time. The regulations of the StVO (German Highway Regulation) must be observed. If works or services are rendered on the factory premises/building site, the relevant building site rules apply. Further, the Contractor shall familiarize itself and comply with the respective site regulations (for example, safety regulations).
18. Liability
- We and our employees are only liable for gross negligence and intent, on whatever legal grounds. This does not apply if the duty that has been neglected is essential for the achievement of the purpose of the contract or a contractual duty is affected that typically leads to the risk of damage or injury to life, limb and health or property used privately in accordance with the product liability act.
19. Right to set off, withhold performance and of retention
- The CO only has a right to set off, withhold performance and of retention for legal claims or claims that are final or which we have expressly recognised.
20. Waste disposal
- As far as the deliveries/services of the CO produce waste, in accordance with the waste laws, it will recycle or dispose of the waste - subject to written agreements to the contrary - at its own expense in accordance with the regulations of the waste laws. Title, risk and the responsibility under the waste laws are transferred to the CO at the time the waste is produced.
21. Secrecy
- The CO agrees to maintain secrecy about all knowledge, information, skills and documents, e.g., technical and other data, measurement results, technology, operational experience, industrial secrets, know-how, drawings and other documents unless they are in the public domain (hereinafter referred to as „INFORMATION“) that it receives from us or of which it otherwise becomes aware from our field, not to disclose this to third parties and to use it solely for the purpose of the fulfilment of the relevant order/appointment. The duty of secrecy continues for a period of 3 years after termination of the contractual relationship between the CO and us. The CO agrees to return all physically transferred INFORMATION such as documents, samples, specimens or the like to us immediately following an appropriate request without retaining any copies or records, and to destroy its own records, compilations and evaluations that contain INFORMATION immediately at our request and to confirm this to us in writing. We have title to and copyright of all INFORMATION.
22. Planning documents
- Any drawings, sketches, etc., drawn up by the CO according to our specifications become our unrestricted property with no additional remuneration. Contrary declarations of the CO, e.g., on the documents handed over to us, are not binding.
23. Advertising material
- Reference may only be made to the existing business relationships with us for advertising purposes or for public appearances with our explicit prior written consent.
24. Prohibition of assignment
- Assignments by the CO outside the scope of § 354 a HGB (German Commercial Code) are excluded; exceptions require our written consent for their validity.
25. Severability
- If single clauses of these terms of business should be or become wholly or partly invalid, this does not affect the validity of the remaining clauses. The foregoing applies analogously if a clause in these terms of business was not meant to become an integral part of the contract.
26. Place of jurisdiction and applicable law
- 26.1 Exclusive place of jurisdiction is the commercial domicile of our company if the CO is a merchant. We are also entitled to sue in the court that is competent for the commercial domicile of the CO.
- 26.2 The law of the Federal Republic of Germany applies to all legal relationships between the CO and ourselves to the exclusion of the reference standards of private international law. The United Nations convention on contracts for the international sale of goods from 11 April 1980 (CISG) is not applicable. Customary terms are to be interpreted in accordance with the applicable Incoterms - ICC, Paris.