

Terms and Conditions of Sale and Delivery (05/2022)

Passavant-Geiger GmbH

I. General

1. The offer is directed toward merchants within the meaning of the German Commercial Code, public law legal entities and special funds under public law. The following Terms and Conditions apply to the goods and services exclusively. No supplementary or contrary Terms of Purchase of the customer shall apply, unless Passavant-Geiger agree to them in writing in an individual case. Delivery of goods, performance of services or receipt of payments without reservation cannot be interpreted as acceptance of contrary Terms and Conditions. A contract shall come into force upon order confirmation in text form by Passavant-Geiger. A contract shall also come into existence if Passavant-Geiger fulfill the order.
2. Passavant-Geiger shall reserve ownership and copyrights of all information and documents provided to the customer during the contractual relationship, e.g. samples, models, cost estimates, drawings, technical illustrations, information of a corporeal and incorporeal nature, including in electronic form; they may not be made accessible to third parties.

II. Prices and Payment Terms

1. It is understood that the list price does not include shipping, customs duties, incidental import duties, insurance, statutory VAT, packaging and other incidental costs. The goods shall be packaged in the standard commercial manner as deemed necessary at our reasonable discretion. The costs of assembly, installation and start-up of systems based on actual costs will be charged.
2. If the deadline for delivery of goods or performance of services is more than three months after the signing of the contract, Passavant-Geiger shall be entitled – after informing the customer in due time and before delivery or performance – to adjust the price of goods or services agreed upon at the signing of the contract, including shipping, to a reasonable extent to reflect cost developments outside of Passavant-Geiger control (e.g. input costs, exchange rate fluctuations, changes in customs duties and fees). For master agreements containing price agreements, the three-month period shall commence with the signing of the master agreement.
3. Unless otherwise agreed, the customer must pay the amount owed within 30 days after receipt of the invoice. After the expiration of this deadline, the customer shall be in default without a warning. The amount invoiced is payable strictly net without deduction.
4. In the event of a delay in payment Passavant-Geiger is entitled to claim default interest at the statutory rate as well as fees in the amount of EUR 40.00 as of the due date. This shall also apply if the claim for payment is an advance payment or other payment by installments. The lump sum pursuant to sentence 1 shall be credited against any damages owed to the extent that the damages are due to costs of legal action. This shall not affect the right to claim higher damages for default. Receipt of the payment (value date of the credit to our bank account) shall be decisive for determining the timeliness of payments.
5. The customer shall have the right to set off counterclaims only to the extent that its counterclaims are undisputed or recognized by declaratory judgment or if they initially existed as a claim for payment in kind in a reciprocal relationship and were later converted into a claim for damages. The customer shall only have a right of withholding based on the same legal transaction.

III. Delivery, Transfer of Risk, Acceptance, Insurance

1. Unless otherwise agreed by the parties, delivery shall be ex works, which shall also be the place of performance for delivery and any subsequent performance. At the request and at the cost of the customer the goods shall be sent to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, Passavant-Geiger is entitled to determine the means of delivery itself (in particular the carrier, transportation route and packaging). Partial deliveries and corresponding invoices are permitted unless they are unreasonable for the customer.
2. The risk of accidental loss, accidental deterioration, damage or destruction as well as delayed delivery by third parties shall pass to the customer upon loading in Passavant-Geiger's warehouse or, if the delivery item cannot or shall not be shipped, upon provision of the delivery item and dispatch of the notice of readiness for delivery, even if partial deliveries are made or Passavant-Geiger has taken on further services, e.g. dispatch, delivery and installation. If by way of derogation it is agreed that the risk will pass upon acceptance and dispatch or acceptance is delayed or not executed due to circumstances for which Passavant-Geiger is not responsible, the risk shall pass to the customer as of the date on which notice of dispatch or readiness for acceptance is given.
3. Passavant-Geiger undertakes to take out insurance at the request and at the cost of the customer. Unless otherwise agreed, Passavant-Geiger shall insure the goods upon dispatch against theft, breakage, fire, water and other damage on Passavant-Geiger's usual terms at the cost of the customer.

IV. Delivery Period, Delay

1. The delivery period shall be determined in the agreements between the contracting parties. Passavant-Geiger's compliance with the delivery period shall depend upon all commercial and technical issues having been clarified between the contracting parties and the customer having performed all obligations incumbent upon it, such as furnishing the required official certificates or approvals, approving installation drawings or making an advance payment. If this is not the case the delivery period shall be extended appropriately. This shall not apply if Passavant-Geiger is responsible for the delay.
2. The delivery period shall be deemed complied with if the delivery item has left Passavant-Geiger's factory or notice of readiness for dispatch has been given before it expires. If acceptance is to take place, the agreed acceptance date or alternatively the notice of readiness for dispatch shall be decisive except in the case of justified refusal of acceptance.
3. If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, it shall be charged for the costs arising as a result of the delay or at least 1% of the invoice amount for each month of the delay. The customer shall remain entitled to prove that Passavant-Geiger has not incurred any losses at all as a result of the delay or has incurred losses that are significantly lower than the flat-rate charge incurred.
4. The customer may withdraw from the contract if performance in its entirety becomes finally and conclusively impossible for Passavant-Geiger prior to the transfer of risk. The customer may furthermore withdraw from the contract if execution of part of the delivery of an order becomes impossible and it has a justified interest in refusing the partial delivery. If this is not the case the customer must pay the contract price attributable to the partial delivery. The same shall apply in the case of inability on the part of Passavant-Geiger. Section VII (2) shall apply in other respects.
5. If impossibility or inability occurs during a delay in acceptance or the customer is solely responsible for such circumstances it shall remain obligated to provide consideration.
6. If Passavant-Geiger do not perform for reasons that are Passavant-Geiger responsibility, the customer shall provide Passavant-Geiger with a reasonable grace period for performance in text form, which shall generally be two weeks. At Passavant-Geiger request, the customer shall state within a reasonable period of time whether it will rescind the contract due to the delay and/or demand compensatory damages in lieu of performance or if it will continue to insist on performance.
7. If an agreed-upon performance deadline is missed for reasons for which Passavant-Geiger is not responsible because, despite seeking proper congruent coverage, Passavant-Geiger were not supplied, not properly supplied or were not supplied in due time, the delivery periods shall be reasonably extended. If Passavant-Geiger has informed the customer about the impediment to performance and the impediment is not merely temporary in nature, Passavant-Geiger shall be entitled to withdraw the contract, in whole or in part, due to the part thereof that remains unfulfilled.

V. Retention of Title

1. Passavant-Geiger shall reserve title to the delivery item until full and unconditional payment of all claims arising from the business relationship.
2. Until the secured claim has been paid in full, the customer may only dispose of goods subject to retention of title with Passavant-Geiger prior consent. The customer shall promptly inform Passavant-Geiger in text form if and to the extent that third parties attempt to attach goods subject to retention of title.
3. If goods subject to retention of title are treated or processed by the customer, Passavant-Geiger retention of title shall extend to the new item in its entirety. If the customer processes, combines or mixes such goods with third-party products, Passavant-Geiger shall acquire co-ownership of the resulting product in the ratio of the invoiced value of Passavant-Geiger goods to that of the third-party products utilized by the customer at the time of the processing, combination or admixture.
4. If the customer combines or mixes goods subject to retention of title with a main item belonging itself, the customer hereby transfers its rights in the resulting new item to Passavant-Geiger. If the customer combines or mixes goods subject to retention of title with a main item belonging to a third party for a fee, the customer hereby assigns Passavant-Geiger its compensation claims against the third party. Passavant-Geiger accept the assignment.
5. The customer shall be entitled to resell goods subject to retention of title in the ordinary course of business. If the customer sells goods subject to retention of title without receiving the full purchase price, it shall agree to retention of title with its buyer, which reflects the obligations that bind the customer. The customer hereby assigns to Passavant-Geiger its claims based on any such

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resale and its rights under the retention of title agreed-upon by the customer. Passavant-Geiger accept the assignment. At Passavant-Geiger request, the customer shall be obliged to inform the buyer of the assignment and to provide Passavant-Geiger with the information and documentation necessary to assert its rights against the customer's buyer. The customer shall be entitled to collect its claims based on the resale, despite the assignment, as long as the customer properly meets its obligations to Passavant-Geiger.

6. If the value of the collateral exceeds Passavant-Geiger total claims by more than 10 percent, Passavant-Geiger shall be obliged to release the surplus collateral of Passavant-Geiger choice at the request of the customer.
7. If insolvency proceedings are instituted against the assets of the customer, if the customer's financial situation deteriorates and as a result the fulfillment of its payment obligations to Passavant-Geiger is jeopardized, or if the customer suspends payments, Passavant-Geiger is entitled to withdraw from the contract with immediate effect and to require the immediate return of the delivery item.

VI. Warranty

To the exclusion of further claims subject to the provisions of section VII Passavant-Geiger shall have the following liability for material defects and defects of title in the delivery, including wrong deliveries as well as improper installation or defective installation instructions:

Material Defects

1. Passavant-Geiger warrants that the goods delivered and the services provided will conform to applicable German provisions and standards. If goods are to be used abroad, the customer agrees to ensure their conformity with relevant local law and to make adjustments at its own expense, if necessary.
2. The goods shall be defect-free if they are of the agreed-upon quality. Passavant-Geiger product description, which was provided to the customer before the placement of its order or included in the contract in the same way as these Terms and Conditions, shall be controlling. There shall be no additional declaration of obligation (independent guarantee) with respect to claims for defects, unless the customer has entered into a separate agreement with Passavant-Geiger, which governs the scope and legal consequences of the independent guarantee in detail.
3. If there is no express agreement on quality, the goods shall be free of defects of quality if they are suitable for use in accordance with the contract and are of the quality that the customer may expect in accordance with the information and communications attributable to us. Public statements of other manufacturers or other third parties may not be taken into consideration.
4. The prerequisite for the customer to make a claim for defects is its compliance with the statutory duty to inspect and make a complaint (Art. 377 and 381 of the German Commercial Code [HGB]). If a defect is obvious (including wrong delivery or short delivery) or is discovered upon inspection or thereafter, the defect must be promptly reported to us in writing. Notification shall be considered 'prompt' if it is made within one week of knowledge or the need to know. Timely dispatch of the notice shall suffice. If no notice is given or if notice is given belatedly, any claims based on the defects in question shall be excluded.
5. If a defect was caused by the customer or a third party, there shall be no right to assert a claim for defects. In particular, this may be assumed if the defect is based on one of the following circumstances:
 - Design requests by the customer if the unsuitability of the request was not discernible to Passavant-Geiger or the customer rejected Passavant-Geiger expressed concerns;
 - Defectiveness of the materials or other components delivered by the customer;
 - Improper use, faulty installation or start-up, ordinary wear and tear, faulty or negligent treatment or maintenance, use of unsuitable equipment or the existence of harmful environmental influences if they are attributable to the customer or third parties.
6. If the goods delivered are defective, Passavant-Geiger can choose whether to rectify the situation by eliminating the defects (repair) or delivering a defect-free item (replacement). Passavant-Geiger shall be entitled to condition rectification of the defect on payment of the purchase price that is due by the customer. However, the customer may retain a reasonable portion of the purchase price until the defect is eliminated. Following consultation with Passavant-Geiger the customer shall grant the time and opportunity required to perform all repairs and replacement deliveries Passavant-Geiger deems necessary; Passavant-Geiger shall otherwise be released from liability for the consequences arising as a result. The customer shall have the right to remove the defect itself or have it removed by third parties and request compensation from Passavant-Geiger for the necessary expenses only in urgent cases where operational safety is jeopardized or in order to avert disproportionately extensive damage, in which case Passavant-Geiger must be informed immediately.

7. The place of performance for rectification of the defect shall be the original place of delivery, unless performance at a different location is in line with the intended use. The customer shall bear any additional costs incurred by performance at a place with restricted access (e.g. offshore platform, restricted area, polar or high alpine region). In the case of replacement, the customer must return the defective goods at the place of performance.
8. If Passavant-Geiger fails to rectify the defect despite two attempts or default despite being provided with a reasonable grace period, the customer can rescind the purchase contract, which waives any additional rectification of the defect, or reduce the purchase price by the value of the defect. Rescission is excluded if the defect is insubstantial.

Defects in Title

9. If use of the delivery item leads to infringement of industrial property rights or copyrights within Germany, Passavant-Geiger shall at its expense procure the right of further use for the customer or modify the delivery item in such a way that industrial property rights are no longer infringed. The customer is entitled to withdraw from the contract if this is not possible under economically reasonable conditions in a manner that is acceptable to the customer or within a reasonable time period. Under the stated conditions Passavant-Geiger is also entitled to withdraw from the contract. Passavant-Geiger shall furthermore indemnify the customer against any claims of the industrial property right holders concerned that are uncontested or recognized by declaratory judgment.
10. The obligations of Passavant-Geiger specified in section VI (9) relating to infringement of industrial property rights or copyrights shall be conclusive subject to the provisions of section VII (2).

They shall only apply if:

- the customer informs Passavant-Geiger without delay of any assertion of industrial property right or copyright infringements,
- the customer provides a reasonable degree of support to Passavant-Geiger in defending the claims asserted and/or enables Passavant-Geiger to carry out the modification measures under section VI (9),
- Passavant-Geiger reserves the right to take all defensive measures, including out-of-court settlements,
- the delivery item was not produced or modified on the instructions of the customer, and
- the infringement of rights was not caused by the customer having modified the delivery item without authorization or having used it in a manner not in conformity with the contract.

VII. Liability

1. The provisions of sections VI and VII (2) shall apply, to the exclusion of any further claims of the customer, if due to the fault of Passavant-Geiger the customer cannot use the delivered item in conformity with the contract on account of nonperformance or faulty execution of proposals and consultations occurring before or after conclusion of the contract and breach of other ancillary contractual obligations, particularly instructions for use and maintenance of the delivery item.
2. In the case of damage not occurring to the delivery item itself, Passavant-Geiger shall be liable, on whatever legal grounds, only
 - in the case of willful intent,
 - in the case of gross negligence,
 - in the case of culpable injury to life, body or health,
 - in the case of defects that were fraudulently concealed or the absence of which was guaranteed,
 - as part of a promise of guarantee, and
 - in the case of defects in the delivery item where there is liability under product liability law for personal injury or damage to privately used property.

In the case of culpable violation of cardinal contractual obligation, Passavant-Geiger shall also be liable in case of slight negligence, however, limited to compensation for typical, foreseeable losses. A cardinal obligation is one whose fulfillment enables the proper implementation of the contract and which the customer can legitimately rely on being fulfilled.

3. The customer can only withdraw or terminate the contract due to a breach of duty, which does not consist of a defect, if Passavant-Geiger is responsible for the breach of duty. The customer shall have no right of termination independent of this (particularly under Art. 651 and 649 of the German Civil Code [BGB]). Any notice of withdraw or termination must be in written form in accordance with Art. 126 par. 1 BGB. In other respects, the provisions of law shall apply.
4. Further claims are excluded.

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VIII. Limitation Period

1. The reciprocal claims of the contracting parties shall be time-barred in accordance with the provisions of law, unless otherwise specified below.
2. By way of exception to Art. 438 par. 1 No. 3 of the German Civil Code (BGB), the limitation period for claims based on defects of quality and legal defects shall be one year from delivery of the goods or provision of the services, unless the defect was fraudulently concealed. To the extent that formal acceptance was agreed upon, the limitation period shall commence with formal acceptance.
3. Claims for legal defects shall not be time-barred insofar as and as long as a third party can still assert its rights against the customer because such rights are not yet time-barred.
4. The statutory limitation period shall apply to structures and newly manufactured items, which are used as structures in accordance with their customary mode of use and which have caused the defect.
5. If Passavant-Geiger owe a customer contractual compensatory damages under Section VI. on account of or as a consequence of a defect, the statutory limitation period shall apply to this claim (Art. 438 of the German Civil Code [BGB]). It shall also apply to competing non-contractual claims for compensatory damages, unless the regular statutory limitation period under Art. 195 and 199 BGB results in a shorter limitation period for an individual case. The limitation period of the German Product Liability Act shall remain unaffected.

IX. Use of Software

To the extent that the scope of delivery includes software, the customer shall be granted a nontransferable, nonexclusive right to use the software supplied, including its documentation. It shall be provided exclusively for use on the delivery item for which it is intended. Use of the software on more than one system or by third parties who do not themselves have a license to use the software or forwarding it to such parties is prohibited.

The customer may only reproduce, revise or translate the software or convert it from the object code into the source code to the extent legally permitted (Art. 96 a et seq. of the German Act on Copyright and Related Rights [UrhG]). The customer undertakes in particular not to remove copyright notices or alter them without the prior written agreement of Passavant-Geiger.

All other rights to the software and documentation, including copies, shall remain with Passavant-Geiger and/or the software supplier. The granting of sublicenses is not permitted.

X. Force Majeure, Frustration of the Contract, Reservations with respect to Performance

1. In the event of force majeure affecting Passavant-Geiger or its suppliers, Passavant-Geiger obligation to make deliveries and provide services shall be suspended for the duration of the disruption and a reasonable recovery period. The same shall apply to shortages of energy or raw materials, industrial actions and official orders.
2. If a serious change in the circumstances existing at the time of the signing of the contract occurs, and Passavant-Geiger cannot be expected to continue its adherence to the contract as a result, Passavant-Geiger shall be entitled to withdraw from the contract.
3. Passavant-Geiger performance of the contract shall be subject to the reservation that such performance must not violate the provisions of national and international foreign trade laws, sanctions or embargos.

XI. Applicable Law, Place of Jurisdiction

All legal relationships between Passavant-Geiger and the customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties to the exclusion of the UN Convention on Contracts for the International Sale of Goods. By way of derogation, the prerequisites and effects of the retention of title pursuant to Section V. shall be subject to the law at the respective place of storage and installation of the item, should the choice of law made in favor of German law accordingly be inadmissible or ineffective.

For those persons addressed by Section I.1, insofar as the customer has its registered office in the EU, the sole place of jurisdiction – including international jurisdiction – for all disputes arising under and in connection with the contractual relationship shall be Passavant-Geiger's registered office is located in Aarbergen. Passavant-Geiger shall also be entitled to sue in any court with general jurisdiction over the customer. If the customer has its registered office outside the EU, all disputes shall be finally settled in accordance with the ICC Rules of Arbitration, excluding recourse to the ordinary courts of law. The place of arbitration shall be the ICC International Chamber of Commerce in Berlin. The arbitration proceedings shall be conducted in German. Annexes to pleadings may also be submitted in English

without the need for translation.

Special Provisions for the Performance of Work:

If the customer has hired Passavant-Geiger to assemble, install or place the goods delivered by us into operation, the following provisions shall apply as a supplement.

XII. Subcontractors

Passavant-Geiger shall be entitled to use subcontractors for installation services.

XIII. The Customer's Duty to Cooperate

1. The customer shall complete all necessary earth-moving work, construction work and other ancillary work outside the scope of Passavant-Geiger industry at its own expense in due time before the start of Passavant-Geiger work. In addition, the customer shall provide the necessary specialists and support personnel, building materials and tools, commodities and consumables needed for installation and startup, such as scaffolding, hoisting devices and other devices, fuel and lubricants as well as connections for energy and water at the place of use as well as heating and lighting in due time.
2. The customer shall ensure storage of the materials needed for assembly or installation at the installation site, such as machine parts, equipment and tools. The customer shall be obliged to provide suitable rooms for this, particularly sufficiently large, dry and lockable rooms, and reasonable working and break rooms for the installation personnel. Protective clothing and devices, which may be necessary due to special conditions at the installation site, shall be provided.
3. Before the start of installation work, the customer shall provide Passavant-Geiger with the necessary information regarding the location of subsurface electrical, telecommunications, gas and water conduits or other vulnerable equipment and the necessary load-bearing information on its own initiative.
4. If assembly, installation or formal acceptance is delayed due to circumstances that are not Passavant-Geiger responsibility, the customer shall bear the reasonable additional costs for waiting periods and any additional trips by Passavant-Geiger installation personnel, which may be necessary.

XIV. Custom-Made Goods

1. Passavant-Geiger machines are regularly adapted to the customer's requirements and are therefore basically custom-made goods. If custom-made goods are manufactured at the order of the customer, the customer shall only be entitled to terminate the agreement if there is good cause arising from Passavant-Geiger area of responsibility.
2. If goods made to the customer's specifications are not accepted, Passavant-Geiger shall be entitled to dispose of the items at the customer's expense after the expiration without result of a reasonable pickup period announced to the customer in text form.

XV. Formal Acceptance

1. If, after completion – and possibly before the expiration of the agreed-upon performance period – Passavant-Geiger requests that the performance be accepted, the customer shall conduct the acceptance procedure within 12 business days, unless otherwise agreed. Upon request, self-contained performance segments shall be accepted separately. Acceptance can only be refused until material defects are eliminated.
2. If no formal acceptance is requested, the performance shall be deemed to have been accepted at the expiration of 30 business days after written notice of completion. If no formal acceptance is requested and the customer has begun using the performance or a part thereof, acceptance shall be deemed to have been granted after the expiration of six business days from the start of use, unless otherwise agreed.
3. With formal acceptance, the risk shall pass to the customer, to the extent that the risk has not already passed to the customer under Section III.