



General Terms and Conditions for Sale and Delivery Sielaff GmbH & Co. KG Automatenbau Herrieden

I. GENERAL INFORMATION:

(1) Material and Personal Scope of Applicability

The following Terms and Conditions shall apply for all our deliveries and performances (including supplementary / peripheral services, such as proposals / suggestions, engineering assistance, consultations) to and for entrepreneurs as contemplated in § 14 BGB [German Civil Code], legal entities under public law, or public separate estate properties. They shall not apply for legal relationships with consumers as contemplated in § 13 BGB [German Civil Code].

(2) Exclusion of Other Terms and Conditions of Business

Divergent terms and conditions of business of the Ordering Party shall herewith be contradicted. They shall also not be binding or committing for us if we do not specifically contradict them upon having received them. Our Terms and Conditions shall be regarded as having been acknowledged and accepted as of order placement or with the receipt of the order confirmation, at the latest, however, with the acceptance of our delivery.

(3) Effectiveness

If individual provisions should be or become ineffective, then this shall not impair the effectiveness of the remaining other provisions of these General Terms and Conditions for Sale and Delivery. An effective provision shall be regarded as agreed in case of the ineffectiveness of a provision, which comes as close as possible to the economic intention and purpose pursued.

(4) Writing Requirement

Divergences from the following Terms and Conditions, other changes of or supplements to the order shall require our written confirmation for their effectiveness. This shall also apply for the abolition of this writing requirement.

(5) Copyright

We reserve for ourselves the property- and copyrights to illustrations, drawings, calculations and other documents. The Ordering Party shall require our express previous written consent before passing them on to third parties.

II. ORDER:

(1) Written Confirmation

Our offers shall remain without obligation until an order (purchase order) placed on the basis of the offer is confirmed by us in writing. Every order (purchase order) shall require our written confirmation for its legally binding acceptance. Upon deliveries without written confirmation, our invoice shall simultaneously be regarded as an order confirmation.

(2) Scope / Contents of the Order

Proper technical and formal changes of the ordered goods shall remain reserved, in as far as the technical function, ordinary use and the value of the product is thereby not affected or is merely affected insignificantly. If such change should perhaps cause the acceptance to become unreasonable for the Ordering Party in the individual case, then he can withdraw from this order. Further reaching rights shall be excluded.

(3) Technical Data

The technical data indicated in our offers, drawings and illustrations are approximation values, in as far as they are not specifically described as obligatory and binding in writing and do not state details with regard to tolerances. The appropriate technical acceptance- and safety regulations of the manufacturer country shall, as for the remaining issues, be exclusively authoritative for our deliveries.

III. OBLIGATION TO DELIVER

(1) Reservation of Self-Supply

Prerequisite of our own obligation to deliver is the punctual and proper self-supply with the necessary goods and materials. We shall be entitled to withdraw from the contract under exclusion of any indemnity obligation in case of a constant hindrance due to circumstances lying beyond the range of our responsibility and/or control, particularly acts of god / force majeure, strike, lockout, bans on import and export, transportation hindrances, official interventions or the like. A not merely insignificant change of the ability to supply, of the terms of quotation, or of the quality of the goods of our suppliers, or of the performances of other third parties, on which the proper execution of the order placed with us is fundamentally dependant, shall also entitle us to resign from the contract under exclusion of any indemnity obligation. Should the goods to be delivered be sensitive goods, which are subject to an individual export licence, the Ordering Party commits to notifying the Supplier of their own accord with an "end-use certificate".

(2) Partial Delivery, Excess- or Short Deliveries

Partial deliveries shall be permitted and shall be regarded as an independent delivery with respect to payment and complaint. We shall be entitled to excess- or short deliveries of up to 10% of the order quantity, provided that this is not unreasonable for the Ordering Party.

(3) Essential Deterioration of the Assets / Pecuniary Circumstances of the Ordering Party

If an essential deterioration of the assets / pecuniary circumstances and/or of the standing regarding liquidity of the Ordering Party should occur, or if such circumstances already on hand before the conclusion of contract should become known afterwards, then we shall, as we may select in our own discretion, be entitled to either withdraw from the contract, or to demand immediate cash payment of all invoices remaining unpaid, even if the invoice amounts have previously been completely or partly deferred or paid by bill of exchange. Particularly any poorer credit standing classification of a credit rating service, the protest of a bill or cheque, any distress or garnishing, suspension of payments, the instigation of insolvency proceedings, as well as if such insolvency proceedings are rejected for lack of mass, shall be considered as such deteriorations. In case we should perhaps not withdraw from the contract in spite of the occurrence of any deterioration of the financial standing, then we shall only deliver under concurrent conditions against immediate payment, for larger orders only against cash in advance.

IV. DELIVERY DATE / DELIVERY PERIOD

(1) General Regulations regarding Delivery Dates / Delivery Periods

In as far as nothing to the contrary has been agreed, our delivery dates and delivery periods stated in the offers shall be understood as temporary and not yet obligatory and binding estimates. If obligatory delivery dates and delivery periods have been agreed, then these shall be regarded as adequately prolonged, if they cannot be met because of circumstances lying beyond our control. A period of one month shall, with regard to the technical complexity of the delivery products, be generally regarded as adequate for the prolongation, provided that a shorter or longer period has not been agreed in writing in the individual case under consideration of the mutual interests. Delivery periods shall commence with the date of our written confirmation, however, not before the clarification of all execution details and of all other prerequisites to be created by the Ordering Party for the proper performance of the contract. The same shall apply for delivery dates.

(2) Transactions for Delivery by a Fixed Date

The agreement of obligatory fixed dates or of fixed delivery periods shall require the express designation as being a firm transaction for delivery by a fixed date and shall require our confirmation in writing.

(3) Obligation to Supportive Cooperation

The Ordering Party shall be obliged to provide all data, documents and other specifications required for the performance of the contract together with the order, at the latest, however, immediately after placement of the order. If such documents and data do not arrive on time, then the Ordering Party cannot make reference to compliance with delivery dates or delivery periods. In this case, the assertion of claims for delay damage shall be excluded. The delivery date or the delivery period shall be regarded as adequately prolonged.

V. TRANSFER OF RISK

(1) Transfer of Risk with Consignment

The risk of loss and of any deterioration of the delivery shall pass on the Ordering Party as soon as the delivery has left the works of the supplier. This shall also be valid when the consignment is performed at our expense or with our means of transportation. The dispatch shall in any case be performed at the risk of the Ordering Party, even if freight paid delivery has been agreed.

(2) Transfer of Risk with Notification of Dispatch Readiness

If the dispatch of the delivery is postponed upon the request of the Ordering Party or for reasons lying beyond our responsibility, then the risk shall pass on to the Ordering Party with the notification of dispatch readiness.

VI. PRICES

(1) General Pricing Regulations

Our prices are ex works of supplier plus packing and statutory value added tax. The agreement of fixed prices shall require express written confirmation. If nothing to the contrary has been agreed, then our prices shall be understood as Euro - prices for all deliveries, also for deliveries outside of the European Monetary Union.

(2) Minimum order value

In the case of orders with a net goods value of less than 25 €, we will add a small-order supplement of 10 € to the invoice. Repeat orders from vending keys we will charge a processing fee of 25 € per order.

(3) Price Adjustment / -Increase

If nothing to the contrary has been agreed, then the prices quoted by us shall be subject to alteration. We shall be entitled to adequately adjust or to increase the prices if our supplier increases his selling prices, if not merely insignificant price increases occur due to a change of exchange rates, of customs duties or similar fiscal charges, or if there is a period of time of more than two months between the order (make-and-take order) and the delivery, in as far as a new price list has attained validity within this time period. A price adjustment /-increase shall be excluded if such would be unreasonable for the Ordering Party.

(4) Packing and Packing Material

The Ordering Party shall bear the costs for packing and packing material. Packing and packing material will be taken back by us. The Ordering Party shall bear the costs of return - transportation. The return of packings of every kind shall be excluded for all deliveries outside of Germany.

VII. TERMS OF PAYMENT

(1) Periods of Payment

The amounts billed shall, in as far as nothing else has been agreed, be payable within 30 days as of date of invoice without discount.

(2) Default Interest

In the case of a delay in payment of the Ordering Party, the Ordering Party shall, notwithstanding the assertion of further damage claims in respect of the delay, pay interest in the amount of 8% points above the base interest rate of the Federal Bank of Germany on the unpaid demand.

(3) Payment by Bill of Exchange and by Cheque

Bills of exchange shall only be accepted on the basis of express agreement, and – just like cheques – only in lieu of payment and under reservation of acceptance in the individual case. Discounting- and other expenses shall be borne by the Ordering Party.

(4) Other Disturbances regarding the Services in Return

Delivery shall be effected under the prerequisite of creditworthiness and solvency of the Ordering Party. We shall at any time be entitled to adequately amend the Terms and Conditions in case of a delay in payment, of any failed redemption of cheques or failed discharge of bills of exchange, of a cessation of payment, of the instigation of proceedings serving for the settlement of debts, in case of noncompliance with the terms and conditions of payment, in case of poorer credit standing classification of a credit rating service, and if circumstances are on hand, which are suitable to decrease the creditworthiness of the Ordering Party, and we shall also be entitled to withdraw from the contract upon the occurrence of definite and final refusal of performance.

(5) Offsetting and Right of Retention

The Ordering Party shall only be entitled to offsetting and to a right of retention with regard to our due claims in relation to its own counter-claims in the extent that such counter-claims have been finally established or have been acknowledged and accepted in writing.

VIII. RESERVATION OF TITLE

(1) Reservation of Title Agreement

The delivered products (Secured Goods) shall remain our property until the fulfillment of all claims against the Ordering Party, to which we are entitled from the business connection. Bills of exchange and cheques shall only be regarded as a payment after discharge / redemption has been effected.

(2) Extended Reservation of Title

If the Secured Goods are processed or compounded with other products which do not belong to us by the Ordering Party to form a new, uniform item, the we shall be entitled to co-ownership in the new item in proportion of the value of the Secured Goods in relation to the value of the other processed and/or incorporated products at the time of processing and/or compounding. The co-ownership thereby created for us shall be regarded and treated as relating to the Secured Goods as contemplated in these Terms and Conditions.



(3) Disposal and Assignment in Advance

The Ordering Party may sell the goods under our reservation of title in the course of ordinary business, and only for as long as it is not behind schedule with the settlement of all our demands. The Ordering Party shall already now assign its demands from the re-sale of the Secured Goods to us for the purpose of securing all our demands from the business connection. We herewith accept this assignment. If the Secured Goods are sold together with other goods or co-ownerships not belonging to us by the Ordering Party, then the demand pertaining to the re-sale shall be regarded as having been assigned only to the limit of the value of our Secured Goods. The value of the Secured Goods shall be respectively rated on the basis of our invoice value. The Ordering Party shall be authorized to collect the demands assigned to us from the re-sales until such authorization is repealed, which may be effected at any time.

(4) Jeopardization of the Right of Ownership

The Ordering Party shall not be authorized to pledge or to assign the Secured Goods for the duration of the time period in which the reservation of title is in effect. The Ordering Party shall immediately inform us in writing in case of attachment, confiscation or of other dispositions or interventions of third parties, particularly such by way of execution.

(5) Obligation to Surrender

If the Ordering Party fails in delay of payment completely or in part with regard to the settlement of our demands, then we shall be authorized to require the surrender of the Secured Goods at any time and to dispose of them in another manner, and to hold outstanding deliveries back, even if we have not withdrawn from the purchase contract. Another further reminder or stipulation of a deadline shall not be required in this respect. The assertion of a reservation of title by us shall not constitute a withdrawal from contract.

(6) Release of Securities

If the value of the securities we are entitled to according to the Terms and Conditions as stipulated above exceeds the outstanding invoice value by more than 20%, then we shall, upon request of the Ordering Party, be obliged to release exceeding securities in manner as we may deem appropriate in our own discretion, however with the stipulation, that with the exception of deliveries effected in the context of a real account current relationship, the release is to be pronounced only for such deliveries, or the replacement values thereof, which have themselves been fully paid.

IX. MATERIAL DEFECTS

(1) Specifications regarding Nature and Quality

The nature and quality of the product to be delivered by us is conclusively described by the contents of our written or electronic tender documents and/or our catalogues, CDs or other data carriers. In as far as nothing else has been agreed in writing, the usage as stipulated in our offer shall constitute the only contents of the contract.

(2) Obligations of the Ordering Party pertaining to Inspection and the Notification of Deficiencies

The Ordering Party shall examine our products immediately upon receipt and it shall report recognizable defects in writing within a period of two weeks after delivery. Defects which could not be discovered by careful examination within this period shall be reported to us in writing immediately, at the latest, however, within two weeks after their discovery. If the Ordering Party abstains from the punctual notification of a defect, then our delivery shall be regarded as having been executed as stipulated in the contract and as free of defects. § 377HGB [German Commercial Code] shall be applicable.

(3) Insignificant Defects / Personal- or Third Party Negligence / Wear and Tear

No claims for defects can be asserted in case of an only insignificant deviation from the nature and quality agreed, in case of only insignificant impairment of the usability, in case of natural wear and tear, or of damages, which have occurred after the transfer of risk because of incorrect or careless treatment, calcification, improper use, excessive use, unsuitable operating supplies, unsatisfactory construction work, unsuitable building locations, chemical, electrochemical, electronic or electrical influences or of other special external influences, particularly manipulation and vandalism, which are not presupposed according to contract, as well as of not reproducible software errors. If the Ordering Party or if third parties perform modifications or repair work improperly, then there can also be no claims for defects asserted for such and for the consequences arising therefrom. Warranty claims shall be excluded, if the serial number of a delivered device / component is illegible, or if plaques displaying dates, CE- or TÜV [German Association for Technical Inspection] - certification seals or other safety - relevant markings have been removed or destroyed. Parts which are to be restored or replaced due to wear and tear shall be exempted from the scope of warranty claims.

The Ordering Party may not refuse the acceptance of deliveries because of insignificant defects.

(4) Liability for Material Defects

Our products shall, as we may select in our own discretion, be refurbished or delivered subsequently free of charge by shipment of a replacement part or by replacement delivery of the object of sale itself, if a material defect appears within the limitation period, provided that the cause thereof was already on hand at the time of the transfer of risk, for which the Ordering Party shall bear the burden of proof and demonstration. The removal of the defective part, as well as the reinstallation of the replacement part delivered within the context of warranty, shall be incumbent upon the Ordering Party. All costs and expenditures arising in connection with the removal and the reinstallation of replacement parts shall be borne by the Ordering Party.

(5) Warranty Period

Vending machine types FR, HG, SG, SC and HO and spare parts will be out of warranty after 12 months. FK, FS, GF, SÜ, SN, SP, SiOne and RN vending machine types and cooling units will be out of warranty after 24 months. This shall not apply in as far as longer periods are stipulated by law in accordance with BGB [German Civil Code] § 438 section 1 no. 2 (Buildings and Items for Buildings), § 479 section 1 (Right of Recourse) and § 634 a section 1 no. 2 (Construction Defects), as well as in cases of harm to life, body or health, in case of premeditated or gross breach of duty through us and when a defect is deceitfully concealed. The statutory provisions relating to suspension of expiration of prescription, suspension or re-commencement of the time limits shall remain unaffected.

(6) Exclusion of Warranty with Regard to Accessory Equipment Provided

If the Ordering Party provides accessory equipment for the product, or causes such to be provided by third parties, then the Ordering Party shall be legally responsible and accountable that these accessory parts provided are free of defects. We shall not be obliged to perform any inspection of incoming goods. Our warranty and/or liability in respect of such accessory parts provided shall be excluded.

(7) Exclusion of Rights of Recourse

The Ordering Party shall have a rights of recourse against us in accordance with § 478 BGB [German Civil Code] (Entrepreneur's Recourse) only in as far as the Ordering Party has not made any agreements with its buyer/client reaching beyond the statutory claims for defects, and/or there is no equal compensatory arrangement as contemplated in § 478 section 4 BGB [German Civil Code] otherwise on hand.

(8) Return of Unsatisfactory Products

The Ordering Party shall, in as far as it has asserted claims against us with respect to warranty, be obliged to either, as we may select in our own discretion, send the unsatisfactory products back to us freight paid, or to have them ready for inspection and examination of defects at the place of its branch office.

(9) Further Compensation of Damages

Article XI. (OTHER CLAIMS FOR COMPENSATION OF DAMAGES) shall govern the claims for compensation of damages. Further claims of the Ordering Party asserted against us and our vicarious agents because of a material defect, or other claims than those dealt with in this Article IX, shall be excluded.

X. DEFECTS OF TITLE, INDUSTRIAL PROPERTY RIGHTS, COPYRIGHTS

(1) Third-Party Industrial Property Rights

We shall, unless agreed otherwise, be obliged to provide the deliveries free of industrial property rights and copyrights of third parties (hereinafter referred to as „IPR“) solely within Germany. If a third party asserts justified claims against the Ordering Party based on an infringement of an IPR with respect to the deliveries made by us and used in conformity with the contract, then we shall be liable to the Ordering Party within the time period stipulated in Art. IX no. 5 as follows:

- We shall, as we may select in our own discretion and at our own expense, either acquire the right to use the IPR with respect to the deliveries concerned, or modify the deliveries so that they will no longer infringe the IPR, or replace them. If this is not possible for us under commensurate conditions, then the Ordering Party shall be entitled to cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
- Our obligation to pay damage compensation shall be governed in accordance with Art. XI contained in these Terms and Conditions.
- Our obligations as stipulated above shall only apply in as far as the Ordering Party immediately notifies us in writing of any such claim asserted by the third party, does not concede the existence of an infringement and leaves all protective measures and settlement negotiations reserved for us. If the Ordering Party ceases the usage of the delivery for reasons of reducing the damage or for other good reason, then it shall be obliged to indicate to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the usage has been discontinued.

(2) Responsibility of the Ordering Party

Claims of the Ordering Party shall be excluded in as far as he himself is responsible for the infringement of the IPR.

(3) Other Exclusion Reasons

Claims of the Ordering Party shall furthermore be excluded in as far as the infringement of the IPR is caused by special specifications of the Ordering Party, by a type of application which was not foreseeable for us, or was caused by the fact that the delivery has been modified by the Ordering Party or is being used together with products not provided by us.

(4) Other Defects of Title

The provisions of Art. IX shall apply mutatis mutandis if other defects of title are on hand.

(5) Exclusion of Further Claims

Any further or other claims of the Ordering Party against us or our vicarious agents exceeding the claims provided for in this Art. X and in Art. IX for a defect of title shall be excluded.

XI. OTHER CLAIMS FOR COMPENSATION OF DAMAGES

(1) Exclusion of Liability

Any claims for compensation of damages and reimbursement of expenses of the Ordering Party, regardless of which legal justification, particularly on cause of infringement of duties arising from contractual obligation, and from tort/wrongful acts, shall be excluded.

(2) Mandatory Liability

The above shall not apply in case of mandatory liability, e.g. under the „Produkthaftungsgesetz“ [German Product Liability Act], in the case of intent, gross negligence, injury of life, body or health, or of breach of essential contractual duties. Claims for compensation of damages and reimbursement of expenses arising from a breach of essential contractual duties shall, however, be limited to the foreseeable damages normally covered by the contract, in as far as there is no intent or gross negligence on hand or a liability obligation on cause of injury of life, body or health. The above provision shall not imply a change in the burden of proof to the detriment of the Ordering Party.

(3) Limitation

To the extent that the Ordering Party is entitled to claims for compensation of damages according to this Art. XI, these shall be time-barred upon the expiry of the limitation period applicable to claims for material defects pursuant to Art. IX no. 5. The statutory provisions governing limitation periods shall apply for claims for compensation of damages under the „Produkthaftungsgesetz“ [German Product Liability Act].

XII. OBLIGATION REGARDING THE DISPOSAL OF ELECTRONIC EQUIPMENT

We are obliged to take back goods supplied to the customer once they have come to the end of their life and to dispose of them in accordance with legal guidelines, at the customer's cost. All costs incurred for dismantling, packaging and transportation of the machines back to our Head Office in Herrieden are the responsibility of the customer. If required by the customer, we are willing to provide the customer with addresses of suitable waste disposal companies, so that if the customer so wishes, he can make his own arrangements for disposing of his goods directly.

The customer indemnifies Sielaff GmbH & Co. KG Automatenbau from the obligation according to § 10 Abs. 2 ElektroG (take-back obligation of supplier) and any linked claims of third parties to it.

XIII. PRODUCT DETAILS

(1) Product Description in Printed Matter and Advertising

All contents contained in our tender documents and other printed matter as well as on data carriers shall merely constitute a product description, in as far as such is not specifically described as a guaranteed property, and does not imply a proposal for the conclusion of a guarantee agreement. The same shall apply with regard to the contents of our advertising.

XIV. MISCELLANEOUS

(1) Withdrawal by the Ordering Party

The statutory right of rescission of the Ordering Party does not presuppose any fault or negligence if there is a defect of the delivery on hand. The Ordering Party can only rescind the contract in all other cases, if there is a breach of duty on hand for which we are responsible.

(2) Protection of Data Privacy

We herewith inform our Ordering Parties, that we shall process their personal data with the aid of EDP in accordance with the regulations of the Datenschutzgesetz [German Data Protection Act] and shall pass it on for business purposes.



(3) Other Languages

The English version of these Terms and Conditions merely constitutes a reading version for purposes of convenience. Solely the German version shall be authoritative for the interpretation of the individual regulations of these Terms and Conditions.

XV. PLACE OF PERFORMANCE AND PLACE OF VENUE / JURISDICTION, APPLICABLE LAW

(1) Place of Performance

Place of performance for the mutual performances owed from the contract shall be Herrieden.

(2) Place of Venue / Jurisdiction

Nuremberg shall be the sole place of venue / jurisdiction for all disputes directly or indirectly arising from the contractual relationship. We shall, however, also be authorized to lodge complaints at the business seat of the Ordering Party.

(3) Applicable Law

Exclusively the laws of the Federal Republic of Germany shall apply for the legal relationships between us and the Ordering Party, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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Version: 01-01-2020