

Vending Machine Terms and Conditions of Wurth Industry of Canada Ltd.

I. Area of validity, General Points

1. These Vending Machine terms and conditions of business ("Terms and Conditions of Business") apply in addition to the General Terms of Delivery and Payment of Wurth Industry of Canada Ltd. (hereafter referred to as "Wurth") for all the business relations of Wurth with its customers (hereafter referred to as "customers" and jointly "parties") with the conclusion of a Vending Machine contract. The terms and conditions of business only apply if the customer is an entrepreneur (Section 14 BGB [Civil Code]), a legal entity under public law or a special fund under public law. In the instance of ambiguities or contradictions between the general terms of delivery and payment and these terms and conditions of business, these terms and conditions of business take precedence over the general terms of delivery and payment.
2. In other respects, these terms and conditions of business apply exclusively; Wurth does not acknowledge terms of the customer which conflict with or vary from these terms and conditions of business, unless it has expressly agreed to their validity. These terms and conditions of business also apply if Wurth, in the knowledge of conflicting terms of the customer or terms of the customer which vary from its terms and conditions of business, carries out the delivery to the customer without reservations.
3. Individual agreements made with the customer in exceptions take precedence in each instance over these terms and conditions of business. A written contract or a written confirmation from Wurth is decisive for the contents of these kinds of agreements.
4. References to the validity of statutory regulations only have clarifying importance. Therefore, even without this kind of clarification, the statutory regulations apply, provided they are not directly amended or expressly prohibited in these terms and conditions of business.

II. Supply concept

As a wholesaler, Wurth provides different customer-specific supply concepts for C-parts consumables. The Vending Machine supply concept is based on providing the customer in return for payment with a supply system on lease, by means of which the C-parts consumables are supplied subsequently on an automated basis. If the customer removes an article from the system, this triggers automatic ordering of the same article. Continuous stocking of the system with articles shall be guaranteed in this way.

III. Permission of use of Vending Machine

1. Wurth gives the customer permission for commercial use of the Vending Machine ("permission of use"). The permission of use starts on the date the Vending Machine is handed over to the customer.
2. The amount of the rental for the permission of use of the Vending Machine ("service flat charge") depends on the model and equipment. The service flat charge is agreed on an individual basis and is plus statutory turnover tax. It is due payment on the 3rd working day of the month in advance, provided not agreed otherwise.
3. Wurth is obliged,
 - to deliver, install and put the Vending Machine into operation at the agreed installation location ("Installation") in return for payment;
 - to hand over to the customer the access authorisations, which he has selected, in the instance of permission of use for a Vending Machine, provided with access restriction;
 - when required, during the term of the permission of use, to undertake maintenance work, services, possible repairs and replacements as well as remote servicing via the existing Internet broadband dedicated line ("UMTS/WLAN") to the Vending Machine.
4. On delivery of the Vending Machine, the customer is obliged to keep a suitable and clean installation site ready for the Vending Machine, with respect to its size and purpose of use, which has sufficient connection options to the existing supply network (single phase alternating current 230V per module) in a radius of maximum two metres and UMTS/WLAN.
5. During the term of the permission of use, the customer is obliged,
 - to treat the Vending Machine considerately and carefully;
 - to notify Wurth immediately of any defects or possible faults with the Vending Machine, for which he has permission of use;
 - to keep the location of installation of the Vending Machine safe for traffic;
 - to grant unrestricted access to the Vending Machine during the usual hours of business after prior agreement to Wurth and the customer service personnel and service personnel commissioned by Wurth for the purposes of checking the condition, and the stocking as well as for other reasons, such as for the purpose of carrying out repairs and servicing work;
 - to bear the costs incurred from the operation of the Vending Machine from electricity and the Internet broadband dedicated line (with WLAN);
 - to equip the Vending Machine exclusively with the products purchased from Wurth and only to stock the same in it;
 - to refrain from stocking the Vending Machine with hazardous materials, combustible, explosive, and chemical materials or liquids or to store the same in it.

IV. Supply of products, obligation of the customer to take delivery of the goods in the instance of special articles

1. After installation of the Vending Machine, it is first stocked with products about which a contract of sale is concluded between the parties for the products to be stocked.
2. With the removal of an article from the Vending Machine, the customer makes a binding offer with respect to Wurth, to purchase the same article. This offer is automatically transmitted via UMTS/WLAN in this context and processed electronically by Wurth. A contract of sale is brought about with the acceptance of the offer by Wurth.
3. The delivery of the ordered goods is implemented by collective delivery in accordance with the standard of the order collector agreed between the parties and taking account of administrative processing times at Wurth.
4. A reduced quantity supplement is charged for small orders below a goods value (=gross purchase price) of **[INSERT \$ AMOUNT HERE]**.
5. The system management (stocking) of the Vending Machine is effected after delivery of the ordered goods by the customer himself, provided Wurth has not taken on the obligation of system management of the Vending Machine.

6. The customer is obliged to buy and take delivery of the special items, which, during the term of this contract have been specifically obtained for him and stored at Wurth in mutual agreement after a storage period of 12 months and after a written request from Wurth. Special articles do not belong to the standard programme of Wurth. Wurth provides them with article numbers which start with the numbers 0989 or 0991.

7. If the customer fails to comply with the request to take delivery within 3 months after receipt of the request, Wurth is entitled to demand compensation for the damage incurred as a result including additional expenses (e.g. storage costs). Wurth is entitled to charge a flat rate for damage at the amount of 0.25 % of the value of the goods per calendar day to a maximum 5 % of the value of the goods for which delivery should be accepted. The proof of higher damage and the statutory claims of Wurth shall remain unaffected. The customer is allowed to provide proof that Wurth has not incurred any damage at all or only significantly lower damage than the above flat charges.

V. Insurance

1. During the term of this agreement the customer will maintain insurance at his own expense, which provides Vending Machine with appropriate cover against loss, fire damage, theft, storm, water and other natural damage which can typically be covered by property insurance. The customer will provide Wurth with a copy of the insurance policy as soon as possible.
2. The customer is obliged to inform Wurth immediately about all the circumstances which he becomes aware of, which can detract from the validity of the insurance cover or can be detrimental to the assertion of possible insurance claims. In addition, the customer is obliged to bear all the costs in connection with the insurance contract and to meet all the obligations incumbent upon him in accordance with the contract, in particular, to make all the necessary declarations in good time with respect to the insurer.

VI. Term and termination of the Vending Machine contract

1. The contract for the lease-based permission of use of the Vending Machine ("Vending Machine contract") comes into force when signed and is concluded for an indefinite period of time. Provided not agreed otherwise, it can be cancelled with a period of notice of 6 months at the end of the month, taking account of the agreed minimum term of the contract.
2. The right to extraordinary cancellation without notice of the Vending Machine contract for an important reason shall remain unaffected.
3. Furthermore, Wurth can cancel the Vending Machine contract extraordinarily without notice if
 - the customer, notwithstanding a written caution from Wurth, continues with use of the Vending Machine contrary to contract, which not only infringes the rights of Wurth insignificantly, in particular, if the customer gives permission of use to a third party for the Vending Machine without authorisation or endangers the Vending Machine by inappropriate use or neglect of the duty of care incumbent upon him;
 - the customer is more than five weeks in arrears with the payment of a full monthly service flat charge;
 - the customer, despite written caution does not comply with his obligations from the Vending Machine contract in another way and infringes the rights of Wurth not only insignificantly.
4. If the customer does not transact any order using the Vending Machine within a period of 6 weeks during the term of the Vending Machine contract, Wurth, notwithstanding the above regulations, is entitled at any time to cancel the Vending Machine contract with a period of notice of 6 weeks (special cancellation).
5. Each cancellation of the Vending Machine contract must be made in writing in accordance with Section 126 BGB. The telecommunications transmission will not suffice. The cancellation in electronic form in accordance with section 126a BGB and in text form in accordance with Section 126b BGB is prohibited.
6. Notwithstanding the above regulations, the parties are free to rescind the Vending Machine contract prematurely in mutual agreement. The customer is obliged to pay a flat rate charge for expenses with respect to administrative and leasing expenditure, if, during the contract minimum terms, Wurth makes use of the cancellation rights in accordance with Points 2, 3 or 4 of this section. Here, the date of the declaration of cancellation is decisive. The customer is permitted to provide the proof that Wurth has not incurred any expense at all or only a significantly lower expense than the agreed flat rate expense.
7. The customer is obliged to return the Vending Machine to Wurth, including module and accessories, after termination of the Vending Machine contract. Wurth will disassemble and collect the Vending Machine from the customer, at the latest within 15 calendar days after termination of the Vending Machine contract.
8. Cancellation of the Vending Machine contract leaves the contracts of sale concluded by the date of the validity of the cancellation unaffected.

VII. Final provisions

1. If individual provisions should be wholly or partly invalid or impracticable, the validity or feasibility of the other provisions shall not be affected. The invalid or impracticable provision must be replaced by a valid and practicable provision, which comes closest to the original regulation in commercial terms. In the case of contrary-to-plan gaps in the regulations, the gap must be filled by such a valid and practicable regulation, which the parties would have agreed, if they had thought about the necessity of regulating the point, when the contract was concluded.
2. These business relations and all legal relations between Wurth and the customer shall be interpreted and enforced in accordance with the laws of the Province of the location of the customer and the federal laws of Canada applicable therein, without regard to conflict of laws principles. Any action against either party may be brought in any court of competent jurisdiction located in the Province of Ontario, and the customer submits to the non-exclusive jurisdiction of any such court and waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action. Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.