

# General Terms and Conditions of Kraemer Baumaschinen GmbH & Co. KG for the Delivery of Spare Parts

- 1. Scope of application**
  - 1.1. These general terms and conditions apply to the spare parts division of Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer) in relation to companies within the meaning of Section 14 of the German Civil Code (hereinafter referred to as the customer). Special terms and conditions are applicable to the business divisions of construction machinery sales, repairs and rental, which are only applicable here on a supplementary basis.
  - 1.2. Conflicting terms and conditions of the customer shall not apply even if Kraemer does not expressly object to them.
  - 1.3. In the case of continuous business relations, this also applies in the event that Kraemer has not expressly referred to this in the course of the relations.
- 2. Offers / quotations / payment terms**
  - 2.1. Offers from Kraemer are subject to contract.
  - 2.2. The prices quoted by Kraemer are exclusive of the statutory VAT. Shipping costs, packaging costs. Any special procurement costs shall generally be borne by the customer.
  - 2.3. The VAT is charged additionally – at the relevant statutory rate – insofar as the delivery is subject to VAT under German law. If the delivery is exempt from VAT within the European Union, the calculation of the statutory VAT only ceases to apply if a valid and audit-proof VAT registration number of the customer is made available. For export deliveries within the meaning of the German VAT Act to a third-country territory, the customer shall, in addition to the purchase price, provide a security in the amount of the statutory VAT if Kraemer requests this of the customer. The security can then only be released upon presentation of proof of export for VAT purposes in the form of copy 3 of the export declaration, as handled by the customs office of export (border customs office), and, if necessary, in the form of additional import documentation or shipping documents (e.g. air waybill, bill of lading) and, if applicable, the import confirmation from the recipient country required in the export licence. The refund shall not be issued if Kraemer does not receive the required documents within two months of the date of the invoice.
  - 2.4. Kraemer may demand that the customer pays an advance in the amount of the expected final purchase price. A request for advance payment is not a quotation.
  - 2.5. The invoices from Kraemer are due immediately and without deduction. The customer shall be in default 14 days after the invoice date without the need for a further reminder.
- 3. Scope of the agreement / implementation of the agreement / delivery times**
  - 3.1. In the absence of a written agreement signed by both parties, the written order confirmation issued by Kraemer shall be decisive for the scope of the agreement.
  - 3.2. The information on delivery times is not binding. Delivery times are considered to have been met as soon as availability for shipment has been indicated, the goods were shipped or picked up. For foreign businesses, all official formalities and import licences must be issued before delivery.
  - 3.3. In the event of unforeseeable operational impediments – e.g. strikes, difficulties in procuring replacement parts, delays in delivery or performance by suppliers – binding delivery times shall be extended accordingly.
  - 3.4. A reminder within the meaning of Section 286 of the German Civil Code and the setting of a deadline within the meaning of Section 281 of the German Civil Code and Section 323 of the German Civil Code must be made explicitly and in writing. A period of time according to Section 281 of the German Civil Code and Section 323 of the German Civil Code must be at least 3 weeks. If a delay is due to a delay in delivery by an upstream supplier then this shall not constitute a breach of duty.
  - 3.5. Partial deliveries are generally in accordance with the agreement.
  - 3.6. In the event of default on the part of Kraemer, compensation shall be paid only up to 5% of the purchase price. The customer reserves the right to demonstrate higher damages. Kraemer reserves the right to prove lower damages.
- 4. Transfer of risk, transport and insurance**
  - 4.1. The risk passes to the customer when the goods are handed over to the carrier. This also applies if the shipment is organised by Kraemer.
  - 4.2. It falls under the responsibility of the customer to insure the goods against transport damage if the customer has commissioned the transport.
  - 4.3. Attention is drawn to the obligation to inspect and give notice of defects in accordance with Section 377 of the German Commercial Code.
- 5. Return of goods / used parts**
  - 5.1. When non-standard parts (replacement parts) are purchased, Kraemer is entitled to charge the customer a used parts deposit. This deposit for used parts must be paid upon invoicing. The used parts deposit shall be credited to the customer account if the old part is returned to Kraemer using the old part return form, the form is completed in full and the old part is free of cracks and breaks, within four weeks of delivery of the AT part.
  - 5.2. With the exception of cases in which the customer has a legal or contractual right to cancel the agreement, delivered goods shall not be taken back.
  - 5.3. The customer is free to submit a courtesy claim. The customer is not entitled to a right of return as a result. A right of return does not arise from a courtesy request even if Kraemer asks for the goods to be sent after the courtesy request.

A right of return only arises from a courtesy request when the returned goods have been accepted as flawless. In this case, the purchase price minus a handling and restocking fee of 15% of the purchase price shall be credited to the account of the customer.
- 6. Reservation of title**
  - 6.1. The goods remain the property of Kraemer until full payment has been received.
  - 6.2. The goods must not be sold to third parties before the invoice has been settled in full.
  - 6.3. The goods must not be installed in devices and machines before the invoice has been paid in full. This applies both to the devices and machines of the customer and to those of third parties.
- 7. Warranty / Material defects**
  - 7.1. As a matter of course, the statutory provisions are applicable when assessing the existence of a legally relevant defect. For parts remanufactured or manufactured by Kraemer (e.g. hydraulic hoses), this means: The production / manufacturing is carried out according to the specifications of the customer (e.g. technical drawing, specification of the exact spare part number or according to a sample). Incorrect information provided by the customer falls specifically within the scope of risk of the customer and does not lead to warranty claims against Kraemer.
  - 7.2. The warranty period is limited to one year from the statutory commencement of the warranty period. Kraemer does not provide any warranty for used (not overhauled) replacement parts ordered by the customer.
  - 7.3. Kraemer reserves the right to choose between rectification and subsequent delivery, including when spare parts are sold. The customer may only claim a reduction in the compensation for work if Kraemer has twice failed to attempt or has failed to rectify the defect or make a subsequent delivery despite the setting of a reasonable written deadline in each case.
  - 7.4. In the context of the statutory provisions, a warranty is provided for the delivery of spare parts insofar as Kraemer can be regarded as the supplier within the meaning of Section 478 of the German Civil Code.
  - 7.5. Claims for damages are limited to 5% of the purchase price. The customer reserves the right to demonstrate higher damages. Kraemer reserves the right to prove lower damages. Otherwise, the provisions set forth in article 8.3 apply.
- 8. Liability, in particular for damages**
  - 8.1. If the object of the agreement cannot be used in accordance with the agreement due to the culpable breach of contractual secondary obligations – e.g. obligations to provide advice or instruction – then the provisions set forth in articles 7 and 8.3 shall apply to the exclusion of further claims. With regard to other breaches of secondary obligations article 8.3 applies.
  - 8.2. If Kraemer culpably causes property damage that is not covered by the warranty then Kraemer shall be liable in accordance with the following conditions.
  - 8.3. Beyond the aforementioned provisions, damages – including indirect damages – of any kind whatsoever and regardless of the legal basis, shall only be compensated by Kraemer if:
    - gross negligence or intent is present, or
    - a violation of life, body or health is concerned, or
    - Kraemer has culpably violated essential contractual obligations, the achievement of the purpose of the agreement is jeopardised and, in addition, the damage is typical of the agreement, or
    - in cases of mandatory liability under the German Product Liability Act, or
    - expressly warranted characteristics are missing and the purpose of the warranty was to cover such damages that did not occur to the subject of the agreement itself.In all other respects, liability is excluded.
- 9. Closing provisions / set-off / applicable law**
  - 9.1. The place of jurisdiction for all national and international agreements and disputes is Rheda-Wiedenbrück, where the head office of Kraemer is located.
  - 9.2. German law applies with the exclusion of the UN Sales Convention.
  - 9.3. Amendments to an agreement must be made in writing, as must any amendment to this written form requirement. A signed document (PDF) sent by fax or email complies with this contractual written form requirement.
  - 9.4. If any of these provisions is invalid or incomplete, either in whole or in part, then the validity of the remaining provisions shall not be affected. The missing or ineffective provision shall be replaced by a provision that most closely reflects the intention of the contracting parties; otherwise, the statutory provisions shall apply.
  - 9.5. The customer may only offset or withhold payment in relation to a claim for remuneration if the counter-claims are undisputed or have been finally upheld in a court of law.
  - 9.6. Kraemer is the controller in terms of data protection legislation. The personal data of the customer are collected, processed or used for the purpose of the establishment, implementation, and termination of the agreement. Any promotional use is solely for the purposes of self-promotion, including recommendation advertising. Data shall only be transferred to third parties if this is necessary for the implementation of the agreement.
  - 9.7. The customer can object at any time to the possible use of their data for the purposes of advertising or market research and opinion polling. The objection needs to be addressed by post to Kraemer Baumaschinen, Ferdinand-Braun-Str. 3, 33378 Rheda-Wiedenbrück, Germany, or by email to: [info@kraemer24.com](mailto:info@kraemer24.com).