

Terms and Conditions of Kraemer Baumaschinen GmbH & Co. KG for the Supply of Spare Parts

1. **Scope**
 - 1.1. These terms and conditions apply to the Spare Parts division of Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer) for companies within the meaning of Section 14 BGB [German Civil Code] (hereinafter referred to as Customer). For the construction machinery trading, repair and rental divisions, specific terms and conditions apply, which only apply supplementally to this.
 - 1.2. Conflicting conditions of the Customer shall also not apply if Kraemer has not explicitly objected to them.
 - 1.3. For ongoing business relationships, this also applies in the event that Kraemer has not explicitly referred to this during the course of the relationships.
2. **Offers / quoted prices / payment terms**
 - 2.1. Insofar as an offer has been prepared/a price has been arranged, this quoted price is subject to confirmation, insofar as the liability has not been guaranteed in text form and explicitly stating a commitment period.
 - 2.2. The quoted prices shall be valid from the registered office of Kraemer. Shipping costs, packaging costs and any special procurement costs must fundamentally be borne additionally by the Customer.
 - 2.3. The VAT shall be charged additionally - in the respective legally defined amount - where it involves a delivery that is subject to value-added tax under German law. If it involves a VAT-exempt intra-Community delivery, the charge of statutory VAT shall only be waived subject to the specification of a valid and audit-proof VAT ID number of the Customer. With an export delivery within the meaning of the German VAT Act to the third-country region, in addition to the purchase price, the Customer must pay the amount of statutory VAT, if the Customer is requested to do so by Kraemer. The security deposit can then only be refunded in return for the presentation of an export certificate for value-added tax purposes in the form of Example No. 3 of the export notification dealt with by the export customs office (border office) and, if necessary, in the form of additional import evidence, or of shipping documents (e.g. air way bill, bill of lading) and the import confirmation of the recipient country, if required in the export permit. The refund amount shall lapse if the required documents are not available with Kraemer within 2 months after the invoice date.
 - 2.4. Kraemer is authorised to request an advance payment in the amount of the anticipated final purchase price from the Customer. A request for advance payment does not constitute a cost estimate.
 - 2.5. The payment of the fee shall take place directly after invoice without any deductions. Any objections to an invoice must be made in writing within 10 days following the invoice date. The Customer shall enter into default 10 days after the invoice being sent, provided that no other payment target has been arranged, without a further reminder being required, if Kraemer has pointed this out in the invoice.
3. **Scope of contract / contract performance / delivery periods**
 - 3.1. In the absence of a written contract signed by both parties, the order confirmation of Kraemer is decisive for the scope of the contract.
 - 3.2. The specifications for the delivery periods are non-binding. Delivery periods shall be deemed as having been met, as soon as readiness for shipping has been notified, the goods shipment has been submitted for shipping or collected. For foreign transactions, all official formalities and import permits must exist prior to delivery.
 - 3.3. In the event of unforeseeable operational hindrances - e.g. strike, procurement difficulties for spare parts, delivery or performance delays with suppliers - the binding delivery periods shall also be extended accordingly.
 - 3.4. A reminder within the meaning of Section 286 BGB, as well as the setting of a grace period within the meaning of Section 281 BGB and Section 323 BGB shall take place explicitly and in writing. A grace period in accordance with Section 281 BGB and 323 BGB must amount to at least 3 weeks. Where a delay is caused by a delivery delay by an upstream supplier, this shall not be regarded as a breach of duty.
 - 3.5. Partial deliveries are basically contractually compliant.
 - 3.6. In the event of default by Kraemer, damages will only be paid for up to 5% of the purchase price. The Customer reserves the right to prove a higher loss. Kraemer reserves the right to prove a lower loss.
4. **Transfer of risk, transport and insurance**
 - 4.1. The risk shall transfer to the Customer with the handover to the shipper. This also applies if the shipping is organised by Kraemer.
 - 4.2. The Customer shall be obligated to insure the goods against transport damage, if the Customer has arranged the transport.
 - 4.3. Reference is made to the obligation to inspect and give notice of defects under Section 377 HGB [German Commercial Code].
5. **Acceptance of returned goods / return of used parts**
 - 5.1. with the acquisition of replacement parts, Kraemer is authorised to charge the Customer a deposit for used parts. This deposit for used parts is payable upon invoicing. The deposit for used parts shall be credited to the customer account, if within 4 weeks from delivery the replacement part, the used part is received by Kraemer using the used part return form, the form is completely filled out and the used part is free from welds, cracks and breakages.
 - 5.2. With the exception of those cases where the customer is entitled to unwind the contract on a legal or contractual basis, no acceptance of returned supplied goods will take place.
 - 5.3. The Customer's right to submit a request for goodwill remains unaffected. This shall not entitle the Customer to a right to return the goods. A right to return the goods shall also not result from the request for goodwill if Kraemer requests that the goods are sent after the request for goodwill. A right to return the goods shall only result from the request for goodwill if the returned goods have been accepted as being immaculate. In this case, the purchase price will be credited to the customer account after deducting a flat-rate handling and re-stocking fee of 15% of the purchase price.
6. **Reservation of ownership**
 - 6.1. The goods shall remain the property of Kraemer until full payment is made.
 - 6.2. The goods are not permitted to be sold to third parties prior to full settlement of the invoice.
 - 6.3. Prior to full settlement of the invoice, the goods are not permitted to be installed in devices and machines, which applies to devices and machines of the Customer, as well as devices and machines of third parties.
7. **Warranty / physical defects**
 - 7.1. The statutory specifications self-evidently apply to the assessment of the existence of legally relevant liability for defects. For parts that are overhauled or manufactured by Kraemer (e.g. hydraulic hoses, this means: The production / manufacturing takes place in accordance with the Customer's specifications (e.g. technical drawing, specification of the exact spare part number or according to prototypes). Faulty specifications of the Customer are exclusively within the Customer's sphere of risk and do not lead to warranty claims against Kraemer.
 - 7.2. The warranty period is limited to one year from the legal start of the warranty period. Insofar as used (not overhauled) spare parts are order, Kraemer shall not issue a warranty.
 - 7.3. Kraemer shall have the option to choose between reworking and supplemental delivery, also with the sale of spare parts. Only if Kraemer has not attempted rework or supplemental delivery twice in spite of setting a relevant adequate grace period in writing or if this has failed, the Customer can claim a reduction of the compensation for work performed.
 - 7.4. A warranty is issued within the context of the legal provisions for the delivery of spare parts, insofar as Kraemer is regarded as a supplier within the meaning of Section 478 BGB.
 - 7.5. In the event of claims for damages, these will be paid in the amount of up to 5% of the purchase price. The Customer reserves the right to prove a higher loss. Kraemer reserves the right to prove a lower loss. Ceteris paribus, the provision of Clause 8.33. shall apply.
8. **Liability specifically for damages**
 - 8.1. Insofar as the order subject matter is not used in a contractually compliant manner due to the culpable breach of contractual ancillary duties - e.g. advisory or briefing duties, the provisions of Clause 7 and 8.3 shall apply, subject to the exclusion of further claims. With regard to the breaches of other ancillary duties, Clause 8.3 shall apply.
 - 8.2. Insofar as Kraemer culpably causes physical damage, which does not give rise to any warranty performance rights, Kraemer shall not be liable under the following conditions.
 - 8.3. Over and above the aforementioned provisions - also indirect damages - regardless of the type and notwithstanding the legal grounds, Kraemer shall only provide compensation if:
 - gross negligence or malice aforethought exists or
 - injury to life, limb or health is affected or
 - significant contractual duties have been culpably breached by Kraemer, the achievement of the contractual purpose is jeopardised and it also involves a typical contractual loss or
 - in those cases where mandatory liability exists under the Product Liability Act or
 - expressly guaranteed characteristics are missing and the purpose of the guarantee was to cover losses that did not occur on the order subject matter itself.Ceteris paribus, liability is excluded.
9. **Final provision / set-off / applicable law**
 - 9.1. The legal jurisdiction for all agreements and disputes is Rheda-Wiedenbrück as the registered office of Kraemer.
 - 9.2. German law applies, to the exclusion of the UN Sales Convention.
 - 9.3. Changes to a contract must be in written form, as well as any change to this written form clause. A document that is signed and sent by telefax fulfils this contractual written form requirement.
 - 9.4. If the provisions should be or become fully or partially invalid, this shall not affect the validity of the remaining provisions. The missing or invalid provision shall be replaced by the provision that comes closest to the intention of the contracting parties, otherwise the legal provision.
 - 9.5. The customer is only permitted to carry out set-offs or retentions with regard to the remuneration claims with undisputed or legally established claims.
 - 9.6. Kraemer is the responsible office within the meaning of the Data Protection Act. The Customer's personal data shall only be collected, processed or used for purpose of contract formation, performance and termination. Advertising use shall only take place for the purpose of own advertising, including recommendation advertising. Sending to third parties shall only take place insofar as this is necessary for performance of the contract.
 - 9.7. The Customer can object to any use of its data for the purpose of advertising, market research or opinion research at any time. The objection shall be addressed by post to Kraemer Baumaschinen, Ferdinand-Braun-Str. 3, D-33378 Rheda-Wiedenbrück or by e-mail to: info@kraemer24.com.