

General Terms and Conditions for the Repair Service of Kraemer Baumaschinen GmbH & Co. KG

1. Scope of application

- 1.1. These general terms and conditions apply to the repair service division, i.e. to the maintenance work (inspections, repairs and servicing) of construction machinery carried out by Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer). These contractual conditions shall only apply to companies within the meaning of Section 14 of the German Civil Code, legal entities under public law or a special fund under public law in accordance with Section 310 Subsection 1 under 1 of the German Civil Code. Special terms and conditions are applicable to the business division of construction machinery sales and construction machinery rental, as well as the spare parts trade, which are only applicable here on a supplementary basis.
- 1.2. Kraemer does not recognise any conflicting contractual terms and conditions of the customer, unless Kraemer has provided written consent at the time of acceptance of the order.
- 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

- 2.1. Offers from Kraemer are subject to contract.
- 2.2. Quotations are generally non-binding, unless the binding force was expressly assured in writing. Oral quotations are non-binding and Section 650 of the German Civil Code is not applicable.
- 2.3. If the relevant order is based on a non-binding written quotation then the customer shall forthwith be notified if it becomes apparent during the repair work that the quotation shall be exceeded by more than 25%. After written notification of the excess, the customer may only exercise its right of cancellation under Section 650 of the German Civil Code within three working days – the date of receipt by Kraemer being the determining date.
- 2.4. If the preparation of the quotation requires examinations of the equipment of the customer then the costs for this shall be reimbursed with a minimum of €100, which shall be credited to the wage costs. If the order is not placed within three days on this basis then paragraph 6 is applicable by analogy.

3. Scope of the agreement / implementation of the agreement

- 3.1. In the absence of a written agreement signed by both parties, the written order confirmation from Kraemer shall be decisive for the scope of the agreement. If no explicit instructions are given, Kraemer shall carry out the repairs at its own discretion. Kraemer decides, in particular on the basis of cost-effectiveness and time criteria, whether a repair is carried out by installing new parts, by installing repaired parts or whether the existing defective parts are repaired.
- 3.2. Removed parts become the property of Kraemer.

4. Prices/ due date of payment / invoicing

- 4.1. Any prices quoted are exclusive of the applicable statutory value added tax.
- 4.2. Kraemer may demand that the customer makes an advance payment in the amount of the anticipated costs of the repairs (or the purchase price in the case of the sale of replacement parts). Instead of making an advance payment, the customer is entitled to provide a directly enforceable bank guarantee in the amount of the requested sum. A request for advance payment does not constitute a quotation in accordance with Section 650 of the German Civil Code.
- 4.3. The invoices from Kraemer are due immediately and without deduction. The customer shall be in default without the necessity of a reminder if the customer has not paid within 14 days of the date of the invoice.
- 4.4. 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.
- 4.5. If the customer claims third-party services with regard to the repair services ordered – in particular, insurance compensation – these claims are assigned to Kraemer in full. Kraemer is entitled to notify the third party of the assignment and to demand direct payment.

5. Repair times

- 5.1. The information on repair times is non-binding as it is based on estimates.
- 5.2. In the event of unforeseeable operational impediments – e.g. strikes, difficulties in procuring replacement parts, delays in delivery or performance by suppliers – binding repair times and deadlines shall be extended accordingly.
- 5.3. 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.
- 5.4. Liability for default losses is governed by article 9.2. The amount is, however, in any case limited to 5% of the net repair price.

6. Acceptance of the performance

- 6.1. The customer shall be notified when the contracted work has been completed. The despatch of the invoice shall constitute notification. The risk passes to the customer upon notification.
- 6.2. The customer must collect the repaired object within three working days, otherwise Kraemer is entitled to charge a storage fee of at least €50 per week or part of a week.

7. Reservation of title, extended right of lien

- 7.1. Kraemer reserves ownership of all accessories, spare parts, and replacement parts used until all payments arising from the agreement have been received.
- 7.2. If the customer is the owner of the machine then the customer grants Kraemer co-ownership of the machine corresponding to the value of the repair work in relation to the current value of the machine until the invoice has been paid in full.
- 7.3. If the customer is not the owner of the machine then the customer shall assign to Kraemer all claims arising from the contractual relationship entitling the customer to possession of the machine. As part of this assignment, Kraemer is irrevocably authorised, but not required, to fulfil the agreement for the customer.
- 7.4. The contractor has a right of lien. In particular, as far as it is related to the object to be repaired.

8. Warranty / Claims for defects

- 8.1. Kraemer warrants that it shall carry out repairs using only new replacement parts in accordance with the following provisions, in the course of which the warranty period shall be limited to one year. Kraemer does not provide any warranty for used replacement parts that are used in repairs.
- 8.2. Claims for defects become time-barred 12 months after acceptance of the service. Kraemer must be informed of any defects discovered in writing and without delay. The liability of Kraemer shall lapse if the customer carries out work improperly or has it carried out improperly by a third party without the consent of Kraemer.
- 8.3. With regard to the individual production of parts (e.g. hydraulic hoses), it should be noted that this individual production is carried out according to customer specifications (e.g. drawings). The correctness of these specifications falls within the sphere of risk of the customer. If the specifications are faulty, this does not lead to the parts produced being defective.
- 8.4. Kraemer reserves the right to choose between rectification and subsequent delivery, including when spare parts are sold. The customer shall only be entitled to other claims if the rectification of defects has failed despite the setting of a reasonable written deadline in accordance with § Section 440 Subsection 2 of the German Civil Code.
- 8.5. 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.
- 8.6. Further claims are subject to article 9.

9. Other liability

- 9.1. In the event of culpable violation of contractual secondary obligations, the provisions set forth in articles 8 and 9.2 shall apply to the exclusion of further claims.
- 9.2. Insofar as Kraemer is liable for culpably caused damages, 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 (liability is excluded in the case of slight negligence) or
 - compensation is claimed for injury to life, limb or health, 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.

10. Closing provisions / competent court

- 10.1. The place of jurisdiction for all national and international agreements and disputes is Rheda-Wiedenbrück, where the head office of Kraemer is located. German law applies with the exclusion of the UN Sales Convention.
- 10.2. 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.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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. The customer can object at any time to the possible use of their data for the purposes of advertising, market research or opinion polling. The objection needs to be addressed to Kraemer Baumaschinen GmbH & Co. KG, Ferdinand-Braun-Straße 3, 33378 Rheda-Wiedenbrück, Germany, or by email to: info@kraemer24.com.