

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

1. **Scope**
 - 1.1. The general terms and conditions are valid for the business area of construction machinery repair, i.e. for the repair of construction machinery and the delivery of spare parts - by Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer). For spare parts deliveries, these terms and conditions only apply to entrepreneurs within the meaning of § 14 BGB [German Civil Code]. For the construction machinery sales and construction machinery rental business areas, as well as the spare parts service, specific general 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 / cost estimates**
 - 2.1. Insofar as an estimate of the costs has taken place, this estimate shall be non-binding, unless the commitment has been expressly guaranteed in writing.
 - 2.2. Insofar as the respective order has been based on a non-binding written estimate of the costs, the Customer shall immediately be notified, if it emerges during the repair that the cost estimate will be exceeded by more than 25 %. Insofar as Kraemer notifies the Customer in writing about the excess, the Customer can only exercise its cancellation right under § 650 BGB within 3 working days - the date of receipt by Kraemer is decisive.
 - 2.3. Bindingly guaranteed estimates of anticipated costs shall only be prepared by Kraemer in return for separate remuneration.
 - 2.4. Insofar as a cost estimate has only taken place verbally or only all-in, without breaking down the individual items, no obligation by Kraemer shall result from this cost estimate. The provision of § 650 BGB also does not apply here.
 3. **Scope of contract / contract performance**
 - 3.1. In the absence of a written contract signed by both parties, the written order confirmation of Kraemer is decisive for the scope of the contract.
 - 3.2. In the absence of express instructions, Kraemer shall perform the repairs at its own discretion. Kraemer shall specifically decide on the basis of efficiency and time criteria, whether a repair should take place by installing new parts, installing repaired parts or whether the defective parts should be repaired.
 4. **Prices / due date for remuneration / invoicing**
 - 4.1. Any prices shall be stated without the respective applicable statutory value-added tax.
 - 4.2. Kraemer is authorised to request an advance payment in the amount of the anticipated repair costs (or purchase price for the sale of spare parts) from the Customer. Instead of the advance payment, the Customer is authorised to provide a directly enforceable bank guarantee in the required amount. A request for an advance payment does not constitute a quotation within the meaning of § 650 BGB.
 - 4.3. 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 can specifically not refuse the payment of the remuneration with the reason that it has not collected the machine. The Customer shall enter into default 10 days after the invoice being sent, without a further reminder being required, if Kraemer has pointed this out in the invoice.
 - 4.4. The Customer is only permitted to carry out set-offs or retentions with regard to the remuneration claims with undisputed or legally established claims.
 - 4.5. Insofar as the Customer can claim upon third party benefits regarding the commissioned repair - particularly compensation payments from an insurance company - these claims shall be assigned to Kraemer in their full amount. Kraemer is authorised to notify the assignment to the third party and demand direct payment. If the Customer is authorised to deduct input tax, the VAT shown on the invoice shall be paid by the Customer to Kraemer.
 5. **Repair times**
 - 5.1. The specifications for repair times are non-binding, as they are based on estimates.
 - 5.2. In the event of unforeseeable operational hindrances - e.g. strike, procurement difficulties for spare parts, delivery or performance delays with suppliers - the binding repair times/deadlines shall also be extended accordingly.
 - 5.3. A reminder within the meaning of § 286 BGB, as well as the setting of a grace period within the meaning of § 281 BGB and § 323 BGB shall take place explicitly and in writing. A grace period in accordance with § 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.
 - 5.4. In the event of default by Kraemer, damages will only be paid for up to 5% of the repair price. The Customer reserves the right to prove a higher loss.
 6. **Reservation of ownership**
 - 6.1. Insofar the Customer is the owner of the machine, it shall grant Kraemer co-ownership of the machine in accordance with the value of the repair service compared to the present value of the machine until full payment of the repair invoice.
 - 6.2. Kraemer shall also be entitled to the contractor lien due to claims from previously performed work, spare parts deliveries and other work, insofar as they are related to the repaired item. For other claims from the business relationship - also from previous contracts - the lien shall only apply insofar as these claims are undisputed or legally established.
 - 6.3. In the case where the Customer is not the owner of the machine, it shall assign the claim to transfer of ownership or return transfer after full repayment of existing third-party claims to Kraemer and irrevocably authorises Kraemer to perform on behalf of the Customer. However, Kraemer Baumaschinen GTC Construction Machinery Repair Ver 4-2015
 7. **Warranty**
 - 7.1. Kraemer shall issue a warranty for repairs with the exclusive use of new parts according to the following provisions, whereby the warranty period is limited to 1 year. Insofar as used spare parts are also used for repairs, Kraemer shall not issue a warranty.
 - 7.2. With regard to the customised production of parts (e.g. hydraulic hoses), it is pointed out that this customised production takes place on the basis of Customer specifications (e.g. drawings). The Customer bears the risk for the correctness of these specifications. Where specifications are faulty, this shall not lead to liability for defects of the produced parts.
 - 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. The Customer can only withdraw from the contract, if the repair is verifiably of no interest to the Customer, in spite of the reduction.
 - 7.5. 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 § 478 BGB.
 - 7.6. With regard to the enforcement of damages claims, the provision of Clause 8.3 applies.
 8. **Other liability**
 - 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 be liable. However, in the case of slight negligence, the liability is limited to the amount of the wages.
 - 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 exists or
 - damages are claimed due to injury to life, limb or health 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. **Collection / acceptance**
 - 9.1. The risk transfers to the Customer once it has been notified about the completion of a repair. The sending of the invoice is regarded as notification in the aforementioned sense.
 - 9.2. Within 1 week from sending the completion notification, the customer shall accept the repair and collect the equipment.
 - 9.3. If the performance of work has not been complained about by the Customer when accepting the machine or if the collection of the machine has not taken place within the time limit under Clause 9.2, the acceptance shall be deemed as having taken place.
 - 9.4. Insofar as the Customer fails to collect the machine within the time limit under Clause 9.2, Kraemer shall be authorised to charge the Customer for storage costs or to store the machine with third parties at the Customer's expense.
 10. **Final provisions**
 - 10.1. The legal jurisdiction for all agreements and disputes is Rheda-Wiedenbrück as the registered office of Kraemer.
 - 10.2. 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.
 - 10.3. 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. 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. 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 GmbH & Co. KG, Ferdinand-Braun-Str. 3, D-33378 Rheda-Wiedenbrück or by e-mail to: info@kraemer24.com.
- er, no obligation exists for Kraemer to perform on behalf of the Customer.