

# General Terms and Conditions for the Sale of Construction Machinery, Construction Equipment and Accessories of Kraemer Baumaschinen GmbH & Co. KG

## 1. Scope of application

- 1.1. These general terms and conditions apply to the business segment of construction machinery sales by Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer) to companies within the meaning of Section 14 of the German Civil Code. Special terms and conditions are applicable to the business segments of construction machinery hire, as well as the spare parts service, 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 repeated or 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

- 2.1. Offers and quotations provided by Kraemer are subject to change unless an effective date is explicitly stated in the relevant offer.
- 2.2. If drawings, sketches or technical information are provided with an offer then they are only approximately decisive.

## 3. Scope of 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 and delivery.

## 4. Availability of construction machinery

- 4.1. Kraemer shall only ship the construction machinery upon express request. The place of performance and fulfillment is therefore the principal place of business of Kraemer, unless expressly stipulated otherwise.
- 4.2. The indication of delivery times and dates is only an approximation, as Kraemer has no influence on its own supplies. Kraemer shall therefore only be in default in the event of an explicit written warning.
- 4.3. The customer can only assert the rights arising from Section 281 of the German Civil Code (damages in lieu of performance) and Section 323 I of the German Civil Code (withdrawal) after setting two reasonable deadlines in writing, each of which must be at least four weeks in length!
- 4.4. In the absence of a written agreement signed by both parties, the delivery period shall commence on the date stated in the written order confirmation sent by Kraemer.
- 4.5. In the event of a security demand in accordance with article **Fehler! Verweisquelle konnte nicht gefunden werden.**, the delivery period shall be suspended by the period from the demand for security until the provision of security.
- 4.6. In the event of industrial disputes and unforeseen events beyond the control of Kraemer, or in the event of impediments for which the manufacturer is responsible, the delivery time shall be extended by the duration of the impeding event. This also applies if Kraemer has already been in default.
- 4.7. The delivery period shall be deemed to have been observed if Kraemer notified the customer within the delivery period that the purchased item is available for collection. Kraemer is entitled to perform before the expiry of the delivery period. Furthermore, Kraemer is entitled to make partial deliveries.

## 5. Reservation of title

- 5.1. Kraemer remains the owner of all delivered items until all of the obligations of the buyer arising from the business relationship were discharged in full.
- 5.2. During the reservation of title, the customer is required to insure the purchased item at its own expense against theft, breakage, fire, water, and other damage and to provide evidence of this to Kraemer upon request. If the proof is not provided at the latest upon delivery then Kraemer is entitled to take out the aforementioned insurance policies itself at the expense of the customer.
- 5.3. If third parties seize the reserved goods – e.g. by way of attachment – then the customer must forthwith Kraemer accordingly, handing over all documents necessary to put forward a legal defence.
- 5.4. If the buyer has registered a business as a construction machinery dealer then the buyer is entitled to resell the purchased item in the ordinary course of its business. The buyer assigns any and all claims against third parties arising from the same to Kraemer in advance. The buyer remains entitled to collect the claims. At the request of Kraemer, the Buyer shall disclose the relevant debtors, provide all information for the collection of the claims, and notify the debtors of the assignment. Kraemer is entitled to notify the debtors of the assignment itself.
- 5.5. If the value of the reserved goods serving as security for Kraemer exceeds the outstanding claims by more than 20% then Kraemer is required vis-à-vis the customer, upon request of the customer and at the discretion of the customer, to surrender the security until the aforementioned value limit has been reached.
- 5.6. Transfer by way of security or pledging of the purchased item is only admissible if this occurs within the framework of financing the purchase price and Kraemer is irrevocably and unconditionally designated in the loan agreement as the payee of the loan amount.
- 5.7. The assertion of a reservation of title, as well as an attachment against the purchased item by Kraemer, shall not be deemed to be a cancellation of the agreement.

## 6. Transfer of risk / delivery

- 6.1. The customer is required to take delivery of the construction equipment immediately upon notification that it is available. If the goods are not taken delivery of within three working days of notification then the customer can no longer invoke a temporary inability to take delivery of the goods in respect of a delay in taking delivery of them. If the customer still does not take delivery of the machine, even after a further request, then the machine shall be deemed to have been taken delivery of three days after the renewed request.
- 6.2. If acceptance is not carried out in accordance with the provisions set forth in article 6.1, Kraemer shall be entitled to charge at least 0.5% of the invoice amount per month for its own storage. Kraemer reserves the further rights arising from the default in taking delivery. In particular, the right is reserved to claim further additional costs.
- 6.3. In addition to the legal consequences of default in taking delivery, Kraemer is also entitled to withdraw from the agreement if the customer is in default in taking delivery. In the event of this kind of cancellation, Kraemer reserves the right to claim additional expenses and loss of profit.
- 6.4. The compensation amounts to a flat rate of 15% of the net purchase price. The compensation shall be higher or lower if the seller can demonstrate that the loss was higher or the buyer can demonstrate that it was lower.

## 7. Prices / due date / payment default

- 7.1. The prices quoted by Kraemer are exclusive of the statutory VAT
- 7.2. 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.
- 7.3. If the customer has provided security in the form of a bank guarantee then they can demand that the guarantee is returned concurrently with the payment of the purchase price.
- 7.4. The customer may only offset claims against the purchase price that were legally established or are undisputed.

## 8. Warranty

- 8.1. Kraemer does not provide a warranty for used construction machinery. Kraemer warrants newly manufactured construction equipment in accordance with the following provisions, in the course of which the warranty period is limited to one year.
- 8.2. Kraemer is entitled to choose between subsequent delivery and rectification in accordance with Section 439 of the German Civil Code.
- 8.3. In any case, the customer can only assert further warranty rights if Kraemer has failed to attempt to rectify the defect or make a subsequent delivery despite at least two written notices setting a deadline of at least two weeks on two occasions, or if such attempts have failed.
- 8.4. If parts are replaced as part of the rectification of defects then the replaced parts become the property of Kraemer. The original warranty obligation shall apply to the spare parts, which shall be extended by the duration of the repair.
- 8.5. For the right to claim damages, article 10 of these GTC shall additionally apply.
- 8.6. A warranty is provided within the scope of the statutory provisions insofar as Kraemer must be regarded as the supplier within the meaning of Section 478 of the German Civil Code.
- 8.7. Any warranty claims the customer may have against the manufacturer are not affected by this agreement. If Kraemer is the contractual partner of the manufacturer's warranty, rather than the customer, then Kraemer commits to assign any warranty claims to the customer. Kraemer points out that the warranties of manufacturers are subject to the fulfilment of obligations, in particular regular maintenance by a specialist workshop. Kraemer provides service plans and warranty documents upon delivery.

## 9. Trade-in

- 9.1. If Kraemer accepts a machine as payment then the condition of the machine at the time of the inspection by Kraemer shall be deemed to be contractually agreed.
- 9.2. Any deterioration in the condition of the machine in the period up to acceptance by Kraemer shall be at the expense of the customer and shall entitle Kraemer to reduce the price agreed for the part exchange. The only exception to this is normal wear and tear that does not affect the full functionality of the machine.

## 10. Limitation of liability

Kraemer shall only be liable for intent and gross negligence if the liability presupposes fault on its merits. This does not apply if a material contractual obligation is concerned. This also does not apply if compensation is claimed for injury to life, limb or health.

## 11. Closing provisions

- 11.1. The place of jurisdiction for all national and international agreements and disputes is Rheda-Wiedenbrück, where the head office of Kraemer is located.
- 11.2. German law applies with the exclusion of the UN Sales Convention.
- 11.3. 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.
- 11.4. 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.
- 11.5. 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.
- 11.6. 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.
- 11.7. 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).