

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

1. Scope of application

- 1.1. These general terms and conditions are applicable to the business segment of construction machinery rental, i.e. the rental of construction machinery for a certain period of time, by Kraemer Baumaschinen GmbH & Co KG (hereinafter referred to as: Kraemer) to companies within the meaning of Section 14 of the German Civil Code (hereinafter referred to as the: Hirer). Special terms and conditions are applicable to the business segments of construction machinery sales and repair, as well as the spare parts trade, which are only applicable here on a supplementary basis.
- 1.2. In the case of ongoing business relationships, the inclusion of the GTC - article 1.1 - shall also apply in the event that Kraemer has not expressly referred to the GTC in the course of these relationships.
- 1.3. Conflicting terms and conditions of the customer shall not apply even if Kraemer does not expressly object to them.

2. Hire prices / security

- 2.1. The hire charge is based on the current hire price list at the time of the hire agreement / handover document, or on the order confirmation. The minimum hire period is one day.
- 2.2. If loading and unloading, transport, assembly, conversion, attachment, supply of fuel, cleaning, repair or waste disposal by Kraemer is necessary or contractually stipulated then these services shall be remunerated by the Hirer at the rates customary in the industry.
- 2.3. If the Hirer uses the machinery in a manner contrary to the agreement then Kraemer is entitled, without prejudice to any other rights, to demand an appropriate surcharge in addition to the hire charge. This applies in particular – notwithstanding other claims – in the context of use in accordance with article **Fehler! Verweisquelle konnte nicht gefunden werden.** of these GTC.
- 2.4. Both the basic hire charge and the usage-based hire charge are subject to the statutory VAT at the applicable rate.
- 2.5. If the hire period exceeds one week then the hire charge is due with retroactive effect. Otherwise, the hire charge is due when the hired object is returned. Kraemer may demand payment of any additional costs for conversions, installations, transport, etc. prior to delivery of the hired object.
- 2.6. Kraemer is moreover entitled, prior to handover of the hired object, to demand a deposit of the total hire charge for one month plus the excess – see article 9 – by way of security for all of the claims to which Kraemer is entitled under the hire relationship. When calculating the deposit, the insurance premium is taken into account in addition to the actual hire charge. In addition, Kraemer may demand that a written direct debit authorisation is provided before the hired object is handed over.
- 2.7. Kraemer may also demand in advance – before handover and conversion – the costs for conversion and assembly of the hired object property, as well as remuneration for further services within the meaning of articles 2.2 up to 2.3.
- 2.8. 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. Start of hire period / collection of machinery

- 3.1. The hire period begins on the date specified as the start date in the hire agreement. If no explicit date is given then the hire period begins with the conclusion of the agreement. If the daily usage time exceeds eight hours per day or 40 hours per week then Kraemer is entitled to a subsequent pro-rata increase in the hire charge.
- 3.2. If the Hirer does not pick up the hired object at the start of the hire period then the Hirer shall be in default of acceptance without further literal or actual offer on the part of Kraemer.
- 3.3. Unless expressly stipulated otherwise in the hire agreement, the object shall be made available at the depot of the head office of Kraemer in Rheda-Wiedenbrück. The Hirer is responsible for transport and loading.
- 3.4. Furthermore, the handover takes place with the complete filling of the fuel and lubricant tanks.
- 3.5. Upon handover, both parties shall draw up a handover protocol in which the condition of the hired object is documented. A test run and instruction are provided. The Hirer must inspect the hired object on any defects immediately upon handover and, if necessary, issue a complaint immediately.
- 3.6. If the customer fails to fulfil the claims of Kraemer arising from articles 2.6 and 2.7, Kraemer shall not be in debtors' default. If the equipment is not made available at the scheduled time, the customer can assert its rights under Section 281 of the German Civil Code (damages in lieu of performance) and Section 323 of the German Civil Code (withdrawal) in any case only after an appropriate period of at least three working days has been expressly set in writing.

4. Settlement during the hire period / Obligations

- 4.1. If a defect becomes apparent when the equipment is put into operation or during operation, Kraemer must be notified immediately. Kraemer is entitled to provide a replacement hired object of equivalent functionality.
- 4.2. During the hire period, the Hirer must ensure that sufficient maintenance and care is provided at its own expense. In particular, the Hirer needs to ensure that there is an adequate supply of operating fluids and lubricants.
- 4.3. The Hirer is not entitled, without Kraemer's prior written consent, to make changes to the hired object, in particular to carry out additions or conversions, or to remove labels that were affixed by Kraemer or the manufacturer.
- 4.4. The Hirer may not grant any third party rights to the equipment (e.g. hire, loan) nor assign any rights under this agreement.
- 4.5. If a third party asserts rights to the equipment through confiscation, attachment, or the like then the Hirer is required to forthwith notify Kraemer accordingly in writing and to notify the third party in writing of the existence of the hire.
- 4.6. In the context of the warranty for defects, Kraemer shall not be liable for damages. This exclusion of liability does not apply if a defect is due to intent or gross negligence on the part of Kraemer or if the hired object lacks a warranted property or if there is question of injury to life, limb or health.
- 4.7. If a place of use has been stipulated then the Hirer may only remove the equipment from the said place if Kraemer is notified in advance and in sufficient Kraemer Baumaschinen GTC Construction Machinery Hire Version 09/2024

- time to allow a one-hour handling period during normal business hours. The Hirer must state the new location in the notification. Use outside Germany is only allowed with prior written consent (GPS anti-theft device). If the customer fails to obtain the said consent then Kraemer shall not be liable for damages for delays in the operation of the equipment.
- 4.8. The Hirer is not authorised to use the hired object for any other purpose than that contractually stipulated. This applies in particular to the following cases of use, if this intended use is not explicitly part of the agreement:
 - Use at hydraulic engineering construction sites
 - Use for demolition work, provided that a demolition gripper is not the subject of the hire agreement.
 - Use in a quarry
 - Use with hydraulic hammer, provided that this is not the subject of the hire agreement.
 - Use with aggressive media, e.g. use in lime

5. End of hire period

- 5.1. If the hire is agreed for a specific period then the hire agreement shall end upon expiry of that date. If a full return has not taken place by this date then the hire period shall be extended accordingly until the full return has taken place.
- 5.2. Both parties are entitled to terminate the hire agreement without giving notice for good cause before the end of the contractual period. On the part of Kraemer, good cause shall in particular be deemed to exist if
 - a third party asserts rights to the equipment,
 - the Hirer is declared to be insolvent / bankrupt, or
 - the Hirer uses the hired object in a manner contrary to the agreement, or
 - the Hirer fails to fulfil its obligation to properly treat and care for the hired object in accordance with the provisions set forth in article 4 despite a reminder, or
 - if the Hirer fails to meet its payment obligations, in particular with regard to the hire charge and deposit, or
 - the Hirer is in default of acceptance.
 - makes changes to the hired object.
- 5.3. If the hire was concluded for an open term then the hire can be terminated with due observance of a notice period of two weeks effective from the end of a week. If the hire charge is calculated by the month, a notice period of one month applies, effective at the end of the month.
- 5.4. At the end of the regular hire period, the Hirer must return the equipment together with all the parts required for its operation. The Hirer shall return the equipment to Kraemer in the condition corresponding to the condition of the equipment upon handover, taking into account the depreciation in value resulting from the contractual use of the equipment. The Hirer has no right of retention in respect of the hired object.
- 5.5. If the equipment is returned in a condition that does not comply with the provisions set forth in article 5.44 then it shall be restored to that condition at the expense of the Hirer without prior notice. This applies in particular to damage to the hired object and to insufficient stocks of fuel and lubricants, as well as to any necessary cleaning or decontamination work.
- 5.6. Unless expressly stipulated otherwise in the hire agreement, the vehicle needs to be returned to the Kraemer depot from which it was collected. If the complete return to Kraemer's depot does not occur at the end of the hire period then Kraemer is entitled to collect the equipment at the expense of the Hirer. With regard to the costs, article 2.2 applies.

6. Decommissioning / interruption of the rental period / 'availability' notification

- 6.1. In the following instances, Kraemer is entitled to decommission the hired object:
 - Breach of the duties and obligations of article 4
 - Existence of good cause within the meaning of article 5.2
 - End of the hire period in accordance with article 5.1(1), article 5.22, or article 5.33
 - Violation of the return obligation according to article 5.44
- 6.2. The period of decommissioning does not entitle the Hirer to a reduction in rent. The customer has no contractual right to interrupt the hire period – notification of availability. The Hirer bears the risk of the operational capability of the equipment, e.g. due to the weather. Any deviations must be stipulated in writing.

7. Right to inspect and examine the equipment

- When the hired object is collected at the start of the hire period and when it is returned at the end of the hire period, both parties should conduct a joint final inspection of the hired object. The relevant results should be included in a signed protocol. If the customer returns the hired object outside business hours or if a joint inspection is not possible for other reasons then Kraemer is entitled to draw up the return protocol independently and to use it to log the condition of the equipment. The burden of proof in respect of this protocol is vested in the customer.
- 7.1. Furthermore, the Hirer is entitled to inspect the hired object themselves or through a representative before the collection and return. The costs of this kind of inspection are borne by the Hirer.
 - 7.2. The Hiring Company is entitled to inspect the equipment or to have it inspected by an authorised representative at any time.
 - 7.3. The Hiring Company is entitled to inspect the hired object at any time after prior consultation with the Hirer regarding the time of the inspection, or to have it inspected by an authorised representative. The Hirer is required to facilitate the inspection by Kraemer in every way. The costs of the inspection shall be borne by Kraemer.

8. Limitation of liability

- 8.1. Kraemer shall only be liable for intent and gross negligence if the liability presupposes fault on its merits. This is not applicable if compensation is claimed for injury to life, limb or health.
- 8.2. Further claims for damages against the Hiring Company, in particular compensation for damages that have not been inflicted on the hired object itself, can only be asserted by the Hirer in the event of
 - an intentional breach of duty by the Hiring Company

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- a grossly negligent breach of duty by the Hiring Company or in the event of an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the Hiring Company
- culpable violation of essential contractual obligations if the achievement of the objective of the agreement is jeopardised, with regard to the foreseeable damages typical for the agreement
- damages resulting from injury to life, limb or health that are based on a negligent breach of duty by the Hiring Company or an intentional or negligent breach of duty by a legal representative or vicarious agent of the Hiring Company
- if the Hiring Company is liable under the German Product Liability Act for personal injury or property damage to privately used objects

In all other respects, liability for damages is excluded.

9. Insurance

- 9.1. When the hire agreement is concluded, the Hirer has the option of taking out insurance for the hired object themselves. If the Hirer has taken out insurance, Kraemer must be provided with corresponding proof of this before the hired object is picked up / handed over (e.g. copy of the insurance policy). Otherwise, the contractually agreed excess is due for each claim. At the request of Kraemer, the Hirer must submit a claim report within 24 hours, with mention of witnesses.
- 9.2. If the Hirer makes insurance mandatory for the hired object then Kraemer shall ensure that it insures the hired object against the following risks in its favour: Damage due to theft; damage due to fire, lightning, and explosion.
- 9.3. The amount stipulated in the hire agreement for mandatory insurance needs to be paid in addition to the total hire charge.
- 9.4. With the exception of the motor vehicles that are registered for road use, the hired objects are NOT covered by liability insurance. If the Hirer wants to take out the said insurance then they may do so themselves.

10. Final provisions / data protection / GPS

- 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.
- 10.2. Amendments to an agreement must be made in writing, as must any amendment to this written form requirement. A signed document sent by fax 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. Kraemer is the controller in terms of data protection legislation. The personal data of the Hirer 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.
- 10.5. 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.
- 10.6. The Hirer 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.
- 10.7. Kraemer points out that the hired objects are equipped with a GPS-supported anti-theft device.