

# General Terms and Conditions of Business of KRAMER GmbH for the Customer Service Division, Version as at 1 February 2019

## 1 Scope

1.1 The General Terms and Conditions of Business apply to the services/deliveries commissioned and/or performed by KRAMER GmbH in the Customer Service Division (hereinafter also referred to as KRAMER GmbH), for example repairs, installations, deliveries of new or spare parts, maintenance contracts and technical inspections, e.g. in accordance with the requirements of the respective manufacturer or mandatory statutory provisions - hereinafter generally referred to as Service(s). These General Terms and Conditions of Business apply to entrepreneurs within the meaning of Section 14, BGB (German Civil Code), legal entities under public law and special funds under public law (hereinafter referred to as the Customer).

1.2 These General Terms and Conditions of Business apply exclusively in dealings between KRAMER GmbH and the Customer. KRAMER GmbH shall not acknowledge the Customer's terms and conditions that vary from, conflict with or supplement our General Terms and Conditions of Business (e.g. general terms and conditions of business) unless KRAMER GmbH has granted its written consent. The rendering of services on the part of KRAMER GmbH in the knowledge of the Customer's varying or conflicting terms and conditions shall not constitute consent. Contractual agreements entered into in individual cases that vary from these General Terms and Conditions of Business (including supplements, amendments and subsidiary agreements) shall only take precedence over these General Terms and Conditions of Business if they have been agreed in writing.

1.3 The Customer acknowledges that these General Terms and Conditions of Business have binding force for all orders placed by KRAMER GmbH in the Customer Service Division or services rendered by KRAMER GmbH. These General Terms and Conditions of Business apply in addition to the General Terms and Conditions of Business and Delivery (General Terms and Conditions of Business) of KRAMER GmbH. In the event of varying provisions, the General Terms and Conditions of Business of the Customer Service Division shall take precedence.

## 2 Services, bringing about a contract

2.1 KRAMER GmbH shall render the service agreed with the Customer in accordance with the latest technological developments acknowledged at the time of entering into the contract. The Customer shall bear the risk of utilisation.

2.2 In the case of maintenance services, the services rendered by KRAMER GmbH include, inter alia, functional checks with a review of the operating data made available by the Customer, maintenance and any necessary repair and conversion work, including spare parts installation.

2.3 KRAMER GmbH may render the service agreed with the Customer in one delivery or in partial deliveries. KRAMER GmbH shall only be required to provide contractual success if this has been agreed in writing in an individual case.

2.4 KRAMER GmbH is entitled to render the service agreed with the Customer via its own employees or third parties commissioned by KRAMER GmbH (hereinafter also referred to as employees).

2.5 Orders that the Customer places with KRAMER GmbH shall be deemed accepted if they are confirmed in writing by KRAMER GmbH. Solely KRAMER GmbH's written order confirmation shall be authoritative in respect of the contract scope. If KRAMER GmbH acts on behalf of the Customer in accordance with an order placed by the Customer without written order confirmation, this shall be deemed acceptance by KRAMER GmbH of the contractual offer. If the Customer accepts a contractual offer from KRAMER GmbH, a contractual relationship shall similarly be established between KRAMER GmbH and the Customer with the scope set out in the offer.

## 3 Calculating the service, payment

3.1 KRAMER GmbH may agree on a lump sum price with the Customer for the ordered service. In such a case, the contract / order confirmation shall contain the explicit "Flat rate price" note.

3.2 KRAMER GmbH shall calculate the cost of the services for which a price list has been drawn up in accordance with the respective valid price list for the service ordered by the Customer. In such case, it shall be sufficient for KRAMER GmbH to refer to invoicing in line with the price list.

3.3 If a lump sum price has not been agreed with the Customer for the commissioned service and amounts are not settled in accordance with a valid price list (sub-sections 3.1, 3.2), remuneration shall be based on the hours worked (actual time spent) and the material costs incurred. The Customer shall confirm the working hours of employees commissioned by KRAMER GmbH upon presentation of the time sheets. If the Customer fails to provide confirmation or state a reason, the time sheet shall be deemed accepted two working days following handover unless the Customer objects in writing within four working days after handover, and the stating of reasons.

3.4 KRAMER GmbH shall state amounts in euros plus the statutory value added tax applicable in Germany.

3.5 KRAMER GmbH is entitled to demand instalment payments or reasonable advance payments from the Customer for services commissioned by the Customer and for services rendered or to be rendered by KRAMER GmbH.

3.6 If the service ordered by the Customer cannot be performed for reasons for which KRAMER GmbH is not responsible, the Customer shall reimburse the expenses incurred by KRAMER GmbH (in particular for labour time, material and spare parts). This also applies in the event that a malfunction specified by the Customer does not occur during the commissioned rendering of services by KRAMER GmbH or if a period agreed for the rendering of services is not honoured by the Customer or the contract is cancelled during the rendering of services.

3.7 If repairs or maintenance work ordered by the Customer cannot be performed for reasons that are not the responsibility of KRAMER GmbH, the item to be repaired/maintained need only be restored to its original condition by KRAMER GmbH at the express request of the Customer subject to reimbursement of the costs.

3.8 KRAMER GmbH shall issue the invoice for the commissioned service once the work has been performed and forward it to the Customer, irrespective of the provisions of sub-section 3.5. Invoices fall due immediately, at the latest within seven days of invoicing without any deductions, even if they include instalments or advance payments in accordance with sub section 3.5. In the event of default in payment on the part of the Customer, KRAMER GmbH does not undertake to perform or continue pending or additional work.

## 4 Obligations on the part of the Customer to collaborate

4.1 The Customer shall support KRAMER GmbH and the employees, or third parties commissioned by KRAMER GmbH, in rendering the service at its own expense so that the order can be completed quickly. This includes the Customer taking all special precautions and measures required to protect persons and property at the work location, and to comprehensively informing the employees engaged by KRAMER GmbH to render the service.

4.2 The Customer must ensure at its own expense that the conditions necessary for rendering the service are available within the Customer's premises and at the work location, in particular that sufficient electrical energy, heating, lighting and water etc. are available at the work location with suitable connections. This also applies if the rendering of services by KRAMER GmbH requires the provision of work equipment, such as forklifts, work platforms or lifting platforms etc. KRAMER GmbH shall inform the Customer in good time if such equipment is required.

4.3 The Customer must ensure at its own expense that employees, assembly parts, tools, materials and spare parts can be transported unhindered within the company premises to the work location (place at which the service is rendered).

4.4 The Customer is to ensure that KRAMER GmbH can start and perform the agreed service without delay following the arrival of the employees.

4.5 The Customer is to obtain at its own expense all official certificates, permits or authorisations required for the rendering of services by KRAMER GmbH. This also applies to certificates, permits or authorisations that are not official in nature.

## 5 Performance time, passing of risk

5.1 Delivery or performance times are specified in the individual agreements entered into by KRAMER GmbH and the Customer. With regard to compliance with these by the KRAMER GmbH, it is taken for granted that all commercial and technical matters between the contracting parties have been clarified, and that the Customer has honoured all its obligations. Otherwise, the delivery or performance time shall be extended accordingly. This does not apply if KRAMER GmbH is responsible for the delay. The specified delivery/performance times shall not have binding force if an express delivery/performance time has not been agreed in writing between KRAMER GmbH and the Customer.

5.2 KRAMER GmbH's compliance with a delivery or performance time is subject to the reservation that KRAMER GmbH itself is supplied in good time and fault-free. KRAMER GmbH shall inform the Customer immediately of any delays resulting from this.

5.3 If the Customer is responsible for delivery or performance time delays, KRAMER GmbH shall be entitled to charge additional costs incurred, for example for waiting times, provision of personnel and additionally required travelling times.

5.4 The risk of accidental deterioration or loss shall pass to the Customer upon the rendering of the service/delivery. If the rendering of the service / delivery or the acceptance are delayed for reasons that are not the responsibility of KRAMER GmbH, the risk shall pass to the Customer and the warranty shall commence at the same time as the written notification of the rendering of the service / readiness for delivery or notification of the provision / completion or readiness for acceptance of the delivery / service.

## 6 Work services

6.1 In the case of work services, the Customer undertakes to accept them as soon as KRAMER GmbH has notified the Customer that such services have been performed, and the service has been rendered without significant faults. A record of the acceptance shall be drawn up and signed by the Customer and the responsible KRAMER GmbH employee. If the Customer fails to honour its obligation to sign the protocol, the acceptance recorded by the KRAMER GmbH employee shall be deemed accepted by the Customer upon delivery of the acceptance protocol, unless the Customer objects to the acceptance protocol in writing within four working days from delivery of the acceptance protocol, and stated reasons.

6.2 If acceptance is delayed through no fault of KRAMER GmbH, acceptance shall also be deemed to have taken place upon receipt of the notification of readiness for acceptance by the Customer, irrespective of the provisions of sub-section 6.1, unless the Customer objects within four working days of receipt of the notification of readiness for acceptance, and states reasons. KRAMER GmbH's liability for identifiable defects shall lapse upon acceptance unless the Customer has reserved the right to assert a specific defect.

## 7 Material defects, defects in title, liability, warranty

7.1 KRAMER GmbH shall be liable for defects in the deliveries and services by way of exclusion of all of the Customer's other claims, irrespective of the provisions of sub-section 8, such that KRAMER GmbH shall rectify the defects. The Customer grants KRAMER AG the right to carry out subsequent improvement twice. Accordingly, the guarantee obligation on the part of KRAMER GmbH is initially limited to the subsequent improvement within a reasonable period.

7.2 KRAMER GmbH shall not be liable if the Customer or third parties perform modifications, maintenance work or repairs or the like regarding the subject matter of performance without the prior written consent of KRAMER GmbH. This also applies to unsuitable or improper use, incorrect commissioning, incorrect assembly on the part of the Customer or third parties, normal wear-and-tear, incorrect handling, improper maintenance, use of unsuitable operating materials or spare parts.

7.3 The Customer is to notify KRAMER GmbH without delay in writing of any defect found. KRAMER GmbH shall rectify a defect, for which written notification is justified, within a reasonable period of time.

7.4 KRAMER GmbH shall only be liable for damage that does not affect the goods or services in the event of intent, gross negligence, culpable loss of life, physical injury or detrimental effects on health and in the event of defects fraudulently concealed by KRAMER GmbH.

7.5 Claims for subsequent performance, a reduction of the remuneration or rescinding the contract, which are not subject to the period of limitation set out in Section 438(1), No. 2, BGB, or Section 634 a(1), No. 2, BGB, shall fall under the statute of limitations from the statutory start of the limitation period unless KRAMER GmbH has fraudulently concealed the defect.

## 8 Intellectual property, industrial property rights

8.1 Industrial property rights shall remain the property of KRAMER GmbH. KRAMER GmbH shall only grant the Customer a non-exclusive, non-transferable right that is not limited in terms of time to use any industrial property rights such that this is necessary to use the delivery item/services. The same shall apply to samples, cost estimates, drawings, information of a tangible or intangible nature, plans, descriptions, calculations and the like.

8.2 The Customer may only use the offer documents made available to the Customer (e.g. cost estimates, plans, drawings and calculations etc.) to review the specific offer and is to return these to KRAMER GmbH without delay at its own expense if a contractual relationship with KRAMER GmbH is not brought about in relation to the offer.

8.3 Forwarding to third parties the documents, information and the like made available to the Customer by KRAMER GmbH in accordance with sub-sections 8.1 and 8.2 is not permitted without the prior written consent of KRAMER GmbH.

## 9 Reservation of title, right of lien

9.1 KRAMER GmbH retains ownership of the delivery item up until receipt of all payments, including for any subsidiary services that the Customer is required to render, resulting from the contract taken as a basis.

9.2 The Customer may not sell, pledge or assign the delivery item as security as long as the reservation of title in accordance with sub-section 9.1 applies. The Customer shall inform KRAMER GmbH without delay of any seizure, confiscation or other disposal by third parties as long as the reservation of title in accordance with sub-section 9.1 applies.

9.3 If the Customer acts in breach of contract, in particular in the event of default in payment, KRAMER GmbH shall be entitled to take back the delivery item after issuing a reminder and the Customer undertakes to surrender it. As a result of the reservation of title in accordance with sub-section 9.1, KRAMER GmbH may only demand the return of the delivery item if it has withdrawn from the contract KRAMER GmbH · Stöckmatten 2-10 · D-79224 Umkirch/Freiburg · HRB no.1045 · Freiburg i. Br. Local Court ("Amtsgericht") Managing Directors: Matthias Weckesser, Alexander Butsch

9.4 An application for the institution of insolvency proceedings regarding the Customer's assets shall entitle the KRAMER GmbH to withdraw from the contract and request the immediate return of the delivery item.

9.5 KRAMER GmbH is entitled to a lien on the Customer's repair item that has come into its possession based on the contract due to its claim resulting from a repair contract. The right of lien may also be asserted for claims resulting from work performed at an earlier date, deliveries of spare parts or other services, insofar as these are connected with the item to be repaired.

## 10 Force majeure

Each contracting party shall be released from its obligation to perform if and to the extent that it is unable to honour a contractual obligation for reasons of force majeure. Force majeure shall be deemed any event unrelated to the business operations of the contracting party and having an effect of unavoidable force from outside (e.g. war, civil war, embargoes under commercial law, import or export bans, political unrest, natural disasters and natural events, including if these affect intended transport routes). If a party cites force majeure, the other contracting party is to be notified of this in writing without delay, at the latest within seven days of becoming aware of it.

## 11 Retention right

11.1 The Customer shall only be entitled to withhold payments to KRAMER GmbH resulting from the contractual relationship such that its counterclaims are undisputed or have become res judicata.

11.2 The Customer shall only be entitled to offset payments to KRAMER GmbH, resulting from the contractual relationship, against counterclaims resulting from other legal relationships such that they are undisputed or have become res judicata.

11.3 The Customer may only assign claims against KRAMER GmbH with the written consent of KRAMER GmbH.

## 12 Applicable law, place of jurisdiction

12.1 The contractual relationship in place between the Customer and KRAMER GmbH and all legal relations resulting from it are subject exclusively to the law of the Federal Republic of Germany by way of exclusion of the conflict of laws provisions of international private law and the United Nations Sales Law (CISG).

12.2 The exclusive place of jurisdiction for all claims and disputes resulting from the contractual relationship between the Customer and KRAMER GmbH shall be the court responsible for the registered office of KRAMER GmbH, insofar as the requirements of Section 38, ZPO (German Code of Civil Procedure) are met. KRAMER GmbH may bring legal action against the Customer at its general place of jurisdiction.

## 13 Safeguarding clause

In the event that individual provisions of these General Terms and Conditions of Business are invalid or unenforceable, or become invalid or unenforceable after the contract is entered into, this shall not affect the validity of the other provisions. The invalid or unenforceable provision is to be replaced by a valid and enforceable provision that achieves the effect of the economic objective intended by the contracting parties.