

# General Terms and Conditions of Kinshofer GmbH

1. General Terms
- 1.1 Our quotations, services and consignments take place exclusively in accordance with the following terms. We are not bound by the general terms and conditions of the customer and buyer; we hereby reject them explicitly.
2. Quotations and Conclusion of Contract
- 2.1 Our quotations are subject to change and non-binding. Declarations of acceptance require our written confirmation to be considered valid. The same is true for any amendments, changes or sub-agreements.
- 2.2 Drawings, outlines and other annexes to quotations containing measurements, technical information and further designations are to be considered as approximations, and likewise non-binding.
- 2.3 All quotation documents are subject to IPR and copyright. They must not be made accessible to a third party without our explicit permission.
- 2.4 The same applies to sample devices that were made on behalf of the customer, up to a point in time where we expressly issue an IPR release.
- 2.5 Kinshofer is free to invoice its services by post, or electronically via email.
3. Prices
- 3.1 Our prices are in Euros ex works, without packing, including free loading onto the means of transportation.
- 3.2 VAT is also to be added.
- 3.3 Packing materials and cost of packing are at the expense of the customer. Packaging will be free of charge in certain circumstances with prior agreement.
- 3.4 Supplements and recalculations of the agreed remuneration are permissible if extraordinary circumstances, such as wage increases, strikes, lockouts, increases in public charges, taxes, customs duties, etc., make this necessary.
4. Terms of Payment
- 4.1 Payment – both total and partial payments – is, unless otherwise agreed, to be made within 30 days of receipt of a delivery notification and dispatch provision, or 30 days subsequent to the date of invoicing, excluding the set-off in cash minus discount deduction. Offsetting is only possible with legally valid claims.
- 4.2 We accept bills of exchange and checks only on the basis of explicit agreement with a value as of the date of the day on which we can obtain the counter-value, on the condition that we are able to discount them. If this is not the case, we are entitled to demand immediate cash payment. Any exchange of bills then occurs after cash payment.
- 4.3 Stamp duty, discount charges, collection charges and interest are due immediately.
- 4.4 For any delay of payment, the indebted amount is interest-bearing with an interest rate of a minimum of 4%, or the respective discount rate of the Federal Bank.
- 4.5 If, after the conclusion of the contract, circumstances become known which are likely to reduce the creditworthiness of the buyer, all our claims shall become due for immediate payment, even without regard to the duration of accepted bills of exchange. In such a case, we are able to render open shipments against prepayment. Furthermore, we are able to prohibit any resale of already delivered goods, to take back control of already delivered – but as yet unpaid for – goods, and to make the best possible use of the goods after the expiry of a further reasonable payment period.
5. Time of Delivery
- 5.1 The delivery time is determined by us. It begins as of the time the contract was accepted (order confirmation).
- 5.2 The delivery period is met if the delivery has left our factory prior to its expiration. This also applies when the timely notification of readiness for shipment is met, and likewise if the timely dispatch is impossible through no fault on our part.
- 5.3 The observance of the delivery period presupposes the fulfillment of all customer-side obligations.
- 5.4 In case of any circumstances at our factory or with subcontractors that disturb, inhibit or disable the production process, we are entitled to demand a reasonable extension or commencement of a new delivery period.
- 5.5 Events of force majeure release us from adherence to delivery deadlines without restriction of the right to subsequent delivery within a reasonable time after elimination or cessation of the relevant force majeure.
- 5.6 Insofar as the delivery period is extended in accordance with the above provisions, the buyer is unable to derive any rights to claims against the delivery delay.
6. Transfer of Risk
- 6.1 The risk passes to the buyer upon handover to the buyer, collector or contractor, at the latest upon exiting the factory. This also applies if partial deliveries are made, and likewise if additional services, such as delivery and installation, have been contractually assumed by us.
- 6.2 Transport insurance is only taken out by us at the express request of the customer. The costs of such insurance are always borne by the customer. Delivered items are, even with minor defects, to be accepted without prejudice to any warranty claims.
7. Retention of Ownership
- 7.1 All goods and items delivered by us remain our property until all claims arising from the business relationship have been settled in full. This also applies to claims relating to repair services and spare parts deliveries.
- 7.2 As long as our retention of ownership exists, the resale or the transfer of rights based on other legal grounds, even if modified, is only permitted with the proviso that all claims arising from the resale or transfer to third parties in the amount of our claims shall be assigned to us, and without this a special declaration of assignment is required for individual cases.
- 7.3 Handling and processing of items delivered by us is carried out under exclusion of the acquisition of property according to § 950 of the German Civil Code, without obligation to us. The processed goods serve as security for our outstanding claims. In the event of processing or connection with other goods, we are entitled to co-ownership of the new object in the ratio of the value of the reserved goods to the processed goods as of the time of processing.
- 7.4 In the event that items delivered by us that have not yet been paid for in full are sold by the customer, the assignment to us of a purchase price claim to the amount of the price invoiced by us, or to the amount of the value of the processed goods shall be deemed as agreed upon.
- 7.5 The customer must notify us immediately of any sale, pawning or other impairment to the value of the goods delivered by us. Any costs resulting from a pawn release shall be borne by the customer.
- 7.6 The buyer is obliged – for the duration that any claims are open – to provide all information in a timely manner and without restriction, and also all documents necessary to secure our claims, including any surrogate claims.
8. Warranty for All Kinshofer Products, with the Exception of those Involved in Recycling and Demolition (see 9.f.)
- 8.1 For material and processing errors, we are liable to the exclusion of further claims and rights of the buyer, regardless of the legal grounds, as of the date of departure of the goods from our factory. The instruction and delivery protocol must be completed by the dealer and sent to Kinshofer. If Kinshofer has not been notified of a commencement date, this is to be taken as the delivery date upon which the goods leave the Kinshofer factory.
- 8.2 Warranty Period: Kinshofer grants a warranty on all of its products as being free from defects in materials and workmanship for a period of 24 months from the date of commissioning to the first user, but not longer than 30 months from the date of purchase by the contractor and not exceeding 4000 operating hours.  
  
Genuine Kinshofer replacement parts are warranted to be free from defects with regard to materials and workmanship for a period of three (3) months from date of purchase. Factory overhauled products are warranted to be free from defects in materials and workmanship for a period of six (6) months from the date of purchase.  
  
Parts that have been repaired or replaced by Kinshofer or its contracting partner pursuant to the above are warranted under conditions of normal and proper use, storage, service and maintenance against defects in workmanship and material for a period of three (3) months from date of repair or adjustment or the expiration of the product warranty, whichever is longer.
- 8.3 Warranty Extension: Kinshofer may offer an extension of the warranty for a certain additional payment. Please contact Kinshofer for further information. If the buyer offers its customer a warranty extension, this additional period and this guarantee is the sole obligation of the contracting party, and the costs involved are to be borne by the contracting party.
- 8.4 Notification of defects must be made immediately and in written form within a period of two weeks following receipt of the delivery at the notified destination. The two-week period also applies to defects that cannot be identified despite careful checking on delivery. However, in such instances the period begins with the date of discovery of the defect.
- 8.5 The assertion of a warranty claim assumes that the buyer has fulfilled their obligations, terms and conditions, and has correctly followed all operating instructions. There is no liability assumed for faults and damages that occur because of improper handling, negligence, or excessive use. Nor is liability assumed when faults occur as a result of processing and work upon the items undertaken once they have left our factory.
- 8.6 With assertion of a justified complaint within the timeframe we reserve the right to choose whether to correct mistakes and faults, supply the buyer with a replacement free of charge, or to issue a credit note corresponding to the calculated value or current value.
- 8.7 For external products or converted parts, we only assume liability to the extent of the warranty claims the subcontractor is obliged to fulfill.
- 8.8 After a complaint has been made, Kinshofer is to be granted unrestricted access to the defective item, both for the purpose of checking the veracity of the complaint and for the purpose of correcting the defect. Insofar as a defect can only be remedied within our factory, the defective item must be made available to us. If the complaint relates to a deliverable part, it must be sent to us upon request.
- 8.9 If the buyer requests the remedying of a defect that is not recognized as such by us within the scope of the warranty, we are entitled to undertake any rectification only upon the prior depositing of an amount equivalent to that of the expected costs.
- 8.10 Exclusion: The warranty does not apply to wearing parts. In addition, neither Kinshofer GmbH nor its contractual partners are obliged to carry out repairs or replacements that become necessary due to normal wear and tear or that are caused in whole or in part by destruction, fault or negligence, or which result from improper installation, storage, use, service or repair of the product, or use of the product in a manner for which it has not been developed, or as a result of external influence on the product.  
  
In addition to the above, the warranty does not cover loss of income due to downtime, damage due to misuse or abuse, negligence, accidents, alterations, routine maintenance, or normal wear and tear.  
  
Any parts that are found to be missing after the initial commissioning date are not covered by the warranty.  
  
The tightening of loose fittings or hoses is to be considered a maintenance issue. Therefore, any hydraulic leak or similar resulting from a loose fitting is not covered by the warranty.
- 8.11 Warranty Procedures: If a product is alleged to be defective in material or workmanship within the warranty period, the buyer must promptly contact Kinshofer or one of their contracting partners to determine whether the buyer should either (a) send the product to a service location or (b) make the product available at the buyer's location (or another location) for examination by Kinshofer or its contracting partner. The cost and risk of transporting the allegedly defective product to Kinshofer or its contracting partner is to be borne by the buyer, and the cost of transporting the rectified product back to the buyer will be borne by Kinshofer or the contracting partner, FCA the location from which Kinshofer or its contracting partner returns the rectified product to the buyer. (However, should the allegedly defective product that the buyer returns to Kinshofer or its contracting partner not in fact be defective, the buyer also bears the costs incurred for the return transport of the product to the buyer.)  
If an examination by Kinshofer or its contracting partner reveals that the product is defective in regard to its processing or material, the product will be repaired or replaced (or credited) free of charge, according to the scope and limitations of the warranty. If such an examination reveals that the product is not defective in workmanship or materials (for example, if the product has been altered for improper use and service, or modified in terms of parts), such repair or replacement, if any, will be carried out by Kinshofer or their contract partner as per the normal service fees charged to the buyer, plus transport costs.
9. Warranty for Products Intended for Demolition and Recycling
- 9.1 Kinshofer GmbH develops and produces equipment of the highest quality standards and guarantees the warranty only to the original buyer or recipient. This warranty is not transferable. Such equipment is made for use on products within the demolition and recycling industry. This equipment is usually mounted on excavators or backhoes. The equipment is delivered with CE certification according to the conditions of Orgalime S 2000.
- 9.2 Warranty Period: Kinshofer grants a warranty on all of its products as being free from defects in materials and workmanship for a period of 24 months from the date of commissioning to the first user, but not longer than 30 months from the date of purchase by the contractor and not exceeding 4000 operating hours.  
  
Parts that have been repaired or replaced by Kinshofer or its contracting partner pursuant to the above are warranted under conditions of normal and proper use, storage, service and maintenance against defects in workmanship and material for a period of three (3) months from date of repair or adjustment or the expiration of the product warranty, whichever is longer.
- 9.3 Responsibilities of Kinshofer  
In the case of design, material or manufacturing defects, Kinshofer's liability during the warranty period is limited to replacement of the defective component. If expertise is needed to replace the faulty component, Kinshofer will remove the old component and install the new one. If no expert knowledge is required, the responsibility of Kinshofer ends with the delivery of the repaired or new component to the buyer.  
Services provided by Kinshofer during normal business hours and via a Kinshofer dealer or other source approved by Kinshofer:  
- Contact Kinshofer before the repair, in order to determine the place and personnel of repair for the tool.  
- Kinshofer carries the cost of the faulty parts. In the event that an initial repair has been performed incorrectly by the customer, the cost of a second repair resulting from the first one will not be borne by Kinshofer.  
- Kinshofer is to deliver, at its own choice, either new or repaired parts, or repaired parts or assembled components approved by Kinshofer.
- 9.4 Responsibilities of the Dealer / End User  
During the standard warranty period, the dealer / end user is responsible for:  
- Provision of proof of delivery date to the first user. If necessary, Kinshofer can also request further information, such as invoices and transport documents.  
- Labour costs  
- Travel and transport costs  
- Bonus and overtime costs  
- Excessive shipping costs  
- Local taxes, if applicable  
- Reporting, within 48 hours, of a defect that falls under the scope of the warranty, immediate delivery of the product for repair.  
- Submission of claims within one month  
- Undertaking of necessary maintenance work (including the use of correct oils and lubricants), replacement of parts due to normal wear and tear  
- Immediate notification of Kinshofer if a damaged component can cause consequential damage  
- The end user or dealer is to keep parts in stock for at least six months. If Kinshofer does not demand a part's return, the dealer is to dispose of it
- 9.5 Return of Parts  
The user is responsible for the return of parts during and after the warranty period. Kinshofer can ask for a return of a part for inspection purposes:  
- Kinshofer informs the dealer where to send the part.  
- The part must be packed properly, so that it cannot be damaged during transport. Example: use of blind flanges prevent splashing of hydraulic oil. Costs resulting from inadequate packaging will be charged to the sender.  
- Attach a copy of the warranty claim, and write the warranty number on the part.
- 9.6 Limitation  
Kinshofer is not responsible for:  
- Damages resulting from an improper use or installation from the point of view of Kinshofer.  
- Damages resulting from use of accessories or spare parts not sold or approved by Kinshofer.  
- Damages resulting from misuse, improper use, inappropriate use, neglect, or improper repair.  
- Damages resulting from a delay in the return or making available of the product by the user after notification of a potential problem.  
- Damages resulting from unauthorized repairs or adaptations.  
- Repairs of auxiliary machines not manufactured by Kinshofer (excavator etc.). The warranty for such machines is the responsibility of the respective manufacturer.  
- Normal wear or decline in performance quality.  
- Damages resulting from problems with dirt, water or particles in the hydraulic system or resulting from inadequate auxiliary machines (excavator, etc.). The equipment is to be used and maintained according to the instructions contained in the Kinshofer Operating Manual.
- 9.7 For products used in the Middle East, Africa, and areas under the jurisdiction of a Kinshofer Branch or a Kinshofer Limited dealership, there may be some limitations on towing and/or travel expenses, depending on geographic location and distance to the nearest repair shop. Please ask your closest authorized repair shop for the applicability of these limitations.
- 9.8 The warranty covers all main components of the products. Warranty claims must be made to a Kinshofer dealership or another place authorized by Kinshofer. For further information about submission of warranty claims or about Kinshofer as issuer of this warranty, please contact Kinshofer at:  
Kinshofer GmbH, Hauptstrasse 76, 83666 Waakirchen, Germany, Tel.: +49 (0) 8021 88990, Fax: +49 (0) 8021 8899 37
- 9.9 THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE ARE HEREBY DISCLAIMED.
10. Place of Fulfillment and Jurisdiction
- 10.1 The place of fulfillment for the services to be provided by both parties is Miesbach, Germany.
- 10.2 The place of jurisdiction for all contractual, direct or indirect disputes, and also for bill of exchange or check processes, as well as proceedings for the issue of an arrest or an injunction is Miesbach (AG Miesbach or Munich II District Court), unless another exclusive place of jurisdiction exists.
11. Legality of the Terms and Conditions and the Contract: Should a provision of these General Terms and Conditions or this Contract be or become legally invalid, this shall not affect the validity of the remaining provisions of the General Terms and Conditions or the contract.  
  
Severability clause: The contracting parties undertake to replace any ineffective provision with an effective provision that comes as close as possible to that which has been deemed legally invalid.