

General terms and conditions of the company Kinshofer GmbH

1. General terms

1.1 Our quotations, services and consignments take place exclusively due to the following terms. The general terms and conditions of the customer and purchaser do not oblige us; we object them explicitly.

2. Quotation and conclusion of contract

2.1 Our quotations are a subject to change and noncommittal, declarations of acceptance require our written confirmation to be valid. The same is true for amendments, changes or sub-agreements.

2.2 Drawings, outlines and other attachments to quotations with their measures, technical information and further designations are decisive only approximately and likewise noncommittal.

2.3 All documents of quotation are subject to our property right and copyright. They must not be accessible to a third party without our explicit approval.

2.4 The same is true for prototypes that have been manufactured by order of the purchaser, as long as there has not explicitly been a floating of ownership.

2.5 The consignee is free to invoice the benefits via letter post or electronically via e-mail.

3. Prices

3.1 Our prices are valid in Euro ex works, without packing, including free shipment to means of transportation.

3.2 The value added tax will come into inclusion additionally.

3.3 Packing materials and cost of packing are for the account of the purchaser. The packing will only be free of charge after certain arrangements.

3.4 Additional charges and subsequent billing on the arranged considerations are permitted in case of extraordinary circumstances such as pay increases, strikes, lockout, increase of public burdens, taxes, customs, etc.

4. Terms of payment

4.1 Payment – total payment as well as part payment – has to be done within 30 days from display of our shipment and delivery allocation and from date of invoice respectively to the exclusion of charging in cash without cash discount deduction, if nothing special has been agreed over with. Charging is only possible with legally titled claims.

4.2 We only accept notes and checks for payment after explicit agreement with validation of the day the counter value is available to us, and under the premise, that a discounting is possible for us. If that is not the case, we are entitled to demand cash down payment immediately. Acceptance return will take place after the cash down payment.

4.3 Stamp duty, discount charges, collection charges and interest are due instantly.

4.4 From delay of payment the indebted amount is interest-bearing with the interest of minimum 4% or the respective discount rate of the federal bank.

4.5 If after the conclusion of a contract there emerge circumstances, that are able to lower the creditworthiness of the purchaser, all our payment requests will be due for instant payment, regardless of the duration of discounted drafts. In that case we are able to render open shipments only against prepayment. Furthermore we are able to bar resale of already delivered goods, to take back control of already delivered but not yet paid goods and to make the best possible use of the goods after an adequate credit period.

5. Time of delivery

5.1 The time of delivery is appointed exclusively by us. It begins with the acceptance (confirmation of order) and the thereby accomplished contract.

5.2 The time of delivery is kept, when the shipment has left our factory to the expiration of the delivery time. It is also kept with the punctual advice of readiness for shipment, even if the shipment is not possible without our fault.

5.3 The compliance of the delivery time assumes the acquittal of the purchaser.

5.4 In case of any circumstances at our work or with subcontractors, that disturb, block or paralyze the production process, we are able to extend the delivery time adequately or appoint a completely new time of delivery.

5.5 Circumstances by acts of nature beyond our control excuse us from compliance of times of delivery without qualification of the right of subsequent delivery within an adequate time after elimination of the service and delivery disturbance.

5.6 If the time of delivery is extended due to preceding terms, the purchaser cannot derive any rights against us due to delivery delay.

6. Passing of risk

6.1 With the delivery to the collector or assigned freight carrier, at the latest though with leaving the factory, the risk passes to the purchaser. This is also effective, when subsequent deliveries are made and further services from our side, like delivery and installation, have been taken over.

6.2 We only conclude a "goods in transit" insurance by explicit request. The purchaser has to take over the costs for such an arrangement in any case. Delivered goods, even if they show marginal defects, have to be accepted save any warranty claim.

7. Secret lien

7.1 All from us delivered items and goods stay our property until all debts of the business relation are settled. This also applies to debts from repairing services and spare part deliveries.

7.2 As long as our secret lien exists, resale or cession of right to use based on other legal grounds, even if modified, are only allowed, if all claims from resale or cession of right to use to third parties amounting to our demands is given to us, without special act of transfer in particular cases.

7.3 Conditioning and handling of goods delivered from us occur to the exclusion of acquisition of property according to § 950 German Civil Code, without obligation. The handled items form an assurance for our open claims. When handling or connecting the goods with other items we are entitled to co-ownership of the new item in relation of the value of the reserved goods to the handled items while machining.

7.4 In case the purchaser resells delivered but not yet paid items, the cession of the purchase price claim amounting to our charged prices, respectively amounting to the value of the handled item count as agreed.

7.5 The purchaser has to inform us instantly about resale, pawn or other curtailing of the delivered goods. The purchaser has to bear the expenses for the floating of pawn.

7.6 The purchaser is obliged – as long as there are open debts – to inform us non-restrictively and provide us with the documents that are necessary for the assurance of our claims including surrogate demands.

8. Warranty

8.1 For faults in material or process of the items we guarantee to the exclusion of further demands and rights of the purchaser, no matter on the base of which legal grounds from the day of leaving work after the following schema:
- for attachments 12 months
- for rotators 12 months
- for repaired parts 6 months

8.2 Complaints are to be levied instantly and in written form within a period of two weeks after receipt of the goods at the destination. The two week period is also valid for faults that occur after the receipt despite accurate check at time of delivery. In that case the period starts from the day of detection of the fault.

8.3 The assertion of warranty claims assumes that the purchaser has fulfilled his obligations, terms and conditions. There is no liability assumed for faults and damages that occur because of improper handling or exceeding exposure. It is neither assumed, when faults occur because of conditioning and handling of the items outside our factory.

8.4 With assertion of a justified complaint within the time frame we are either allowed to correct mistakes and faults, supply the purchaser with a replacement exempt from charges or credit the calculating or current value.

8.5 For external products or converted parts we only assume liability to the extent of the warranty claims the subcontractor has to fulfill.

8.6 After a happened complaint there has to be unrestricted access for us to the damaged item in terms of proving the complaint as well as clearing it. If a damage can only be cleared in our factory, the item has to be provided to us. If the complaint applies to a conveyable part, the item is to be delivered to us by request.

8.7 If the purchaser demands for the clearance of a fault that is not guaranteed a warranty by us, we are allowed to depend the repair on the earlier estimated costs.

9. Warranty for products 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 receptor. This warranty is not transferable. The equipment is made for the use on products of the demolition and recycling industry. This equipment is usually mounted on an excavator. The equipment is delivered with CE-certificate according to the conditions of Orgalime S 2000.

9.2 Duration of warranty

- Standard duration of warranty for new tools: 12 months from date of delivery to the first user. The dealer has to fill in the instruction and handover protocol and send it to Kinshofer. If Kinshofer was not informed about the starting date, the date of delivery ex works Kinshofer is valid.
- Standard duration of warranty for new parts: Kinshofer's warranty for spare parts is valid for three months starting from installation by the first user.
- Standard duration of warranty for repaired tools: Kinshofer's warranty for repaired tools is valid for six months starting from installation by the first user.

9.3 Responsibilities of Kinshofer

In the case of mistakes in the blue print, material or manufacture the responsibility of Kinshofer is limited to the replacement of the faulty component. If expertise is necessary in order to exchange the faulty components, Kinshofer will remove the old component and install the new one. If there is no expertise necessary, the responsibility of Kinshofer ends with the delivery of the repaired or new component to the buyer. Services of Kinshofer during normal working hours and via a Kinshofer-dealer or another 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 case a first repair has not been done correctly, Kinshofer will not carry the cost of a second repair resulting from the first one.
- Kinshofer delivers either new or repaired parts or those repaired parts or mounted components approved by Kinshofer, depending on Kinshofer's choice.

9.4 Responsibilities of dealer / end user

During the standard duration of warranty the dealer / end user is responsible for:
- Delivery of an evidence of the date of delivery to the first user. If necessary Kinshofer can also ask for further information like invoices and transport documents.
- labour costs
- travel and transport costs
- costs of bonus or overtime hours
- forwarding charges that are more expensive than the usual
- local fees where applicable
- report within 48 hours of a defect coming under warranty, immediate allocation of the product for repair.
- claims have to be filed within one month
- execution of the necessary maintenance works (including using the correct oils and greases), exchange of parts because of normal wear.
- in case a damaged component causes secondary damages, Kinshofer has to be informed immediately
- the user or dealer keeps the parts in stock for at least six months. If Kinshofer does not reclaim the part, the dealer has to dispose it.

9.5 Return of parts

The user is responsible for the return of the parts during and after the duration of warranty. Kinshofer can ask for a return of the part for testing purposes:
- Kinshofer informs the dealer where to send the parts to.
- the part has to be packed fairly that it cannot be damaged during transport. Example: use blind flanges in order to avoid an extrusion of hydraulic oil. Costs resulting from inadequate packing have to be paid by the dispatcher.
- 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 additives or spare parts not sold or approved by Kinshofer.
- damages resulting from misuse, improper use, inappropriate use, disregard or improper repair.
- damages resulting from a delay of the allocation of the product by the user after telling him 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 ensured by the respective manufacturer.
- normal wear or quality loss.
- damages resulting from problems with pollution, 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 operation manual.

For products used in the areas of the Middle East, Africa and areas administrated by a Kinshofer branch or a Kinshofer limited dealer there can be certain limitations concerning towing and/or travel costs, depending on the geographic location and distance to the next repair shop. Please ask your closest authorized repair shop for the applicability of these limitations.

9.7 The warranty covers all main components of the products. Warranty claims have to be addressed to an official location of a Kinshofer dealer or another source authorized by Kinshofer. For further information about the address for warranty claims or about Kinshofer as issuer of that warranty, please contact Kinshofer at:
Kinshofer GmbH, Hauptstrasse 76, 83666 Waakirchen, Germany,
Tel.: +49 (0) 8021 8899 0, Fax: +49 (0) 8021 8899 37

10. Place of fulfillment and jurisdiction

10.1 The place of fulfillment for the performances of both parties is Miesbach.

10.2 Jurisdiction for all contractual, direct or indirect differences, also for cash or check processes and actions because of an order of arrest or an interim injunction is Miesbach (Local Court Miesbach respectively District Court Munich 11), as long as there is no other exclusive jurisdiction.

11. Obligation of general terms and conditions and of contract

In case a clause of these terms and conditions is or will be legally ineffective, the effectiveness of the remaining clauses of this contract will not be touched.