

GENERAL TERMS AND CONDITIONS CORPORATE SECTOR OF BOVAG AUTOMOBILE COMPANIES PURCHASE/REPAIRS & MAINTENANCE



GENERAL

These General Terms and Conditions apply with effect from 01 October 2017. They apply to agreements relating to the purchase, repairs and maintenance of cars, parts or accessories between members of BOVAG Automobile Companies and buyers/clients who act for purposes falling within their business of professional activities.

Article 1 - Definitions

In these General Terms and Conditions, the following terms are defined as stated below:

- the **car**: a passenger car or a van with a total maximum weight of 3,500 kilos, including carrying capacity;
- the **car to be purchased**: the car that will be sold to the seller by the consumer as part of the agreement, also referred to as the trade-in car;
- the **agreement**: the agreement of purchase and sale of a new or a used car, parts or accessories;
- the **seller**: the person who sells a new or a used car, parts or accessories to a buyer;
- the **buyer**: the person who buys a new or a used car, parts or accessories for purposes that fall within his business or professional activities;
- the **instruction**: the agreement concluded with the client to carry out work such as assembly, disassembly, repairs or maintenance, voluntary or statutory inspections and loss assessments;
- the **client**: the person who, for purposes that fall within his business or professional activities, instructs the mechanic to carry out work;
- the **mechanic**: the person who executes or delegates an instruction with regard to a car, parts or accessories;
- **in writing**: written or electronically.

Article 2 - General

1. Deviations are valid only when they have been laid down in writing by both parties. Deviations also include supplements to or extensions of these general terms and conditions and also the cancellation of a (purchase) agreement.
2. The seller/mechanic is entitled to change these general terms and conditions.
3. Only these general terms and conditions apply to all offers and agreements of the seller/mechanic, regardless of any (earlier) reference by the buyer/client to his own or other general terms and conditions. We explicitly reject any general terms and conditions declared applicable by the buyer/client.
4. In the event that one or more provisions of these general terms and conditions are null and void or were nullified, the other provisions will remain in force.

Article 3 - Formation of the agreement/instruction

1. All offers made by the seller/mechanic about prices, the duration of repairs, models and versions, among other things, are without obligation. It does not matter who makes those offers, or how or where those offers are made. Each offer is made on the basis of the prices and specifications that apply at that time. Descriptions (such as images and drawings) are as accurate as possible but they do not bind the seller/mechanic. Minor deviations are allowed. In the case of an error in model change, the seller, without the buyer knowing about it, can make the technically required changes to cars sold by him, to their gear and/or parts or accessories.
2. If a subordinate of the seller/mechanic has no power of attorney, any verbal promises made by him are binding only after they have been confirmed in writing by the seller/mechanic.
3. Agreements/instructions are formed the moment the seller/mechanic has accepted an order in writing or otherwise when the seller/mechanic has started to perform the agreement/instruction.
4. If the seller/mechanic has not documented the agreement or the instruction in writing, the written confirmation thereof, the delivery note or the invoice serves as proof. The buyer/client can provide proof to the contrary of the existence or contents of the agreement or the instruction.
5. All agreements/instructions and any changes thereto, are concluded under the suspensive condition of the approval from the management board. If the management board of the seller/mechanic does not state that the (change to the) order is not accepted within two working days of the confirmation, this order is deemed to have been concluded.

Article 4 - Prices

1. All prices are exclusive of turnover tax (and other governmental levies) and exclusive of the costs for transport, insurance, assembly work, servicing and inspections and other preparation fees. Other agreements may be made in writing.
2. Things may change after the agreement or the instruction is agreed on, as a result of which the seller/mechanic will increase the price. This concerns circumstances such as a change to a general price level (such as taxes, import duties or excise duties) or changes in exchange rates. It may also concern increased manufacturing prices/import prices or increased costs of wages, social insurance contributions or other conditions of employment.
3. Workshop rates are not incorporated in the quoted price of parts, accessories or materials. Neither have these rates been incorporated in the listed costs of third parties. Other agreements may be made in writing.
4. A price change does not constitute a reason to dissolve the agreement or the instruction.
5. The prices quoted assume delivery to the business address of the seller/mechanic. When the buyer/client asks for delivery elsewhere, the additional costs thereof are payable by him.

Article 5 - Delivery of the purchased or repaired object

1. The purchased car, part or accessory or the repaired car, part or accessory is delivered to the business address of the seller/mechanic. Other agreements may be made in writing.
2. If the agreement is to ship an object, this is done at the expense and risk of the buyer/client.
3. The buyer has to collect the purchased car, part or accessory within three days of receiving the notification that it is ready for collection.
4. The client has to collect the repaired car, part or accessory within three days of receiving the notification that it is ready for collection.
5. If the terms given in paragraphs 3 and 4 have elapsed without the object having been collected, this object will be at the expense and risk of the buyer/client from that moment onwards. The seller/mechanic may also charge storage costs. These storage costs are the costs that the seller/mechanic would normally charge, if no fixed storage costs are in place, the seller/mechanic will charge a reasonable fee. Other costs incurred such as transport costs, may also be charged.
6. If the (purchase) agreement does not explicitly state otherwise, the risk of the purchased car, part or accessory transfers to the buyer the moment the purchased object leaves the business of the seller.
7. When the seller/mechanic has a car, part or accessory under its management, because it has been presented for repairs, for instance, this car, part or accessory remains at the expense and risk of the buyer/client. This does not apply when this car, part or accessory is damaged or lost due to the intent or gross negligence of the seller/mechanic.

Article 6 - Delivery time agreement, instruction

1. The delivery date is given in the agreement or on the instruction. The seller/mechanic is at all times entitled to deliver early. The parties may agree on a later delivery.
2. If no delivery date is agreed on, the seller/mechanic will notify the buyer/client in writing well in advance when the car, part or accessory is ready for collection by the buyer/client at the business address of the seller/mechanic. If another location has been agreed on, the seller/mechanic will indicate when delivery is made at the agreed location.
3. Delivery times are always presumptive. Late delivery by the seller/mechanic is not a reason for the buyer/client to dissolve the agreement or the instruction. An exception is when the agreement or the instruction is subject to a specific delivery term and this term has been exceeded by more than 60%. After this transgression, the seller/mechanic does need to be declared in default in writing by the buyer/client first. If subsequently, 30 days have passed after the written notice of default reaching the seller/mechanic, the seller/mechanic is in default and the agreement or the instruction can be dissolved.

Article 7 - Cancellation of the (purchase) agreement

1. The buyer can cancel the agreement when the delivery term is exceeded, also when the seller is not in default.
2. The purchased car, part or accessory must be cancelled in writing.
3. The buyer has to reimburse the damage caused by the cancellation if the delivery time is exceeded by up to four weeks. This damage is set at 10% of the total purchase price of the car, part or accessory, unless agreed otherwise when the agreement is concluded.
4. The damage must be paid within five working days of the cancellation. If the buyer has not paid after five working days, the seller can notify the buyer in writing that the buyer has to pay after all. In that case, the buyer can no longer invoke the cancellation.
5. When the delivery time is exceeded by more than four weeks, the buyer can cancel in writing without owing the seller any compensation for damage.

Article 8 - Parts replaced by the mechanic

The replaced parts become the property of the mechanic after the instruction is executed, without the client being reimbursed for them.

Article 9 - Loss assessment

If the mechanic has carried out a loss assessment on the instruction of the client, the costs actually incurred in that respect will be invoiced to the client. The assessment costs will be agreed on by the parties in writing. Failing that, the assessment costs to be reasonably determined will be payable.

Article 10 - Payment

1. Payment must be made in cash or by means of a transfer into the seller's/mechanic's bank account. The agreed price must be paid in full, including the additional costs, and the buyer/client cannot set off or suspend his payment.
2. Payment must be made when the car, part or accessory is delivered or when the work is completed.
3. It may be agreed in writing that payment does not have to be made immediately.
4. In the case of instructions and the purchase of a used car, part or accessory on account, payment must be made within 14 days of the invoice date, without cutting the amount and without invoking a set-off or suspension unless agreed otherwise.
5. When purchasing a new car, part or accessory on account, payment must have been received immediately after the invoice date without cuts, set-off or suspension unless agreed otherwise.

6. In a purchase agreement, the seller may demand payment in advance, a deposit or another form of security. In the case of repairs that cost more than €500, the mechanic may advance the client for payment in advance. On demand, the buyer/client has to make such advance payment. The invoice for the advance payment must have been paid before the purchased/repaired object is delivered.
7. If the buyer/client does not pay the agreed price or if he fails to pay it full or in time, the seller/mechanic does not have to declare him to be in default. From the day on which payment should have been made, the seller/mechanic can charge statutory interest which can be increased with the amount of 3% of the outstanding amount. The seller/mechanic also may claim other costs.
8. If the seller/mechanic has to engage a third party in order to be able to collect his claim against the buyer/client, the judicial and extrajudicial costs will be payable by the buyer/client. The extrajudicial costs are set at 15% of the outstanding amount, subject to a minimum of €114. If the costs actually incurred in connection with court proceedings are higher than any cost order, the buyer/client will have to pay the actual costs. The seller/mechanic may also demand compensation.
9. Objections to the invoices sent to the buyer/client must be communicated to the seller/mechanic in writing by registered post within five working days of the due date. If no objection is made to an invoice within that period, the buyer/client is deemed to have agreed with the invoice that was sent.

Article 11 - Retention of title, right of retention and pledge regarding purchase agreement/right of retention of the mechanic

1. The cars, parts or accessories delivered to the buyer remain the property of the seller until the buyer has paid everything he owes in the form of a purchase price by virtue of these (purchase) agreements. If the buyer/client also issues an instruction to carry out work on the purchased object within the framework of these agreements, the retention of title also applies until the seller/mechanic is paid in full for this work.
2. The retention of title also applies to claims that the seller/mechanic has or may have against the buyer/client because the buyer/client has failed to fulfil his contractual obligations towards the seller/mechanic, such as the payment of fines, interest and costs.
3. As long as the ownership of the delivered objects has not transferred to the buyer, he cannot pledge these objects, transfer the ownership thereof or give a third party another right to the purchased object. The buyer notifies the seller of every event that is or may be detrimental to his interests in his capacity of the owner of those objects.
4. Until the buyer has obtained ownership of a car, he is liable as the owner and driver of the car. He has to pay the maintenance costs. The buyer has to bear the risk of the car getting damaged or being lost. The buyer has to take out third-party and comprehensive insurance for the car and keep it insured. The buyer must authorise the seller to receive the payments to be assigned to the seller by the buyer (by means of a deed of assignment yet to be agreed on) on behalf of the buyer on the basis of the insured comprehensive risk. The buyer can only use the object for the purposes of his normal business operations.
5. The seller does not indemnify the buyer for the liability of the buyer because he is the owner and driver of the car.
6. The buyer may demand the seller for claims which third parties may bring against the seller due to the retention of title on an object.
7. If the buyer fails to fulfil his obligations or if the seller has good reason to believe the buyer will fail, the seller can take back the object that was delivered under retention of title. The buyer will then be credited for the market value of this object. The credit is never higher than the original purchase price of the car, part or accessory. The costs of taking back the object are deducted from the amount to be credited. In the event of a claim on account of failing to fulfil a contractual obligation, this claim will be deducted from the amount to be credited.
8. The seller/mechanic may exercise his right to retention to all objects which the seller/mechanic has in his possession for or on behalf of the buyer/client. The right of retention is exercised when the purchased or repaired objects delivered by the seller/mechanic have not been paid in full and the seller/mechanic exercises the seller's right to retention. The attributable failure to fulfil a contractual obligation. The right of retention can also be exercised on account of work carried out by the mechanic on the same object previously. Apart from failing to pay or to pay in full the purchase price of an object or a service, failure to pay the damage, interest and costs owed or to be owed to the seller/mechanic by the buyer/client on the basis of a (purchase) agreement, instruction or these general terms and conditions is also a reason to exercise the right of retention.
9. By bringing objects under his control or by having objects brought under his control, the buyer/client creates a possessory pledge on these objects for everything he will have to pay the seller/mechanic, for whatever reason. It does, in any case, concern claims that exist until an agreement or an instruction will have been settled in full. In his capacity of pledgee, the seller/mechanic can convert a possessory pledge into a non-possessory pledge and exercise this right in these general terms and conditions. In that case, the agreement and a copy of these general terms and conditions will be registered as a private deed.
10. In the event that a third party has, in good faith, acquired ownership of the as yet unpaid objects and this third party has not yet paid the purchase price due, the buyer hereby undertakes to retain a non-possessory pledge and to create this on the buyer's claim against that third party on our demand.

Article 12 - Dissolution of the agreement/instruction

1. The buyer/client has to fulfil his obligations from the agreement or the instruction. If he fails to do so, the seller/mechanic will, in writing, give him the opportunity to fulfil his obligations after all within 14 days of receiving this notice of default. When the term given in this notice of default has expired, the agreement or the instruction is automatically dissolved without legal intervention being required. There is one exception to this. After the expiry of this term, the seller/mechanic may decide to demand in writing that the buyer/client fulfils his obligations after all. The provisions of article 10, paragraph 7 remain in full force (despite article 12, paragraph 1). For instance, no notice of default is required if the buyer/client has not paid the agreed price or has failed to pay it full or in time.
2. If the agreement or the instruction is dissolved, the seller/mechanic can demand that the buyer/client pays a fine immediately, without having to send the buyer/client a new notice of default and without legal intervention being required. The extent of that fine is 15% of the agreed amount. Another demand may be payment of compensation and of the costs to be able to recover a claim against the buyer/client (including the costs referred to in article 10, paragraph 8).
3. If the seller/mechanic demands compliance with the agreement or the instruction (see paragraph 1), a fine may be claimed every day. The starting point is the expiry of the 14-day period. A fine can be immediately demanded each day that subsequently passes. The extent of that fine is 3/1000 of the agreed amount for the object or service. The seller/mechanic may also demand that the buyer/client pays compensation and recovery costs (these referred to in article 10, paragraph 8, among other things).
4. When the buyer/client dies, in full or in part, or is declared bankrupt or if he has been granted a moratorium or has been declared bankrupt, or if the buyer/client ceases his business operations and/or when the assets of the buyer/client are seized and this is not lifted within 30 days of the attachment, or if the buyer/client otherwise loses the power of disposition over his assets or parts thereof, the following - which is not connected to the remainder of this article 12 - will apply. The seller/mechanic would give him a good reason to fear he will not (be able to) fulfil his contractual obligations, he has to notify the seller/mechanic immediately.

Article 13 - Force majeure

1. If the performance of an agreement or an instruction is difficult or impossible for the seller/mechanic due to circumstances that he cannot control, he can dissolve this agreement or instruction (if not yet performed) in writing. The seller/mechanic describes the circumstances that render the performance of these agreements difficult or impossible.
2. Within the meaning of these terms and conditions, force majeure is, for instance, understood to mean:
 - war or a similar situation, riots, sabotage;
 - fire, lightning strikes, explosions, the release of hazardous substances or gases;
 - disruptions in the power supply, manufacturing or operational breakdowns of any nature;
 - boycotts, factory sit-ins, blockades to the extent held by persons other than employees working for the seller/mechanic;
 - transport restrictions, time lost through frost, import and export bans;
 - non-attributable shortfalls by third parties engaged by the seller/mechanic;
 - obstructions caused by governmental measures;
 - epidemics;
 - theft, embezzlement or of damage to goods from a warehouse, workshop or another business site of the seller/mechanic, or during transport;
 - and any other circumstances that constitute an abnormal course of business of the seller/mechanic or as a result of which the seller/mechanic cannot reasonably be expected to perform the agreement.The provisions of this paragraph also apply when these kinds of circumstances affect suppliers or other third parties engaged by the seller/mechanic.
3. In the event of force majeure on the part of the seller/mechanic, he will notify the buyer/client as soon as possible by means of a written notice, stating if delivery is still possible and if so, when.
4. If the subsequent delivery of the object or the service will exceed the agreed delivery time plus three months due to force majeure, the agreement or the instruction can be dissolved in writing. This is confirmed in a notification to the buyer/client as referred to in paragraph 3. A one-week period then commences, during which one party can notify the other in writing of its intention to dissolve the agreement or the instruction. No compensation is due. The provisions of article 6, paragraph 3 of these terms and conditions remain in force, also when paragraph 4 applies.

Article 14 - Liability

1. The buyer/client can only claim compensation for damage that is the foreseeable and direct result of an attributable failure of the seller/mechanic to fulfil his obligations under the agreement or the instruction. (An attributable failure is also referred to as breach of contract). Consequential damage or indirect damage suffered by the buyer/client is not compensated. Examples include trading loss, losses due to delays (other than statutory

interest), damage caused by a reduction in value, the inability to benefit from an object or a lack of profits, losses suffered, having to incur costs for alternative transport or hire and lease expenses; third-party goods or third parties themselves suffering damage; damage to cargoes, personal injury or non-material damage).

2. This paragraph (2) serves to establish a loss ceiling. If the seller/mechanic has to pay compensation by virtue of paragraph 1, the amount that qualifies for compensation can never be higher than the maximum sum insured or the amount to be reasonably insured.
3. Article 15 contains the conditions which form the basis for the ability to challenge the seller/mechanic. After and in addition to these warranty conditions, the buyer/client does not have the rights assigned by law to buyers (and clients) who act for purposes that fall outside their business or professional activities. One example of such a right which the buyer/client does not have is the right under Book 7 of the Dutch Civil Code [Burgerlijk Wetboek (BW)] that an object complies with the purchase agreement upon delivery.
4. Every other claim for compensation, whatever the reason, is excluded.
5. The buyer/client indemnifies the seller/mechanic against all third-party claims unless the seller/mechanic is liable in accordance with this article.

Article 15 - Warranty and recall

1. Purchased new cars and new parts or accessories are subject only to the manufacturer's warranty issued by the manufacturer or the importer, as set out in its warranty documents. At times, the buyer is not the warranty recipient of a third party/guarantor, whereas the seller/mechanic is. This is the case when the seller/mechanic has purchased an object from a third party (read: manufacturer/importer). In that case, the warranty issued to the seller/mechanic by this third party will be guiding. This manufacturer's warranty contains certain exclusions. The seller/mechanic never has to do anything extra for the buyer that would exceed the warranty of this third party. If a car part is replaced within the manufacturer's warranty period, it will not change the original warranty period, which will continue.
2. Something similar applies to work which the mechanic has outsourced to a third party. In that case, the client is not the recipient of the warranty. The seller/mechanic never has to do anything extra for the buyer that would exceed the warranty of this third party. Therefore, the warranty on the work issued by the third party will be guiding.
3. Any warranty concerning objects purchased by the client/buyer that were used by third parties previously (such as second-hand cars, demonstration and show models, trade-in parts, etc.) is excluded. Other agreements may be made in writing.
4. When hazardous or defective parts are found under the warranty, the seller/mechanic can replace or repair the purchased object. It is up to him and he does not have to do anything else other than that. If parts are replaced under the warranty, they become the property of the seller/mechanic. In those cases, no work has to be carried out under the warranty:
 - in the case of an anticipated product property;
 - in the case of problems on account of external causes (e.g. the object has been dropped or something fell onto it, etc.);
 - in the case of problems caused by an act or omission by the buyer/client (or a third party);
 - normal wear and tear do not come under the warranty either.
5. The seller/mechanic guarantees the work he has carried out for a period of three months, subject to a maximum of 25,000 km, counting from the moment he has completed the work.
- 5.2 The warranty means that the seller/mechanic will remedy the faults identified during this period at his own expense, if they were reported by the buyer/client immediately.
- 5.3 Exclusions for the warranty on work:
 - no warranty is issued for emergency repairs;
 - the warranty does not cover damage caused by improper use;
 - neither does the warranty cover damage caused when the buyer/client or third parties have carried out work, without prior consent of the seller/mechanic, which is directly or indirectly related to the repairs carried out by the seller/mechanic, with regard to which the claim under the warranty is made;
 - also excluded from this warranty are colour differences in the car's, part's or accessory's paintwork that are not perceptible with the naked eye, degradation of the paintwork on account of an external cause (such as damage caused by hail) or defects in the paintwork of parts that were not fitted or modified by the mechanic. The warranty on work does not cover normal wear and tear or damage caused by frost either.
 - if the buyer/client brings his own materials, parts or accessories to be used by the seller/mechanic for the maintenance or repairs, or if the buyer/client demands the use of a certain material, part or accessories, or if the buyer/client demands that the seller/mechanic applies certain methods he would not have used otherwise for maintenance or repairs, the consequences of faults or incompatibility of such parts, materials, accessories or these kinds of methods will be at the expense and risk of the buyer/client, unless the mechanic has failed in his expertise or care when carrying out the work or having the work carried out.
6. Recalls. If the seller becomes aware of a product recall by the manufacturer on account of a fault in a new vehicle/new part that was delivered, the seller will immediately notify the buyer in writing. If the buyer does not contact the seller immediately following this written notification, all and any claims from the buyer in that respect may lapse. This means that both the seller and the manufacturer cannot be held liable for any damage suffered and to be suffered by the buyer as a result of that, which explicitly includes but is not limited to any consequential damage.

Article 16 - Complaints

1. The buyer/client has to complain in time. This has to be done within eight days after the reason for lodging the complaint was or could have reasonably been discovered. This term starts when the complaint or the purchased or repaired object is delivered. If the buyer/client submits his complaint too late, all claims lapse.
2. If it concerns outwardly perceptible faults in the objects delivered by the seller/mechanic (such as scratches, dents, etc.), complaints can be lodged only during actual delivery. The buyer/client can present proof to the contrary.
3. Objects that are being returned will not be accepted, unless the seller/mechanic has agreed with the buyer in writing in advance. The object must be returned carriage paid, in strong packaging.
4. When the complaint is lodged in time, the buyer will give the seller the opportunity to verify the complaint. If the seller accepts the complaint, he must be given the time needed to replace the object sold or to take the necessary measures. In the case of a replacement, the benefit that the buyer has already enjoyed from the purchase will be taken into account, for which the buyer will be charged with reason.
5. Lodging a complaint does not give the buyer/client the right to suspend his payment obligations or to set off.
6. Complaints that are lodged in time will not be processed if it emerges that the buyer/client or third parties have made changes or carried out repairs to the purchased/repaired object except when the seller/mechanic had granted its explicit approval in writing for that.

Article 17 - Trade-in car

1. The buyer has sold the trade-in car to the seller as part of the agreement. If the buyer continues to use the trade-in car and it breaks down or is lost before the car is delivered to the seller, this will be at the expense and risk of the buyer. Until the car is delivered to the seller, the buyer remains the owner of the object to be traded in and all costs, including those for maintenance, damage, loss and depreciation, shall be at his expense. The seller is not bound by an agreed trade-in price if the actual delivery date of the object to be traded in is later than the approximate delivery date used. In that case, a percentage agreed on by the parties beforehand can be used as depreciation on the purchase price.
2. Unless agreed otherwise in writing, the buyer guarantees the seller that a trade-in object:
 - is free from third-party rights and claims;
 - is free from damage;
 - is in a proper and traffic-safe condition;
 - has not been manipulated. Examples include manipulated odometer readings.On a final note, with regard to the object to be traded in, the buyer guarantees that he is not aware of any other facts or circumstances of which he knew or could have known that they would be of interest to the seller.
3. The guarantees referred to in paragraph 2 remain in force after the object has effectively been traded in to the seller.
4. Upon effective delivery, the vehicle to be traded in must come with a valid vehicle registration certificate Part I, Part II or a valid registration card and a transfer certificate. If one or more of the aforementioned documents is missing, the seller reserves the right to charge the buyer. This concerns the cost items in relation to a depreciation in value and costs to be incurred to obtain a new vehicle registration certificate.

Article 18 - Personal details

The personal details of the buyer/client given in the agreement or on the instruction are processed by the seller/mechanic, possibly within the meaning of the Personal Data Protection Act [Wet Bescherming Persoonsgegevens (Wb)]/the General Data Protection Regulation [Algemene Verordening Gegevensbescherming (AVG)]. Based on this data processing, the seller/mechanic will be able:

- to perform the agreement or carry out the instruction and to fulfil his warranty obligations to the buyer/client;
- to offer the buyer/client the best possible service;
- to promptly provide him with up-to-date product information and make him personalised offers in the event of a justified interest;
- the car's details will be entered in the odometer reading system. This system registers read odometer readings in order to prevent fraud with odometers;
- also, in the case of a legitimate interest, the personal details can be made available to the IND association so the details can be cleaned up.

Article 19 - Applicable law

Every legal relationship between the seller/mechanic and the buyer/client is governed by Dutch law.