

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



GENERAL

These General Terms and Conditions apply with effect from 1 April 2018. They apply to agreements pertaining to the purchase, repairs and maintenance of cars, parts or accessories between members of BOVAG Automobile Companies and consumers. These General Terms and Conditions have been drafted in consultation with the Consumers' Association and the ANWB Road Assistance in the context of the Self-Regulation Coordination Group (CZ).

DEFINITIONS

In these General Terms and Conditions, the terms below have the following meaning:

- *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 consumer;
- *the consumer*: every natural person who, in his capacity of a buyer or a client, acts for purposes outside his business or professional activities;
- *the instruction*: the agreement concluded with the consumer to carry out work such as assembly, disassembly, repairs or maintenance and voluntary or statutory inspections;
- *the mechanic*: the person who executes or delegates an instruction with regard to a car, parts or accessories;
- *unavoidable expenses*: all expenses that are not optional for the consumer and which are required in order to be able to use the purchased car. These expenses must be included in the listed price of both a new and a used car. In practice, this means that for a new car, the VAT, the private motor vehicle and motorcycle tax, charges, the recycling fee, the costs for a zero service and registration number, the transport costs to the dealer and other extras that must be purchased are already incorporated in the listed price.
- *avoidable expenses*: optional expenses for the consumer that were additionally agreed on. These expenses are not necessarily included in the listed price of the car, such as additional parts or accessories;
- *in writing/written*: in writing or electronically;
- *the warranty*:
 - a. the statutory warranty referred to in Article 7:17 of the Dutch Civil Code;
 - b. the manufacturer or importer's warranty in respect of cars and parts/accessories (see article 14 paragraph 2);
 - c. the BOVAG Purchase Warranty on used cars as set out in article 14 paragraph 3 and the BOVAG Warranty Certificate that may be issued by the seller;
 - d. the BOVAG repairs and maintenance warranty in respect of work.

PURCHASE

Article 1 - The offer

1. The seller makes a verbal or written offer.
2. This offer gives a full and accurate description of the offer, i.e. the price and the rights and obligations of the consumer and the seller. The description of the offer must be sufficiently detailed so as to enable the consumer to make a fair assessment of the offer.
3. The offer sets out the price of the car on offer, the part on offer or the accessory on offer. The price of a car on offer includes the unavoidable expenses.
4. If the seller uses images of the car, part or accessory, they are truthful.
5. Apparent mistakes in the offer do not bind the seller.
6. The consumer has to accept the offer within the term set by the seller. If no term is given, the buyer has to accept the offer immediately.

Article 2 - The agreement

The seller lays down the agreement in writing and gives a copy thereof to the consumer. The arrangement between the consumer and the seller also applies when the arrangement is not set out in writing.

Article 3 - The contents of the agreement

- The written agreement does, in any case, state:
- the identity of the seller such as his trade name, business address, telephone number and e-mail address;
 - a description of the car, parts or accessories;
 - the price and a description of the car to be purchased, including parts or accessories;
 - the price of the car, including accessories at the time of purchase. The price includes the unavoidable expenses, the agreement indicates whether it concerns a fixed or an unfixed price; or;
 - the price of an individually purchased part or accessory;
 - the unavoidable expenses when purchasing a car;
 - a reference to the warranty provisions, with the seller or a third party such as the manufacturer or importer acting as guarantor. The warranty provisions of this third party are open for inspection.
 - the payment method;
 - the delivery date and whether this is an anticipated or a fixed date.
- If no delivery date has been agreed on, the car, part or accessory will be delivered within 30 days of concluding the agreement, at least.

Article 4 - Price changes

1. If it concerns a fixed price, the seller cannot increase the price after the agreement is concluded, unless it concerns a change to a governmental levy which, in any case, concerns a changed tax or excise duty.
2. If the agreement itself shows that it concerns an agreed unfixed price, the seller can change the price on the basis of changes to a governmental levy, manufacturing prices, import prices or exchange rates. The seller notifies the consumer of the extent of the price change and the reason thereof as soon as possible. In the case of a price increase, the consumer can dissolve the agreement within 10 days, unless the price increase is the result of a change to a governmental levy.
3. If a seller has indicated that the price is not fixed, he also has to pass on changes in the price that are to the consumer's advantage.
4. If the seller is declared to be in default pursuant to article 6, but the stipulated term has not yet expired, only a price increase based on a change to a governmental levy may be passed on.
5. As soon as the seller is in default, no price increases can be passed on.

Article 5 - The car-related risk

1. If the purchased car breaks down or is lost before the car is delivered to the consumer, this will be at the expense and risk of the seller.
2. If the car to be purchased breaks down or is lost before the car is delivered to the seller, this will be at the expense and risk of the consumer.

Article 6 - Delivery and default

1. In the case of a fixed delivery date, the seller is in default as soon as that date has passed.
2. In the case of a presumed delivery date, the consumer first has to declare the seller in default. This means that the seller is given three weeks to deliver the car. If the seller has still not delivered the car, part or accessory after that term has elapsed, the seller is in default.
3. In the cases below, no notice of default from the consumer is required:
 - if the seller has announced that he will not make the delivery;
 - if delivery before the agreed delivery date is essential, given the circumstances upon conclusion of the agreement, because the consumer has said so or because the car, part or accessory is required for a special occasion, for instance.

Article 7 - The consequences of default

1. If the seller is in default pursuant to article 6, the consumer can dissolve the agreement.
2. Furthermore, the consumer can ask for the damage he has suffered to be compensated, unless the seller can invoke force majeure.

Article 8 - Cancellation

1. The consumer can cancel the agreement, also when the seller is not in default.
2. The agreement can be cancelled in writing up to the date on which the purchased car, part or accessory or the car to be purchased is delivered.
3. The consumer has to compensate all damage suffered as a result of the cancellation. This damage is set at 15% of the total purchase price of the car, part or accessory, unless the parties have agreed otherwise when the agreement was concluded.
4. The damage must be paid within ten days of the cancellation. If the consumer has not paid after ten days, the seller can notify the consumer in writing that the consumer has to perform the agreement after all. In that case, the consumer can no longer invoke the cancellation.

REPAIRS AND MAINTENANCE

Article 9 - Quote and term

1. The instruction for work is preferably laid down in writing. The mechanic issues a quote and a completion date in advance. This quote and completion date are presumed, unless the consumer and the mechanic have agreed that it concerns a fixed price or a fixed delivery date.
2. If in the case of an unfixed price, the car repairs turn out to be 10% more expensive than the estimate originally given, the mechanic has to discuss this with the consumer.
3. The consumer can cancel the instruction at all times. The costs already incurred by the mechanic when the instruction is cancelled and the work already completed at that time, must be paid.
4. The mechanic immediately communicates when the work is likely to be completed after the delivery date. The mechanic also indicates when the work will be completed with the consumer.
5. When a fixed delivery date is exceeded, the consumer is entitled to reasonable compensation, unless the mechanic is a victim of force majeure.

Article 10 - The account

An itemised account is issued for the work carried out.

Article 11 - Storage costs

1. If the consumer does not collect the car within three working days of having been told that the repairs are completed, the mechanic can charge storage costs.
2. The storage costs are the costs that the mechanic would normally charge. If no fixed storage costs are in place, the mechanic will charge a reasonable fee.

Article 12 - Right of retention

1. The mechanic has the right of retention on the car, part or accessory. This means that the mechanic will not return the car, part or accessory until the consumer has paid the account for this or previous work or other costs.
2. The mechanic can also exercise the right of retention when the dispute about the work has been submitted to the Vehicle Disputes Committee referred to in article 21 or to the court, unless the consumer has furnished sufficient (replacement) security, for instance by placing an amount on deposit with the Disputes Committee.

Article 13 - Replacing parts

1. When a consumer asks for the old parts back when he issues the instruction, he will receive them after they have been replaced.
2. In the case of a claim under the warranty between the mechanic and a guarantor such as a manufacturer or an importer, the mechanic may refuse to release the parts.
3. If the consumer did not ask for the parts or did not do so in time, the replaced parts will also become the property of the mechanic without the consumer being reimbursed for them.

WARRANTY

Article 14 - Warranty on cars and parts/accessories

1. In addition to the BOVAG Repairs and Maintenance Warranty as referred to in article 15, any BOVAG Purchase Warranty as referred to in article 14.3, the BOVAG Warranty Certificate and/or the manufacturer and importer's warranty referred to in article 14.2, consumers also have statutory warranty at all times.
2. The manufacturer or the importer gives a manufacturer's warranty on new cars and new parts.
3. In addition to the statutory warranty, the seller may grant a twelve month manufacturer's warranty on used cars and the seller may extend this term to at most 24 months.
4. In case of replacement under the warranty as referred to in article 14 paragraphs 1 and 3 and the BOVAG Warranty Certificate, consumers are not obliged to pay for the use of the product during the period preceding the replacement. In the case of repairs or replacement on the basis of the warranty within the meaning of the article 14 paragraphs 1 and 3 and the BOVAG Warranty Certificate, the seller/mechanic will find a suitable solution for the consumer's transport problems.
5. The seller indicates the odometer reading of the car in the purchase agreement, after checking the odometer reading register. The seller guarantees that the reading given in the agreement is 'logical', unless the agreement explicitly states that it is 'not logical' and the consumer has explicitly agreed to this record in writing.
6. No BOVAG Purchase Warranty is ever given for used parts delivered individually. Defects that arise outside the European Economic Area (EEA) do not come under the BOVAG Purchase Warranty on used cars, unless the consumer demonstrates that the defects were not caused by circumstances that deviate from the EEA, such as relatively poorer roads or fuel of a poorer quality.

Article 15 - BOVAG repairs and maintenance warranty on car, parts and accessories

1. The mechanic guarantees that the activities performed comply with the assignment. Within the European Economic Area and for a period of six months after delivery of the repaired or maintained car, part or accessory, the mechanic guarantees that he has carried out the instructions with due care or that they were carried out with due care on his behalf and that correct materials were used. In the case of repair or replacement, the mechanic guarantees that the defects were not caused by circumstances that deviate from the EEA, such as relatively poorer roads or fuel of a poorer quality.
2. There may be exceptions that render the warranty invalid:
 - 2a. This warranty does not apply when the consumer has brought his own materials, parts or accessories for the mechanic to use. If the consumer demands the use of a certain material, part or accessory which the mechanic would not have used otherwise. When the consumer demands the mechanic uses certain methods for the work to be done, the warranty does not apply when the method demanded by the consumer deviates from the method the mechanic would have preferred to follow. The consequences of defects or unsuitability of these kinds of parts, materials, accessories or working methods will, therefore, be at the expense and risk of the consumer unless the mechanic has failed in his expertise or care when carrying out the work or having the work carried out.
 - 2b. If the consumer asks the mechanic to carry out emergency repairs on the car, a part or an accessory, no warranty will be given for this.
 - 2c. The consumer will report a problem with the repaired or maintained car, part or accessory as soon as possible after discovering the problem. If the consumer fails to do so, it could (if that would be reasonable, given the circumstances) mean that the consumer can no longer invoke the warranty.
 - 2d. When the mechanic is not given the opportunity by the consumer to resolve problems with the car, parts or accessories repaired or maintained by him, the consumer cannot invoke the warranty either, unless the situation set out in paragraph 3 occurs.
 - 2e. When a third party carries out work on the car, part or accessory that was repaired or maintained by the mechanic, the consumer cannot invoke the warranty because of that work, unless the situation set out in paragraph 3 occurs. However, the consumer can invoke the warranty when the work carried out by a third party has nothing to do with the work previously carried out by the mechanic on this car, part or accessory.
3. An exception to paragraphs 2.d and 2.e may occur if the repaired or maintained car must be repaired immediately. Such an emergency situation must occur in a location that is not in the vicinity of the mechanic's business premises. Furthermore, the consumer has to be able to demonstrate this urgency. He can do so by presenting data from the other business or the faulty car parts. If the repairs are carried out by another business within the national borders of the Netherlands, this business has to be a member of BOVAG. If the emergency situation arises outside the national borders of the Netherlands and if the car has been repaired by a third party business outside the Netherlands, the costs charged by this foreign third party are reimbursed up to no more than the price level as it applies at the mechanic's business.

GENERAL PROVISIONS

Article 16 - Payment

1. Payment must be made in cash or by means of a transfer into the bank account of the seller/mechanic.
2. Payment must be made when the car, part or accessory is delivered or when the work is completed.
3. The seller/mechanic and the consumer can agree in writing that immediate payment is not necessary. If no precise payment moment is set, the payment term is one month.
4. The consumer must pay the amount owed before the payment date has passed. If he fails to do so, the seller/mechanic will send a free payment reminder after that date, giving the consumer the opportunity

to pay the outstanding amount within fourteen days of receiving this payment reminder.

5. If after expiry of the payment reminder, payment has still not been made, the seller/mechanic is entitled to charge interest from the moment of default. This interest is equal to the statutory interest.
6. Collection costs for extrajudicial costs can also be charged. The extent of these costs is subject to (statutory) limits. These limits may be deviated from to the consumer's advantage.

Article 17 - Retention of title on a car

The car delivered to the consumer remains the property of the seller until the consumer has paid everything he owes pursuant to the purchase agreement. Until the consumer has gained formal ownership of this car, he has to take out third party and comprehensive insurance for the car, pay the costs and bear the risk for the car getting damaged or being lost. He must also pay for any maintenance to be carried out. In his capacity of owner and driver of the car, the buyer is liable.

Article 18 - Distance agreement/outside sales room

The consumer has rights and obligations that ensue from the provisions for agreements between traders and consumers, see Book 6, title 5, section 2b of the Dutch Civil Code [Burgerlijk Wetboek (WB)]. This only applies when an agreement or instruction is concluded at a distance and outside sales rooms, within the meaning of Article 6: 230g of the Dutch Civil Code. In that case, the statutory provisions apply in addition to and in derogation from these general terms and conditions.

Article 19 - Deviations

Deviations, which also include supplements to or extensions of these general terms and conditions, are valid only when they have been documented in writing by both parties and when the deviations do not leave the consumer in a less advantageous position than he would have been without these deviations. Deviations from the BOVAG Guarantee Certificate and the BOVAG repairs and maintenance warranty are not valid.

Article 20 - Mediation arrangement

A consumer who has a complaint about the sale of a used car, about the sale of a new car, part or accessory or about the execution of the BOVAG repairs and maintenance warranty has to contact the seller/mechanic first. The following applies if it becomes clear that the consumer is not satisfied with the result of the manner in which the seller/mechanic handles the complaint: the consumer can submit a dispute about an instruction or an agreement to BOVAG Mediation within six weeks after it has arisen. The mediation attempt will follow regulations that were sent to the parties beforehand. The address of BOVAG Mediation is: PO Box 1100, 3980 DC, Bunnik, the Netherlands. Telephone no. 030-6595395 (local rate). As regards assistance in mediation, the consumer should only be able to exercise his statutory rights during the period of the statutory reversal of the burden of proof being six months after delivery or invoke only the BOVAG Warranty, both as referred to in article 14. The consumer may elect at all times to submit the complaint to the disputes committee. See article 21 for an interpretation of this procedure. If it concerns a newly purchased car or new parts or accessories, BOVAG Mediation can be invoked only when the consumer cannot invoke any warranty issued by the manufacturer or importer of this new object.

Article 21 - Dispute settlement procedure

1. In the event of a dispute about the way in which the instruction or the agreement was formed or performed, the consumer or the seller/mechanic can submit the dispute to the Vehicles Disputes Committee. Address: The Disputes Committee, PO Box 90600, 2509 LP, The Hague, the Netherlands (visiting address: Borderwijklaan 46, 2591 XR, The Hague, the Netherlands). At that time, the consumer may also opt to take his dispute to court.
2. This dispute settlement procedure only applies to disputes between consumer and members of BOVAG Automobile Companies. It applies in the case of:
 - a. the agreement of purchase and sale of a new car, part or accessory, unless the consumer has complained on the basis of a warranty given by the manufacturer or importer of the car, part or accessory;
 - b. the agreement of purchase and sale of a used car;
 - c. the BOVAG Purchase Warranty or the BOVAG Warranty referred to in article 15 of these general terms and conditions.
3. The dispute must have been submitted to the Vehicle Disputes Committee within twelve months of the date on which the consumer complained to the seller/mechanic. If the consumer has opted for the disputes committee, he can subsequently only take the matter to court after the disputes committee has declared that it has no jurisdiction or is incompetent, when appropriate, or to promptly ask the court to test the binding opinion issued by the disputes committee for reasonableness. This can be done in writing or in another method to be stipulated by the Vehicle Disputes Committee. A dispute will be deemed to exist if it is not resolved after complaint handling by the seller/mechanic and/or via the mediation attempt of BOVAG Mediation.
4. The decision of the Vehicle Disputes Committee comes in the form of a binding opinion. This is done in accordance with the regulations that are communicated to both parties before the dispute beforehand. These regulations form a part of these agreements between the consumer and the BOVAG member.
5. The consumer must pay a fee to have the dispute processed by the Vehicle Disputes Committee.
6. The decision of the Vehicle Disputes Committee cannot be challenged by a court if more than two months have lapsed since the decision was sent and the ordinary court was not asked to test the decision for reasonableness.

Article 22 - Performance bond

BOVAG guarantees performance of the binding opinions of the disputes committee by the BOVAG-affiliated seller/mechanic. However, this is not the case if the seller/mechanic decides to submit the binding opinion to the court for testing within two months and the court declares the binding opinion not binding and that ruling cannot be contested. The guarantee applies up to €910 and subject to the condition that the consumer assigns his claim against the seller/mechanic to BOVAG. In the case of amounts higher than €910, BOVAG will try to make the seller/mechanic pay the excess through the courts. If that succeeds, the interest collected in excess of €910 will be paid out to the consumer. BOVAG does not issue a performance bond if it concerns one of these situations before the consumer has met certain formal intake requirements (payment of the complaint-filing fee, returning the completed and signed questionnaire and any payment of a deposit) needed in order to deal with the dispute. It concerns the insolvency, moratorium or termination of the business of the seller/mechanic. In the case of the latter situation, the date on which the business termination is entered in the commercial register or an earlier date on which BOVAG can prove that business activities were effectively terminated is the determining factor. BOVAG will pay out up to a maximum of €910 per dispute if the insolvency or moratorium is granted or if the seller/mechanic has terminated his business after the consumer has met the intake requirements.

Article 23 - Personal details

The personal details of the consumer given in the agreement or on the instruction are processed by the seller/mechanic in accordance with the Personal Data Protection Act [Wet Bescherming Persoonsgegevens (Wbp)]/the General Data Protection Regulation [Algemene Verordening Gegevensbescherming (AVG)]. Based on this data processing, the seller/mechanic will also:

- carry out the instruction or to perform the purchase agreement and to fulfil his warranty obligations to the consumer;
- offer the consumer the best possible service;
- to promptly provide the consumer with up-to-date product information and make him personalised offers in the event of a justified interest;
- the car details will be entered in the odometer reading register mentioned in article 14. 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 INDI association so the details can be cleaned up. Any objection by the consumer to the seller/mechanic to process the personal details within the meaning of the law for the purposes of direct mailing will be allowed.

Article 24 - Choice of law

This agreement is governed by Dutch law.