

PRIVATE GENERAL CONTRACT / PARTS SALE CONDITIONS BOVAG OVERHAULING AND RESTORING COMPANIES GENERAL



GENERAL

These General Terms and Conditions apply with effect from 1 February 2022. They apply to agreements between members of overhauling and restoring and consumers.

DEFINITIONS

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

- *the consumer*: every natural person who, in the capacity of a buyer or a client, acts for purposes outside his business or professional activities;
- *the assignment*: an agreement concluded with a consumer to carry out work such as restoration and/or overhaul and/or other work on a product;
- *the purchase agreement*: an agreement concluded with a consumer for the sale of an (exchange) part of a product.
- *the product*: the vehicle/vessel/stationary installation of another product or a part thereof.
- *the mechanic*: the person who carries out an assignment or has it carried out with regard to a product;
- *the seller*: the person who sells an (exchange) part of a product;
- *cost-plus contract*: an assignment in respect of which the mechanic and the consumer do not agree a fixed price, but within which context they assume compensation of the actual costs, such as labour costs and the cost of materials, increased by a mark-up percentage;
- *in writing/written*: in writing or electronically.

PURCHASE OF AN (EXCHANGE) PRODUCT

Article 1 - Place of delivery purchased (exchange) parts of items of property / price increases (exchange) parts

1. The place of delivery of an (exchange) part is the seller's business premises, unless otherwise agreed in writing. In the event the (exchange) part is delivered to the consumer on the basis of a different agreement, the (exchange) part will be for the consumer's risk as from the moment the consumer, or a third person/carrier designated by the consumer, has received the (exchange) part. However, if the consumer designates a carrier and this choice of carrier was not offered by the seller, the risk already passes to the consumer at the moment the (exchange) part is received by the carrier designated by the consumer. Provisions included in the terms and conditions of a carrier chosen by the consumer do not prejudice the provisions of this paragraph.
2. Price increases as a result of changes in duties, taxes, excise duties, manufacturing and/or import prices and/or exchange rates, for example, may at all times be charged on in the agreed purchase price. The consumer will have the right to dissolve the agreement following notification of this change if the increase of the agreed price by the seller takes place within three months after the conclusion of the purchase agreement. Dissolution must take place within one week after this notification.

2. Article 2 - Purchase of an exchange part (agreement, packaging, requirements (handing in) old parts, risk of old parts)

1. The seller lays down the purchase agreement regarding an exchange part in writing and gives a copy thereof to the consumer. The purchase agreement between the consumer and the seller also applies if the agreement is not laid down in writing. The written purchase agreement regarding an exchange part provides in any event:
 - the identity of the seller such as the trade name, business address, telephone number and e-mail address;
 - the description of the exchange parts and whether or not the price concerns a fixed or variable price;
 - the price and a description of the part to be purchased. The agreement indicates whether it concerns a fixed or a variable price;
 - a reference to the warranty provisions in which connection the seller or a third party such as the manufacturer or importer acts as guarantor. The warranty provisions of this third party are open for inspection;
 - the payment method;
 - the delivery date and whether this is a presumed or a fixed date. If no delivery date has been agreed, an exchange part will be delivered within thirty days of concluding the agreement in any event.
 - the place of delivery.
2. Exchange products sold by the seller to the consumer are packaged in the standard way. Packaging will be used if necessary. Such packaging is always provided to consumers on loan. Packaging remains the property of the seller. Consumers are obliged to return the packaging to the seller intact.
3. Deposits are charged in respect of packaging, unless agreed otherwise. If the consumer has not returned the packaging material within three months of the purchase of the exchange product, the seller is no longer obliged to refund the deposit charged to the consumer for packaging. However, this will not affect the consumer's obligation to return the packaging.
4. The consumer will be charged a deposit upon purchase of an exchange product, unless agreed otherwise. If the consumer has not handed in the old part to be exchanged within three months of the purchase of the exchange part and/or has not delivered this correctly packaged (not safe / not completely coolant or oil-free), the seller is no longer obliged to refund the deposit charged to the consumer. However, this does not alter the consumer's obligation to return the packaging.
5. Exchange parts are always sold against surrender of the old part. The old part must be of the same make, design and composition and may not be broken, cracked, welded or damaged or incomplete in some other way. It must be possible to overhaul vital parts (in case of an engine, these are block, head, crankshaft and camshaft) in the usual way. If the old part that was handed in is not satisfactory, the higher costs will be for the consumer's account and subsequent calculation will take place.
6. The consumer is obliged to package the old parts to be delivered safely and coolant and oil-free at its own expense for environmental and safety considerations. The consumer is liable for all damage incurred by the seller and/or third parties resulting from the incorrect delivery of the old parts to be delivered.
7. Sale with purchase. If upon the sale of a new part against the purchase of a used part the old part remains available to the consumer while awaiting the delivery of the new part, the latter new part will not become the property of the consumer until after the old part was actually transferred to the seller. The old part remains entirely for the consumer's account and risk for as long as he continues to use it.

Article 3 - Conformity rights on the part of the consumer towards the seller of an (exchange) part

1. Consumers are entitled to the statutory guarantee with respect to (exchange) parts. This means that the seller guarantees that the product delivered complies with the agreement (conformity). Moreover, the seller guarantees that the product has the characteristics that are required for normal use taking into account all circumstances and for any special use that may have been agreed. The product must be delivered with all accessories and installation and other instructions provided for in the agreement. Products with digital elements must be updated in the manner determined in the agreement. In the event a problem arises during the period of the statutory reversal of the burden of proof, which is six months after delivery, the law assumes that the product purchased (containing digital elements) did not comply with the agreement, unless the seller demonstrates otherwise or the nature of the product or the nature of the deviation precludes this.
2. The manufacturer or the importer provides manufacturer's warranty as well as the statutory warranty for new products with respect to the suitability of these new parts to retain their functions and performance during normal use (sustainability).
3. The consumer makes the product available to the seller and the seller will take back the product for its account for the purpose of repairs or replacement on the basis of the statutory warranty. In case the product is replaced, the

consumer will not be obliged to pay for the use of the product during the period preceding the replacement. In the event the repair of the product requires the removal of products that were installed before it became apparent that the products delivered do not comply with the agreement or if the product has to be replaced because the obligation to repair or replace includes: a. the removal of the product delivered that does not comply with the agreement and the installation of replacement or repaired products, or b. reimbursement of the costs of that removal or installation.

THE ASSIGNMENT

Article 4 - The assignment (record/price/delivery/adjustments/termination of the assignment)

1. a. The assignment is preferably laid down in writing. Consumers receive a copy. Assignments apply only to activities the mechanic could reasonably foresee. b. Upon his death, the joint heirs will have the option of having the activities carried out in full or to have the activities that commenced stopped while paying for the costs of the activities already carried out by the mechanic. The joint heirs must inform the mechanic of the option they choose in writing within one month after the consumer's death, failing which the mechanic will have the right to dissolve the assignment without judicial intervention. The joint heirs are and remain in all cases referred to in the first sentence of this provision jointly and severally liable for payment of the user's fee. c. The mechanic provides consumers with a quotation in advance. This quotation is a presumed guide price, unless a fixed price is agreed expressly. Situations in which a cost-plus contract without guide price has been concluded constitute an exception to the indication of a presumed guide price or a fixed price. d. Changes to cost-plus or other contracts: if it becomes clear during the performance of activities that these cannot be carried out in whole or in part due to the condition of the product or parts and materials made available by the consumer, the mechanic will notify the consumer thereof. If this is the case, the parties will determine in consultation whether the assignment should be amended, insofar as no relevant provisional sums or adjustable quantities have been included. In case of a cost-plus contract, the activities actually performed and the quantities actually delivered and/or used will be set off. Price increases arising from additions and/or changes to the assignment requested by the consumer are for the consumer's account. As soon as the mechanic foresees that he will exceed an amount or amounts indicated in the costs-plus or other contract by more than 10%, the mechanic will be obliged to notify the consumer thereof. If this is the case, the parties will determine in consultation whether the assignment should be amended. Both the mechanic and the consumer have the right in such cases to dissolve the assignment without requiring any notice of default. The activities carried out by the mechanic until the moment of dissolution will remain payable by the consumer in such cases.
2. The mechanic indicates when he will commence performance of the activities and/or will provide an indication of the delivery time. The activities involved special, often custom-made materials and parts.
3. The place of delivery is ex business premises of the mechanic, unless otherwise agreed in writing. The mechanic allows the consumer to inspect the product or have it inspected before it is delivered. The risk of the product passes to the consumer following delivery. In the event the product is delivered to the consumer on the basis of a different agreement, the product will be for the consumer's risk as from the moment the consumer, or a third person/carrier designated by the consumer, has received it. However, if the consumer designates a carrier and this choice of carrier was not offered by the seller, the risk already passes to the consumer at the moment the product is received by the carrier designated by the consumer. Provisions included in the terms and conditions of a carrier chosen by the consumer do not prejudice the provisions of this paragraph.
4. The mechanic always maintains a written record of the work carried out. In case of a cost-plus contract, consumers receive an invoice containing a detailed statement of the materials used and the number of working hours spent, which includes interim statements in case of large projects, for the purpose of completion. The consumer is deemed to have approved the (interim) time sheet/invoice reported if the consumer has not responded to it within 7 days.
5. a. If the presumed guide price in case of a cost-plus contract becomes more expensive by more than 10%, the mechanic will be required to discuss this cost increase with the consumer. b. The following applies in case of a presumed guide price not within the context of a cost-plus contract. In the event a price increase or decrease that has an impact on the guide price occurs more than 3 months after conclusion of the assignment, the mechanic will charge it on at the request of the party that has the greatest interest in the increase or decrease being charged on. This is subject to the condition that the aforementioned restoration or overhaul activities have not yet been carried out (in full). Changes to taxes, excise duties and other government levies can always be charged on. In the event the presumed guide price is exceeded by 10%, the mechanic will be required to discuss this cost increase with the consumer. c. The following applies in case of a fixed price that was agreed expressly. The mechanic has the right to increase the price if the consumer requests the mechanic to perform more or other work. This is only possible if the mechanic informs the consumer of the increase in time or if the consumer could have reasonably foreseen the price increase. The mechanic always has the right to charge on changes to taxes, excise duties and other government levies. The mechanic is required to stop the work if the work has to be changed or interrupted unexpectedly or if the scope becomes much larger than anticipated. The mechanic will then consult with the consumer to discuss whether the work will be continued and, if so, how. The mechanic receives in any event compensation for the work already carried out as well as the costs involved in the work. A new price or a new fixed delivery term will only apply if this has been agreed. The mechanic and the consumer preferably agree the changes in writing.
6. Consumers have the right to terminate the assignment at all times. The costs already incurred by the mechanic prior to the termination and the work already completed at that time do have to be paid.
7. Changes to the agreement concerning a work to be delivered as referred to in article 4 paragraph 1 under d and paragraph 5 under c may result in any delivery times indicated in advance being exceeded. In case of a change, the delivery time will be deemed to have been extended by a non-strict deadline in proportion to the agreed changes. The assignment is based on the working conditions that apply at the time of the conclusion of the agreement and on the materials ordered by the consumer for the performance of the work. The delivery time will be extended insofar as necessary in case of a delay that is not attributable to the company as a result of changed working conditions or because the materials ordered for the performance of the work are not delivered in time. In such cases, the mechanic communicates immediately in writing if the activities are about to be completed later than the agreed indicative delivery date. In the event the delivery time is exceeded by more than 15% without force majeure on the part of the company, the company will be in default if the consumer sent a written notice of default and these obligations have not been met within a reasonable term afforded to the company. In case of a possible notice of default, a reasonable term will constitute a period of at least 12 weeks in view of the fact that the company often uses special and custom-made materials and parts. Force majeure on the part of the company also includes situations in which the supplier of parts and/or materials fails to deliver at the agreed time. Default without notice of default applies if it has become permanently impossible for the company to comply with its obligations or if the company informs the consumer that it will not perform.

Article 5 - Storage costs

If the consumer does not collect the overhauled or restored product within seven days of having been informed that the work has been completed, the mechanic will have the right to charge storage costs.

Article 6 - Security rights such as the right of retention, payment in advance

1. The mechanic may exercise a right of retention in respect of the product. This means that the mechanic will not return the product until the consumer has paid the invoice for this and/or previous work or other costs.
2. The mechanic can also exercise the right of retention if the dispute about the work has been submitted to the courts, unless the consumer has furnished sufficient (substitute) security.
3. In addition to the right of retention, the mechanic also has the right to demand that the consumer makes an advance payment of at most 50% before commencing the work. Other reasonable forms of demanding security are allowed as well, such as creating a right of pledge.

Article 7 - Replacing parts

1. If a consumer asks for the parts that were replaced within the context of the assignment, they will be placed in his possession.
2. In the event a guarantee claim has to be settled between the mechanic and a guarantor, the mechanic will have the right to refuse to surrender the parts.
3. If the consumer did not ask for the parts or did not do so in time, the replaced parts will become the property of the mechanic without the consumer being reimbursed for them.

GENERAL PROVISIONS

Article 8 - Liability towards consumers

1. The mechanic's/seller's liability is limited to at most the amount for which the company is or should have been insured subject to a maximum of €2,500,000.
2. The mechanic is not liable in the event cargo, inventory, valuable papers or documents are lost or stolen from the vehicle, while the vehicle was at the company for work, with the exception of intent or deliberate recklessness on the part of the mechanic.
3. The mechanic/seller is not liable for consequential damage, with the exception of intent or deliberate recklessness on the part of the company.

Article 9 - Payment

1. An itemised invoice is issued for the work carried out. (Also in the interim in case of large projects).
2. Payment takes place upon delivery of the product, unless a payment term was agreed.
3. 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, allowing the consumer to pay the outstanding amount as yet within fourteen days of receiving this payment reminder.
4. If after expiry of the payment reminder, payment has still not been made, the mechanic/seller will have the right to charge interest from the moment of default. This interest is equal to the statutory interest.
5. Extrajudicial collection costs may also be charged. The amount of these costs is subject to (statutory) limits. These limits may be deviated from to the consumer's advantage.
6. Complaints concerning the amount of the invoice must be submitted in writing within a reasonable period after the invoice date accompanied by an explanation of the complaints. Seven days constitutes a reasonable period in any event. Complaints are no longer handled and the consumer's right to complain lapses after that term, unless the fact that a complaint was submitted late cannot reasonably be attributed to the consumer.

Article 10 - Deviations

Deviations, additions to or extensions of these general terms and conditions, are only valid if they have been laid down in writing by both parties and provided these deviations do not leave the consumer in a less advantageous position than he or she would have been without these deviations.

Article 11 - Conformity rights towards the mechanic

1. The mechanic does not provide a guarantee concerning errors in the design of a product that was assembled if he did not deliver this design himself. The mechanic does not guarantee the usability and soundness of the assembled materials and the items of equipment in respect of which the consumer determined that they must be used or that were delivered by the consumer himself. If the mechanic knows or could know that the design or the materials contain certain shortcomings, he will be obliged to inform the consumer thereof. Nor does the mechanic provide warranty for:
 - a. defects following delivery that prove to have been caused by normal wear and tear, inexpert use or a lack of due care;
 - b. defects that result from changes to the product delivered that were made by the consumer or third parties;
 - c. damage that has arisen as a result of the above failures.
2. The consumer is entitled to the statutory warranty concerning parts/materials assembled incorrectly, provided this incorrect installation formed part of the purchase while the installation was carried out by the entrepreneur or under its responsibility.

Article 12 - Mediation arrangement/complaints

1. Consumers who have complaints first have to contact the seller/mechanic about this.
2. If it becomes apparent that the consumer is not satisfied with the result of the manner in which the seller/mechanic handled the complaint, he will have the right to submit the complaint to BOVAG Mediation within six weeks after it arises. The mediation attempt will follow regulations provided to the parties in advance. The address of BOVAG Mediation is: PO Box 1100, 3980 DC in Bunnik. Telephone no. +31 (0)30-6595395 (local rate). If it concerns newly-purchased parts or accessories, BOVAG Mediation can be invoked only if the consumer cannot invoke any warranty issued by the manufacturer or importer of this new product.

Article 13 - Distance agreement/outside sales room

The consumer has rights, including the right of withdrawal, and obligations that ensue from the provisions for agreements between traders and consumers, see Book 6, Title 5, Article 2b of the Dutch Civil Code (DCC). This only applies if an agreement or assignment is concluded at a distance and outside sales rooms, within the meaning of Article 6: 230g DCC. In such cases, the statutory provisions apply in addition to and in derogation from these general terms and conditions. Consumers do not have the right to withdraw if the consumer concerned issued a distance assignment, while the service is provided by the mechanic entirely during the reflection period. The latter is subject to the condition that the mechanic has commenced performance with the express prior consent of the consumer and he has declared that he will lose his right to withdraw as soon as the mechanic has carried out the assignment in full. The right to withdraw does not apply either in case of items of property that were created in accordance with the consumer's specifications, which were not prefabricated and that are created on the basis of an individual choice or decision by the consumer, or that are clearly intended for a specific person.

Article 14 - Choice of law

This agreement is governed by Dutch law unless the law of a different national law applies pursuant to mandatory rules of law.

Article 15 - Authentic language

In case of doubt, the Dutch version of these general terms and conditions applies also if these terms of delivery and payment were provided in a language other than the Dutch language.