



## STANDARD TERMS OF BUSINESS FOR CORPORATE CUSTOMERS OF BOVAG CAR DEALERS, BOVAG INDEPENDENT CAR BUSINESSES, AND BOVAG TRUCK & TRAILER BUSINESSES

### GENERAL

These Standard Terms of Business govern all agreements for the sale, repair and servicing of cars, parts and car accessories, made by and between members of *BOVAG Autodealers*, *BOVAG Onafhankelijke Autobedrijven* and *BOVAG Truck & Trailerbedrijven*, on the one hand, and buyers or clients acting in the exercise of a profession or the conduct of a business, on the other.

### Clause 1 - Definitions

In these Standard Terms of Business, the following definitions are used:

- *the vehicle*:
  - \* a passenger car or van with a total weight when loaded of no more than 3,500 kg;
  - \* a truck or heavy goods vehicle with a total weight when loaded in excess of 3,500 kg, and;
  - \* a trailer.
- *the agreement*: the agreement for the sale and purchase of a new or used car or parts or car accessories;
- *the seller*: the party selling a new or used car or parts or car accessories under the agreement;
- *the buyer*: the party buying a new or used car or parts or car accessories under the agreement;
- *the assignment*: the agreement for the performance of assembly, disassembly, repair or servicing work, voluntary or statutory vehicle tests and checks, and damage assessments, hereafter referred to individually and collectively as 'work';
- *the client*: the party instructing the mechanic to carry out work or to arrange for work to be carried out;
- *the mechanic*: the party receiving instructions to carry out work on a car and/or related to parts and/or car accessories or arranging for such work to be carried out.

### Clause 2 - General

1. These Standard Terms apply to all offers and all agreements of sale/purchase and the delivery of services by the seller/mechanic to a buyer (a legal entity or private individual) acting in the exercise of a profession or the conduct of a business.
2. The parties to these Standard Terms are consistently referred to as "the seller/mechanic", on the one hand, and the "buyer/client", on the other.
3. Variations from these Standard Terms must specifically be agreed in writing. Any agreed variations will not affect the validity of the other provisions and will apply to no more than one transaction at a time.
4. The seller/mechanic may amend these Standard Terms at any time.

### Clause 3 – Conclusion of the agreement

1. All offers and quotations howsoever and wherever submitted by a seller/mechanic are free of obligation and based on the prices and specifications valid at the time of conclusion of the agreement. Images, drawings, quoted capacities and further descriptions will be as accurate as possible but not strictly binding on the seller/mechanic. Minor non-conformities are allowed and if any changes are made to car models, the seller/mechanic may, without notifying the other party and without the other party's knowledge, carry out any necessary technical changes to the vehicles it sells or which are taken in for servicing or to any vehicle parts or accessories.
2. Promises or arrangements made verbally by or on behalf of the seller/mechanic are binding only if and to the extent that they have been confirmed in writing.
3. If no written agreement is provided by the seller/mechanic, the seller's/mechanic's written confirmation or the delivery receipt or the seller's/mechanic's invoice will serve as proof of the existence and terms of the agreement, subject to any evidence to the contrary.

### Clause 4 – Prices

1. All prices are in euros, exclusive of VAT and/or other government taxes, transport and insurance costs, the cost of repairs, servicing and vehicle tests, and the cost of getting a vehicle ready for use, unless expressly agreed otherwise in writing.
2. In the event of a rise in prices, including those charged by the seller's/mechanic's importers and suppliers, or any change in wages, taxes, social insurance contributions, other employment terms, currency fluctuations or similar circumstances occurring after the parties have concluded the agreement, the seller/mechanic may increase the agreed price to reflect such increase.
3. Unless expressly agreed otherwise, the prices of materials, parts and third-party costs do not include the workshop's hourly rates.
4. A change in prices will in no event constitute grounds to terminate the agreement.
5. Prices quoted are for delivery ex the seller's/mechanic's premises; if delivery is to be made elsewhere at the request of the buyer/client, the additional costs are payable by the buyer/client.

### Clause 5 - Delivery

1. The vehicle will be delivered at the seller's/mechanic's premises, unless the parties have expressly agreed on a different place of delivery in writing.
2. If the sold vehicle is not collected within 8 days of the buyer/client being notified that the vehicle is ready for collection, the risk of loss of or damage to the vehicle will in any case pass to the buyer/client from that time. In such cases, the seller/mechanic may charge a fee for having the vehicle in its custody according to its usual rates or the local rates. Any shipping of the product/products other than to the seller's/mechanic's premises will be for the risk and account of the buyer/client.
3. The risk of loss of or damage to the vehicle taken in for servicing or otherwise accepted into its custody by the seller/mechanic remains with the buyer/client, save for any intentional act or omission [opzet] or gross negligence [groeve onachtzaamheid] on the part of the seller/mechanic.

### Clause 6 – Delivery time

1. The time of delivery will be the date of delivery of the product or service (including repairs) stated in the agreement made between the parties or such earlier or later date as the parties may subsequently have agreed. Early delivery is always allowed.

2. If no date of delivery is agreed, the seller/mechanic will let the buyer/client know in writing well in advance when the vehicle(s) will be ready for collection at the seller's/mechanic's premises or at the agreed location.
3. Delivery times, whether or not expressly stated, are approximate times only and will in no event be strict deadlines. Accordingly, late delivery by the seller/mechanic will in no event be a valid reason for the buyer/client to terminate the agreement with the seller/mechanic, unless an expressly agreed delivery deadline was exceeded by more than 60%. Even after expiry of this extended period, the seller/mechanic will need to receive a written notice of default from the buyer/client first, granting it a grace period of at least one month, before the seller/mechanic is in default.

### Clause 7 Cancellation

1. If the buyer/client does not wish to exercise its right of termination under Clause 6 (3) or has no right of termination, the buyer/seller may terminate the purchase agreement in writing only if the delivery time has been exceeded. If the delivery time is exceeded by no more than four weeks, the buyer/client may cancel, provided that it pays the seller/mechanic 10% of the purchase price of the cancelled vehicle within five working days of the date of cancellation. If the buyer/client fails to pay this amount in compensation within five working days, the seller/mechanic may notify the buyer/client in writing that it demands specific performance of the agreement, in which case the buyer/client may no longer rely on such cancellation. If the delivery time is exceeded by more than four weeks, the buyer/client may cancel in writing without owing the seller/mechanic any compensation.

### Clause 8 – Replaced parts

Parts which have been replaced will become the property of the seller/mechanic after completion of the assignment (to carry out repairs), without the buyer/client being entitled to any compensation.

### Clause 9 – Storage costs

If the buyer/client fails to collect the vehicle within three working days of being notified that the work has been completed, the seller/mechanic may charge storage costs according to its usual rates or the local rates.

### Clause 10 – Damage assessments

If the seller/mechanic has carried out a damage assessment on the instructions of the buyer/client, the buyer/client will be charged the actual cost of the assessment. The assessment costs must be agreed by the parties in writing, in the absence of which reasonable assessment costs will be payable, based on the rules of conduct for experts adopted in mutual consultation by BOVAG, FOCWA, NIAV, and NVV.

### Clause 11 - Payment

1. Unless the parties have expressly agreed otherwise in writing, the other party must pay the total price agreed without any setoff, reduction or suspension prior to delivery or in cash upon delivery. Delivery includes the delivery of a service.
2. Payment for purchases or assignments on credit must have been received no later than fourteen days after the invoice date, without any discount, setoff or suspension. Payment for purchases of new vehicles on credit must be made immediately after the invoice date, unless otherwise agreed.
3. At the seller's/mechanic's first request, which the seller/mechanic is entitled to submit at any time, the buyer/client must make an advance payment or down payment or provide security as requested for the proper performance of its obligations in a manner to be decided by the seller/mechanic.
4. If the buyer/client fails to pay the total price agreed in a timely fashion or at all, the buyer/client will be in default without any notice of default being necessary. In such cases, the seller/mechanic may charge statutory interest plus 3% on the overdue amount per day as from the due date, without this affecting any of the seller's/mechanic's other rights.
5. If the seller/mechanic is required to engage the services of a debt collection agency, in addition to the seller's/mechanic's other rights to compensation, all associated costs, both judicial and extra-judicial, the extra-judicial costs being a minimum of fifteen (15) per cent of the overdue amount with a minimum of EUR 114, will be payable by the other party.

### Clause 12 – Retention of title, possessory lien, and pledge

1. The seller/mechanic retains title to all products delivered to the buyer/client until the purchase price for all such products has been paid in full. If, under the terms of these sales agreements, the seller/mechanic carries out any work for the buyer/client payable by the buyer/client, the retention of title continues to apply until the buyer/client has also fully paid the amount charged for such work. The retention of title also covers all claims which the seller/mechanic may have against the buyer/client for failure by the latter to meet any of its obligations to the buyer/client [seller/mechanic].
2. For as long as title to the products delivered has not passed to the buyer/client, the buyer/client may not create a pledge over such products or grant any third party any other right in or to such products, and must notify the seller/mechanic of any circumstances which may harm the seller's/mechanic's interests as the owner of such products. The seller/mechanic is not required to indemnify the buyer/client in any way for its liability as the party in possession of the product. For its part, the buyer/client

must indemnify the seller/mechanic for any claims by third parties against the seller/mechanic in connection with its retention of title.

3. The buyer/client must take out third-party liability and all-risk insurance for the vehicle for the period during which title is retained. The buyer/client grants the seller/mechanic irrevocable power to collect any insurance money paid under the all-risk insurance policy on its behalf.
4. If the buyer/client fails to meet any of its obligations or the seller/mechanic has good grounds to believe that it will fail to meet its obligations, the seller/mechanic may reclaim the products title to which it has retained. After the products have been repossessed, the buyer/client will be refunded their market value, which will in no event exceed the original purchase price, less the cost of the repossession and less any other amounts which the buyer/client may owe the seller/mechanic for failing to meet its obligations.
5. The seller/mechanic may exercise a possessory lien over all products which it has in its possession for or on behalf of the buyer/client for as long as the buyer/client has not paid the goods or services delivered by the seller/mechanic in full and this failure to pay constitutes breach by the buyer/client, including any such loss or damage, interest or costs as the buyer/client may at any time owe the seller/mechanic under any agreement or these Standard Terms of Business.
6. By taking any item into the seller/s/mechanic's custody, the buyer/client creates a pledge over such item for all amounts which it owes or may at any time owe the seller/mechanic on any basis whatsoever. This includes, without limitation, any claims under agreements which have not yet been settled. The parties also agree that the seller/mechanic, in its capacity as pledgee, may convert such possessory pledge into a non-possessory pledge by having the agreement between them and a copy of these Standard Terms of Business registered as a private instrument.

#### Clause 13 – Termination

1. If the buyer/client, after receiving a written notice of default, continues to fail to meet its obligations to the seller/mechanic for a period of fourteen (14) days, the agreement will expire by operation of law without court order, unless the seller/mechanic demands specific performance of the agreement. The foregoing applies without prejudice to Clause 11 (4) of these Standard Terms.
2. If the buyer/client breaches its obligations to the seller/mechanic and the agreement has terminated on that basis, the buyer/client must pay the seller/mechanic a penalty immediately payable on demand of fifteen (15) per cent of the agreed price, without any notice of default or court order being necessary, and without this affecting the seller/s/mechanic's right to full compensation and to be reimbursement for the collection costs, including the costs referred to in Clause 11 (4).
3. If the seller/mechanic demands specific performance under Clause 13 (1), the buyer/client must pay the seller/mechanic a penalty immediately payable on demand of three (3) per mil of the agreed purchase price for each day that has elapsed since expiry of the fourteen- (14-) day period stated in Clause 13 (1) until the day of performance, without prejudice to full compensation and reimbursement of the collection costs, including the costs referred to in Clause 11 (4).
4. Without restricting the generality of the provisions set out in this clause, the seller/mechanic may, without notice of default or court order and without this affecting any of its other rights, terminate or suspend all or any part of the agreement with immediate effect if the buyer/client dies, applies for a suspension of payments or bankruptcy or is declared bankrupt. In such cases all amounts which the buyer/client owes the seller/mechanic will immediately fall due and payable on demand, without the seller/mechanic being required to pay any compensation and/or provide any guarantee. The buyer/client must notify the seller/mechanic promptly if the buyer/client becomes aware of any facts and/or circumstances which it believes provide good grounds to fear that it will not or may not be able to meet its obligations to the seller/mechanic.

#### Clause 14 – Force majeure

1. If it is onerous or impossible for the seller/mechanic to perform an agreement due to force majeure, the seller/mechanic may terminate the agreement, to the extent that it has not yet been performed, by means of a written notification to the buyer/client explaining the circumstances that render any further performance onerous or impossible.
2. For the purposes of these Standard Terms, force majeure includes without limitation:
  - war or a similar situation, riots, sabotage;
  - fire, lightning, explosions, release of hazardous substances or gases;
  - failing energy supply, interruptions to plant or business operations of any nature whatsoever;
  - boycotts, sit-downs, picketing by persons other than the seller's/mechanic's employees;
  - transport problems, shutdown of operations due to winter conditions, import and export bans;
  - excusable breach perform by third parties engaged by the seller/mechanic to help perform the agreement;
  - any problems caused by government action;
  - epidemics;
  - theft or embezzlement of or damage to products stored at the warehouse, workshop or other business premises of the seller/mechanic or whilst in transit;
  - and any other circumstances preventing the seller/mechanic from conducting its operations normally, as a result of which the seller/mechanic cannot reasonably be required to perform the agreement.The provisions set out in this Clause 14 (2) also apply if such circumstances affect the seller/s/mechanic's suppliers or other third parties engaged by the seller/mechanic.
3. If the seller/mechanic is affected by an event of force majeure, the seller/mechanic must notify the buyer/client as soon as possible, saying whether delivery can still be made and, if so, when.
4. If an event of force majeure has not made it impossible to deliver, but delivery cannot be made within three (3) months of the agreed delivery date, either party may terminate the agreement by sending a written notification to the other, without either party being entitled to compensation payable by the other. Such notification must be given within one (1) week of receiving the notification referred to in Clause 14 (3). The provisions set out in this Article 14 (4) do not restrict the generality of Clause 6 (3) of these Standard Terms.

#### Clause 15 - Liability

1. The seller/mechanic will be liable to the buyer/client only for any loss or damage that is the direct and foreseeable result of the seller/mechanic breaching its obligations under the agreement between it and the buyer/client. Consequential or indirect loss or damage of any nature whatsoever, including without limitation loss of business, late payment penalties (other than statutory interest), value impairments, lost enjoyment, lost profits, financial losses incurred, the cost of replacement transport or rental or lease expenses, damage to third parties or their property, damage to goods stored in vehicles, and personal injury are excluded from compensation.

2. In so far as the seller/mechanic is required to pay compensation for loss or damage under Clause 15 (1), this will only concern loss or damage against which the seller/mechanic has taken out or should reasonably have taken out insurance, it being understood that such compensation will in no event exceed the maximum amount insured or the maximum amount that should reasonably have been insured. This is intended to cap the amount payable in compensation.
3. As regards the state of the services and/or products delivered by the seller/mechanic (including repairs), its liability to the buyer/client will not extend beyond the warranties provided in Clause 16. The buyer/client does not have the rights conferred by law on a buyer/client not acting in the exercise of a profession or the conduct of a business, such as the right provided in Book 7 of the Dutch Civil Code that a product must conform to the agreement upon delivery.
4. All other claims for damages on any basis whatsoever are excluded.
5. The buyer/client must indemnify the seller/mechanic from all claims by third parties, unless the seller/mechanic is liable under this clause.

#### Clause 16 - Warranties

1. Deliveries of new products, including parts, materials and accessories, are not covered by any warranties other than those given by the manufacturer, importer or supplier as stated in the warranty certificates submitted to the other party. If no warranty certificates are submitted, the seller/mechanic will not be required to provide any warranty for products which it has procured from a third party or for work carried out by a third party engaged by it other than the warranty which the seller/mechanic itself has received from such third party. Warranties on products previously used by a third party (including used vehicles, demonstration or showroom models and exchange or replacement parts) are expressly excluded, unless the parties have expressly agreed otherwise in writing.
2. Claims under a warranty will not be valid if any work has been carried out by the buyer/client or a third party on the products and/or services covered by the warranty without the seller/s/mechanic's prior written permission.
3. In the case of a warranty, the seller/mechanic is only required, at its discretion, to replace, supplement or repair the product delivered, provided that the defect does not concern a usual non-conformity and is not the result of an external cause and/or an act or omission by the other party or a third party, or caused by normal wear and tear. The products or parts replaced will become the seller/s/mechanic's property.
4. The seller/mechanic's warranty on repairs carried out by the seller/mechanic is three months for a maximum of 25,000 kilometres, calculated from the day of completion of the repair. This warranty means that the seller/mechanic will remedy and defects found during this period at no cost, provided that the defects have been reported to the seller/mechanic without delay. Emergency repairs carry no warranty. The warranty does not apply to improper use or if the buyer/client or any third party has carried out work, without the seller/mechanic's prior approval, directly or indirectly relating to the repairs carried out by the seller/mechanic covered by the warranty.

#### Clause 17 - Complaints

1. Complaints about products and/or services delivered by the seller/mechanic must be submitted to the seller/mechanic without delay, but in any case within eight days after the cause of the complaint was discovered or could reasonably have been discovered, failing which any claims will not be valid. This period starts to run when the product or service is actually delivered.
2. Complaints about visible defects in the products delivered by the seller/mechanic, such as scratches, dents and similar, submitted after delivery are invalid, unless the buyer/client provides any evidence to the contrary.
3. Returned items will not be accepted unless authorised by the seller/mechanic in advance. They must be shipped carriage and insurance paid and be packaged properly, where necessary.

#### Clause 18 – Trade-in/purchase

1. If the buyer/client buys a vehicle and trades in an old one and continues to use the old one awaiting delivery of the newly purchased vehicle, the vehicle to be traded in will remain at its risk and expense for as long as it has not actually delivered the vehicle to the seller/mechanic. The buyer/client remains the owner of the vehicle to be traded in until then and will bear all associated costs, including maintenance costs and any damage or loss or value impairments. The seller/mechanic is not bound by an agreed trade-in price if the vehicle to be traded in is actually delivered later than the approximate delivery time indicated. In such cases, the parties may apply a pre-agreed percentage against the trade-in price by way of depreciation.
2. Unless expressly agreed otherwise in writing, the buyer/client warrants to the seller/mechanic that any vehicle to be traded in by the buyer/client will be free of any rights or entitlements by third parties, has not been damaged, and is in a proper state of repair and safe to be driven, and that the vehicle has not been tampered with in terms of, for example, the mileage shown on the odometer, and also warrants to the seller/mechanic generally that it is unaware of any facts or circumstances concerning the vehicle to be traded in which it suspects or knows or should know to be important to the seller/mechanic if the latter were not fully informed.
3. The actual trade-in does not release the buyer/client from the warranty referred to in Clause 18 (2).

#### Clause 19 – Personal information

The buyer's/client's personal details stated in the order confirmation will be processed by the seller/mechanic, possibly within the meaning of the Dutch Data Protection Act [*Wet bescherming persoonsgegevens*]. This information will allow the seller/mechanic to perform the agreement and meet its warranty obligations to the buyer/client, and provide the buyer/client with the best possible service, up-to-date and timely car information, and personalised offers. Additionally, the personal data may be shared with third parties for direct vehicle marketing activities. If the buyer/client objects to its personal details being processed within the meaning of the Dutch Data Protection Act for direct mailing activities, the seller/mechanic will accept such objection. The vehicle information will be entered in the system operated by *Stichting Nationale Autopas*, which registers the mileage shown on odometers so as to prevent mileage fraud.

#### Clause 20 – Governing law

All legal relationships between the seller/mechanic and the buyer/client are governed by the laws of the Netherlands.