

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT FOR THE BUSINESS MARKET – BOVAG DAMAGE REPAIR COMPANIES

GENERAL

These General Terms and Conditions shall apply as from 1 February 2022. They apply to orders for the repair of damage to items entered into between members of BOVAG Damage Repair Companies and customers acting for purposes falling within their business or professional activities.

ARTICLE 1 - DEFINITIONS

For the purposes of these General Terms and Conditions, the following definitions shall apply: item: the object to which the quotation or order between the company and customer relates, such as a passenger vehicle, a van with a maximum total weight including payload of 3,500 kg, or the parts or accessories of such vehicles; customer: the person who, for purposes falling within their business or professional activities, gives the company an order to carry out or arrange for damage repair work to be carried out on an item, or the customer's insurer acting on behalf of the customer; order: the agreement entered into with the customer for the performance of damage repair work on an item; company: the party that carries out or arranges for work such as inspection, advice and damage repair to be carried out in relation to an item; force majeure: - war or a situation resembling war, civil unrest, sabotage; - fire, lightning strike, explosion, leakage of hazardous substances or gases; - disruption of the energy supply, factory or business disruption of any kind; - boycott, occupation of the business premises, blockade, insofar as carried out by persons other than employees of the company; - transport difficulties, work stoppages due to frost, import and export bans; - failures by third parties engaged by the company that are not attributable to the company; - impediments caused by government measures; - epidemics; - theft, misappropriation or damage to items from the company's warehouse, workshop or other business premises, or during transport; - and any other circumstance that impedes the normal operation of the company or as a result of which performance of the agreement cannot reasonably be required of the company. The provisions of this definition of force majeure shall also apply where such circumstances affect the company's suppliers or other third parties engaged by the company, written: in writing or electronically.

ARTICLE 2 - GENERAL

1. If these General Terms and Conditions form part of orders, the provisions of these General Terms and Conditions shall apply to such orders, as well as to any orders arising from them and other legal acts arising therefrom, unless the parties have expressly deviated from them in writing.
2. Once these General Terms and Conditions have become applicable, they shall continue to apply to new agreements between the parties, unless expressly agreed otherwise.
3. Deviations must be agreed in writing and shall not affect the validity of the remaining provisions and shall never apply to more than one transaction.
4. These General Terms and Conditions shall always take precedence over any terms and conditions that may be used by the customer. Where necessary, the company hereby expressly rejects the applicability of the customer's terms and conditions.
5. In the event of any conflict between the content of the order and these General Terms and Conditions, the provisions of the order shall prevail, insofar as the order is written.
6. The company shall have the right to amend these General Terms and Conditions at any time.

ARTICLE 3 - FORMATION AND AMENDMENT OF THE DAMAGE REPAIR ORDER, SUBJECT TO MANAGEMENT APPROVAL

1. Every offer (expressly including a quotation) is based on the company carrying out the order under normal circumstances and during normal working hours.
2. Offers shall be deemed to have been made without obligation, even if the offer specifies a period for acceptance. If no acceptance period is apparent from the offer itself (or from its nature), the offer shall remain valid for two weeks from the date of the offer.
3. The company shall endeavour to formulate its quotations (including price lists, brochures and other information and descriptions) carefully, but the user shall not be liable for errors or typographical errors. Minor deviations may occur. The information contained in brochures, images, drawings, dimensions and weight specifications and the like shall be binding only if expressly included in an order signed by both parties or in an order confirmation signed by the customer.
4. If no order has been issued by the company in writing, the company's written confirmation or its delivery note or invoice shall serve as evidence of the existence and content of the order, subject to proof to the contrary.
5. The parties may agree deviating terms and conditions of delivery or payment only in writing, and the order may likewise only be amended in writing. Amendments shall not form part of these General Terms and Conditions. Amendments to an order for work. If, during the performance of the work, it becomes apparent that the work cannot be carried out, or cannot be carried out in full, due to the condition of the item or the parts and materials made available by the customer, the company shall notify the customer accordingly. The parties shall then determine by mutual consultation whether the order should be amended, insofar as no relevant provisional sums or quantities subject to adjustment have been included. Price increases resulting from additions and/or amendments to the order carried out at the customer's request shall be borne by the customer. As soon as the company anticipates that an amount (or amounts) specified in the order will be exceeded by more than 10%, the company shall be obliged to notify the customer accordingly. The parties shall then determine by mutual consultation whether the order should be amended. Both the company and the customer shall then have the right to terminate the order without any formal notice of default being required. In such event, the customer shall nevertheless remain liable for the work carried out by the company up to the time of termination, as well as the costs associated with the work.
6. All orders and amendments thereto shall be entered into subject to the suspensive condition of management approval. If the management of the company does not notify the customer within two days of confirmation of the (amended) order that the (amendment to the) order is not accepted, the order shall be deemed to have been concluded.

ARTICLE 4 - PRICES, APPROVAL OF INVOICES AND STATEMENTS, DAMAGE ASSESSMENT COSTS

1. Any quotation of a price for work to be completed shall be deemed to have been made without obligation, unless a fixed price has been expressly agreed in writing. Price increases resulting from additions and/or amendments to the order carried out at the request of the customer shall be borne by the customer. As soon as the company anticipates that an amount specified in the order will be exceeded by more than 10%, the provisions of Article 3(5) shall apply.
2. Prices are calculated for delivery at the user's place of business. Where delivery is made elsewhere at the customer's request, any additional costs associated with this shall be borne by the customer.
3. All prices are exclusive of VAT and any other government charges and levies applicable to the delivery, and of packaging costs, unless the company states otherwise in writing.
4. If, after an offer has been made or an order has been concluded, and before the agreed date for completion of the work, the prices of ancillary materials, raw materials, parts, wages and other factors determining the price have increased, the company may adjust the price accordingly, even where this involves unforeseen circumstances.
5. The insurer shall always have access to the written repair file, and the customer shall also receive a copy upon request.
6. If the other party does not respond within five days to a detailed statement as referred to in paragraph 5 or to an invoice arising from any order, the customer shall be deemed to have approved it.
7. If the company has carried out a damage assessment at the customer's request, the customer shall be charged the actual costs incurred for this purpose. The assessment costs shall be agreed by the parties in writing. In the absence of such an agreement, a reasonable assessment fee shall be payable.

ARTICLE 5 - COSTS AND RISK OF AN ITEM TAKEN INTO CUSTODY

When the company takes an item into its custody, for example because it has been brought in for damage repair, the item shall remain at the customer's expense and risk. This shall not apply if the item is damaged or lost as a result of intent or gross negligence on the part of the company.

ARTICLE 6 - DELIVERY TIME FOR THE ORDER AND STORAGE CHARGES

1. The expected delivery date shall be stated in the order. Early delivery shall be permitted. The parties may agree that delivery will take place at a later date.
2. If no delivery date has been agreed in the order, the company shall notify the customer in writing sufficiently in advance when a repaired item will be ready for collection at the company's place of business. If another location has been agreed, the company shall notify the customer when the item will be delivered at the agreed location.
3. The delivery time for work to be completed shall never be regarded as a strict deadline within the meaning of Article 6:83(a) of the Dutch Civil Code, but shall be a non-binding period and shall be based on the working conditions prevailing when the order was concluded and on the timely delivery of the materials ordered by the company for the performance of the work. If, through no fault of the company, a delay occurs as a result of changes in the aforementioned working conditions or because materials ordered in good time for the performance of the work are not delivered on time, the delivery time shall be extended as necessary.
4. Amendments to an order for work to be completed, as referred to in Article 3(5), may also result in previously specified delivery times being exceeded. In the event of an amendment, the delivery time shall be deemed to have been extended by a non-strict period proportionate to the agreed amendments.
5. After the agreed work has been carried out and the user has notified the other party accordingly, the other party shall collect the item concerned within one week of the notification being sent. If the customer fails to do so, the customer shall nevertheless remain liable to pay the amount due as if the item had been delivered to the customer. In that case, the company may also charge the customer reasonable storage charges.
6. Exceeding the delivery time, regardless of the cause, shall not entitle the customer to carry out or arrange for work to be carried out to perform the agreement without a court order.
7. Any contractual penalty stipulated for exceeding the delivery time shall be deemed to replace any right the customer may have to compensation. Such a penalty shall not be payable if the delay in delivery is due to force majeure.

ARTICLE 7 - REPLACED PARTS

If the customer requests the old parts when placing the order, the customer shall receive them after they have been replaced. If a guarantee claim is to be dealt with between the company and a guarantor, such as a manufacturer or importer, the company may refuse to release the parts. If the customer requests the old parts when placing the order, the customer shall receive them after they have been replaced. If the customer has not requested the parts, or has not requested them in good time, the replaced parts shall also become the property of the company, without the customer receiving any compensation for them.

ARTICLE 8 - PAYMENT

1. Unless the parties have expressly agreed otherwise in writing, payment of the total agreed price must have been made before completion of the service, without any set-off, withholding or suspension of payment by the other party. Payment for additional work shall be made as soon as this has been charged to the customer.
2. Where it has been agreed in writing that payment for orders is to be made after completion, the customer must pay the amount due or the remaining balance within the agreed payment period stated in the quotation.
3. The company may apply a payment period of no more than thirty (30) days to its invoices and shall state this period in its quotation.
4. The company's claim shall nevertheless become immediately and fully due and payable, and the customer shall simultaneously be in default, if:
 - 4a. The customer applies for a suspension of payments or is granted a suspension of payments, its bankruptcy is applied for or it is declared bankrupt, or it surrenders its estate.
 - 4b. an attachment is levied on all or part of the customer's property;
 - 4c. the customer ceases its business, or at least a substantial part thereof, disposes of it, transfers shares in it to a third party or continues it in another manner.
5. Debts owed by the customer, regardless of their basis, shall be paid to the company in cash or by bank transfer.
6. In the reciprocal agreement with the company, the customer shall be deemed to be the first party required to perform. In this context, the performance of the user consists of collection or delivery of the work carried out.
7. If the customer fails to pay any amount due on time, the customer shall be in default by operation of law without any formal notice of default being required. From that time, the customer shall owe interest of 1% per month (with part of a month being treated as a full month) on the amount due until it has been paid in full, unless the statutory interest rate is higher. In that case, statutory interest shall be payable until the amount due has been paid in full. All extrajudicial collection costs shall be borne by the customer. The customer shall owe extrajudicial collection costs of 15% of the amount due, subject to a minimum of €200, insofar as permitted by law.
8. Any objections to invoices sent to the customer must be notified to the company by registered letter within five days of the due date. If no objection to an invoice is made within this period, the customer shall be deemed to have accepted the invoice.

ARTICLE 9 - RIGHT OF RETENTION OF THE DAMAGE REPAIRER

The company may exercise the right of retention over all items that it holds for or on behalf of the customer. The right of retention shall be exercised where the repaired items delivered by the company have not been paid for in full and this constitutes a breach of contract. Breach of contract means the attributable failure to perform a contractual obligation. The right of retention may also be exercised in respect of work previously carried out by the company on the same item. In addition to failure to pay (in full) for a service, failure to pay any damage, interest and costs owed or to be owed by the customer to the company on the basis of an order or these General Terms and Conditions shall also constitute grounds for exercising the right of retention.

ARTICLE 10 - TERMINATION OF THE ORDER

1. Termination of the order shall take place by means of a written statement issued by the party entitled to do so. Before a written notice of termination is addressed to a party, that party must in all cases first be given formal notice of default in writing and be given a period of 30 days to fulfil its obligations or remedy any failures, with the failures being described precisely in writing.
2. In the event of force majeure, the company shall, within three weeks after the occurrence of a circumstance constituting force majeure, be entitled to choose either to terminate the order out of court or to amend the delivery period for a service. Neither option shall give rise to an obligation to pay compensation. Following termination of the order, the company shall be entitled to compensation for the costs already incurred and/or work already carried out by it.
3. If the customer fails to comply, or fails to comply on time, in full or properly, with any payment obligation arising from any order entered into with the user and from these General Terms and Conditions, the company may terminate the order immediately, in whole or in part, without formal notice of default and without court intervention.
4. If the customer is a natural person, the joint heirs shall, upon their death, have the option of having the work carried out in full or of having any work already commenced discontinued, subject to payment of the costs of work already carried out by the company. Within one month after the death of the customer who is a natural person, the joint heirs must notify the user in writing which option they have chosen. Failing this, the company shall have the right to terminate the order without court intervention. In all cases referred to in the first sentence of this provision, the joint heirs shall be and remain jointly and severally liable for payment of the company's remuneration.
5. If the company terminates the order, it shall be entitled to demand payment of the full agreed price, without prejudice to its right to compensation for any loss and/or loss of profit suffered as a result of the termination of the order. The profit shall be set at 15%.

ARTICLE 11 - EXCLUSION OF STATUTORY GUARANTEE RIGHTS, BOVAG DAMAGE REPAIR GUARANTEE FOR WORKMANSHIP, INSURANCE COVERAGE, LIABILITY

1. Exclusion of statutory guarantee rights The customer is not entitled to the statutory rights afforded by law to a buyer who is not acting in the course of a business or profession, including the right under Book 7 of the Dutch Civil Code for the work to conform to the order.

2. BOVAG Damage Repair Guarantee for Workmanship

- Unless expressly agreed otherwise, the company guarantees, within the European Economic Area and for a period of 48 months after delivery of the repaired item, that the orders undertaken or subcontracted by the company have been properly carried out. Unless otherwise agreed with the customer or the customer's insurer, the company shall fit new, original replacement parts or materials supplied by the manufacturer. Where windows are replaced, windows supplied by the manufacturer's supplier shall also be fitted. The guarantee applies only to workmanship and therefore not to the materials and parts fitted in connection with such work. Where guarantee work is not possible or would not serve a useful purpose, the customer shall receive reasonable compensation. The guarantee covers the free-of-charge re-performance, or having re-performed, of work that was not carried out properly. Guarantee work shall be carried out within a reasonable period and without serious inconvenience.
3. Other provisions:
 - 3a. The guarantee applies to the customer and also to persons who subsequently become owners of the repaired item.
 - 3b. If the item is located a considerable distance from the company when the customer makes a claim under the guarantee and the item cannot or may not be driven, the company shall arrange for a recovery vehicle. The cost of the recovery vehicle shall be borne by the customer, unless the customer has successfully made a claim for guarantee work.
 - 3c. Where repairs are carried out to the bodywork of passenger vehicles or vans for which the manufacturer's guarantee still applies, the company shall, in respect of the repaired parts, take over the remaining period of that manufacturer's guarantee where the customer loses, or is at risk of losing, that manufacturer's guarantee as a result of the repair.
 4. Exceptions to the right to the guarantee:
 - 4a. The consequences of defects in, or the unsuitability of, other materials/parts prescribed by the customer or methods of work other than those recommended by the company shall be borne by the customer. This shall not apply where the company has failed to exercise the requisite expertise or due care (Article 7: 760 of the Dutch Civil Code). The written or digital order shall state that the customer has prescribed other parts/materials and/or other work.
 - 4b. If the customer declines work that the company has recommended in writing or electronically before completion, this may, where reasonable in view of the circumstances, result in the customer no longer being able to make a successful claim under the guarantee.
 - 4c. If the customer requests an emergency repair to be carried out on the item, no guarantee shall be provided for such repair. An emergency repair is a temporary solution intended to enable the customer to continue their journey.
 - 4d. The condition of an item may be too poor for a claim for guarantee work to be made. No claim may be made under the BOVAG Damage Repair Guarantee if an item has not undergone preliminary work at the company's workshop. The written or digital order shall state this.
 - 4e. The customer shall report a defect in the repaired item as soon as possible after discovering the defect. If the customer fails to do so, this may, where reasonable in view of the circumstances, result in the customer no longer being able to make a successful claim under the guarantee.
 - 4f. The customer must give the company the opportunity to remedy a defect itself or have it remedied. Failing this, the customer may not make a claim under the guarantee, unless the situation referred to in paragraph 4h applies.
 - 4g. Where a third party carries out work on an item, part or accessory repaired by the company, the customer may not make a claim under the guarantee in respect of such work, unless the situation referred to in paragraph 4h applies. However, the customer shall be entitled to make a claim under the guarantee where the work carried out by the third party is unrelated to the work previously carried out or arranged to be carried out by the company.
 - 4h. An exception to paragraphs 4f or 4g may apply where there is an immediate need to repair the repaired item. The emergency situation must occur at a location a considerable distance from the company. The customer must be able to demonstrate this necessity, for example by providing details from the third-party company or the damaged parts. Where the repair is carried out by a third-party company within the national borders of the Netherlands, that third party must be a member of BOVAG. Where the emergency situation occurs outside the national borders of the Netherlands and the item is repaired by a third-party company established abroad, the costs of the foreign company shall be reimbursed up to the maximum price level applicable at the company.
 - 4i. If normal or prescribed maintenance is not carried out, or is not carried out properly, and an item consequently breaks down, the BOVAG Damage Repair Guarantee shall not apply.
 - 4j. Personal injury, damage to another item or any other costs shall not be compensated under the BOVAG Damage Repair Guarantee.
 - 4k. The BOVAG Damage Repair Guarantee does not cover colour differences in the paintwork of the item that are not visible to the naked eye in daylight, damage to the paintwork caused by an external cause (such as hail damage), or defects in the paintwork of parts that were not fitted or worked on by the company.
 - 4l. The BOVAG Damage Repair Guarantee does not apply to normal wear and tear, damage caused by freezing, overloading, dropping the item supplied, or defects arising from the participation of repaired items in competitions or speed trials.
5. The customer's alleged failure by the company to comply with its guarantee obligations shall not release the customer from the obligations arising for the customer under any order entered into with the company.
6. Liability
 - 6a. Paragraphs 2 to 4 of this Article set out the BOVAG guarantee conditions, which form the basis on which the company may be held liable.
 - 6b. In addition, the customer may only claim compensation for loss that is the foreseeable and direct consequence of an attributable failure by the company to perform its obligations under the order. (An attributable failure is also referred to as a breach of contract.) Consequential loss or indirect loss suffered by the customer shall not be compensated. Examples include, among other things: business losses, loss arising from delay (other than statutory interest), loss due to diminution in value, loss of use of an item or loss of profit, losses suffered, costs incurred for replacement transport or for rental and leasing, damage to third-party goods or damage suffered by third parties themselves, cargo damage, personal injury or non-pecuniary loss. The company shall not be liable if cargo, inventory, securities or documents are lost or stolen from the vehicle while it is in the company's custody for the purpose of damage repair, unless this is due to intent or deliberate recklessness on the part of the company.
 - 6c. The provision set out in paragraph b is intended to establish a liability cap. If the company is required to compensate for loss, the amount eligible for compensation shall never exceed the maximum insured amount or the amount that could reasonably be insured.
 - 6d. The customer shall indemnify the company against all claims by third parties, unless the company is liable under this Article.
 - 6e. Before and after damage repair, the company shall perform a diagnostic scan of the item. If any damage costs unrelated to the order are detected, the company shall notify the customer accordingly and include the diagnostic report in the digital repair file. The company's obligations shall not extend beyond this.

ARTICLE 12 - CHOICE OF LAW AND JURISDICTION

1. All orders entered into between the company and the customer shall be governed exclusively by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded, insofar as any law or treaty provision does not preclude this choice of law.
2. If disputes cannot be resolved by mutual consultation, they shall be brought before and decided by the court having jurisdiction in the place where the company has its place of business.

