

Terms and Conditions of Delivery and Payment Bols Motoren B.V., Tilburg (NL)

The following terms and conditions shall apply to all sales and deliveries by Bols Motoren B.V., Tilburg, Netherlands (hereinafter referred to as "B M", "we", "us" or "our") of goods and provision of services to customers/ purchasers. Departure from these terms and conditions shall be permissible only with our written confirmation.

Article 1. Agreement

1. All quotations and price estimates are purely indicative.
2. It is specifically agreed that the general terms and conditions of the customer/ purchaser are not applicable to sales, repair or other agreements entered into between the parties, unless explicitly agreed in writing.
3. The duration of repairs/work is indicated only approximately.
4. The agreed delivery date is, in the case of purchasing, repair or other agreements only a probable one. If the probable date in the purchasing agreement is exceeded by a period of three months or more; the purchaser can give B M notice of default in writing. If B M has not delivered within one month of the notice of default, the purchaser has the right to cancel the agreement without recourse to legal action. The purchaser must give notice of cancellation by registered letter.
- 5a. Price adjustments as a result of, for example, changes in rights, taxes, duties, factory and/or import prices and/or exchange rates may be passed on at any time in the selling price. After notification of this adjustment the purchaser has the right to cancel the agreement in cases where raising of the stipulated price by B M takes place within three months of the agreement being entered into. The cancellation must take place within one week of such notification by registered letter. In the latter case B M is entitled to compensation for costs incurred, set at 1 % of the agreed selling price.
- 5b. With agreements other than purchasing agreements the agreed price is indicative. If the indicative price is or threatens to be exceeded by more than 20% B M shall contact the customer in order to discuss the additional costs. In that case the customer shall be entitled to cancel the agreement, while compensating B M for work already carried out.
6. Exchange products are sold only on surrender of old products of the same make, construction and compound, which show no external, visible damage and of which vital parts such as block, cylinder head, crankshaft and/or camshaft can be remanufactured in a normal way.
7. In purchasing an exchange product a deposit will be charged. As soon as the old product is returned B M will credit the deposit. Unless old products are supplied with defects as mentioned in clause 6. of this Article. Then the extra costs will be charged to the customer.
8. If the customer has not delivered the old product, referred to in clause 6 of this Article, to B M within 6 months after the date of purchase of the exchange product, we shall no longer be obliged to credit the deposit money charged and/or the costing.
9. Old products and/or parts surrendered must for safety and environmental reasons be securely packed and completely oil and coolant-free. Under no circumstances are we liable for any damage whatsoever resulting from non-compliance with this provision.
10. The mode of transport shall be determined by B M. Goods always travel at the customer's risk, irrespective of whether transport is free and irrespective of whether goods are being transported to or from our premises. Insurance may be taken out at the request of and is chargeable to the customer. Provisions included in the terms and conditions of the carrier, cannot impair the provisions of this clause.
11. Exchange products are packed in a standardised way. The returning products have to be packed in the original standardised packaging. The packaging supplied remains the property of B M, and must be returned to us undamaged. Occasionally packaging material is subject to a deposit arrangement analogous to the clauses 7. and 8. of this Article.
12. Deliveries by us are always 'ex works B M (Tilburg, Netherlands) (EXW) and in accordance with the most recent version of ICC Incoterms.

Article 2. Payment

1. The debts of customers / purchasers to B M are regarded as payable at B M's place of business.
2. Unless expressly agreed otherwise payment to B M must be done previously to the delivery. Mode of payment; by cash payment or by transfer into a bank account specified by us.
3. Payment by the customer/ purchaser must be in 'Euro's', unless explicitly otherwise agreed.
4. If payment is not made by the customer/ purchaser at the agreed time, B M is entitled to charge the statutory Dutch interest rate on the amount due, plus 2% ARP, to be calculated from one month after the agreed payment date. In this case the remainder of the month in which payment should have been made shall be regarded as a whole month. This increase in the amount due is regarded as a condition on which we grant delayed payment, without prejudice to the obligation to pay by the agreed date.
5. If the customer / purchaser remains in default after being served with a summons, B M is entitled to add collection costs to the amount due. These collection costs include both legal and non-legal expenses. Non-legal expenses are all expenses charged to us by lawyers, prosecutors, bailiffs and anyone else whose services they use in order to collect the amount due. Non-legal costs are set at a minimum of 15% of the amount due with a minimum charge of € 100,00.
6. Without prejudice to our right of retention, B M shall be free in executing a repair order to require provisional or partial payment. In cases where the customer is a natural person not acting in the pursuit of a profession or business prepayment in respect of spare parts shall not exceed 50% of the purchase price.
7. If, after completion of the work which B M was commissioned to carry out and notification of the customer, the relevant engine and/or other item sent for reconditioning or repair, is not collected within two weeks, or longer as agreed in writing between the parties, of our sending the notification, we are entitled to charge storage costs in accordance with the rates operating in our company or at the location in question.

8. Replaced materials or items are made available to the customer only if this has been expressly requested at the time of the repair order. Failing this, these materials become our property without the customer having any claim to reimbursement.

Article 3. Guarantee

1. We give a guarantee for a period of 12 months from the invoice date, up to a maximum of either 2,000 running hours for the engine or of 100,000 kilometres covered by the engine, whichever maximum is first reached, on exchange engines supplied by us and on engines completely reconditioned by us for road traction. This guarantee shall be governed by the provisions laid down as part of the so called BOVAG reconditioning guarantee and set out in the relevant reconditioning order and the accompanying BOVAG reconditioning guarantee certificate issued on purchase of an exchange or completely reconditioned engine. The customer/ purchaser shall be provided in any case immediately on request with a free (specimen) copy.
2. In the case of delivery by B M of new engines and other new items these shall be governed by guarantees if and in so far as such guarantees are issued on such engines/items by the factory. Parts obtained by us from third parties or work carried out on our behalf by third parties, are not covered by any guarantee other than that obtained by us from the said third parties. The provisions of this clause are without prejudice to any right enjoyed by a natural person not acting in pursuit of a profession or business, in consequence of the statutory provision of Book 7, Netherlands Civil Code.
3. Unless agreed otherwise with the customer/ purchaser in writing prior to this agreement, the guarantee periods given by us in this Article may be invoked only by direct customers/ purchasers of ours. Third parties, in whatever capacity, are under no circumstances entitled to appeal to these guarantee provisions.
4. We undertake to rectify free of charge any partial reconditioning or work carried out by us, not covered by clause 1 of this Article, which the customer can prove have been carried out incorrectly, though subject to the restriction specified in clause 6 of this Article.
5. We undertake to replace or repair parts manufactured by us, which the customer/ purchaser can prove have been supplied by us in a defective condition, though subject to the restriction specified in clause 6 of this Article.
6. Our liability extends in any case only as far as the amount paid to us by the customer/ purchaser or due to us in respect of the work and supplies obtained, plus the amount paid or due in respect of installing and removing engines, during the first 6 months of the period mentioned in clause 1 of this Article. With respect to the latter, the maximum hours as laid down by the original manufacturer of the engine in question shall apply, against an hourly rate fixed by B M. Our liability ceases as soon as repairs or modifications have been or are being made without our permission on engines or parts of engines worked on by B M.
7. We accept no further guarantee or liability, even for any damage, which is the result of incorrectly, executed work, or of defects in parts supplied.
8. The obligations with respect to the guarantee terminate in any case in which the customer / purchaser does not or has not promptly fulfilled his paying duties. The customer / purchaser is not entitled to refuse to do any payment based on the fact that B M has not yet fulfilled or has not completely fulfilled her obligations with respect to the guarantee.

Article 4. Acceptance and complaints

1. If the customer/ purchaser has complaints about the quality of the goods supplied, he should immediately, but no later than 8 days after signature of the certificate of receipt for the goods, inform us in writing. If the defectiveness of the item has become apparent only later, the customer should inform us immediately upon discovery. Otherwise the customer shall forfeit the right to appeal in case of defects.
2. If the customer/ purchaser wishes to complain formally about the item, he must allow B M to examine the item or have it examined. If the complaint is found to be justified, the costs of this inspection and of returning the item shall be payable by us and at our risk. If the complaint turns out to have been unfounded, the costs of the inspection and of returning the item shall be payable by the customer/ purchaser.
3. Only after we have given prior written permission, shall the return of items be payable by and at the risk of B M.

Article 5. Reservation of right of ownership

1. All goods delivered and to be delivered by B M to the customer, remain strict property of B M until all claims B M has or will have against the customer, including claims resulting from non-compliance of claims before mentioned, have been paid completely.
2. However, the transfer of risks shall under all circumstances pass to the purchaser as soon as we have delivered the item or items to the purchaser.
3. Until such time as the ownership of the item has not passed to the purchaser, the purchaser is obliged to take out any statutorily required insurance in relation to use of the item as well insurance against complete or partial loss (comprehensive cover). In addition the purchaser is obliged to have the item maintained at his expense.
4. B M shall not be held to indemnify the purchaser in any way against his liability as keeper of the item. On the other hand the purchaser shall indemnify B M against claims which might be made against it by third parties, and which it might be possible to link to the reserved right of ownership.
1. If a good delivered by B M, of which B M has a reservation of title, is imported into another member country of the European Union, the law of that member country controls the reservation of title, if that law contains more favourable terms for B M.
2. As long as a reservation of title rests on the goods delivered by B M, the customer cannot burden this outside its ordinary activities; more specifically, the customer is not permitted to burden the goods with regard to any finances in the circumstances before mentioned.
3. The customer must immediately inform B M of claims or claim attempts by third parties to seize goods on which B M has any co-ownership rights.
4. The customer has already granted B M the right to enter all places where B M property is located in order to exercise the ownership rights in occurring situations.

5. The customer is obliged to store B M goods with the accuracy required, separated and obviously recognizable as B M property.
6. The customer is obliged to take care that the B M property, also with regard to the quality assurance criteria and traceability of goods in the production chain, is not mixed with other goods.
7. In case of mixing, B M becomes co-owner of the mixed stock of goods, in proportion of the invoice value of the goods originally delivered by B M.
8. In case of treatment or processing of the goods by or on behalf of the customer, it is supposed to be done (also) by order of B M and B M receives the co-ownership right in the goods newly created in proportion of the invoice value of the goods originally delivered by B M.
9. If B M cannot appeal to her (co-) ownership rights because the goods have been mixed, processed or checked, the customer is therefore obliged to pledge the newly created goods to B M at first request.
10. In that case, B M is also entitled to retrieve the goods on which it has reservation of title, when there are circumstances from which B M can reasonably conclude that the goods will not be paid for (in a timely fashion), even when payment is not claimable yet.

Article 6. Right of retention

1. In the case of repair B M can exercise its right of retention over the item if the customer does not settle the costs of work on the item (in full), and also if costs relate to work previously carried out by us on the same or another item.
2. B M shall not exercise its right of retention if the customer has deposited sufficient (replacement) surety.

Article 7. Force majeure

1. If there is force majeure affecting B M that prevents us from fulfilling our obligations, the meeting of those obligations shall be suspended for as long as the force majeure applies. B M shall inform the customer/ purchaser of this situation as soon as possible. B M shall not be liable for any possible loss suffered by the customer/ purchaser.
2. By force majeure is meant: any circumstance, foreseeable or otherwise, for which B M cannot be held responsible, as a result of which we are wholly or partly prevented from meeting our obligations or as a result of which compliance cannot reasonably be required of B M. This includes such circumstances as: war or similar situations, riot, sabotage, boycott, strikes, occupation, blockades, damage to or breakdown of installations of B M and/or our suppliers, transport problems, telecommunications faults, government measures, natural disasters, fire or explosion.

Article 8. Sale with purchase

1. If in the case of the sale of a new engine or other item, in exchange for the purchase of a used engine or other item, the purchaser, in anticipation of the delivery of the new engine or other item, continues to use the old engine or other item, the latter engine or other item shall become the property of B M only after actual delivery to us. As long as the purchaser continues to use the item, this shall be completely at his own expense and risk.

Article 9. Settlement of disputes

1. All agreements between B M and customers/ purchasers are governed solely by Dutch law, including the Vienna Purchasing Treaty (CISC 1980).
2. Any disputes that may arise from an agreement such as described in these terms and conditions, or from agreements resulting from such an agreement, if they cannot be resolved by mutual discussion, shall be taken to court and settled by the competent court at 's Hertogenbosch (Netherlands). Notwithstanding the above, B M reserves the right to refer a dispute to, in accordance with the procedural rules of the Netherlands Arbitration Institute in Rotterdam (Netherlands).

Article 10. Conflict with statutory provisions

1. Should any provision of these terms and conditions of sale and delivery not apply or conflict with public order or the law, the provision in question shall be considered invalid, but the remaining provisions shall remain completely in force. B M reserves the right to amend the provision in question to make it acceptable in law.

Article 11. Authentic language

1. Even where these terms and conditions of delivery and payment are issued in a language other than Dutch, in case of doubt the Dutch version of these terms and conditions shall be decisive.