

BOVAG GENERAL TERMS AND CONDITIONS RENTAL AND SHARED CAR COMPANIES (without shared car appendix)



These General Terms and Conditions for Rental and Shared Car Companies were drawn up in consultation with the Royal Dutch Touring Club ANWB in the context of the SER Self-Regulation Coordination Group ('CZ') and come into force on 1 February 2021.

Definitions

In these terms and conditions, the terms below have the following meaning:

- The vehicle:* the car, including the parts and accessories that are rented;
- Car:* a passenger car or a company car;
- Hirer:* the natural person who concludes the rental agreement as the hirer;
- Lender:* the natural person or legal entity and member of BOVAG that concludes the rental agreement as the lender;
- Consumer:* the hirer who is a natural person and has entered into the agreement for purposes falling outside his business or professional activity;
- Loss of the lender:* the financial loss suffered by the lender as a result of:
 - damage, including abnormal wear and tear, or loss of the vehicle or appurtenances or parts thereof. This loss includes the costs of the replacement of the vehicle and the appurtenances and parts thereof as well as the loss of rental income;
 - the disadvantage caused with or by the vehicle to persons or property for which the lender, the party in whose name a vehicle is registered or the liability insurer of the vehicle is liable towards third parties;
- Overhead damage:* damage of the lender caused by a collision with the part of the vehicle located at a height of more than 1.90 metres above ground or by a collision with items of property attached to the vehicle located at a height of more than 1.90 metres above ground;
- Driver:* the actual driver of the vehicle;
- In writing: in writing or electronically;
- WAM:* Civil Liability Insurance (Motor Vehicles) Act.

I. GENERAL PROVISIONS

Article 1 - Applicability

These general terms and conditions apply to agreements concerning the rental of vehicles between the lender and hirer.

Article 2 - The offer

- The hirer may choose whether the lender makes a written or oral offer.
- The offer is irrevocable for a period of 14 days with the exception of insufficient availability.
- The offer concerning the rental of a vehicle includes a full and accurate description of:
 - the vehicle;
 - the rental period;
 - the rent;
 - the payment method;
 - any associated costs, such as cleaning costs;
 - the amount of the excess, or whether this excess may be bought off;
 - any deposit or any other manner of providing security.
- The offer includes the opening hours, the address and the telephone number at which the company can be reached.
- These general terms and conditions are enclosed with the offer. If this is not possible, the general terms and conditions will be handed over when the agreement is concluded. They are sent as soon as possible in case of a telephone rental agreement.

Article 3 - The agreement

- The agreement is formed by the acceptance of the offer. The lender preferably confirms the oral agreement in writing.
- The agreement applies for the period and the rate as indicated in the agreement or agreed in any other manner. The agreement states the date and time on which the rental period starts and ends.
- The Parties may agree that valuable items with a value exceeding €15,000 may be transported using the vehicle. The maximum amount, which may have been increased, is indicated in the agreement. Reference is also made to a limitation of liability included in article 13 paragraph 2.

Article 4 - Distance agreement / outside sales area

In the event the Parties conclude an agreement online or by telephone, or outside a sales area, the relevant statutory rules will apply to such transactions. These rules are included in Book 6 Title 5 Section 2b of the Dutch Civil Code. In such cases, these statutory provisions apply in addition to and in derogation from these general rental conditions. Pursuant to these statutory provisions, the hirer does not have the right to withdraw (dissolve) the rental agreement

Article 5 - The price and price changes

- The rent and any associated costs, such as the price per kilometre, are agreed in advance. This also applies to the possible right to change the price in the interim. The rent and any associated costs will be clearly stated in the agreement.
- In the event a price change occurs within three months after conclusion of the agreement, such will not affect the agreed price.
- The second paragraph does not apply to price changes resulting from the law such as tax increases for example.
- The consumer may terminate the agreement if the price goes up three months after conclusion of the agreement, but before the rental period has started.
- The number of kilometres driven is determined on the basis of the odometer, unless it is defective. The number of kilometres driven is determined in a different way that is customary within the industry if the odometer is defective. The provisions above regarding the odometer also apply to the PTO and the cooling engine operating hours counter.
- During the rental period, the hirer will pay the costs related to the use of the vehicle, such as toll fees, the Eurovignette, environmental badges and costs related to fuel and fuel additions, cleaning and parking. The hirer also pays the costs of winter tyres if such tyres are compulsory for the vehicle.

Article 6 - The rental period and exceeding the rental period

- The hirer must return the vehicle on the day and at the time the rental period ends. If an address other than the business address was agreed, the vehicle will have to be brought there. The lender must take receipt of the vehicle during opening hours.
- The hirer may only return the vehicle outside opening hours or to a different address with the permission of the lender.
- Arrangements made regarding the return of the vehicle prematurely within the agreed rental period are without obligation.
- If the vehicle is not returned as agreed at the end of the rental period, which may have been extended, the lender will have the right to take back the vehicle with immediate effect. The contractual obligations of the hirer continue to apply until such time the vehicle has been returned to the lender.
- If the hirer does not return the vehicle on time, the lender will have the right to charge the hirer 20% of the daily rent for each hour the vehicle is returned late. Up to 1.5 times the daily rent may be charged per day following an overrun of five hours. The hirer will also be obliged to reimburse the loss sustained and yet to be sustained by the lender. No higher rent will be charged if it is, and remains, impossible to return the vehicle. The increase of the rent does not apply if the hirer demonstrates that the rental period was exceeded as a result of force majeure.

Article 7 - Cancellation

- If an agreement is cancelled by the hirer, the lender will have the right to charge the following cancellation costs:
 - in case of cancellation up to the 42nd day (exclusive) before the day of hire: the deposit subject to a maximum of 20% of the rent of the vehicle;
 - in case of cancellation from the 42nd day (inclusive) up to the 28th day (exclusive) before the day of hire: 35% of the rent of the vehicle;
 - in case of cancellation from the 28th day (inclusive) up to the 21st day (exclusive) before the day of hire: 40% of the rent of the vehicle;
 - in case of cancellation from the 21st day (inclusive) up to the 14th day (exclusive) before the day of hire: 50% of the rent of the vehicle;
 - in case of cancellation from the 14th day (inclusive) up to the 5th day (exclusive) before the day of hire: 75% of the rent of the vehicle;
 - in case of cancellation from the 5th day (inclusive) up to the day of hire: 90% of the rent of the vehicle;
 - in case of cancellation on the day of hire or later: the full rent of the vehicle.
- Cancellation outside office hours will be deemed to have occurred on the next calendar day.

Article 8 - Payment

- The hirer may request payment of a deposit at the start of the hire.
- The deposit is paid back in principle within 5 working days after the vehicle has been handed in. The lender is entitled to offset still outstanding costs against the deposit. The lender will specify these costs.
- In the event the lender sustains a loss, this is settled against the deposit. This refund will take place as soon as it is clear what amount remains. Repayment will take place within two months after the vehicle has been handed in, but within six months in case of damage caused to third parties.
- If a third party has caused the lender to sustain a loss and the third party has fully reimbursed this loss, the deposit will be refunded within 14 days after recovery of the loss. The lender will endeavour to recover the loss caused by third parties as soon as possible. The lender keeps the hirer informed of developments.
- The lender may demand an advance payment of up to 50% of the rent.
- The rent must be paid immediately after the end of the rental period unless otherwise agreed. Other amounts must be paid within fourteen days after receipt of the invoice.
- The hirer must pay the amount due before the expiry of the payment date. If he fails to do this, the lender will send a free payment reminder after expiry of this date and afford the hirer the opportunity to pay the outstanding amount as yet within fourteen days after receipt of this payment reminder. If payment has still not been made after expiry of this term, the lender will have the right to charge interest from the moment of default. This interest is equal to the statutory interest. The judicial and extrajudicial costs to be incurred by a party to enforce payment of a debt may be charged to the other party. The amount of these costs is subject to (statutory) limits. Deviations from the above in the hirer's favour are possible.

Article 9 - Obligations of the hirer

- The hirer must handle the vehicle with due care and ensure that the vehicle is used in accordance with its intended use. For example, it is not allowed to use the vehicle on a racetrack, on terrain that is not suitable for the vehicle, or on terrain that is entered at your own risk.
- The hirer must return the vehicle in the same condition in which he received it. This means that the hirer must undo any modifications and additions made to the vehicle, for example. The hirer is not entitled to any compensation.
- The hirer must secure the luggage properly to and in the vehicle.
- The hirer must ensure that the vehicle is not operated by someone who is not qualified or clearly mentally or physically not suitable. Only the persons who are indicated as driver in the rental agreement are allowed to drive the vehicle or otherwise dispose of the vehicle.
- The hirer is not allowed to relet the vehicle.
- The hirer is allowed to bring the vehicle outside the national borders of the Netherlands provided it concerns countries indicated in the vehicle's green card, unless otherwise agreed in writing with the lender.
- In case of damage to or defects in the vehicle that is/are known or noticeable to the hirer, the hirer will not be allowed to use the vehicle if this could lead to an aggravation of the damage or the defects, or to a reduction of road safety.
- The hirer is obliged to point out the rental rules to drivers, passengers and other persons he allows to use the vehicle and ensure that they also comply with these rules.
- The hirer is obliged, among other things, to handle the keys belonging to the vehicle, operate the alarm installation and the documents belonging to the vehicle, such as the vehicle registration certificate and the border documents, with due care.
- The hirer is not allowed to use the vehicle to give driving lessons or to transport persons against payment other than for the purpose of carpooling. The hirer is not allowed to participate in races or carry out speed, driving proficiency or reliability tests.

Article 10 - Instructions for the hirer

- The hirer is obliged to maintain or have maintained the oil level and tyre pressure of the vehicle. If the lender requests the hirer to hand in the vehicle for regular maintenance, the hirer will do so, provided this can be arranged for him in a customary manner. The lender will not request the hirer to hand in the vehicle for maintenance if the rental period is one month or less.
- The hirer must return the vehicle clean. Cleaning costs, including the costs of the removal of narcotics and the raw materials of narcotics, subject to a minimum of €25 (inclusive of VAT) may be charged if the hirer fails to do so.
- The hirer fills up the vehicle with the fuel indicated by the lender and intended for the vehicle, possibly including the additions requested by the lender. The hirer will charge an electric car correctly.
- In case of defects known or noticeable to the hirer, damage to or caused with the vehicle or the loss of the vehicle, the hirer will be obliged to comply with the following instructions:
 - the hirer notifies the lender of this;
 - the hirer complies with the lender's instructions;
 - the hirer provides all information and relevant documents to the lender or its insurer upon request and at its own initiative;
 - the hirer leaves the vehicle behind in such a manner that it will be properly protected against damage or loss;
 - the hirer cooperates fully with the lender and the persons designated by the lender to obtain compensation from third parties or for the purpose of conducting a defence against claims from third parties.
- In case of accidents, damage to or the loss of the vehicle, the hirer will also be obliged:
 - to file a report with the local police;
 - to submit a fully-completed and signed agreed statement of facts on motor vehicle accident form to the lender as soon as possible;
 - not to acknowledge guilt in any way.
- The hirer must inform the lender as soon as possible of all circumstances the lender should reasonably be informed of, such as:
 - the suspicion that the odometer / tachograph / speed limiter / PTO / cooling engine / operating hours counter or the tracking & tracing system has been disrupted;
 - the suspicion that the fuel system sealing plan has been breached;
 - that an event occurred as a result of which damage to, caused with or by the vehicle arises or could reasonably arise;
 - regarding the breakdown, seizure, or loss of the vehicle, or that the hirer lost control over the vehicle in a different way.
- If the authorities, such as the police, request the lender to provide information concerning the person who drove or used the vehicle, the hirer will be obliged to answer the lender's questions as soon as possible.

Article 11 - Obligations of the lender

- At the start of the rental period, the vehicle will have a full tank of petrol (or is fully charged if it is an electric car), the agreed accessories and specifications and the equipment that is mandatory in the Netherlands. The vehicle has the right tyre pressure and the right oil level, is clean and maintained properly and technically in good condition as far as the lender knows or is aware of.
- The hirer receives a free upgrade if the vehicle to be rented from the agreed category is not available, unless the vehicle is already in the highest category.
- The lender draws up a report together with the hirer before the start of the rent, which report will indicate any damage to the vehicle that already exists.
- The lender provides the hirer with the required documents before the start of the rental period.
- The lender ensures that Dutch instructions are located inside the vehicle as well as an overview of telephone numbers the hirer can use during and outside opening hours.
- The type of fuel plus any additions that must be used to fill up the vehicle are indicated on the vehicle, preferably close to the fuel intake.
- The Dutch instructions concerning the vehicle indicate at which levels the oil and tyre pressure must be kept.
- If the hirer asks the lender to remedy defects, the lender must do so. The above does not apply if a defect cannot be resolved or if this cannot reasonably be expected of the lender in view of the costs of the repair. If the hirer is liable towards the lender for the defect or for the consequences of the defect, the lender will not be obliged to remedy the defects even if the hirer has requested this.
- Breakdown assistance is provided in the Netherlands and in the countries indicated on the green card. Breakdown assistance is only provided in countries other than those indicated on the green card if the parties agreed that the vehicle may be used there as well.
- Breakdown assistance means in any event that the vehicle is replaced with preferably an equivalent vehicle if a defect in the vehicle will have to be repaired. This is only the case if it is likely that this repair will take more than two working days. The costs of assistance will not be reimbursed by the lender if the breakdown is the hirer's own fault.
- The lender inspects the vehicle for any damage immediately on return by the hirer. This applies both in case the vehicle is returned to the own branch and when the vehicle is returned to a different branch.
- In the event damage is caused to the vehicle abroad, the costs of repatriation of the vehicle will be for the account of the lender, unless article 12(2) applies or the parties have agreed that the vehicle may not be used abroad.

Article 12 - Liability of the hirer

1. The hirer is liable for the lender's loss per claim up to the excess stated in the rental agreement. The excess in case of overhead damage is at most €1,500 in case of vehicles up to 3500 kilogrammes. The excess is also at most €1,500 in case of damage sustained when reversing or parking in or out of the parking space. The excess is at most €1,000 for all other losses.
2. If the damage results from acts or omissions as referred to in article 9, the hirer will be obliged to reimburse the lender's loss in full. This is not the case if the hirer proves that these acts or omissions are not attributable to him or if full reimbursement is not fair and reasonable.
3. In the event the vehicle is returned outside opening hours with the consent of the lender and/or if the vehicle is returned in a location other than the lender's business address, so that the lender can come collect the vehicle, the following will apply in accordance with paragraphs 1 and 2: the hirer remains liable for the loss caused to the lender up until the time the lender has actually inspected the vehicle or has had this done. The lender will inspect the vehicle at the first opportunity and will notify the hirer immediately if damage was discovered.
4. The provisions of the second paragraph of this article only apply to the loss sustained by the lender that consists of financial loss resulting from disadvantage caused with or by the vehicle to persons or property for which the lender, the party in whose name a vehicle is registered or the liability insurer of the vehicle is liable towards third parties, if there is no cover pursuant to the conditions of the WAM insurance contract.
5. In the event the hirer allows a third party to drive or use the vehicle, the hirer will be liable for this person's acts or omissions. Including in the event this person did not have the hirer's approval to use the vehicle.
6. In the event the hirer transports valuable goods or leaves such goods behind in the vehicle, the hirer will be liable for losses resulting from theft or damage, unless this damage resulting from theft or damage was caused by a defect in the vehicle as referred to in article 13 paragraph 2.

Article 13 - Liability of the lender

1. The lender is obliged to compensate the damage caused by a defect if the defect arose after conclusion of the rental agreement and the defect is attributable to it. The obligation also applies if the defect existed when the rental agreement was concluded and the lender was or should have been aware of it or indicated to the hirer at the time that the vehicle did not have the defect.
2. The lender is not liable for damage to goods being transported as a result of a defect in the rented vehicle if the total value of those transported goods exceeds €15,000. The lender is liable for higher amounts if a higher maximum amount was agreed or if the lender knew or should have known about the defects when it made the rental arrangement or in the event defects arose as a result of an intentional act or gross negligence on the part of the lender.
3. In the event someone has sustained personal injury that is compensated by his non-life insurer or in some other way, the lender cannot be held liable for this personal injury.

Article 14 - Government measures and provision of information to the authorities

1. All sanctions and consequences of measures that are imposed by the government in connection with having available or using the vehicle are for the hirer's account, unless they are related to a defect that already existed when the rental commenced or the sanctions are related to circumstances that are within the lender's area of responsibility.
2. If such a sanction or measure is imposed on the lender, the hirer will be obliged to reimburse the loss immediately upon the lender's request. The hirer must also pay administrative costs subject to a minimum of €25. The lender must limit these costs as much as possible. In the event the lender provides information to the authorities in connection with any act or omission on the part of the hirer, such as a traffic offence, the hirer will be obliged to compensate the related costs, subject to a minimum of €10.
3. The hirer will be provided with a copy of the official document of the sanction if he so wishes.

Article 15 - Attachment of the vehicle under administrative / civil / criminal law

1. In the event the vehicle is attached under administrative / civil / criminal law, the hirer will remain obliged to comply with the obligations under the rental agreement, including the obligation to pay the rent, until the moment at which the vehicle is back in the lender's possession free from attachments, unless the attachment is related to circumstances that are within the lender's area of responsibility.
2. The hirer pays the costs related to the attachment.

Article 16 - Dissolution of the rent

1. The parties may dissolve the rental agreement without notice of default or judicial intervention, at the moment:
 - the other party attributably fails to comply with one or more of his obligations, or fails to do so in time or in full, unless this is not serious enough to warrant dissolution;
 - the hirer is placed under a guardianship order, applies for a suspension of payment, is declared bankrupt or the Debt Management (Natural Persons) Act is declared applicable to him;
 - the other party was aware of the circumstances that are of such a nature that he would not have concluded the agreement (in this manner) had he been aware of them. The lender will have the right to demand reimbursement of the reasonable costs;
 - the hirer dies before or during the rental period of the car or the shared car.
2. The hirer will cooperate fully in the return of the car in case of any termination as referred to in paragraph 1.

Article 17 - Complaints and Mediation scheme

1. Complaints about the performance of the agreement must be submitted to the lender, fully and clearly specified and in a timely manner after the hirer has discovered that something in his opinion did not happen properly. The hirer may forfeit his rights if he does not complain on time.
2. The following applies if the hirer is not satisfied with the result of the complaint handling by the lender. The hirer can submit a dispute within six weeks after it has arisen to BOVAG Mediation. The mediation attempt takes place in accordance with regulations of which the hirer and lender have been informed in advance. The address of BOVAG Mediation is: PO Box 1100, 3980 DC, Bunnik, the Netherlands, telephone number 030-6595395 (local rate). The complaint must relate to the interpretation or performance of these general rental conditions. The hirer may of course elect to submit the complaint to the disputes committee.

Article 18 - Dispute settlement procedure

1. Disputes between the hirer acting for purposes falling outside his business or professional activities and the lender on the formation or the performance of agreements relating to the services or goods delivered or to be delivered by the lender can, with due observance of the provisions below, be submitted by either the hirer or the lender to the Vehicle Rental Disputes Committee. Address: The Disputes Committee, PO Box 90600, 2509 LP, The Hague, the Netherlands (address: Bordewijklaan 46, 2591 XR, The Hague).
2. A dispute will only be dealt with by the Disputes Committee if the hirer has first submitted his complaint to the lender on time. A dispute arises if the complaint of the hirer has not been satisfactorily resolved by the lender and/or via the mediation attempt of BOVAG Mediation.
3. If the complaint does not lead to a resolution, the dispute must, at the latest 12 months after the date on which the hirer submitted the complaint to the lender, be submitted to the Disputes Committee in writing or in any other form to be determined by the Disputes Committee. There is a dispute if the complaint has not been resolved after complaint handling by the lender and/or via the mediation attempt of BOVAG Mediation.
4. If the hirer submits a dispute to the Disputes Committee, the lender is bound to this choice. If the lender wishes to submit a dispute to the Dispute Committee, he must ask the hirer to notify within five weeks whether the hirer agrees to this. The lender must state that after the expiry of the abovementioned term, he will deem himself free to submit the dispute to the Court.
5. The Disputes Committee rules with due observance of the provisions of the regulations applicable to it. The decisions of the Disputes Committee are made on the basis of those regulations by way of binding advice. The regulations are sent on request. A fee is payable for the handling of a dispute.
6. The Court or the Disputes Committee referred to above has exclusive jurisdiction to hear the dispute.

Article 19 - Performance bond

1. BOVAG guarantees the execution of the binding advice by its members if the lender does not comply with the binding advice, unless the member decides to submit the binding advice within two months of its dispatch to the Court for assessment and the judgment, in which the Court has declared the binding advice to have no binding force, has become final.
2. The guarantee by BOVAG relates to an amount to be paid by BOVAG of maximum €1000, on assignment of the claim of the hirer. For amounts greater than €1000 per dispute, BOVAG pays, under the same conditions, the maximum amount of €1000 to the hirer. For the excess, the hirer is offered to assign his claim to BOVAG after which, BOVAG shall demand payment of such at law if required. In that event, BOVAG undertakes to transfer any collected monies to the hirer.
3. The guarantee as referred to under paragraph 2 does not apply if a Court nullifies the binding advice. In the event of bankruptcy, a suspension of payment or business cessation of the lender, BOVAG only pays an amount up to maximum €1,000 per dispute and the guarantee only applies if the hirer has complied with the formal obligations to submit the dispute to the Vehicle Rental Disputes Committee before such a situation arises.

Article 20 - Processing of personal data of the hirer and of the driver

1. The personal data stated on the agreement are processed by the lender as controller within the meaning of the General Data Protection Regulation (GDPR) in a register of personal data. This processing allows the lender to comply with article 14 of these conditions, perform the agreement, provide the hirer or driver with optimal service and up-to-date product information and make the hirer or driver personalised offers. The personal data may also be transferred to a bailiff in case the vehicle is filled up without payment. The rental car may be provided with a car tracking & tracing system that allows the lender to follow the vehicle remotely and collect and store all relevant data of its vehicle, including the manner in which the vehicle was used and driven. The hirer could create copies of identity documents. The hirer and the driver may apply to BOVAG for their rights under the GDPR.
2. The data referred to in the first paragraph may also be included in the Elena warning system. In addition to the lender, BOVAG, PO Box 1100, 3980 DC, Bunnik, is responsible for the processing of these data in the Elena warning system. Visit www.bovag.nl/elena for a complete overview of relevant conduct. The aforementioned persons may apply to BOVAG for their rights under the GDPR.

Article 21 - Applicable law

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

SHARED CAR APPENDIX

An appendix to the 'general terms and conditions rental and shared car companies' intended for the rental of a shared car was drawn up effective as from 1 February 2021 within the context of the SER CZ. The rental of a shared car is agreed at a distance or outside the sales area within the meaning of article 4 of the general terms and conditions rental and shared car companies. The set of 'general terms and conditions plus shared car appendix' is therefore only made available digitally. You can find the shared car section at www.bovag.nl/voorwaarden.