

General rental conditions of BOVAG Fietsbedrijven (bicycle / e bike (except for high speed e bike))

These General Terms and Conditions of BOVAG Fietsbedrijven have been drafted in consultation with the Consumers' Association and the ANWB Road Assistance in the context of the Self-Regulation Coordination Group (CZ) and come into force on 1 May 2016.

DEFINITIONS

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

bicycle: a mode of transport with two or more wheels propelled by muscle power using pedals with a speed of maximum 25 km/hour including the accessories which are rented;
hirer: the natural or legal person entering into the rental agreement as the hirer;
lender: the natural person or legal person and member of BOVAG Fietsbedrijven entering into the rental agreement as the lender;
consumer: the hirer who is a natural person and has entered into the rental agreement for purposes falling outside this 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 bicycle or of fittings (such as a key), or of bicycle parts. This loss includes the costs of the replacement of (fittings and parts of) the bicycle and the loss of rental income;
cyclist: the person actually using the bicycle;
in writing: in writing or electronically.

Article 1 - Applicability

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

Article 2 - The offer

- The hirer may select whether the lender makes a written or verbal offer.
- An offer may be withdrawn if the offer is dependent on the availability of a bicycle. Otherwise, the offer cannot be withdrawn for 14 days. The offer can be accepted immediately after it has been issued.
- The offer includes a full and precise description of:
 - the bicycle;
 - the rental period;
 - the rent;
 - any associated costs;
 - the amount of the excess, whether this excess may be bought out or not.
 - any deposit or any other type of security. This deposit is maximum €50 and can be paid in cash or in another manner;
 - the fact that acceptance of the offer is not without obligation.
- The offer contains the opening hours of the company and the telephone number on which the company can be reached.
- The offer states the manner of payment and the manner of provision of security.
- The offer is submitted with these general terms and conditions. If it is not possible to provide these together with the offer, these general terms and conditions are in principle provided when entering to the agreement, but in the event of a telephone rental agreement, they will follow later.

Article 3 - The agreement

- The agreement is formed by the acceptance of the offer. A verbal agreement must be confirmed in writing by the lender but if this does not happen, the agreement still stands.
- The rental agreement applies for the period and for the rate as stated in the rental agreement or agreed in any other manner. The rental agreement states the date and time on which the rental period starts and ends.

Article 4 - Termination (cooling off period)

Hirers have the right to terminate the agreement for 14 days after the formation of the rental agreement. This does not apply if the rental agreement has been entered into in direct contact between the lender and the hirer within a sales room, at the rental desk for example. It also does not apply if the rental has already been carried out with the agreement of the consumer during the cooling off period and the consumer has agreed with the fact that there is no right to terminate. If the rental has been partially carried out during the cooling off period with the consent of the consumer, it applies that the consumer pays for the service in proportion to the event of a termination during the cooling off period.

Article 5 - The price and price changes

- The rent and any associated costs are agreed in advance. This also applies to any opportunity to change the price in the interim. The rent will be clearly stated in the rental agreement.
- If there is a price change within three months after entering into the agreement, this does not affect the agreed price.
- The consumer may terminate the agreement if the price goes up three months after entering into the agreement but before the rental period has started.
- The second paragraph does not apply to price changes resulting from the law such as a VAT increase for example.
- Only costs which have been agreed can be charged to the hirer. If there is a reason for this, the hirer must pay the lender compensation.

Article 6 - The rental period and exceeding the rental period

- The hirer must return the bicycle at the latest on the day and at the time the rental period ends. The address is stated in the rental agreement. If a different address has been agreed, the bicycle must be taken to that address on time. The lender must take receipt of the bicycle during opening hours.
- The hirer may only return the bicycle outside opening hours or to a different address with the permission of the lender.
- If the bicycle is not returned as agreed at the end of the (possibly extended) rental period, the lender can immediately take possession of this bicycle. The contractual obligations of the hirer continue to exist until such time the bicycle has been handed back to the lender.
- If the hirer does not return the bicycle on time, the lender may charge the hirer 20% of the daily rent for each hour the bicycle is returned late. After an overrun of five hours, 1.5 times the daily rent can be charged per day. In addition, the lender can request compensation both for existing loss and loss which is to follow. If it is, and remains, impossible to return the bicycle, no higher rental is charged. The increase of the rent does not apply if the hirer demonstrates that the exceeding of the rental period is the result of force majeure.

Article 7 - Cancellation

If an agreement is cancelled by the hirer, the lender can charge the following cancellation costs:

- in the event of cancellation up to the 30th day (exclusive) before the day of hire: the deposit with a maximum of 10% of the rent;
- in the event of cancellation from the 30th day (inclusive) up to the 7th day (exclusive) before the day of hire: 30% of the rent;
- in the event of cancellation from the 7th day (inclusive) up to the 3rd day (exclusive) before the day of hire: 50% of the rent;
- in the event of cancellation from the 3rd day (inclusive) to 1 day (exclusive) before the date of hire: 90% of the rent;
- in the event of cancellation less than 1 day before the day of hire: the full rent.

Article 8 - Payment

- If the rental period starts within three months after entering into of the agreement, the lender can demand 50% advance payment of the rent. The hirer can request payment of a deposit at the start of the hire.
- The lender refunds the deposit as soon as the bicycle has been returned. The lender is entitled to offset still outstanding costs. In the event of loss of the lender, this is also settled with the deposit. This refund must be made as soon as it is clear which amount remains. The refund must be made within two months.
- If a third party has caused the loss of the lender and the lender has received full compensation for this from a third party, the deposit is refunded within 14 days after the loss has been recouped. The lender shall make efforts to recover the loss caused by third parties as soon as possible. The lender keeps the hirer updated on his efforts.
- Unless otherwise agreed, the rent must be paid immediately after the end of the rental period. Other amounts must be paid within ten 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 after expiry of this date send a free payment reminder and gives the hirer the opportunity to pay the outstanding amount within fourteen days after receipt of this payment reminder. If after expiry of the payment reminder, payment has still not been made, the lender is entitled 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, can be charged to the other party. The amount of these costs are subject to (statutory) limits. This can be departed from in favour of the hirer.

Article 9 - Obligations of the hirer

- The hirer must handle the bicycle with due care and ensure he uses the bicycle as intended. He must handle the battery with due care and charge it regularly, for example. It is forbidden to use the bicycle on a circuit or on a terrain unsuitable for a bicycle. The bicycle must always be locked with the provided locks and attached to a fixed object where possible.
- The hirer must return the bicycle in the same condition as he has received it. This means that the hirer must remove any modifications made to the bicycle, for example. The hirer is not entitled to any compensation if he has made improvements to the bicycles which have to be removed.
- The hirer must affix any luggage properly to the bicycle. No adults may be carried on the back carrier and children may only ride on the bicycle in a child seat.
- The hirer must ensure that nobody uses the bicycle who is not able to do so due to a physical or mental disability.
- The hirer may not rehire the bicycle.
- The hirer may not take the bicycle to other countries apart from Belgium and Germany. If the hirer comes to different arrangement on this in writing, the bicycle may be taken to other countries in accordance with this agreement.
- If the bicycle is broken, article 10(1) applies and the hirer may not continue cycling if this makes it worse.
- The hirer is obliged to show the persons who he allows to use the bicycle the rules of the rental agreement and ensure that they keep to those.
- The hirer must treat the keys to the bicycle with care.

Article 10 - Instructions for the hirer

- If the bicycle is visibly broken, if the bicycle has damaged something or if the bicycle is lost, the hirer must follow these instructions:
 - the hirer notifies the lender of this;
 - the hirer does what the lender requests of him;
 - the hirer, on his own initiative or in response to a request, gives all the information and relevant documents to the lender or its insurance company;
 - the hirer leaves the bicycle in such a way that it will be properly protected against damage or loss;
 - it may be that the lender wishes to demand compensation from a third party. It may also be the case that a third party is of the view that the lender must pay him compensation and that the lender wishes to object to this. The hirer has to cooperate in these instances.
- In the event the bicycle is lost, the hirer is obliged to report this to the local police.

Article 11 - Obligations of the lender

- At the time the lenders provides the hirer with an (electronic) bicycle, it shall have the agreed accessories and specification and is validly equipped in accordance with Dutch law. The bicycle will also be clean, properly maintained and (insofar as known to the lender), technically in a good condition. If it is an electric bicycle, the battery will be fully charged.
- The hirer will receive an upgrade free of charge if no bicycle can be provided from the agreed category. Such an upgrade is not possible if the agreed bicycle is already in the highest category.
- The rental agreement contains telephone numbers the hirer can use during and outside opening hours.
- There is adequate breakdown assistance both in the Netherlands and in Belgium and Germany. For other countries, breakdown assistance only applies if the parties have agreed that this bicycle can be used in these countries.
- Adequate breakdown assistance means in any event that equal replacement transport will be offered by the lender as far as possible if a defect has to be repaired on the bicycle. The bicycle shall be repaired immediately unless this is reasonably not possible. If the breakdown is the fault of the hirer, the costs of assistance is not paid by the lender.
- The lender inspects the bicycle immediately on return by the hirer for any damage. This applies both to the return of the bicycle to the own branch and to the return of the bicycle to a different branch of the same shop.
- In the event of damage to the bicycle abroad, the costs of repatriation of the bicycle are for the account for the lender unless article 12(2) applies.

Article 12 - Liability of the hirer for loss

- The hirer is per event liable for the loss of the lender up to the excess stated in the rental agreement. For bicycles, the excess is maximum €150, for electric bicycles, the maximum is €300.
- If the loss results from acts or omissions by the hirer contrary to article 9, the hirer must in principle compensate the loss of the lender in full. The first possible exception is where the hirer proves that these acts or omissions cannot be attributed to him. A second exception could be that it is not reasonable and fair if the hirer should pay for everything.
- The hirer remains liable for the loss of the lender arisen up until the time the lender has actually inspected the bicycle or has had this done. The lender shall inspect the bicycle at the first opportunity and will notify the hirer immediately if damage has been discovered.
- If the hirer carries another person on the bicycle as a passenger or if the hirer allows another person to use the bicycle, the hirer is liable for all that such other person does or fails to do in accordance with article 12(1) and (2) of these general terms and conditions.

Article 13 - Bicycle defects and liability of the lender

- If the hirer asks the lender to remedy defects, the lender must in principle comply with this. This is however not required if the defect cannot be remedied. It is also not necessary if the hirer could not reasonably demand this from the lender in view of the money the lender would have to spend on this. If the hirer is liable towards the lender for the defect or for the consequences of the defect, the lender does not have to remedy the defects even if the hirer has requested this.
- If someone who has suffered personal injury has been able to recoup this loss from his nonlife insurer or if such a person has received another benefit for this, the lender is not liable for this personal injury.
- The provisions in article 13(2) do not apply if personal injury occurs whilst the lender, when entering into the rental agreement, knew or should have known of the defects or if defects have arisen through an intentional act or gross negligence of the lender.
- The stated range of an electric bicycle is no more than an estimate.

Article 14 - Damage and repairs

- Repairs to the bicycle are for the account of the lender unless the repairs are the result of careless use of the bicycle.
- The hirer may only have someone else other than the lender repair the bicycle with the permission of the lender. The lender gives this permission if this is reasonably required in view of the defect itself and the other circumstances.
- As an exception to paragraph 2, the hirer is permitted to repair flat tyres, lamps and batteries of the bicycle lighting (or have this done) for his own account and at his own risk. This does not need the permission of the lender, therefore.
- If the bicycle is damaged during the rental period, the hirer must return the damaged bicycle to the branch where it was hired. When reporting the damage, the parties can agree that this return can be to a different location.
- The hirer must report damage to the bicycle to the lender as soon as is reasonably possible.
- If the lender does not repair the hired bicycle on time whilst the lender should have done so, the hirer may carry out the repair himself (or have this done) and can request payment of his reasonable costs.
- The lender is obliged to pay the damage which has arisen due to a defect of the bicycle in the following situations:
 - the defect was already present when the rental agreement was entered into and the lender knew or should have known of the defects;
 - the defect was already there but at the time of the agreement, the lender stated to the hirer that the bicycle did not have the defect;
 - the defect arose after the rental agreement was entered into but is attributable to the lender.

Article 15 - Termination of the rental agreement

- The lender can terminate the rental agreement and take back the bicycle when:
 - during the rental period, the hirer does not fulfill one or more of his obligations, or does not fulfill them on time or in full, unless this is not serious enough to warrant a termination;
 - the hirer dies, is placed under a guardianship order, applies for a moratorium, is declared bankrupt or the Debt Management (Natural Persons) Act is declared applicable;
 - the lender is aware of circumstances which are of such a nature that the hirer had been aware of them - would not have entered into the rental agreement (in this manner) with the hirer. In that case, the lender can request compensation for costs, loss and interest.
- The hirer will give his full cooperation to the lender to return the bicycle.

- The lender is not liable for loss of the hirer as a result of a termination on the basis of this article.

Article 16 - Complaints and mediation scheme

- 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. If the hirer is too late in his submission, he may lose this right.
- If it appears that the hirer is not satisfied with the result of the complaint handling by the lender, the following applies. 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. Tel no. +31 (0)900-2692268 (35 eurocent per minute). The complaint must however relate to the interpretation or performance of these general rental conditions. The hirer may of course elect to submit the complaint to the complaints committee.

Article 17 - Dispute settlement procedure

- 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 Dispute Committee. Address: The Dispute Committee, PO Box 90600, 2509 LP, The Hague, the Netherlands (visiting address: Bordewijklaan 46, 2591 XR, The Hague).
- A dispute in only dealt with by a Dispute 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 by the mediation attempt of BOVAG Mediation.
- 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 hirer, be submitted to the Dispute Committee in writing or in any other form to be determined by the Dispute Committee. There is a dispute if it is not resolved after complaint handling by the lender and/or via the mediation attempt of BOVAG Mediation.
- If the hirer submits a dispute to the Dispute 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 above mentioned term, he will deem himself free to submit the dispute to the Court.
- The Dispute Committee rules with due observance of the provisions of the regulations applicable to it. The decisions of the Dispute Committee are made on the basis of those regulations by way of binding advice. The regulations are provided on request. A fee is payable for the handling of a dispute.
- Exclusively the Court or the Dispute Committee referred to above are authorised to hear the dispute.

Article 18 - Performance bond

- 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.
- The guarantee by BOVAG relates to an amount to be paid by BOVAG of maximum €450, on assignment of the claim of the hirer. For amounts greater than €450 per dispute, BOVAG pays under the same conditions the maximum amount of €450 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.
- The guarantee as referred to under paragraph 2 does not apply if a Court nullifies the advice. In the event of bankruptcy, a moratorium or business cessation of the lender, BOVAG only pays an amount up to maximum €450 per dispute and the guarantee only applies if the hirer has complied with all formal obligations to submit the dispute to the Vehicle Rental Dispute Committee before such a situation arises.

Article 19 - Processing of personal data of the hirer and of the manager

The personal data included in the contract are processed in a registration of personal data by the lender as controller in the meaning of the Dutch Data Protection Act. On the basis of this processing, the lender can execute these conditions, perform the agreement, provide the hirer or manager with an optimum service and up to date product information and make the hirer or manager personalised offers. The hirer and manager can request inspection and correction of the processed personal data and raise objections. If it concerns direct mailing, such an objection shall always be honored.

Article 20 - Applicable law

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

