

General terms and conditions

General sales and delivery terms and conditions for Btperformance

ARTICLE 1 - Definitions

1. BTPERFORMANCE: Fuel Saving Technology BV, registered with the Kamer van Koophandel in Flevo-, Gooi- and Eemland under number 59000511.
2. CUSTOMER: every Consumer or Business customer who orders Service(s) and/or Product(s) from, will purchase from and/or concludes an Agreement with Btperformance.
3. CONSUMER: any natural person who acts as a buyer or customer for purposes that fall outside his business or professional activity.
4. BUSINESS CUSTOMER: every legal person and all customers who are not Consumers.
5. DELIVERY: the moment at which Btperformance provides the Customer with possession of the Product or the File, or makes the vehicle to which a Service has been provided available to the Customer again.
6. SERVICES: all possible work that Btperformance performs on and/or with regard to a vehicle and/or adjusting, creating and/or delivering Files.
7. FILES: a computer or software file created and/or modified on request and based on information provided by the Customer.
8. PRODUCT: all items that Btperformance offers, sells and/or delivers to a Customer.
9. SLAVE TOOLS: Product which is connected to the systems (Master Tool) of Btperformance in order to read and write encrypted Files.
10. AGREEMENT: the provision of Services and/or the sale and delivery of Products to a Customer by Btperformance.
11. DISTANCE PURCHASE: the Agreement whereby the Customer is offered Products and/or Services for sale via an online portal and/or system (such as a webshop) created for that purpose by Btperformance, which Products or Services the Customer buys via that portal.
12. CREDIT: An electronic value point or unit issued by Btperformance that can be used to make payments for specifically designated Services and/or Products.

ARTICLE 2 - Applicability of the general terms and conditions

1. These general terms and conditions apply to all offers and Deliveries by Btperformance and/or all Agreements concluded with Btperformance and subsequent Agreements, as well as to all Agreements whereby Btperformance engages third parties (including suppliers) for the Delivery, which third parties can directly invoke these general terms and conditions.
2. When a Customer, via (the website of) Btperformance, makes an appointment with a garage company or third parties for the performance of a Service, Btperformance is not a party to that agreement between this Customer and this Business purchaser/third party. This Customer and Business purchaser/third party must record their mutual agreements - if, however, it is (judicially) established or assumed that Btperformance is a party to such an agreement between these aforementioned parties, Btperformance may invoke the provisions of these general terms and conditions, and these apply in full between Btperformance, the Customer and the Business purchaser.
3. Deviating provisions of these general terms and conditions are only valid if they have been explicitly agreed in writing with Btperformance in advance. Btperformance does not accept any general purchase terms and conditions of the Customer, unless explicitly agreed otherwise in writing.
4. In case Btperformance does not always demand strict compliance with these general terms and conditions, this does not mean that the provisions thereof are not applicable or that Btperformance would lose the right to any extent in other cases and/or at a later time to demand strict compliance with these general terms and conditions.
5. Btperformance has the right to change these general terms and conditions. Changes will be announced via the website(s) of Btperformance and, if necessary and possible, directly to the Customer. The changes come into effect from the moment of announcement or on such a date as mentioned in the announcement.

ARTICLE 3 - Offers, information and conclusion of the agreement

1. All offers, quotes and price statements from Btperformance are without obligation and remain valid for 30 days, unless agreed otherwise in writing. However, Btperformance is entitled to revoke the offer at any time.
2. The Agreement with Btperformance is established after Btperformance has agreed to this in writing or electronically. For a Distance purchase, an Agreement only comes into effect after Btperformance has confirmed the Customer's order and/or has proceeded to Delivery.
3. Any agreements, promises and/or changes to the Agreement made after confirmation of the order are only binding if agreed in writing between the parties.
4. All prices, brochures, website and other information provided with the offer have been compiled as carefully as possible. Should it later appear that errors have been made in this information provided, Btperformance is entitled to correct these errors and/or (before Delivery has taken place) to adjust or terminate the Agreement without being liable for damages in that regard.
5. Btperformance is entitled to refuse Delivery and not to fulfil Agreements regarding Products and/or Services, without being obliged to pay any (damage) compensation.
6. Btperformance assumes - and the Customer is responsible for - the accuracy of all information and statements provided by the Customer, such as - but not limited to - supplying information with regard to Files, and Btperformance is not obliged to conduct any further investigation into this. The Customer is also required to report any defects in the vehicle and/or engine management system prior to concluding the Agreement.

ARTICLE 4 - The price

1. The price of Products and/or Services are stated in Euros or Credits and are based on prices, wages and taxes at the time of the offer/quotation. Btperformance has the right to adjust the prices or Credits once a year, as of January 1, in accordance with the CBS price index of family consumption for the previous year.
2. When purchasing the Slave Tool, the Customer will receive an amount of Credits mentioned during the transaction free of charge. If the Customer wants to use the Slave Tool independent from the systems of Btperformance, then for this conversion of the Slave Tool (should be linked to master tool or to another master) the Customer needs to fulfil a payment equal to the amount of Credits received when purchasing the Product, at the then-current price of Credits. If there are no Credits supplied with a Slave Tool the Customer will still be charged 10 Credits for the aforementioned decoupling. A quote must be requested from the tool supplier for the extra costs of converting the tool from slave to master. These additional costs will be communicated to you upon receipt of quotations from the tool supplier.
3. Btperformance is authorized to pass on price increases to the Customer if they occur after 3 months after entering into the Agreement. A price increase may arise from, among other things (not exhaustively) an increase in raw material prices, production costs, transport costs, war, weather conditions, calamities etc. The maximum price increase is 15% per year, unless there are very exceptional circumstances. Price increases are announced in a timely manner and in writing. Price increases due to government measures will, however, be charged directly to the Customer through Btperformance. If the Customer, after entering into the Agreement, wishes to have additions and/or changes processed therein or provides incorrect data (files), this may affect the price. Btperformance may reasonably pass on the extra costs to the Customer.

ARTICLE 5 - Distance purchase of a product or service - consumers

1. In the case of a Distance purchase, the Consumer has the right to dissolve the Agreement within 14 days after full Delivery of all Products ordered simultaneously.
2. The Consumer's right to dissolve expires upon the Delivery of Services, when the Consumer has requested Btperformance to urgently repair or maintain a vehicle at an external location and/or after fulfilment of the Agreement. The right of dissolution also does not apply to the creation and Delivery of Files, as this relates to the production of goods on the specifications of the Consumer and/or to the Delivery of goods of digital content. Insofar as necessary, the Consumer explicitly waives the aforementioned rights to dissolution, on which it has been determined in this paragraph that these have lapsed or will lapse.

ARTICLE 6 - Method and delivery of products

1. Delivery of a Product to a **BUSINESS CUSTOMER** takes place by delivery to the carrier, unless otherwise agreed. Btperformance arranges for the transport at the expense and risk of the Business customer. Payment of a Product is paid in advance by the Business customer via a method to be determined by Btperformance.
2. Delivery of a Product to a **CONSUMER** takes place at the moment that a Product is delivered by the carrier to the address specified by the Consumer, after which the risk passes to the Consumer.
3. The Customer is obliged to accept the Product offered. If the Customer does not accept the Product, Btperformance is entitled to store the Product at the expense and risk of the Customer and/or to charge the (return) costs to the Customer.
4. If and as soon as the Customer has ordered more than one Product, Btperformance is always authorized to execute the Delivery in parts.
5. If it is agreed that Products will be collected by the Customer, the Customer must collect these within seven (7) days after confirmation by Btperformance, at the location designated by Btperformance. If the Customer fails to do so, the demonstrated costs reasonably incurred by Btperformance, such as costs for storing the Products and for not collecting in a timely manner, are borne by the Customer.
6. The periods for delivery stated by Btperformance are always targets and not strict deadlines, unless the parties have expressly agreed otherwise.

ARTICLE 7 - Method and delivery of files

Only computer files read by Slave tools supplied by Btperformance or uncoded/open files can be processed by Btperformance. The Customer sends the original read-out computer files via the Btperformance website to Btperformance. Btperformance then delivers the Files via the e-mail address used and specified by the Customer or via an online portal developed for this purpose by Btperformance. When the Customer uses the online portal, the Customer will receive a notification by email when the modification is ready. All (delivery) periods mentioned by Btperformance have been stated to the best of its knowledge on the basis of the information known to Btperformance when entering into the Agreement. The delivery periods are never strict deadlines. The mere exceeding of a stated (delivery) period does not put Btperformance at fault or in default. Btperformance will consult with the Customer in case of deviation from the stated (delivery) period. The Customer will always provide Btperformance in a timely manner with all the data and information that is useful and necessary for the proper execution of the Agreement and will provide the necessary cooperation in a timely manner. Extra costs that arise for Btperformance as a result of the lack of sufficient cooperation and/or provision of information by the Customer will be borne by the Customer.

ARTICLE 8 - The provision of a service

1. If the installation and/or assembly of a Product or Products is part of the Agreement, this concerns a Service, unless it follows from the nature of the Product to be delivered or the description given thereby that no assembly can or will take place.

2. An order given to Btperformance for installation, repair, assembly or replacement of Products or repair of a vehicle does not include the order for replacement or renewal of those parts that only become visible after dismantling and then appear to need replacement or renewal, as well as repairing all those defects that become apparent upon disassembly and for which repair is advisable or necessary.
3. Btperformance only performs additional repairs or replacements as referred to in the previous paragraph after the Customer has given permission for this.
4. Btperformance is not liable for damage caused to a vehicle or parts thereof when the damage is the result of the necessary measures Btperformance must take for the purpose of carrying out the repair, assembly or replacement, unless the damage is the result of intent or deliberate recklessness of Btperformance.

ARTICLE 9 - Storage costs and right of retention

1. If the Customer does not collect a vehicle within three working days after the Customer has been informed that the vehicle can be collected, Btperformance may charge a fee for storage costs.

The storage costs are the costs that are normally charged by Btperformance and - if no fixed storage costs apply at the location concerned - otherwise Btperformance will charge a reasonable fee for this, at least € 100.00 per calendar day. Btperformance can exercise the right of retention on a vehicle or a component thereof. This means that Btperformance will not return the vehicle or any part thereof until the Customer has paid all amounts for this or previous Deliveries or Agreements and/or other costs arising therefrom for Btperformance.

ARTICLE 10 - Payments

1. The prices quoted for Consumers are always in euros, including VAT and excluding any shipping costs and statutory taxes. The prices, VAT and taxes are specified for Business customers.
2. Unless otherwise agreed, payment takes place upon Delivery. For Products specifically ordered for the Customer and for Files, advance payment may be required by Btperformance.
3. If payment does not take place at the Delivery and/or on the agreed date and another form of payment has not been explicitly agreed in writing, then Btperformance is entitled to an interest payment pursuant to Article 6:119 of the Dutch Civil Code for a Consumer and pursuant to Article 6:119a of the Dutch Civil Code for a Business purchaser over the outstanding amount.
4. If the Customer fails to pay his debt, Btperformance is entitled to charge collection costs. If the Customer is a Consumer, Btperformance will first send the Consumer a reminder and set the Consumer a period of 14 days to meet his payment obligations, stating the (collection) costs to be charged otherwise. The collection costs are fixed by Btperformance on the costs arising from the Reimbursement for extrajudicial collection costs (WIK) Decree.
5. Payments always firstly settle any interest and costs owed, after which payments are deducted from the oldest invoice, despite any different descriptions when payment is made by the Customer.
6. Btperformance also reserves the right to claim any further costs and/or damages that may arise as a result of the Customer's late compliance.
7. In the event of liquidation, bankruptcy, seizure or suspension of payment for the Customer, the claims of Btperformance are immediately payable.

ARTICLE 11 - Credit system

When Btperformance makes this possible, payments may be made via the Btperformance credit system. Via the Btperformance website, the Customer must purchase Credits in advance, which Credits are linked to the personal and non-transferable account of the Customer. Once purchased and/or received otherwise or free of charge by the Customer, Credits can no longer be exchanged for money or transferred to a third party. Any refunds will also be settled with the Customer through Credits on the Customer's account. In principle, Credits have an unlimited shelf life, but if a Customer does not log in to his account (anymore), then these Credits will expire unconditionally after one year.

ARTICLE 12 - Login details and online portal [\[ST|FK1\]](#)

1. The Customer receives login details provided by Btperformance, with which details the Customer gains access to the protected parts of the website of Btperformance and/or his Credits.

2. The Customer is responsible for the use and management of his account(s), access code(s) and/or password(s) by or on behalf of him. The Customer will keep the password(s) and/or username completely confidential and ensure that they are not used by unauthorized third parties or for other purposes. The Customer will also be careful in the use of these details.

3. Btperformance reserves the right to trace every action taken by the Customer, such as logging in, reading, downloading, uploading and sending information via the Btperformance website, to the access code with which the Customer logs in.

4. As soon as the Customer knows or suspects that an access code or password is known or may be known to someone else who is not so authorized, he immediately reports this to Btperformance. Btperformance is not liable and accepts no liability in the event of loss or misuse of these login details and/or the expiration or loss of Credits.

ARTICLE 13 - Intellectual property right

All intellectual property rights, including the rights to the software, the Files and Products supplied by Btperformance, including preparatory material and related materials, in the broadest sense of the word, rest with Btperformance. For the use of the Files in the relevant vehicle, Btperformance grants the Customer a limited, non-exclusive licence to use the Files in one vehicle. With this Agreement, no intellectual property rights are delivered and/or transferred to the Customer in any way. The Customer is not permitted, without the express written permission of Btperformance, to change, edit, make public, reproduce the aforementioned works of Btperformance, to make them suitable for consultation or reproduction via the internet, to copy other than exclusively for own use in/on the vehicle for which Btperformance has produced the relevant File. Business customers who purchase Files on behalf of one of their customers are entitled to use the Files on behalf of that customer or vehicle once. If a Customer infringes the foregoing or the intellectual property right of Btperformance, this will be considered as non-compliance with the Agreement, and this gives Btperformance the right to terminate or suspend the Agreement and to claim compensation from the Customer for the damages resulting therefrom for Btperformance. In the event of a violation by the Customer of the provisions of this article, the Customer will also and immediately owe Btperformance a fine of € 2,500.00 per event and € 500.00 per day (or part thereof) that the violation continues thereafter, without prejudice to the right of Btperformance to also claim full damage compensation from the Customer.

ARTICLE 14 - Complaints

The Customer is obliged to examine or have investigated every Product at the time of Delivery, but in any case within the shortest possible time. In addition, the Customer should examine whether the quality is in accordance with what has been agreed, or at least meets the requirements that apply in normal (commercial) trade. Any complaints regarding the Services provided must be made in writing to Btperformance within 5 (five) working days after Delivery and for Products within 2 months after Delivery. If the defect could not reasonably be discovered within these periods, the Customer must report this to Btperformance in writing within a reasonable time, but at least 14 days after discovery. In the latter case, the Customer must demonstrate that he could not reasonably have discovered the subject of the complaint earlier. Complaints by Business customers regarding Services, including Files, must be submitted to Btperformance within the period referred to in paragraph 2, as detailed as possible, with submission of a sound (technical) report, log file or generated error code from which the complaint and substantiation thereof clearly arise. Complaints from a Customer that refer to the failure to meet statements, composition or performance as stated by Btperformance will only be treated as a complaint and give the right to complain when the aforementioned (power test) results show a deviation of 15% or more. Complaints do not suspend the payment obligation of the Customer. The Customer is not entitled under any circumstances to postpone, refuse or suspend payment for other Btperformance services. If a complaint is justified regarding a Service or Product delivered, Btperformance has the choice between repairing or re-delivering what was rejected, proportionally adjusting the calculated invoice amount, or not fully or partially executing the Agreement, provided that this is in proportion to the complaint. Refunds of orders that have been paid through Credits always take place in Credits. Btperformance can leave the handling and resolution of complaints regarding the proper performance of the Agreement to its supplier. The Customer explicitly agrees that Btperformance will forward any complaint(s) to this supplier, and the Customer will resolve the complaint(s) directly with this supplier. The Customer must give Btperformance and/or the supplier the opportunity to investigate a complaint or to have it investigated. If the Customer has not complained within the period specified in paragraph 2 or (the Business Customer) has fulfilled the (evidence) obligation referred to in paragraph 3, all his rights and claims for whatever reason will lapse with regard to what he has complained or could have complained within that period and/or should have demonstrated, and the Delivery is considered valid. If the Customer has installed the File using Products other than those supplied through Btperformance, the Customer must demonstrate that the complaint did not arise due to the use of third-party equipment.

ARTICLE 15 - Guarantee and the installation of files

Btperformance guarantees the proper functioning of the delivered Files per se (without being installed) from the date of Delivery for a period of one year, provided that the Customer has paid the invoice in a timely manner. If defects occur during this period in the functioning of the Files, Btperformance will repair them free of charge, subject to the provisions of the previous article. If installation is not carried out by Btperformance, the Customer is responsible for the proper installation of the Files in the vehicle and the requested modification. Btperformance advises the Business customer to limit any guarantee that may be granted to its customer with the present provisions as a starting point. On the Product delivered by Btperformance to the Customer, not being Files, Btperformance provides a 1-year guarantee from the moment of Delivery to the Customer.

ARTICLE 16 - Customer liability and own responsibility

The Customer is aware that the use or use of the Files and/or Products may be in conflict with (local) laws and regulations, may be prohibited or may infringe the (warranty) rights of third parties, such as the producers of vehicles. The Customer declares to use the Files, Products and/or the vehicle to which they are applied at his own risk and to be independently responsible for investigating or inquiring whether use or application of the Files and/or use of the Products is permitted. For this reason, Btperformance urgently advises the Customer, taking into account the above, to use the Files and Products only on private property and/or a test or racetrack. Furthermore, the Customer realizes that the use of the Files and/or Products may constitute a (heavier) load on the vehicle, the possible consequences of which will be borne by the Customer. Btperformance is furthermore exclusively liable for damage suffered by the Customer that is the direct result of a shortcoming attributable to Btperformance in the fulfilment of the effort obligations resting on Btperformance or in the delivered Product. Btperformance is never liable for indirect damage, including consequential damage, lost profit, (temporarily) becoming unusable for a vehicle, hoist or transport costs, fines, missed savings and/or damage due to business interruption or loss of factory guarantees. Btperformance is not liable for damage caused by the Customer's failure to comply with his information obligation, obligation to investigate, instructions or by the information provided by the Customer being incorrect, complete or reliable, or arising from incorrect or unlawful use of the Files or the Product. Btperformance is always authorized to limit or undo the damage of the Customer as much as possible, for which the Customer is obliged to cooperate fully. The Customer himself is also obliged to limit the damage as much as possible. The Customer indemnifies Btperformance against any claims from third parties with regard to damage, which are related to or ensue from the Services provided by Btperformance or supplied Files and/or Products, if and insofar as Btperformance is not liable to the Customer under the provisions of this article. If the Customer has insured any risks associated with this Agreement or can invoke another (guarantee) right, the Customer now indemnifies for then Btperformance against these risks. Btperformance excludes liability at least in the following situations (not exhaustive):

- Damage to the hardware or the vehicle as a result of the Files or Products supplied by Btperformance;
- Damage related to defects and/or parts of goods or (software) files supplied by the Customer;
- Damage to the vehicle itself and/or items in the vehicle (load), when installing the Files;
- Damage as a result of incomplete and/or incorrect information provided by the Customer;
- Damage as a result of an incorrect cost estimate/budget from Btperformance;
- Damage as a result of advice, services or products provided by third parties on behalf of the Customer;
- Damage as a result of transport, temporary storage or items deposited by the Customer for processing;
- Damage as a result of adjustments, transfer, or uninstallation of the delivered Files;
- if the vehicle, the Files or a Product has been offered for repair or repair to another party without the express written permission of Btperformance;
- if the defect is wholly or partly due to improper use, incorrect action by the Customer, manipulation of the Files and/or the engine management system after the Delivery by Btperformance, or is otherwise due to the fault of the Customer;
- Personal injury directly or indirectly related to Files and/or Products supplied by Btperformance.

9. Before the Customer invokes the liability stated in this article, the Customer must meet the conditions as stated in Article 15 regarding the timely and correct delivery of a complaint and give Btperformance the opportunity to take measures (for repair). If this (repair) option is withheld from Btperformance, any right to compensation will lapse.

If Btperformance turns out to be liable in connection with the Services it has provided and/or Files and/or Products delivered, its liability is in accordance with the aforementioned provisions, arranged as follows and limited to (in separate and descending order):

- a) The amount that can be recovered from the third parties and/or auxiliaries engaged by Btperformance;
- b) The amount that the insurer of Btperformance turns out to pay;
- c) If the liability of Btperformance does not fall under the aforementioned exclusions and Btperformance should nevertheless prove legally liable, its contractual and/or legal liability is limited to either free repair or (re-)Delivery of the Services, Files or Product that have proven to be defective or to compensation for the amount of the invoice for the relevant Service(s), File(s) and/or the Product(s), but in all possible situations up to a maximum of € 1,000.00 (in words: one thousand euros). The foregoing only allows an exception if the damage was caused by intent or gross negligence of Btperformance.

The liability limitations laid down in the foregoing provisions of this article are also stipulated for the benefit of the third parties engaged by Btperformance in the implementation of the Agreement, who can thereby directly invoke those liability limitations.

ARTICLE 17 - Retention of title

Btperformance reserves the ownership of all Products and/or Files delivered to the Customer by it and/or on its behalf until payment thereof, plus any shipping and/or transport costs, has been paid in full. Until the invoice from Btperformance is fully paid, the Customer cannot derive any rights with regard to the Services and/or Products supplied by Btperformance.

ARTICLE 18 - General expiration period

Defects and attributable shortcomings on the part of Btperformance must be reported to Btperformance in writing within a reasonable time after discovery, but in any case within 2 months after delivery of the Files or Products, or delivery of the Services, failing which the right to compensation to be claimed expires.

ARTICLE 19 - Indemnification

The Customer indemnifies Btperformance against all claims from third parties with regard to Services, Files and/or Products supplied by Btperformance to the Customer, as a result of which those third parties may have suffered or still suffer damage, irrespective of the cause or time of occurrence thereof.

ARTICLE 20 - Nullity/destruction of provisions

If any provision of these general terms and conditions proves to be wholly or partially invalid, is voided or is otherwise found to be invalid, then that will maintain the validity of the other provisions of these general terms and conditions. The provisions that are not legally valid or cannot be legally applied will be replaced by provisions that are as close as possible to the scope of the provisions to be replaced, for which the parties will then consult with each other. If there is ambiguity regarding the explanation of one or more provisions of these general terms and conditions, the explanation must be 'in the spirit' of these provisions.

ARTICLE 21 - Applicable law and choice of court

All Agreements concluded under these general terms and conditions are exclusively governed by Dutch law. International treaties, such as the Vienna Sales Convention, are hereby expressly excluded, if and to the extent possible. Disputes will be submitted to the competent judge of the Midden-Nederland district court.