

# COMMERCIAL WARRANTY

## 04/2017

Tuning Box SPRL, having its registered office at Ruthier 1, Faymonville, 4950, Waimes, Belgium, listed with the Banque Carrefour des Entreprises under number 0473.420.970 (hereafter the "guarantor") hereby grants the buyer of a Tuning Box unit, free of charge, a commercial warranty to the effect that the product shall not damage the engine on which it is installed (hereafter the "engine warranty").

### 1. Beneficiary of the warranty

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#### **1.1. The warranty shall only apply to buyers who meet the following two (cumulative) conditions :**

- He/she is a consumer as defined in article 1649 bis (2) (i) of the Belgian Consumer Code: "any natural person who is acting for purposes which are not related to his or her trade, business or profession";
- He/she has returned the declaration of subscription to the commercial warranty dispatched with the Tuning Box unit, duly completed and signed, within 10 days of receipt of the product, to the following address :

SPRL TUNING BOX,  
Ruthier 1, Faymonville  
4950 Waimes  
Belgium

#### **1.2. If, during the warranty period, the beneficiary of the warranty sells the vehicle in which the Tuning Box unit was installed, the engine warranty may be transferred to the buyer of the vehicle provided that the guarantor is expressly notified thereof in writing within 14 days of the date on which the vehicle was sold. The written notification must include the new beneficiary's first name and last name, along with his/her contact details.**

### 2. Guarantor

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Tuning Box SPRL, having its registered office at Ruthier 1, Faymonville, 4950, Waimes, Belgium, shall be the only guarantor for the engine warranty.

### 3. Purpose of the warranty

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#### **3.1. This warranty is a commercial warranty in the meaning of article 1649 septies of the Belgian Civil Code. As such, it neither supplements nor affects, in any way, the consumer guarantee granted to the consumer by virtue of articles 1649 bis et seq. of the Belgian Civil Code.**

**3.2. The warranty, which is granted free of charge, covers damage to the engine components and parts appearing in the definitive, exhaustive list below and forming part of the motor vehicle owned by the beneficiary of the warranty and covered by the warranty during the warranty period, where such damage is caused by use of the Tuning Box unit (hereafter the “covered damage”):**

Cylinder block, cylinder head, pistons, piston rod, crankshaft, valves, valve guide, camshafts, sumps, intake manifold, cogwheels, drive shaft, turbocharger and gearbox (with the exception of wearing and coupling parts).

**3.3. The engine warranty shall only cover motor vehicles that :**

- Are registered in Germany, Austria, Belgium, Bulgaria, Cyprus, Croatia, Denmark, Spain, Estonia, Finland, France, Greece, Hungary, Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, Czech Republic, Romania, United Kingdom, Slovakia, Slovenia, Switzerland and Sweden.
- Had no more than 100,000 km on the clock when the covered damage occurs ;
- Were first registered no more than five years prior to the date on which the Tuning Box unit was installed;
- Are used for private, non-commercial purposes (the term commercial use refers, for example, to commercial passenger transport vehicles, school transport vehicles, delivery and courier vehicles and rental vehicles);
- Have been properly serviced and maintained as required or recommended by the manufacturer, with documentary evidence of such service and maintenance work.

## **4. Effective date and warranty period**

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**4.1. The commercial warranty shall take effect on the date mentioned on the declaration of subscription to the statutory guarantee mentioned in point 1.1 above ;**

**4.2. The warranty shall expire one (1) year following the purchase date for a Tuning Box Classic unit, or two (2) years following the purchase date for a Tuning Box Evolution unit.**

**4.3. In any event, and irrespective of the applicable warranty period (1 year or 2 years) as mentioned in the paragraph above, the warranty shall automatically expire :**

- when the vehicle exceeds 100,000 km since its first registration, or ;
- when five (5) years have passed since the vehicle's first registration.

## 5. Exclusions

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### 5.1. The warranty shall not apply :

- To units other than the Tuning Box Classic and the Tuning Box Evolution units. In particular, the warranty shall not cover units installed on tractors and boats ;
- In the event of normal wear and tear of the engine parts covered by this engine warranty ;
- In the event of damage caused by participation in races, driving training or similar situations ;
- In the event of damage caused by modifications (including but not limited to modifications intended to enhance engine performance or alter exhaust fumes) to the vehicle's engine and/or engine control unit, prior to or during the warranty period ;
- In the event of damage caused by exposure of the vehicle to axle or towing loads that exceed the manufacturer's recommended limits or total authorised weight ;
- In the event of damage caused by the beneficiary's failure to follow vehicle usage guidance contained in the manufacturer's instruction manual ;
- In the event of damage caused by the beneficiary's failure to use the Tuning Box unit as intended and/or to follow instructions contained in the instruction manual provided by the guarantor, or by the fact that the beneficiary, or a third party acting on the beneficiary's instruction, has installed the unit in a manner not consistent with the guarantor's specifications ;
- In the event of damage caused by the use of inappropriate fuels or other substances, or fuels or other substances not approved by the vehicle's manufacturer, and in particular (but not limited to) engine oil; in the event of damage resulting from an accident, i.e. a sudden event in which the vehicle has sustained a direct, external mechanical impact, or a road traffic accident, i.e. a sudden road traffic event that could potentially cause damage to the vehicle when travelling on the road;
- In the event of damage resulting from an error by the beneficiary or a third party, and in particular damage caused by inappropriate use of the vehicle or the unit, or damage resulting from a deliberate act.

**5.2. Furthermore, the warranty shall be invalidated if the vehicle's odometer has been tampered with or altered, or if the odometer has stopped working or been replaced such that the guarantor is unable to read or verify the vehicle's actual mileage and the guarantor has not been notified of this situation within 14 days of its occurrence.**

**5.3. Furthermore, the guarantor shall refuse to honour a warranty claim if the beneficiary deliberately ignores the provisions of point 7 of this declaration on how to proceed when covered damage occurs.**

**5.4. Finally, the guarantor shall refuse to honour a warranty claim if the unit has been installed in a different vehicle model from the model appearing on the purchase invoice.**

## 6. Maximum cover

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- 6.1. In the event that covered damage occurs, the engine warranty shall cover the cost of replacing the engine components and parts listed in point 3.2 above, provided that documentary evidence is provided, up to a maximum value of €5,000 (including VAT) per covered damage.**
- 6.2. In no event shall the guarantor be required to make a payout under the warranty exceeding the current value of the vehicle immediately prior to the occurrence of the covered damage. The engine warranty shall not cover other costs, including (but not limited to) the cost of other repair or service work for other vehicle components, and reimbursement of indirect damages and loss, such as vehicle recovery costs, rental vehicle costs, overnight accommodation costs, loss of enjoyment, vehicle parking or removal costs, etc.**

## 7. How to proceed when covered damage occurs

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- 7.1. The beneficiary shall inform the guarantor of damage covered by the warranty, within 14 days of the occurrence of such damage, by registered letter with acknowledgment of receipt sent to the following address :**

SPRL TUNING BOX,  
Ruthier, Faymonville 1  
4950 Waimes  
Belgique

- 7.2. The guarantor shall only honour claims under the engine warranty if they are made in accordance with the process set out in point 7.1, and provided that the beneficiary encloses with the claim the following supporting evidence :**

- The original invoice for the Tuning Box unit ;
- A copy of the vehicle manufacturer's service handbook and/or service invoices proving that the vehicle has been properly and regularly serviced and maintained as per the manufacturer's recommendations or instructions;
- A copy of the vehicle registration certificate ;
- Quotes for the required repairs, detailing the parts that need to be replaced.

- 7.3. The guarantor shall decide whether or not to obtain an expert opinion, internally or externally, on the relevant damage. To this end, the beneficiary shall provide all information in its possession with regard to the circumstances in which the damage occurred. The guarantor may appoint an independent expert, at its cost, to assess the cause of the damage.**

- 7.4. The beneficiary shall not replace, or have a third party replace, the defective parts without first obtaining the guarantor's prior, written consent. Failing that, the beneficiary shall be deemed to have waived his/her rights under this warranty.**

## 8. Time limit on engine warranty claims

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Engine warranty claims shall be subject to a time limit of 12 months from the date on which the guarantor gives written authorisation, pursuant to point 7.4, to replace the parts covered by the warranty.

The statutory time limit shall also apply in the event of hidden defects or lack of conformity as defined in point 10 below.

## 9. Free engine warranty

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The engine warranty is granted to the beneficiary by the guarantor at no extra cost.

## 10. Relationship between the engine warranty, the consumer goods conformity guarantee and the hidden defects guarantee

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**10.1. The engine warranty shall not affect the other rights that the beneficiary of the warranty may exercise, as a consumer, against the guarantor, as the seller and/or manufacturer of Tuning Box units. Such rights shall continue to apply.**

**10.2. In particular, irrespective of the provisions of this engine warranty, the guarantor shall remain bound to provide a guarantee against hidden defects pursuant to articles 1641 to 1649 of the Belgian Civil Code, and to a statutory conformity guarantee pursuant to articles 1649 bis to 1649 octies of the Belgian Civil Code.**

### **Art. 1641**

*A seller is bound to a warranty on account of the latent defects of the thing sold which render it unfit for the use for which it was intended, or which so impair that use that the buyer would not have acquired it, or would only have given a lesser price for it, had he known of them.*

### **Art. 1642**

*A seller is not liable for defects which are patent and which the buyer could ascertain for himself.*

### **Art. 1643**

*He is liable for latent defects, even though he did not know of them, unless he has stipulated that he would not be bound to any warranty in that case.*

### **Art. 1644**

*In the cases of Articles 1641 and 1643, the buyer has the choice either of returning the thing and having the price repaid to him or of keeping the thing and having a part of the price repaid to him, as appraised by experts.*

### **Art. 1645**

*Where the seller knew of the defects of the thing, he is liable, in addition to restitution of the price which he received from him, for all damages towards the buyer.*

**Art. 1646**

*Where the seller did not know of the defects of the thing, he is only liable for restitution of the price and for reimbursing the buyer for the costs occasioned by the sale.*

**Art. 1647**

*Where the thing which had defects perishes because of its bad quality, the loss falls upon the seller who is liable to the buyer for restitution of the price and other compensations explained in the two preceding Articles.*

*But a loss occasioned by a fortuitous event falls upon the buyer.*

**Art. 1648**

*The action resulting from redhibitory vices must be brought by the buyer shortly thereafter, according to the nature of the redhibitory vices, and standard practice of the location where the sale took place.*

**Art. 1649**

*It does not take place with regard to sales made by order of the court.*

**Art. 1649 bis**

(1)

*The present section is applicable to sales of consumer goods by a seller to a consumer*

(2)

*For the purpose of this section, the following terms shall bear the following meanings:*

1. « Consumer » : *any natural person who is acting for purposes which are not related to his trade, business or profession ;*
2. « Seller » : *any natural or legal person who sells consumer goods in the course of his trade, business or profession ;*
3. « Consumer goods » : *any tangible movable item, with the exception of:*
  - *goods sold by way of execution or otherwise by authority of law,*
  - *water and gas where they are not put up for sale in a limited volume or set quantity,*
  - *electricity ;*
4. « Producer » : *the manufacturer of consumer goods, the importer of consumer goods into the territory of the European Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the consumer goods ;*
5. « Guarantee » : *any undertaking by a seller or producer to the consumer to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising ;*
6. « Repair » : *in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale.*

(3)

*Contracts for the supply of consumer goods to be manufactured or produced shall also be deemed contracts of sale for the purpose of this section.*

**Art. 1649ter**

(1)

*For the purpose of application of Article 1604 (1), the consumer goods delivered by the seller to the consumer are presumed to be in conformity with the contract if they:*

1. *comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;*

2. are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;
3. are fit for the purposes for which goods of the same type are normally used;
4. show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.

(2)

The seller shall not be bound by public statements, as referred to in (1) (iv), if he:

- shows that he was not, and could not reasonably have been, aware of the statement in question,
- shows that by the time of conclusion of the contract the statement had been corrected, or
- shows that the decision to buy the consumer goods could not have been influenced by the statement.

(3)

There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.

(4)

Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility.

This shall apply equally if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

#### **Art. 1649quater**

(1)

The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered and which appears within two years of delivery.

The two-year time frame mentioned in (1) shall be suspended during the time necessary to repair or replace the goods, or during negotiations between the seller and the consumer in order to reach an amicable settlement, if any.

By way of exemption to (1), the seller and the consumer may, for second-hand goods, agree on a time frame of less than two years but not less than one year.

(2)

The seller and the consumer may agree on a time frame during which the consumer must inform the seller of the existence of the lack of conformity, such time frame being no less than two months from the date on which the consumer noticed the defect.

(3)

The consumer must take action within one year of the date on which he noticed the lack of conformity, provided that this time limit does not expire before the end of the two-year time frame mentioned in (1).

(4)

Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity, according to whether the goods were new or second-hand.

(5)

The provisions of this chapter relating to the hidden defects guarantee shall apply after the two-year time frame mentioned in (1).

### **Art. 1649quinquies**

(1)

*Other than any compensatory damages, the consumer has the right to demand from the seller, under a lack of conformity claim pursuant to Article 1649 quater, either the repair or replacement of the goods, under the provisions set out in (2); or he may require an appropriate reduction of the price or have the contract rescinded, under the provisions set out in (3).*

*Consideration shall be given, however, to any aggravation of the damage resulting from the consumer's use of the goods after the point at which the lack of conformity was or should have been observed.*

(2)

*In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate. Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.*

*The terms "free of charge" in (2) above refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.*

*For the purpose of (1), a remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:*

- *the value the goods would have if there were no lack of conformity;*
- *the significance of the lack of conformity;*
- *whether the alternative remedy could be completed without significant inconvenience to the consumer.*

(3)

*The consumer may require an appropriate reduction of the price or have the contract rescinded :*

- *if the consumer is entitled to neither repair nor replacement, or*
- *if the seller has not completed the repair nor replacement within a reasonable time or without significant inconvenience to the consumer..*

*By way of exemption to (1), the consumer is not entitled to have the contract rescinded where the lack of conformity is minor in nature.*

*For the purpose of (1), any refund granted to the consumer shall be reduced to take account of his use of the goods since delivery.*

### **Art. 1649sexies**

*Where the seller receives a lack of conformity claim from the consumer, the seller shall be entitled to remedy from the producer or any contractual intermediary involved in the transfer of ownership of the consumer goods, on the grounds of the producer's or the intermediary's contractual liability in connection with the goods. Any contractual term that has the effect of waiving or restricting such liability shall not be binding on the seller.*

### **Art. 1649septies**

(1)

*A guarantee shall be legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.*

(2)

*The guarantee shall:*

- *state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee;*
- *set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.*



(3)

*On request by the consumer, the guarantee shall be made available in writing or feature in another durable medium available and accessible to him.*

*In any event, if the contract of sale is made in writing, it shall contain the information mentioned in (2).*

(4)

*Should a guarantee infringe the requirements of (2) and (3), the consumer can still rely on the guarantee and require that it be honoured.*

*The same shall apply if the guarantee infringes the requirements of Article 13 (1) of the Belgian Law of 14 July 1991 on Trade Practices and Consumer Information and Protection.*

#### **Art. 1649octies**

*Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from this section shall not be binding on the consumer.*

*Any provision stating that the law of a third country is applicable to a contract governed by this section shall not be binding on matters governed by this section where, in the absence of such provision, the law of a European Union Member State would be applicable and would confer greater protections on the consumer on such matters*

## **11. Applicable law**

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The engine warranty is governed by Belgian law.

## **12. Competent jurisdiction**

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The Belgian courts shall have sole jurisdiction over a dispute arising from the application or interpretation of these warranty terms and conditions.

## **13. Final provisions**

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**13.1. The invalidity of any current or future provision of these warranty terms and conditions shall in no way affect the validity of the other provisions.**

**13.2. In the event of any contradiction between these warranty terms and conditions and the general terms and conditions of sale, the latter shall prevail.**