

TERMS AND CONDITIONS

License for temporary/unlimited software transfer



Black Tusk GmbH

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§ 1 Scope of application, customer information

The following terms and conditions (GTC) govern the contractual relationship between Black Tusk GmbH (www.shop.blacktusk.eu) and their consumers - hereinafter referred to as CUSTOMERS - with regard to the licensing of Garmin ConnectIQ products - hereinafter collectively referred to as PRODUCTS - by Black Tusk. We do not accept any terms and conditions that contradict or deviate from our terms and conditions. Contract language is German and was translated into English. In case of doubt the German version counts. The terms and conditions are valid in their current version at the time of the order by the customer. The customer acknowledges these terms and conditions and agrees to them as soon as he places an order.

§ 2 Subject matter of the contract

Subject of these terms and conditions (license terms) is the granting of temporary or permanent software licenses described in the online order by Black Tusk GmbH, Neuberg 85, 5532 Filzmoos (hereinafter referred to as "BLACK TUSK") for the use of the PRODUCTS by the customer.

The product scope and subject matter of the contract is determined by the respective valid order(s). The scope of functions through the licensing of the product is conclusively defined in the product description. Licensing of the PRODUCTS shall be exclusively in accordance with the order in conjunction with these License Terms.

§ 3 Conclusion of contract

The product presentation on the website does not constitute an offer in the legal sense. It is an invitation to the customer to make an offer himself. The customer makes the offer in the legal sense by placing an order. Consent to the immediate release of the download and the associated waiver of your right of revocation are prerequisites for the ordering process. Thus the licenses are available for immediate use after conclusion of the contract. In addition, the conclusion of the contract will be sent to the deposited e-mail.

Upon conclusion of the contract, the customer is obligated to pay BLACK TUSK the license fee agreed in accordance with the shopping cart. License fees and all other prices are including Austrian value added tax.

§ 4 Order process

The customer selects the desired goods (app) in the online shop (shop.blacktusk.eu). For each product (App) the customer can select a license and by clicking the button "Order", the order process is continued. The customer is requested to agree to terms and conditions, privacy policy, cancellation policy and the knowledge of the loss of the cancellation. Furthermore the customer has to provide an email address for the conclusion of the contract. By clicking on the button "commit to buy" the customer is directed to the external payment services for selection of the preferred payment method. After selecting a payment method, the customer is redirected to the external website of the respective payment service provider and enters the data required to execute the payment. Before placing the order, the data relevant to the order is summarized in an "order overview". The Customer is free to check his details in the order overview once again and may correct them if necessary before sending his order to the payment service provider and consequently to BLACK TUSK by clicking on the button "order now" [alternatively "pay now" or "order liable to pay "]. By clicking on this button, the Customer finally submits a binding purchase offer with regard to the goods selected by him.

§ 5 Order confirmation

Upon receipt of the order, BLACK TUSK will send an order confirmation to the e-mail address provided by the customer, confirming receipt and contents of the order (hereinafter referred to as "Order Confirmation"). The order confirmation constitutes BLACK TUSK's acceptance of the customer's offer to purchase. If BLACK TUSK rejects the conclusion of the contract, the customer will be informed immediately by e-mail.

The customer agrees to the electronic dispatch of the invoice.

§ 6 Storing contract information

Information provided by the customer regarding the order process is stored by BLACK TUSK. Irrespective of this, BLACK TUSK will send the order confirmation and these General Terms and Conditions to the e-mail address provided by the customer.

§ 7 Right of Withdrawal

In principle, the customer has the right to revoke a contract within fourteen days without giving reasons. The revocation period is fourteen days from the day on which the customer or a third party named by the customer, who is not the carrier, has taken possession of the goods. The right of withdrawal is extended by 12 months if the customer has not received correct information about the right of withdrawal. In order to exercise the right of withdrawal, the customer must inform us

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by means of a clear statement (for example, a letter or e-mail sent by post) of your decision to withdraw from this contract. You can use the model withdrawal form, which is not required.

Withdrawal form

I/we () hereby revoke the contract concluded by me/us (*) for the purchase of the following goods*

Ordered on ()/received on (*)*

Name of the consumer(s)

Address of the consumer(s)

Signature of the consumer(s) (only in case of communication on paper)

Date

**Delete as applicable*

In order to comply with the cancellation period, it is sufficient for the customer to send the notification of the exercise of the right of cancellation before the end of the cancellation period.

Exclusion of the right of withdrawal

BLACK TUSK would like to point out that the right of withdrawal in the case of a contract for the supply of digital content which is not stored on a physical data carrier shall expire if BLACK TUSK has started to execute the contract after the consumer

- **has expressly agreed that the BLACK TUSK shall commence with the execution of the contract before the end of the withdrawal period,**
- **has confirmed his knowledge that he loses his right of withdrawal by giving his consent at the beginning of the execution of the contract**
- **as well as a confirmation of the contract on a permanent data carrier including declarations that consent was provided and that a notice of the loss of the right of withdrawal was given.**

Effects of withdrawal

If the Customer withdraws this agreement, BLACK TUSK shall immediately and at the latest within fourteen days from the day BLACK TUSK receives notification of your withdrawal of this agreement, reimburse all payments received by BLACK TUSK from the Customer, including delivery costs (with the exception of additional costs resulting from the fact that the Customer has chosen a different method of delivery than the cheapest standard delivery offered by BLACK TUSK). For this refund, BLACK TUSK will use the same means of payment that the customer used for the original transaction, unless expressly agreed otherwise with the customer; under no circumstances will the customer be charged for this refund. BLACK TUSK may refuse a refund until BLACK TUSK has received the goods back or until the customer has provided proof that the customer has returned the goods, whichever is earlier.

The Customer must return or hand over the goods to BLACK TUSK immediately and in any event no later than within fourteen days from the date on which the Customer notifies BLACK TUSK of the cancellation of this agreement. The deadline is met if you send back the goods before the period of 14 days has expired. The customer has to bear the direct costs of returning the goods. The Customer is only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

End of the withdrawal instruction

§ 8 Delivery

The license for the PRODUCT will be provided to the customer by BLACK TUSK after the order has been completed and processed in the online store. The CUSTOMER must follow the instructions and enter the issued activation code, that is displayed in the online shop after the order process is finished, on the Garmin device within the application to be licensed to complete the licensing process. BLACK TUSK will also send the CUSTOMER an order confirmation including the activation code to the email address provided.

§ 9 Due date and retention of title

Purchase price is due at the latest upon delivery /call. All delivered PRODUCTS shall remain the property of BLACK TUSK until full payment has been received.

§ 10 Time limit for activation

You can activate the product within 24 hours after purchase by entering the code on the watch within the application to be licenced. If the activation has expired, it can be reactivated via the link provided in the order confirmation mail.

§ 11 Term of validity

The term of the license is stated on the order form or the order in the online store. Unless otherwise agreed, the license will be made available on the day the license begins.

The contract is concluded for the duration agreed in the order form.

§ 12 Regulation of the right of use

The parties agree that the SOFTWARE is a protected computer program within the meaning of copyright law. BLACK TUSK retains all copyrights to the SOFTWARE, unless otherwise expressly provided below.

BLACK TUSK grants the Customer a non-exclusive, non-transferable right to use the PRODUCT which is limited in time, space and content to the license period agreed in the order form and which is subject to these license terms.

The customer is obliged to safeguard BLACK TUSK's other rights of use. In particular, the customer shall not be entitled to decompile, reverse engineer or disassemble the PRODUCTS.

Customers are entitled to make copies on other data carriers for private use only. Further distribution, transfer, assignment or sublicensing is not permitted.

If any provision of this agreement is violated, BLACK TUSK may suspend or terminate the license to use the PRODUCTS without notice or compensation.

Any suggestion for improvement or adaptation of a PRODUCT forwarded to BLACK TUSK may be used by BLACK TUSK free of charge, irrevocably and without conditions.

§ 13 Product update

BLACK TUSK reserves the right to make changes to the product, which may also result from program updates. However, some functions may be omitted and/or replaced by others. Likewise, it is BLACK TUSK's sole decision to continue offering and developing individual modules and to discontinue others.

§ 14 Customer information: Storing contract information

Your order with details of the concluded contract (e.g. type of product, price, etc.; email address, agreement to general terms and conditions and security policy, right of withdrawal and loss of withdrawal) will be stored by BLACK TUSK. We will send our terms and conditions to every CUSTOMER, but they are also available on our website at any time after the conclusion of the contract.

§ 15 Customer information: Correction note

You can correct your entries at any time before placing the order. You can also end the ordering process completely at any time by closing the browser window.

§ 16 Limitation of liability and warranty

We exclude liability for slightly negligent breaches of duty, provided that these do not concern duties essential to the contract, damages from injury to life, body or health, guarantees or claims under the Product Liability Act (ProdHaftG). The same applies to breaches of duty by our vicarious agents and our legal representatives. The obligations essential to the contract include in particular the obligation to grant you the right to use the PRODUCTS. Furthermore, we must provide the ordered item to the customer free of material defects and defects of title. Licenses for PRODUCTS must be made available to you free of defects. Our PRODUCTS are subject to statutory liability for defects.

BLACK TUSK warrants that the licensed PRODUCT complies with the respective documentation and allows the functions specified therein. However, BLACK TUSK does not assume any liability for a certain success or progress by using the PRODUCTS.

The customer has informed himself about the essential features of the PRODUCT and bears the risk of whether the PRODUCT meets wishes and needs of the customer. The functionality of the PRODUCT shall be based on the description in the product description and the supplementary agreements made in writing, if any, and otherwise on the quality which is customary for software of the same type and which the customer can expect according to the type of the PRODUCT. A defect shall not be deemed to exist if a functionality existing at the time of initial installation is no longer or not properly available due to an update, a new release or any other change to the operating system or the system or hardware environment of the customer. The functionalities and descriptions presented in the product description do not constitute guarantees, unless otherwise expressly agreed in writing.

The warranty is excluded in the case of defects caused by the customer. Such circumstances are in particular, for example, improper use and the use of unsuitable components. Furthermore, warranty is only given for reproducible defects.

In the event of a functional defect that is subject to warranty, BLACK TUSK shall, at its discretion, either replace the defective parts or improve them within a reasonable period of time. We expressly reserve the right to make improvements by means of a workaround or the provision of a replacement product which essentially functions in the same way and to the same extent as the defective product. If these measures are not suitable to remedy the defect, the Licensee is entitled to reduce the remuneration or - if the defect is not minor - to withdraw from the contract. The warranty period is 24 months from the date of delivery.

BLACK TUSK is under no circumstances responsible for the use of the app by users. BLACK TUSK has no control over the functionality of the Garmin devices and the data transfer to the online platform Garmin Connect or the product platform Garmin ConnectIQ Shop. Under no circumstances is BLACK TUSK responsible for the published and released content via the Garmin platforms.

The PRODUCTS are made available to users during the current development phase. BLACK TUSK does not offer any warranty or guarantee with respect to the PRODUCTS beyond the above.

§ 17 Force Majeure

BLACK TUSK shall not be liable for impossibility of performance, delays or deficiencies in performance, insofar as these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. server or Internet failure, operational disruptions of any kind, etc.) for which BLACK TUSK is not responsible.

If such events make it considerably more difficult or impossible for BLACK TUSK to perform its services and the hindrance is not only of a temporary nature, BLACK TUSK shall be entitled to terminate the contract without notice or to withdraw from the contract at its discretion.

In the event of impediments of temporary duration, the delivery or service deadlines shall be extended or the delivery or service dates postponed by the period of the impediment plus a reasonable start-up period. If the customer cannot reasonably be expected to accept the performance as a result of the delay, he may terminate the contract by immediate declaration in writing to BLACK TUSK. As a rule, unreasonableness shall be deemed to exist if the hindrance lasts for a continuous period of more than 90 days.

§ 18 Right of set-off, right of retention

The Customer shall not be entitled to set off claims against claims of BLACK TUSK unless the Customer's counterclaims have been legally established or are undisputed.

The customer may only exercise a right of retention if his counterclaim is based on the same purchase contract.

§ Section 19 Data Protection

Provisions on data protection are contained in the privacy policy.

§ Section 20 Applicable law

As far as no other legal provisions are mandatory, the law of the Republic of Austria shall apply, excluding the UN Convention on Contracts for the International Sale of Goods.

§ 21 Place of jurisdiction

In the event of disputes arising from contracts concluded under the validity of these General Terms and Conditions, the Austrian courts or courts of the place where the customer has his domicile/ordinary residence shall have jurisdiction for customer complaints. The courts of the

customer's place of residence/ordinary abode shall have jurisdiction for any legal action brought by BLACK TUSK against the customer. After the dispute has arisen, the parties shall be free to agree on a place of jurisdiction.

§ 22 Modification of the General Terms and Conditions / Reservation of right to change

BLACK TUSK is entitled to unilaterally amend these GTCs to the extent necessary to eliminate any subsequent equivalence problems or to adapt them to changes in the legal or technical framework. BLACK TUSK shall inform the customer of any such amendment by sending notification of the content of the amended provisions to the last known e-mail address of the customer and/or by making such notification via the website. The amendment shall become an integral part of the contract unless the customer objects to BLACK TUSK's inclusion in the contractual relationship in writing within six weeks of receipt of the notification of amendment.

§ 23 Information on dispute resolution

The European Commission provides a platform for online dispute resolution at <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home.chooseLanguage>.

You can also submit your complaint directly to us at the following e-mail address:

info@blacktusk.eu

§ Section 24 Severability clause

If any provision of these GTC should be invalid, the validity of the remaining provisions shall not be affected.