

# General Terms and Conditions of movesmart.golf

*Please note: Only the German original of these General Terms and Conditions is legally binding. The English translation is provided for information purposes only and has no legal force. By accepting these General Terms and Conditions, you automatically accept the German original.*

Issued on February 15, 2023

## 1 Scope

The following General Terms and Conditions constitute a legal agreement between you and MTS Muscle tracking system AG, a company based in Zug, Switzerland (together "the Company," "we," "us," or "our"). These General Terms and Conditions govern your use of the website [www.movesmart.golf](http://www.movesmart.golf) (hereinafter: the "Website"), the "movesmart.golf" app (hereinafter: the "App"), the services offered by us (hereinafter: the "Services"), as well as the purchase and use of hardware, in particular sensors (hereinafter: the "Sensors").

Through the Website and the App, you have access to a variety of resources and content, including software, hardware sensors, databases, texts, images, photographs, videos, and information ("Materials"). Software, Materials, Services, and other information, content, and services, including product descriptions and community services such as comments, FAQs, forums, or chats, are collectively referred to as "Content".

By accessing or using the Website and/or the App, the Sensors, the Services, or the Content provided on or through the Website or the App, you agree to comply with and be bound by these General Terms and Conditions and our Privacy Policy. By clicking the "Register" button when registering an account or when using the Website, the App, the Sensors, and/or the Services, you confirm that you have read and understood the General Terms and Conditions, agree to them, and will comply with all applicable laws and regulations. If you do not agree to these terms, you should not use the Website, the App, the Sensors, and/or the Services.

The Company may change the General Terms and Conditions and the Privacy Policy at any time. The revised General Terms and Conditions and Privacy Policy will be notified to you and will be effective from the time of notification. You can view the latest General Terms and Conditions at [www.movesmart.golf/about-us/terms-and-conditions.html](http://www.movesmart.golf/about-us/terms-and-conditions.html) and the Privacy Policy at [www.movesmart.golf/about-us/privacy-policy.html](http://www.movesmart.golf/about-us/privacy-policy.html). Registered users will be notified by email or notification of changes to the General Terms and Conditions. However, it is your responsibility to regularly review these General Terms and Conditions to stay informed of any changes. Your continued use of the Website, Sensors, or App after such changes or after explicitly accepting the new General Terms and Conditions when logging in to the Website and/or the App and/or using the Services or Sensors constitutes your acceptance of these changes.

## 2 Use of Software

The software provided or available on the Website, App, or Sensors is protected by intellectual property rights and belongs exclusively to the Company or, as the case may be, a third-party provider. The use of the software provided or available on the Website or App is subject to the following conditions: (a) The software may only be used for your personal purposes; (b) The software may not be modified or altered in any way, except for software made available under open-source licenses and which may only be modified strictly in accordance with the provisions of such licenses; and (c) The software may not be distributed in any way, except for software made available under open-source licenses and which may only be distributed strictly in accordance with the provisions of such licenses.

### **3 Use of Materials**

The materials provided or available on the website, app, or sensors are protected by intellectual property rights, including copyrights, and belong exclusively to the Company or, if applicable, a third-party provider. You may download, store, view, and print materials that the Company provides on the website or app and use the sensors, subject to the following conditions: (a) the materials may be used exclusively for your personal purposes; (b) the materials may not be modified or altered in any way, except for materials provided under open or creative commons licenses that may only be modified strictly in accordance with the provisions of such licenses; and (c) the materials may not be distributed in any way, except for content provided under open or creative commons licenses that may only be distributed strictly in accordance with the provisions of such licenses.

### **4 Purchase and Use of Hardware**

Hardware, such as sensors, can be purchased on the website.

#### **4.1 Product and Pricing Information**

Images of products in advertising, brochures, online shops, etc. are for illustration purposes only and are not binding.

Sales prices published on the website and in the app are final prices and include all duties, fees, taxes, delivery costs, etc. for delivery to Switzerland.

#### **4.2 Payment, Payment Default, and Retention of Title**

The payment methods and currencies offered on the website or in the app are available to you. When paying by credit card or other instant payment methods, the charge is made upon ordering.

With an advance payment order, delivery will only take place after payment has been received. We reserve the products for 2 weeks for advance payment orders.

If you do not fulfill your payment obligations in whole or in part, all outstanding amounts that you owe us for any reason will become due immediately (within 5 calendar days of the first reminder for advance payment). We can demand these immediately and stop further deliveries of products to you.

We charge a processing fee of CHF 5.- for the second reminder and a processing fee of CHF 20.- for the third reminder. In the case of unsuccessful reminders, the invoice amounts may be assigned to a collection agency. In this case, an effective annual interest rate of up to 15% on the outstanding invoice amount may be charged from the due date. The collection agency will assert the outstanding amounts in its own name and for its own account and may charge additional processing fees.

Ordered products remain our property until full payment is received. We are entitled to make a corresponding entry in the retention of title register. Before transfer of ownership, pledging, transfer of security, processing, or transformation without our express consent is not permitted.

#### **4.3 Availability and Delivery**

The availability and delivery dates we provide are non-binding and may change at any time.

The delivery address for hardware must be easily accessible by truck in Switzerland or Liechtenstein. If this is not the case, you will bear any additional costs, including any customs duties, fees, and taxes that may apply for shipping abroad. Swiss value-added tax will not be refunded.

With the order confirmation, we will inform you of a provisional delivery date.

If we are in delivery delay, you have the right to withdraw from the contract after the 30th calendar day from the originally announced delivery date. In this case, we will refund any prepaid amounts. You have no further claims against us.

#### **4.4 Obligation to inspect**

You undertake to immediately inspect delivered products for correctness, completeness, and delivery damages.

In the case of deliveries by a shipping company, any delivery damage must be noted on the delivery note.

Delivery damages, incorrect or incomplete deliveries must be reported to us within 5 calendar days from the time of pick-up or delivery. You must not put such a product into operation. You undertake to keep it in its original packaging as received and to follow the instructions of our return and refund process.

#### **4.5 Warranty on hardware**

Hardware purchased on the website is covered by a limited warranty. This warranty only applies to hardware. Any software (app, website, etc.) is excluded from the warranty described in this chapter.

##### **4.5.1 Warranty coverage**

We grant you a warranty for defect-free and functional hardware products purchased. In the case of a defect covered by the warranty (i.e., defects that occur before or after delivery of the product or goods to the customer, or that are already present), we will either

- repair the product for free;
- provide a partial or full replacement delivery with an equivalent product;
- provide a refund at the current value of the defective device (not exceeding the original selling price); or
- grant a price reduction.

The choice of the type of remedy is up to us. During the defect removal, there is no entitlement to a free replacement device.

Excluded from the warranty are:

- Wear parts such as batteries, accumulators, projection lamps, incandescent lamps, and housing parts;
- Moisture damage;
- Impact or fall damage;
- Natural wear and tear;
- Software problems;
- Improper treatment;
- Damage caused by external influences;
- Manipulation or alteration of the product;
- Elemental damage;

Any other rights and in particular statutory warranty provisions are excluded.

#### **4.5.2 Warranty Period**

The warranty period is indicated on the delivery note for each product. For new devices, it is 1 year and starts at the time of delivery. The warranty period continues regardless of any warranty services provided. If the product is repaired or replaced, the warranty period is not extended. The sales receipt/delivery note serves as the warranty certificate and must be kept securely.

#### **4.5.3 Procedure in case of defects**

If a defect exists that is not excluded from the warranty, please contact the service center at [www.movesmart.golf/support](http://www.movesmart.golf/support). Any claim for reimbursement of costs for external repairs is excluded. You must send the defective product at your own expense and risk to the service center listed on [www.movesmart.golf/support](http://www.movesmart.golf/support). The products must be returned with all accessories in the original packaging, including a copy of the warranty certificate. If the original packaging is missing, the product must be packed in a suitable manner for transport. If it is determined that a returned product is not covered by the warranty (reasons for exclusion or outside the warranty period), an estimate of the expected repair costs will automatically be prepared. We can invoice you for this estimate. If you decide to have the product repaired, the estimate will not be invoiced. If you do not respond to the estimate in a timely manner (within 10 working days), the product will be disposed of. Returned products that do not have a defect, were sent to the wrong address, whose return was not agreed upon, and/or whose packaging is damaged or missing accessories can be returned to you. In these cases, we may charge a processing fee.

## **5 Reserved Rights**

The software, sensors, services, and content provided or accessible on the website or app are the intellectual property and copyrighted works of the Company or, as the case may be, the third-party provider. The Company reserves all rights, title, and interest in and to the website, app, software, sensors, services, and content provided or made accessible on the website or app. The website, app, software, sensors, services, and content are provided on an "as is" and "as available" basis, and the Company reserves the right to terminate your permissions granted in Chapters 2 and 3, as well as your use of the website, app, sensors, software, or content at any time.

## **6 Security, Passwords, and Access to the Website and Content**

You agree not to use the Website, the App, the sensors, the service, and the software in a way that could damage, disable, overload, or impair any content, accounts, computer systems, databases, software, or networks. You agree not to attempt to gain unauthorized access to any part of the Website, the App, the service, or any content, accounts, computer systems, software, or networks. You agree not to interfere with, or attempt to interfere with, the proper functioning of the Website, the App, the sensors, the service, or any content, accounts, computer systems, software, or networks. You agree not to use robots, web crawlers, spiders, scrapers, or any other automated means to access the Website, the App, the sensors, the service, or any content, accounts, computer systems, software, or networks, and/or to extract content automatically or manually without the express written permission of the company.

Access to password-protected or secure areas of the Website and/or the App is only permitted for authorized users. You agree not to share your passwords, account information, or access to the Website and/or the App. You are solely responsible for maintaining the confidentiality of your passwords and account information and for any activities that occur under your passwords or accounts, or as a

result of your access to the Website and/or the App. You agree to promptly notify the company of any unauthorized use of your passwords or accounts. We are not liable for any losses or damages resulting from your failure to comply with the security requirements for your account and password.

You must provide current, accurate identification, contact, and other information that may be required as part of the registration process and/or continued use of the Website, App, and/or the service.

## **7 No unlawful or prohibited use**

You agree not to use the website, app, sensors, service, or the content provided on or through the website or app for any purpose that is unlawful or prohibited by these Terms of Service, applicable laws and regulations, or the rules, policies or terms and conditions posted in a particular area of the website and/or app.

In particular, you agree not to record or store any videos that are illegal, prohibited or offensive on the app.

## **8 Indemnification**

You agree to indemnify and hold harmless the company and third-party providers, their legal representatives, employees, and agents from any claims, liabilities, damages, losses, or expenses, including reasonable attorney's fees and costs, arising out of or related to your breach of these Terms of Service, the Privacy Policy, or any applicable laws or regulations, or additional rules, policies, or terms of use posted in a particular area of the website and/or app, or your infringement or violation of the company's and/or third-party's intellectual property rights.

## **9 Monitoring**

The company has no obligation to monitor the website, app, or the content made available on or through the website or app. However, the company reserves the right to review the website, app, and content, monitor any use and activity on the website, and remove or make unavailable any content at its sole discretion, as needed.

## **10 Termination of Use**

The Company may, at its sole discretion, cease or restrict the provision or access to the Website, App, Sensors, Services, specific areas of the Website or App, or any content provided on or through the Website and/or App. The Company is entitled, at any time and without obligation to compensate you for any damages, to delete your user account and block your access to the Website and/or App if it deems that your use of the Website is not in full compliance with these Terms and Conditions or applicable laws or regulations. The Company will terminate or restrict your use of the Website and/or App if you are deemed to be an infringer of third-party copyright. You understand and agree that the Company is not liable to you or any third party for termination or restriction of your access to or use of the Website, App, Sensors, Services, or content.

## **11 Third-Party Websites, Content, Products, and Services**

The Website provides links to websites and access to content, products, and services provided by third parties, including affiliates and sponsors of the Website or App. The Company is not responsible

for third-party content provided on or through the Website and/or App, and you assume all risks associated with accessing and using such third-party websites and content, products, and services.

## 12 Disclaimer

Unless expressly stated otherwise, the website, app, sensors, services, and all content provided on or through the website and/or app are provided "as is" and "as available." The company expressly disclaims all warranties, whether express or implied, including, but not limited to, warranties of merchantability, reliability, fitness for a particular purpose, and non-infringement with respect to the website, app, sensors, services, and all content provided on or through the website and/or app. In no event shall the company or its administrators be liable for any damages arising from the use of the app, website, sensors, services, or content.

The company does not warrant that: (A) the website, app, sensors, services, or content will meet your requirements; (B) the website, app, sensors, services, or content will be available on an uninterrupted, timely, secure, or error-free basis; (C) the results that may be obtained from the use of the website, app, or any content provided on or through the website or app will be accurate, complete, or reliable; or (D) the quality, completeness, or reliability of the services or any content you have purchased or obtained on or through the website or app will meet your expectations.

You understand and agree that the use of the website, app, sensors, services, or content provided on or through the website or app is at your own discretion and sole risk. Any content accessed, downloaded, or otherwise obtained on or through the website and/or app is used at your own discretion and risk. The company does not warrant the functionality of the website or app during use, or the accuracy, completeness, or reliability of the services or content provided on or through the website and/or app. Therefore, you should not rely solely on the website, app, sensors, services, or content for guidance or information purposes. The company is not liable for damages to your computer system, smartphone, or electronic device, or for data loss arising from downloading or using the website, app, sensors, services, or content.

The company is not liable for damages to your equipment or any other device connected to the website, app, sensors, or content. The company is not liable for damages to third-party property or harassment arising from downloading or using the website, app, sensors, services, or content.

The company reserves the right to make changes or updates to the website, app, sensors, and content provided on or through the website and/or app, and to monitor the use of the website, app, sensors, and content at any time without prior notice.

## 13 Limitation of Liability

In no event shall the company be liable for direct, indirect, incidental, special, or consequential damages, or damages for lost profits, revenues, data, or use, incurred by you or any third party, whether in contract or tort, arising from your access to or use of the website, app, sensors, services, or any content provided on or through the website and/or app, including inaccurate, unreliable, or misleading content.

## 14 Exclusions and Limitations

In some jurisdictions, it is not permissible to exclude or limit certain liabilities. To the extent that such exclusions or limitations are deemed impermissible, the relevant exceptions and limitations in these Terms and Conditions do not apply, and all other provisions remain in full force and effect.

## **15 Privacy Policy**

The company is concerned about your privacy and has developed a policy to address data protection concerns. For more information, please refer to our privacy policy. All personal information collected on this website will be treated in accordance with our privacy policy.

## **16 Jurisdiction and Applicable Law**

All matters related to your access to and use of the site, services, app, sensors, and content provided on or through the site are subject to the substantive laws of Switzerland, without regard to principles of conflict of laws. The Vienna Sales Convention is not applicable. Any controversy, claim or dispute between a user and the company arising out of this policy is subject to the exclusive jurisdiction of the ordinary courts at the company's headquarters, without prejudice to an appeal to the Swiss Federal Court.

## **17 Contact**

For questions about these terms and conditions, please contact our support at [www.movesmart.golf/support](http://www.movesmart.golf/support).