

## Terms of use for BAL.ON App

The BAL.ON App is provided to You by Benecke-Kaliko AG, a subsidiary of CONTINENTAL AG. In order to use the functions of the app, You must purchase the associated BAL.ON Kit, which is available exclusively via the website <https://www.bal-on.golf/> in Austria, Denmark, France, Finland, Germany, Italy, Netherlands, Portugal, Rep. of Ireland, Sweden, Spain and the United Kingdom. The App, together with the BAL.ON Kit, allows You to measure and improve your balance and skills in the practice of golf. The information provided through the app is non-binding and is provided for informational purposes only.

### 1. Definitions

- 1.1 **CONTINENTAL**, hereinafter also referred to as "**we**" or "**us**", means Benecke-Kaliko AG, Beneckeallee 40, 30419 Hanover, Germany, a subsidiary of Continental AG, Vahrenwalder Str. 9, 30165 Hanover, Germany.
- 1.2 **She** or **You** refers to You as a user of the App and its Services.
- 1.3 **App** means the BAL.ON App provided by CONTINENTAL via an App Store as part of the BAL.ON Kit.
- 1.4 **App Store** means the digital marketplace from which You downloaded the App.
- 1.5 **Services** means all functions and services that can be accessed via the App, regardless of whether they require an Internet connection; the services include the cloud-based services required for this purpose (e.g., BAL.ON user account, access to downstream services).
- 1.6 **End Device** means the information technology device (smartphone) You use on which You operate the App.
- 1.7 **BAL.ON Kit** refers to a set offered by CONTINENTAL consisting of a pair of pressure-sensitive insoles with Bluetooth connectivity that enables swing analyses via the App.

### 1 Subject matter of the contract, scope of application, conclusion of the contract

- 1.1 These Terms of Use apply between You as the user and CONTINENTAL as soon as You accept them after installing the App by clicking the corresponding button in the App.
- 1.2 The subject matter of the contract is the use of the App. These Terms of Use apply exclusively to the use of the App and the included services.
- 1.3 These Terms of Use do not in any way affect any statutory or other legal rights You may have as a consumer in your country of residence. Warranty terms issued by CONTINENTAL do not apply to the App and its Services.
- 1.4 Upon acceptance of these Terms of Use, the App Store operator and its affiliates shall have the right to enforce these Terms of Use against You as third-party beneficiaries hereunder.

### 2 Requirements for use, purpose of use

- 2.1 To connect to the BAL.ON Kit to the App, the following is required:
  - A Bluetooth 4.0-enabled end device.
  - The latest version of the App from an App Store compatible with your end device.

- Acceptance of these terms of use.
- A registered BAL.ON user account in accordance with these Terms of Use.

2.2 You must ensure that there is a Bluetooth connection between your end device and the BAL.ON Kit while using the App.

2.3 Connection with Bluetooth-enabled third-party products is not included in the scope of services. Third-party products are not supported, and compatibility is not guaranteed. The App is exclusively for connecting with the BAL.ON Kit.

2.4 Further technical usage requirements for the App can be found in the App Store.

### **Use, limitations of the scope of services**

#### **The use**

2.5 Use of the App and the Services is free of charge to the extent necessary for the use of the BAL.ON Kit. We reserve the right to introduce additional chargeable services in the future and will inform You about this circumstance in the event it occurs.

2.6 We are constantly working to improve our products. Therefore, we are entitled to change the content and scope of services of the App and the included services and from time to time we may update the App and change the Service ("**Updates**") for the following reasons:

- for technical reasons, such as troubleshooting or fault clearance,
- to ensure and maintain safety,
- for function extensions, or
- when modifications are required for optimization.

When introducing Updates will shall always endeavour to ensure that the existing scope of services is not restricted and/or any existing services are replaced by services with equivalent or enhanced functionality.

2.7 We shall not be obliged to provide the following services:

- Support related to the App, the Services, or services provided by third parties.
- Making the the App compatible with your end device (hardware, operating system, various versions, drivers and / or control elements) or third-party products, unless we are obliged to do so within the scope of liability for material defects or defects of title for the App, the Services or the BAL.ON Kit.

2.8 We will, in our reasonable discretion, make the App available in the App Store for such reasonable period of time that may be reasonably expect based on the nature and purpose of the BAL.ON Kit and taking into account the circumstances and nature of this Agreement. We may, in our reasonable discretion, terminate the provision of the App in the App Store at any time after the expiration of this period.

2.9 The respective App Store provider does not provide any support with regard to the App. All enquiries regarding the App, its possession and / or its use must therefore be directed to CONTINENTAL and not to the App Store provider.

### 3 Software updates

- 3.1 We are only obliged to provide updates or upgrades to the App and its Services ("**Updates**") during the period that may be reasonably expected based on the nature and purpose of the BAL.ON Kit and in consideration of the circumstances and nature of this Agreement, which are necessary both to ensure and maintain security and to use the BAL.ON Kit as intended. We will inform You about these Updates, any required installation instructions, and the consequences of failing to install them in an appropriate manner (e.g., in the App Store, on our social media channels, or in the App).
- 3.2 If we provide an update that is required to maintain the intended use of the App and its Services together with the BAL.ON Kit, it is your responsibility to install it within a reasonable period of time to continue using the App and its Services together with the BAL.ON Kit.
- 3.3 We are not obliged to provide an update that improves features or expands existing functionality.
- 3.4 You are obliged to perform updates within a reasonable period of time if
- we inform You about the availability of the update as well as the consequences of a failure to install it in a suitable place and
  - the functionality or security of the App and its Services cannot otherwise be ensured.

Where necessary, we will provide installation instructions. Please note that delays or failure to update may result in the inability to connect the BAL.ON Kit or may pose security risks.

### 4 BAL.ON user account

- 4.1 To fully use the App, You need to register for a BAL.ON user account.
- 4.2 You may only register for a BAL.ON user account if You are over 18 and have not been previously excluded from use by us. People who are under 18 require the consent of their parents or a legal guardian to use the App and the services. If You as a parent or guardian allow your child to use the App and the Services, these Terms of Use apply to You; to that extent, You assume responsibility for his or her use.
- 4.3 For successful registration You need to provide the following details:
- E-mail address
  - BAL.ON user account password
- 4.4 You will receive an email with a code to verify your BAL.ON user account to the email address You provided during registration. To complete the registration, You must enter the code in the App on the registration page. Upon successful registration, we will create your user account. You can then log in to your user account in the App using your email address and password.
- 4.5 After successful registration, You have the option to personalize your user profile by providing additional voluntary information.
- 4.6 The user account is not transferable to another person whether for money, for anything else or for free. If you sell any device on which the App is installed, you must remove the App from it.
- 4.7 Only one user account may be created per person.
- 4.8 You must keep your password secret from third parties. If third parties have obtained knowledge of this data or if You have a corresponding suspicion, You are obliged to change the password immediately and to notify us by email at [contact@bal-on.golf](mailto:contact@bal-on.golf). We are entitled to block access to the user account if there is reasonable suspicion of misuse of the data access by third parties.

## 5 Your general obligations as a user

- 5.1 We rely on your cooperation to fix malfunctions of the App and its services, including updates. Please notify us of any errors You may have encountered by emailing us at [contact@bal-on.golf](mailto:contact@bal-on.golf).
- 5.2 You may not use the App and its Services, including Updates, in a manner that
- may cause damage to the BAL.ON Kit or impair its safety or that of the Services.
  - is not permitted under the terms of use of the App Store.
  - violates legal regulations.

## 6 Rights of use; Contents

- 6.1 We grant You a right to use the App and its Services, including Updates, for the purpose that is technically necessary to use them as intended and in accordance with these Terms of Use together with the BAL.ON Kit.

The right of use is

- non-exclusive,
- non-transferable,
- not sublicensable and
- limited in time to the duration of this contract.

The right of use only includes the right of reproduction insofar as loading, displaying, running or saving the App in your end device technically requires reproduction.

- 6.2 In particular, You may not do the following with the App and, to the extent technically possible, with the Services, including updates:
- Distribute, copy (unless this is for the intended use), modify or edit or transform.
  - Extract content.
  - Reverse Engineering.
  - Provide or rent the App and its services or updates to third parties.
- 6.3 The provisions of Section 50A(1) Copyright, Designs and Patents Act 1988 (CDPA) [creation of a backup copy by a person authorized to use] and Section 50BA CDPA [observation, studying and testing by acts for which an authorization exists], Section 50B CDPA [decompilation to convert a computer program expressed in a low level language to a higher level language] shall remain unaffected by the above provisions.
- 6.4 In the event that You create content in the App, in particular, but not limited to videos, audio, photos or other content (hereinafter “**Content**”), You hereby grant to Continental, at the time of their creation, the non-exclusive, unlimited right to use, the Content to facilitate the use of the App as well as the use of related services, including , but not limited to, the BAL.ON Academy.
- 6.5 You warrant that all Content Continental receives is not encumbered with (unlicensed) copyrights, intellectual property rights, neighbouring rights or other third-party rights. You warrant and ensure that all necessary approvals for the creation and use of the Content pursuant to these Terms of Use have been provided. If persons are depicted or audible on the Content, the additional prior written consent of those persons may be required for the production of the Content. In this event, You will obtain the relevant consent from said persons. If You involve third parties in the production of the Content, You will make sure that You are granted the rights required to grant the rights pursuant to this Section.

## 7 Claims for defects

- 7.1 We shall be liable for material defects and defects of title of the App and its services, including any updates, in accordance with the applicable law.
- 7.2 We shall be entitled to refuse to provide updates (sec. **Fehler! Verweisquelle konnte nicht gefunden werden.**) if in our reasonable opinion this is only possible at disproportionate cost. Examples of where this might not be possible include:
- Support for operating systems no longer in common use.
  - Repair of defects that are very rare in relation to the total number of users and unforeseeable taking into account the care required in traffic, the repair of which requires the commissioning of third parties.
  - If it can be demonstrated that the cost of developing the update exceeds the general development cost of the BAL.ON Kit.

## 8 Liability

- 8.1 We shall not be liable for any loss or damage to the extent that is
- has been caused by misuse of the BAL.ON kit/user account or by your incorrect entries.
  - was caused by your culpable failure to perform an update and the damage would have been prevented if You had installed the update.
- 8.2 We do not exclude or limit in any way our liability to You where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.
- 8.3 We are responsible to You for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage You suffer that is a foreseeable result of our breaking these terms or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time You accepted these terms, both we and You knew it might happen.
- 8.4 If defective digital content that we have supplied damages a device belonging to you, we will either repair the damage or pay you compensation. However, we will not be liable for damage that you could have avoided by following our advice to apply an update offered to you or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.
- 8.5 We are not liable for business losses. The App is for domestic and private use. If you use the App for any commercial, business or resale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 8.6 The App and the Services are provided for general information and entertainment purposes only. They do not offer advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of information obtained from the App or the Service. Although we make reasonable efforts to update the information provided by the App and the Service, we make no representations, warranties or guarantees, whether express or implied, that such information is accurate, complete or up to date.

## 9 Communication between You and CONTINENTAL

You agree that we may communicate any legally or technically relevant statements that are not advertisements, such as notices of termination or notices of updates or changes to the Terms of Use, via the email address You provided when You registered for a BAL.ON user account.

## 10 Contract duration, termination, user account blocking

10.1 This contract shall run until one of the contracting parties decide to terminate and both contracting parties are entitled to terminate these Terms of Use at any time without notice for example by uninstalling the App (see sec. 10.3) or by us no longer providing the App (sec 10.4). The right to terminate for cause remains unaffected for both parties.

10.2 You can permanently delete your BAL.ON user account at any time in the app menu under "Delete user account". The parts of the contract concerning the use of the BAL.ON user account and the services available via the user account end automatically when You delete your user account, without the need for termination.

10.3 Uninstallation of the App or installation of a new version of the App (including updates and upgrades) with new or amended Terms of Use shall also be deemed a notice of termination of these Terms of Use on your part.

10.4 The removal of the App from all App Stores shall also be deemed to be a declaration of termination of these Terms of Use on our part.

10.5 We reserve the right to terminate if You breach the following provisions of these Terms of Use:

- Sec. 4.8 (Disclosure of the password to third parties)
- Sec. 6.1 (Exceeding the rights of use granted)
- Sec. 6.2 (Violation of explicitly prohibited actions)

10.6 In the event of a breach pursuant to sec. 10.5 we shall be entitled to immediately block your user account and to exclude You from further use of the App and the services after prior notification and expiry of a reasonable period of time. We shall not be obliged to provide notice if there are special circumstances that justify the immediate termination after weighing the interests of both parties. In the event of termination under this clause, You are no longer entitled to register again.

## 11 Changes to these terms of use

11.1 We are entitled to amend or supplement these Terms of Use. Sec. 3.1 remains unaffected by this. We will only make such changes or additions if it is necessary for an important reason such as technical (significant functional changes or enhancements, adaptation of the App to the state of the art, security-related changes) or legal reasons (changes in the law). We will notify You of changes or additions four weeks before the changes come into effect in an appropriate manner, such as in the App Store, via the App or, if You have created a user account, via the email address You have provided. You may terminate this contract if you do not accept the amended Terms of Use. We will display changes and amendments when You start the App. You may accept them if You agree. If You do not accept them, we are entitled to terminate this contract.

11.2 You are entitled to terminate the applicable Terms of Use within four weeks of receipt of the notification. If You terminate the contract, it will only continue to run until You uninstall the App or install an update of the App with new or amended Terms of Use. If You do not exercise your right of termination, the contract will continue with the amended Terms of Use as soon as You have downloaded an update of the App with the amended Terms of Use from the App Store and agreed to these new Terms of Use in the App.

## 12 Settlement of disputes, final provisions

12.1 Please contact us if you have a complaint and we will seek to resolve it with you. If it is not possible to resolve a complaint, then we are obliged to provide you with details of an Alternative Dispute resolution (ADR) Provider. ADR is an optional process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. Note that we are not obliged to and may decide not to participate in any ADR process

12.2 The invalidity of a provision shall not affect the validity of the remaining provisions. In the event that a provision is found to be invalid, the parties undertake to replace the missing provision with a contractual provision that corresponds to the concurring will of the parties.

12.3 These terms are governed by English law, and you can bring legal proceedings in respect of the products in the English courts. If you live in Scotland, you can bring legal proceedings in respect of the products in either the Scottish or the English courts. If you live in Northern Ireland, you can bring legal proceedings in respect of the products in either the Northern Irish or the English courts.

Thank You for reading our terms of use.

**Status: June 2023**