

## **General Terms and conditions B2B BC Consulting SARL - Software**

### **THE PRODUCTS OFFERED ON THIS WEBSITE ARE INTENDED FOR SALE TO AND USE BY PROFESSIONAL VEHICLE TUNERS ONLY AND ARE UNSUITABLE FOR A NON-PROFESSIONAL AUDIENCE**

#### **1. General.**

- 1.1. The legal relationship and each agreement between BC Consulting (BC Consulting SARL, with registration number B169121, EUID-number LURCSL.B169121 and headquarters at ZI Rolach Hall n°2, 5280 Sandweiler, Luxembourg) and the client are exclusively governed by these terms and conditions, unless agreed otherwise in a written agreement.
- 1.2. The terms and conditions are available on the website ([www.bcconsulting.lu/general-terms-and-conditions](http://www.bcconsulting.lu/general-terms-and-conditions)).
- 1.3. The terms and conditions are applicable to every offer of BC Consulting and for every concluded distance contract between BC Consulting and the client who, exclusively for professional purposes, uses or acquires tuning softwares/tuning files (the 'Products') which were brought on the market by BC Consulting.
- 1.4. The terms and conditions that are mentioned on the website at the moment of the order, apply and are deemed to apply on that order.
- 1.5. By ordering or buying Products of BC Consulting, using the website, the client confirms that he or she has read the general terms and conditions and accepted them. In particular, by purchasing and downloading, configuring or using the Products and its documentation, the client also explicitly accepts the terms of the License Agreement, which forms fully part of these terms & conditions, and agrees to be bound by this License Agreement. In case of any inconsistency between the terms & conditions and the License Agreement, the stipulations of the License Agreement will prevail.
- 1.6. BC Consulting reserves the rights to modify the terms and conditions at any moment.
- 1.7. Any variations or derogations to these terms and conditions shall be inapplicable unless agreed in writing by BC Consulting. Derogations to one or more articles of the General terms and conditions will not affect the applicability of the other articles of those same general terms and conditions.

#### **2. Professional client**

- 2.1. Given the extremely specific nature of the Products, BC Consulting only sells its Products B2B to professional vehicle tuners who are sufficiently trained, educated and skilled in the tuning of a vehicle and who can tune a vehicle without extra information, education or assistance from any third party.
- 2.2. By ordering or buying Products of BC Consulting the client confirms that he or she is a professional car tuner with an extensive knowledge and education with regard to the tuning of a vehicle.

#### **3. Information, orders, prices and availability**

- 3.1. The information that is made publicly available by BC Consulting (e.g. through the website) is general by nature and submitted to corrections and/or changes. That information itself is by principle not adapted to personal or specific circumstances. BC Consulting reserves the right to modify the characteristics of the Products at any moment, as it deems appropriate or necessary or as may required by any authority.
- 3.2. All offers and Products are subject to availability.

- 3.3. All prices indicated on the website are based on the current prices that BC Consulting applies.
- 3.4. All prices are in Euro and are exclusive of VAT and exclusive of any other applicable costs.
- 3.5. The prices can be subject to fluctuations and can be modified at all time by BC Consulting on its website.
- 3.6. The price valid at the time of the confirmation of the order shall apply to such order and shall be set forth in the purchase account of the customer buying the Product.
- 3.7. BC Consulting processes orders subject to availability and within the limitations as provided in this general terms and conditions. BC Consulting maintains its right to refuse orders at all time for legitimate reasons, including but not limited to, when it has a serious suspicion of abuse of law or misconduct by the client.
- 3.8. The buying of a product does not comprise the updates made on the product by BC Consulting. In the event the client wishes to receive an update on its software, a new order needs to be made and paid on the website.

#### **4. Product Ordering process and delivery**

- 4.1. Before ordering a Product, each customer must create an account. The customer account will be created by completing the registration process and by providing BC Consulting with current, complete and accurate information as prompted by the application registration form. Providing incorrect information (such as a fake or not unique VIN number) can lead to BC Consulting's inability to offer support on a specific project.
- 4.2. Once the customer account is created, the customer may buy Products available on the webstore. The Products purchased hereunder will consist of credit(s) allowing to download the tuning software(s)/tuning file(s) corresponding to the purchased credit(s). Credits must be paid in accordance with the provisions of article 5.
- 4.3. The credits purchased will be saved on the purchase account of the customer and can be used at any moment to download the corresponding Products available on the webstore. Once a tuning software/tuning file is downloaded, the available credits will be reduced by the credit corresponding to the Product downloaded.
- 4.4. Purchased credits cannot be cancelled and will not be refunded. Any request for a refund will lead to an immediate exclusion from the website, services and Products.

#### **5. Invoice and payment**

- 5.1. The invoice will be delivered to the customer upon confirmation of the order and will be sent only by email.  
Customers are obligated to pay the Products using the online payment provider "Paypal" unless explicitly agreed otherwise with BC Consulting
- 5.2. BC Consulting may offer other payment methods in the future. If BC Consulting decides to use other payment methods, this will be announced through the website.
- 5.3. In order to ensure the safety of the online payments made by the client, all transactions are encrypted with SSL technology.

#### **6. Delivery of the Products**

- 6.1. Downloading a Product requires to (i) provide BC Consulting with complete and accurate information over the vehicle to be tuned as prompted by the applicable form and (ii) upload the file containing the information read from the engine control unit of the relevant vehicle.

- 6.2. After collection and analysis of the information submitted pursuant to article 6.1, the relevant tuning software/tuning file will be made available to download for the customer.
- 6.3. The warranty given on the Products shall be subject to the customer providing correct and complete information on the vehicle to be tuned. In case of any wrong, inaccurate or incomplete information, BC Consulting disclaims all warranties and conditions regarding to the Products including all warranties of fitness for tuning a specific vehicle.
- 6.4. The customer is fully responsible for the correct installation of the tuning software/tuning file on the vehicle and BC Consulting assumes no obligation in case the installation cannot be performed due to any circumstances other than a defect to the Product itself.
- 6.5. Once downloaded, the customer will not be able to return any tuning software/tuning file and/or to claim any refund of the price of the Product. This is without prejudice to the provisions of article 8 in relation with the warranty.

## **7. Control and acceptance**

- 7.1. The client reserves the right to refuse any Products and to cancel all or any part of its order if the Products provided by BC Consulting do not conform to the applicable industry standards or practices or if they do not conform with the specific order and/or are not fit for tuning the vehicle specified in the delivery note submitted to BC Consulting pursuant to article 6.1.
- 7.2. The clients, or where relevant, the person to whom the delivery is made, must inspect the Products upon delivery. In the event the Products are alleged to be damaged or defective upon delivery or in event of non-conformity with the order, a description of the alleged damage, defect, non-conformity and/or any other complaint must be given in writing within five days from delivery of the Products.
- 7.3. In the event BC Consulting did not receive any complaint in writing within five days from delivery of the products from the client, the products are deemed to be accepted by the client.

## **8. Warranty**

- 8.1. For a term of 1 year from the date of delivery of the Product BC Consulting warrants that:
  - the products supplied shall be of merchantable quality, conform to applicable industry standards and practices and shall be suitable for the clients intended uses and purposes in the ordinary course of business.
  - the products supplied shall be free from defects in design, material and workmanship.
- 8.2. However, the warranty provided by BC Consulting comprises only the software. The implementation of the tuning software/tuning file(s) by the client in the vehicle is at the sole risk of the client and is therefore excluded from the warranty as stipulated under article 8.1.

More specifically, BC Consulting does not guarantee that (i) the Products will meet the client's needs; (ii) it will work with other materials, especially electrical, software, software packages, systems or data, including, but not limited to, input data that the client will provide, not being provided by BC Consulting and that the client decides to use ; (iii) that the Products will operate without interruption and without error, that it is free from errors, complete, and / or up to date.

- 8.3. The customer agrees that it will not make any representation nor give any warranties to the owner of a vehicle tuned other than those in relation with the Product itself.

## **9. Liability and Limitation of liability**

- 9.1. BC Consulting can only be held liable in case of personal injuries or gross negligence and/or intentional misconduct.
- 9.2. The client acknowledges and accepts to assume the full cost of damages resulting from information contained in or collected by the software.
- 9.3. The client acknowledges and accepts that BC Consulting can never be held liable for any indirect, incidental, consequential or similar damages or losses incurred by the client, such as financial and commercial prejudice, loss of profit, loss of sales, increased costs and overhead, loss of clientele or image, report or disruption in the planning of the client's activity, loss of data, files, or any computer programs and that may result from the use or inability to use the Products. Any claim from a third party against the client, is considered to be indirect damage and shall therefore not give rise to any compensation.
- 9.4. Without prejudice to mandatory statutory provisions, BC Consulting's liability will be always limited to the price of the relevant software/credit(s) purchased from the server. In no event shall BC Consulting be liable for any damages due to the owner of a vehicle tuned by the customer.
- 9.5. Moreover BC Consulting can not be held liable for:
- Damages caused by incompetent use of the products or use for a purpose other than that for which they are suitable by objective standards;
  - Damages caused by materials or services provided by third parties, without prior written consent of BC Consulting;
  - Any (in)direct damages and/or costs resulting from, without limitation, improper actions, carelessness, negligence, misconduct, and/or non-proper use and/or maintenance of the products by the client;
  - Normal wear and tear of the products;
  - Any claims from customers of the client as a result of non fulfillment of the pre-contractual information obligation for which the client is responsible;
  - Damages caused by an event of Force Majeure as defined in article 10.
- 9.6. The client shall indemnify BC Consulting against all liabilities, costs, expenses, damages and losses suffered or incurred as a result of or in connection with any claim made against any of them by a third party where such claim arises out of or in connection with the supply of the Products, to the extent that such claim is attributable to the acts or omissions of one of the client or one of their employees, agents or subcontractors.

## **10. Force majeure**

BC Consulting has no liability to customers for failure or delay in the performance of any obligation to the extent that the performance is prevented by reason of Force Majeure. For the purpose of this agreement, 'Force Majeure' means : each circumstance which BC Consulting could not have taken into account at the moment of closing agreement and due to which the normal execution of the agreement could reasonably not be expected from the BC Consulting, such as war, threat of war, independently whether Belgium directly or indirectly is involved, full or partial mobilization, state of emergency, revolt, sabotage, floods, fire or other destructions and damages in factories or warehouses, exclusions, company lockouts, labour strikes, breakage of machines or tools or other malfunctions in BC Consulting or in firms where BC Consulting makes use of products, commodities or other appliances or where BC Consulting renders services, public authority restrictions or public measures of all kind, encumbrances due to unfavorable weather conditions, scarcity of transport means, restrictions or encumbrances of the production and/or supply of products, commodities or excipients, fuels and/or energy.

## **11. Intellectual property rights**

- 11.1. The Products, services, content and all parts of the website of BC Consulting (including all trademarks, logos, designs, drawings, data, product and/or company names, texts, images, software etc.) are protected by intellectual property rights (*i.e.* copyright and trademark law) belonging to BC Consulting or third parties with authorization of BC Consulting. The client is not entitled, for any reason, to modify, copy, distribute, send, re-offer, reproduce, publish, assign under license, transfer or sell to create works derived from the elements earlier mentioned, any given information or content. Supply of products or services by BC Consulting does not imply any transfer or providing of her intellectual property rights. It is not allowed for any reason, to establish an automatic link between the website of BC Consulting and another website or any link that automatically returns to the BC Consulting website, without the consent of BC Consulting.
- 11.2. In particular, the software offered by BC Consulting remains the exclusive property of BC Consulting and the use of software will be subject to the terms set out in the License Agreement, which integrally constitutes a part of the these terms & conditions. Upon termination of the use of software, the client will destroy all software applications, together with the related documentation and manuals. The client engages to keep the software confidential.
- 11.3. Any breach of intellectual property rights of BC Consulting can lead to civil and criminal proceedings in accordance with applicable Luxembourg legislation.

## **12. Information obligation**

- 12.1. It is the responsibility of the owner or holder of a vehicle to ensure that the vehicle at any time complies with the applicable road legislation and is allowed to drive on the public road.
- 12.2. The client, as a professional seller, has the obligation to properly inform its customers of their legal obligations when tuning their vehicle. By agreeing with these general terms and conditions, the client undertakes to comply with its precontractual information obligation towards its customers.
- 12.3. BC Consulting makes no representation or warranty and gives no undertakings in relation to the homologation of a vehicle tuned and/or to the grant to any end customer (owner of a vehicle tuned) of the necessary authorization to drive on the public road.

## **13. Confidentiality**

13.1 Each Party may be aware of confidential information of the other Party (the "Confidential Information"). Confidential Information refers to any information, of any nature, obtained, exchanged, communicated, orally or in writing, by one Party to the other Party, directly or indirectly, in connection with the execution of the contract subject to these terms & conditions, regardless of the nature of the medium of this information, without it being necessary to see clearly identified in writing the term "Confidential" or other similar term. This Agreement is also considered confidential.

13.2. The Confidential Information of a Party does not include information that (i) is in the public domain without being attributable to the other Party; (ii) that the other Party had legitimately known prior to its disclosure, without obtaining it, directly or indirectly, from the disclosing Party; (iii) that are lawfully disclosed to the other Party by a third party not subject to an obligation of confidentiality; or (iv) developed independently by the other Party without using or referring to the Confidential Information of the other Party.

13.3. In addition, this article shall not be construed to prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or regulation or an enforceable judicial decision, provided, however, that the Party obliged to disclose the Confidential Information has previously notified the other Party and makes reasonable efforts to obtain a protective measure prohibiting the use of the Confidential Information so disclosed for purposes other than those required by the judicial or administrative decision.

13.4. Each of the Parties is bound by the strictest confidentiality with regard to the Confidential Information that it has collected on the occasion of the execution of a contract subject to these terms & conditions. Accordingly, unless legally required, the Parties agree (i) not to disclose to third parties the Confidential Information of the other Party, in any form whatsoever, (ii) to limit access to Confidential Information to its employees who need this to fulfill their professional or contractual obligations, having accepted in writing a confidentiality obligation providing a level of protection and restrictions substantially similar to those provided for in these terms & conditions, and (iii) not to use them for other purposes than the execution of this Agreement.

13.5 Each Party undertakes to take all reasonable steps to prevent the Confidential Information from being disclosed or distributed by its employees or agents, breaching these terms & conditions. In any case, each Party agrees to protect Confidential Information with at least the same degree of diligence as he applies for the protection of its own confidential information.

13.6 Each Party undertakes to enforce these provisions by its staff and any agents or third parties who may be involved in any capacity whatsoever in the performance of the contract subject to the terms & conditions.

13.7 Each Party acknowledges and agrees that, in view of the very specific nature of the Confidential Information, the indemnities can not be sufficient in the event of a breach of this clause which would cause irreparable harm to the Party to which it belongs. Therefore, the latter shall have the right to immediately request an injunction, without giving up any other remedies provided by law and / or these terms & conditions.

13.8. This confidentiality obligation shall remain in effect for the duration of any contract subject to these terms & conditions and for five (5) years after the expiration or termination of the contractual relationship for any reason whatsoever.

#### **14. Relationship of parties**

14.1. Nothing contained in these terms and conditions shall be construed as establishing or implying partnership or joint venture between the parties and nothing in these terms and conditions shall be deemed to construe either of the parties as the agent of the other.

#### **15. Waiver**

15.1. The failure by BC Consulting to enforce at any time or for any period any one or more of these terms and conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions.

**16. Severability**

- 16.1. If any term or provision of these terms and conditions is held invalid, illegal or unenforceable for any reason by any court or competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect.

**17. Governing law and jurisdiction**

- 17.1. This agreement shall be governed by and construed with the law of Luxembourg.
- 17.2. Any dispute arising from, or related to, these general terms and conditions, in case of failure of an amicable solution, shall be exclusively brought before the competent courts of Luxembourg.