



OMBEA Insights

TERMS AND CONDITIONS

1. Introduction

1.1 OMBEA Ltd is a company registered in England and Wales under number 9221898.

1.2 These are the terms and conditions upon which OMBEA Ltd provides OMBEA Insights, including the ExpressPod, Web and Support Services. Please read them carefully. In certain places they restrict your legal rights. Please contact OMBEA if you want to clarify or discuss any of these terms and conditions.

1.3 These terms and conditions may be revised or updated at any time without notice. The current version of these terms and conditions can be obtained on request from sale@ombea.com.

2. Definitions and Interpretation

2.1 "Affiliate" of a Party means any legal entity that is (a) directly or indirectly owning or controlling the Party, or (b) under the same direct or indirect ownership or control as the Party, or (c) directly or indirectly owned or controlled by the Party, for so long as such ownership or control lasts. Ownership or control shall exist through direct or indirect ownership of more than fifty percent (50 %) of the nominal value of the issued equity share capital or more than fifty percent (50 %) of the shares entitling the holders to vote for the election of the members of the board of directors or persons performing similar functions;

2.2 "Agreement" means the agreement between the Company and the Customer, consisting of these General Terms and any other terms applicable to the Services;

2.3 "Company" means OMBEA Ltd, a company registered in England and Wales under number 9221898.

2.4 "Confidential Information" shall have the meaning set out in Section 8.1;

2.5 "Customer" means the company entering into the Agreement with the Company;

2.6 "Fee(s)" means the compensation paid by the Customer to the Company for the Services;

2.7 "General Terms" means these General Terms and Conditions;

2.8 "Intellectual Property Rights" means: (i) patents, inventions, designs, copyright (including the right to amend, modify, develop and assign) and related rights, database rights, trademarks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow and confidential information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world;

2.9 "Parties" and "Party" means the Company and the Customer jointly and separately;

2.10 "Purchase Order" shall mean the electronic purchase order entered into by the Company and the Customer;

2.11 "Service(s)" shall mean the ExpressPod Services, ActionPad Services, QuickSurvey and the Support Services, as well as any other services agreed to be provided by the Company to the Customer;

i) "ExpressPod Service(s)" means the customer satisfaction tracking and analysis services based on ExpressPods provided by the Company to the Customer, as set out in the Agreement.

ii) "ActionPad Service(s)" means the tracking and analysis services based on the ActionPads and ActionLink provided by the Company to the Customer, as set out in the Agreement.

iii) "QuickSurvey" means the online survey tool provided by the Company to the Customer, as set out in the Agreement.

iv) "Support Services" shall mean the support services provided by the Company or its third party partner to the Customer, as set out in the Agreement.

2.12 Words importing the singular shall include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include bodies corporate, unincorporated associations and partnerships;

2.13 Any reference to a statute, statutory provision or subordinate legislation is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;

2.14 References to clauses are references to clauses of these terms and conditions; and

2.15 Headings are included for ease of reference only and shall not affect the interpretation or construction of these terms and conditions.

3. General

3.1 These General Terms are applicable to the Agreement between the Customer and the Company and set out the terms under which the Company shall provide the Services to the Customer.

3.2 The Customer enters into the Agreement with the Company by emailing an electronic Purchase Order to sales@ombea.com.

3.3 All Services are subject to the Agreement at all times. The Services may be subject to additional third party terms and conditions, which terms and policies shall be communicated to the Customer by the Company or its subcontractors.

4. Scope of Services

4.1 The Company shall provide the Services to the Customer substantially as set out in the Agreement. The Services are provided “as-is”, without any warranties.

4.2 Reports as regards the Services are provided to the Customer either via e-mail or via the Company’s Website. If reports are provided via the Company’s Website, a user account will be created for the Customer. The Customer agrees to keep the user account and credentials secure from third parties. The Customer is responsible for all actions or omissions performed using its user account. The Company’s Website is provided on an “as-is” and “as available” basis, and the Company does not commit to any service levels.

4.3 Specific terms applicable to ExpressPod Services:

4.3.1 Any hardware supplied to the Customer as a part of the ExpressPod Services shall remain the property of the Company and shall be returned to the Company after the termination of the Agreement. The hardware will be delivered to the Customer. The risk of loss as regards the hardware shall pass to the Customer once the hardware is in the Customer’s possession.

4.3.2 The ExpressPod is supplied ready for use. The ExpressPod contains a GSM module for sending and receiving information. The Customer is responsible for ensuring that the necessary data and telecommunication systems which the ExpressPod Services require are available (GSM network signal is required for uploading reports). The Company is not liable for any issues arising as a result of third party carrier network providers.

4.3.3 The ExpressPod includes batteries and a SIM card with its own telephone number. The Customer shall be responsible for changing the batteries when necessary and acquiring new batteries at their own expense. The Customer shall also replace the SIM card when requested to do so by the Company. The Customer should not otherwise open the ExpressPod or tamper with it in any way. Only personnel or consultants of the Company have the right to perform maintenance work on the ExpressPod.

4.3.4 The Customer’s point of contact at the location where the ExpressPod is in operation is responsible for checking and confirming the functioning of an ExpressPod, as well as certain information upon the request of the Company (e.g., Device ID on the bottom of the ExpressPod) when the Customer receives the ExpressPod.

4.3.5 The Customer shall operate all ExpressPods with due care and ensure that they are only operated indoors. The Customer shall keep the ExpressPods clean.

4.3.6 In case an ExpressPod becomes non-functional, the Company shall replace this free of charge with a new one within thirty (30) days of the Customer’s written request. If, however, the Company reasonably determines that the non-functionality of the ExpressPod is due to a reason attributable to the Customer (or its end-customers), the Company reserves the right to charge the Customer the amount of two hundred and fifty (250,00) GBP for the new ExpressPod, as well as any reasonable additional costs caused by the replacement.

4.3.7 The Customer will not affix or connect other items to the equipment where such affixation exceeds the design limitations of the ExpressPod. Any changes affecting the design or branding of the ExpressPod must be agreed in advance via the purchase of a branding licence.

4.3.8 Upon the termination of the Agreement, the Customer shall return all ExpressPods and other hardware to the Company without delay.

4.4 Specific terms applicable to ActionPad Services:

4.4.1 Any hardware supplied to the Customer as a part of the ActionPad Services shall remain the property of the Company and shall be returned to the Company after the termination of the Agreement. The hardware will be delivered to the Customer. The risk of loss as regards the hardware shall pass to the Customer once the hardware is in the Customer’s possession.

4.4.2 The ActionPad and ActionLink are supplied ready for use. The ActionLink contains a GSM module for sending and receiving information. The Customer is responsible for ensuring that the necessary data and telecommunication systems which the ExpressPod Services require are available (GSM network signal is

required for uploading reports). The Company is not liable for any issues arising as a result of third party carrier network providers.

4.4.3 The ActionPad includes a battery and the ActionLink has its own SIM card with its own telephone number. The Customer shall be responsible for changing the batteries when necessary and acquiring new batteries at their own expense. The Customer shall also replace the SIM card when requested to do so by the Company.

4.4.4 The Customer's point of contact at the location where the ActionPad is in operation is responsible for checking and confirming the functioning, as well as certain information upon the request of the Company (e.g., Device ID on the back of the ActionLink).

4.4.5 In case an ActionPad or ActionLink becomes non-functional, the Company shall replace this free of charge with a new one within thirty (30) days of the Customer's written request. If, however, the Company reasonably determines that the non-functionality is due to a reason attributable to the Customer (or its end-customers), the Company reserves the right to charge the Customer the current list price for the new ActionPad and ActionLink, as well as any reasonable additional costs caused by the replacement.

4.4.7 Upon the termination of the Agreement, the Customer shall return all ActionPads, ActionLinks and other hardware to the Company without delay.

4.5 Specific terms applicable to QuickSurvey:

4.5 Specific terms applicable to QuickSurvey:

4.5.1 The Customer is solely responsible and liable for all activities conducted through the customer's User Account. To prevent unauthorized use, the Customer shall keep the password confidential and shall not share it with any third party or use it to access third party websites or services. If the Customer suspects that someone else knows the password, then it should immediately change in order to protect the security of the Account.

4.6 Specific terms applicable to Support Services:

4.6.1 The Company may offer various training Services from time to time and at its sole discretion. Such training Services are provided via webinar sessions, and other online resources, in the English language.

4.6.2 The Company offers support Services as regards technical support of the ExpressPod and Web Services. Such support is available via email, using the contact information provided on the Company's Website, or via our online Chat facility. The Company shall use its reasonable efforts to reply to emails without undue delay, but does not commit to any particular service levels. Support is not available during weekends and public holidays.

4.6.3 The Company may direct the Customer towards a third party partner as regards first line support.

5. Intellectual Property Rights

5.1 All rights, title and interest, including all Intellectual Property Rights in and to the Services and any changes thereto shall belong exclusively to the Company or its licensors. Except for the express license to use the Services granted to the Customer under and in accordance with the terms and conditions of the Agreement, the Customer shall have no and shall not obtain any rights, license or interests in and to the Services or any Intellectual Property Rights pertaining thereto.

5.2 The Customer shall have a limited non-exclusive, non-transferable, non-sublicensable right to use the Services during the term of the Agreement in its internal business operations.

6. Indemnification

6.1 If the Company justifiably deems that the Services infringe or may infringe upon any third party rights, the Company shall have the right, at its own expense and in its sole discretion, to (a) acquire for the Customer the right to continue the use Services; or (b) replace the Services; or (c) modify the Services to the extent necessary to avoid the infringement.

6.2 If none of the alternatives defined in Section 6.1 are available to the Company on commercially reasonable terms and/or without the significant loss of time, the Company shall have the right to terminate the Agreement in whole or in part subject to a notice period set by the Company, upon which the Customer agrees to cease using the Services, and the Company agrees to reimburse the Fees paid by the Customer for the terminated Services, less a proportion equal to the time of use of the Services by the Customer.

6.3 The indemnity in this Section 6 shall not apply to, and the Company is not liable for any claim that (a) is based on a claim by any Customer Affiliate; or (b) is based on the modification or alteration of the Services or a modification or alteration influencing the Services by the Customer or any third party; or (c) results from

complying with any instructions, specifications or design given by the Customer or any third party under the command and control of the Customer; (d) arises or results from the use of the Services in combination with any software, equipment or products not developed or supplied by the Company or which are contrary to instructions given by the Company; or (e) could have been avoided by using the latest version of the Services made available by the Company to the Customer.

6.4 This Section 6 sets out the entire liability of the Company and the Customer's sole remedy in case of any infringement of any Intellectual Property Rights.

7. Personal data and Customer Data

7.1 To the extent the Customer submits, processes or stores any personal data into the Services, the Company (or its subcontractor where appropriate) processes such data on behalf and for the benefit of the Customer while the Customer remains at all times the data controller for such personal data. The Company processes data submitted by the Customer to the Company in accordance with applicable laws, decrees and regulations. The Customer represents and warrants that it is authorized to instruct the Company and its subcontractors to process such personal data. The Customer represents and warrants that it has the right to collect the personal data provided to the Company for processing.

7.2 The Company can provide the Customer information on where the Company's or its subcontractors' servers are located, on request. The Customer shall be solely responsible for ensuring that it has the right to transfer personal data to the countries where the hosting partner's servers are located.

7.3 The Customer is solely responsible for making appropriate backups of its data, and the Company or its subcontractors shall in no way be liable for any deletion of or failure to store any data of the Customer or other communications maintained or transmitted to the use of the Services.

7.4 After the termination of the Agreement for any reason, the Company shall retain the Customer's data for thirty (30) days and make it available to the Customer via the Company's website. After the thirty (30) days' period, the Company shall have the right to destroy the Customer's data without any liability towards the Customer.

7.5 The Company shall have the right to use any data of the Customer in an anonymized form in any way (e.g. for the purposes of making general statistics about end customer satisfaction, and providing those statistics to the Company's customers).

8. Suspension of Service

8.1 The Company shall have the right to suspend the provision of the Services for a reasonable period of time without any liability towards the Customer if this is necessary in order to perform installation, change or maintenance work in respect of the Services or if such suspension results from installation, change or maintenance work in respect of public communication networks. The Company shall also have the right to suspend the provision of the Services due to a data security risk to the Services or if law or administrative order requires the Company to do so.

8.2 The Company shall always have the right to suspend the Services without any liability towards the Customer, if the Customer is in default with its payment of the Fees due under the Agreement and does not pay such Fees despite a request to pay within fourteen (14) days calculated from the date of such request. The suspension can be continued until the Customer has paid all Fees due under the Agreement.

8.3 The Company shall have the right to suspend the provision of the Services and to deny the Customer's access to the Services without first hearing the Customer, without any liability towards the Customer, if the Company reasonably suspects that the Customer burdens or uses the Services contrary to the Agreement, applicable laws or administrative orders or for a purpose prohibited by the Agreement, applicable laws or administrative orders or in a manner that jeopardizes the provision of the Services to other users.

9. Fees

9.1 The Fees for the Services have been set out in the Purchase Order. Any Services, not expressly defined in the Purchase Order as being included in the Fees shall be charged in accordance with the Company's price list as in force from time to time.

9.2 Fees for the use of the Services shall be invoiced in advance for the applicable invoicing term, which shall be twelve (12) months unless stated otherwise in the Purchase Order.

9.3 The Company reserves the right to increase the rates applicable to the Services where this is justified due to the general increase of the Company's costs and expenses of production (such as but not limited to general increase of labour costs and expenses), or in the case of increase of costs of third party offerings. The Company

shall inform the Customer of such change at least thirty (30) days before the effective date of the change. In such a case the Customer shall have the right to terminate the Agreement subject to thirty (30) days' prior written notice. The termination notice must be delivered to the Company in writing prior to the effective date of the change.

9.4 All rates and Fees are set out without value added tax (VAT) or any other applicable sales taxes, which shall be added to the rates and Fees in accordance with the then-applicable tax laws and regulations.

9.5 The Company reserves the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

10. Confidentiality

10.1 Each Party shall keep in confidence all material and information received from the other Party and marked as confidential or which should be understood to be confidential ("Confidential Information"), and may not use such Confidential Information for any other purpose than those set forth in the Agreement. The confidentiality obligation shall, however, not apply to material and information, (a) which is or later becomes generally available or otherwise public; or (b) which the receiving Party has received from a third party without any obligation of confidentiality; or (c) which was rightfully in the possession of the receiving Party prior to receipt of the same from the disclosing Party without any obligation of confidentiality related thereto; or (d) which a Party has independently developed without any use of or reference to the Confidential Information received from the other Party.

10.2 The obligations of confidentiality in Section 10.1 above shall not prevent a Party from disclosing Confidential Information where it is required to do so under any mandatory law, or by order of a court or governmental body of authority of competent jurisdiction, or by any mandatory requirement of a regulatory authority. If legally possible and applicable, the recipient of such order shall notify the disclosing Party to allow a reasonable opportunity to seek protective order or equivalent or to appeal, and to extent reasonably possible, make effort to protect any sensitive information.

10.3 Each Party shall promptly upon termination of the Agreement, or when the Party no longer needs the Confidential Information in question for the purpose of performing its obligations or exercising its rights under the Agreement, cease using the Confidential Information received from the other Party and, unless the Parties separately agree on destruction of such Confidential Information, return the Confidential Information in question (including all copies and reproductions thereof) to the other Party. Each Party shall, however, be entitled to retain the copies required by law or administrative orders applicable to such Party.

10.4 Notwithstanding the confidentiality obligation set forth herein, each Party shall be entitled to use the general professional skills and experience acquired in connection with the performance of the Agreement.

10.5 The rights and obligations related to the Confidential Information shall survive the termination of the Agreement for any reason for a period of three (3) years from such termination.

11. Limitation of Liability

11.1 The total aggregate liability of a Party towards the other Party under the Agreement shall not exceed the amount of Fees for Services paid by the Customer to the Company during the twelve (12) months immediately preceding the event giving rise to liability.

11.2 A Party shall not be liable for any indirect, incidental, or consequential damages, loss of profits, revenue or business, damages caused due to decrease in turnover or production or loss, alteration, destruction or corruption of data.

11.3 The limitations of liability shall not apply to damages caused by willful misconduct or gross negligence or to liability under Section 6 (Indemnification) or Section 10 (Confidentiality) or to the Customer's obligation to pay the applicable Fees.

12. Term and Termination

12.1 The Agreement shall enter into force on the date set out in the Purchase Order.

12.2 The Agreement shall remain in force for an initial term of twelve (12) months, after which the Agreement shall automatically be renewed for a new consecutive term of twelve (12) months unless terminated by a Party at least sixty (60) days prior to the end of the then-current term.

12.3 Each Party may terminate the Agreement for cause with immediate effect upon written notice to the other Party if:

12.3.1 the other Party becomes insolvent, applies for or is adjudicated in bankruptcy or liquidation or corporate restructuring or otherwise ceases to carry on its business; or

12.3.2 the other Party is in material breach of the terms and conditions of the Agreement and fails to remedy such breach within thirty (30) days from the date of receipt of a written notice by the non-defaulting Party, such written notice detailing the breach and the intention to terminate.

12.4 Upon the termination of the Agreement, any Fees owed by the Customer for any Services provided until the effective date of the termination shall become immediately due. All Fees are non-refundable.

13. Governing Law and Disputes

13.1 The Agreement shall be governed by English law unless the Customer is in Scotland or Northern Ireland, in which case it will be governed by Scots law or Northern Ireland law (as applicable). Any disputes under this agreement shall be dealt with by the courts of the country whose law governs this agreement, unless the Customer is in Northern Ireland or Scotland in which case they can choose to bring a dispute before the courts in their country or the English courts instead.

13.2 Notwithstanding anything set out in Section 13.1 above, the Company shall have the right to claim unpaid Fees in a public court.

14. Other Terms

14.1 The Company shall be free to use subcontractors in the performance of its obligations and exercise of its rights under the Agreement. The Company shall be liable for the acts and omissions of its subcontractors under the Agreement as for its own.

14.2 The Company shall have the right to use its relationship with the Customer in its marketing and sales promotion activities.

14.3 Neither Party shall be liable for any delays or non-performance of its obligations or any damages caused by an impediment beyond its reasonable control, which it could not have reasonably taken into account at the time of entering into the Agreement, and whose consequences it could not reasonably have avoided or overcome. For instance, errors in public communication networks or electricity supply shall constitute such an impediment. Strike, lockout, boycott and other industrial action shall constitute a force majeure event also when the Party concerned is the target or Party to such action. A force majeure event suffered by a subcontractor of Party shall also discharge such Party from liability, if the work to be performed under subcontracting cannot be done or acquired from another source without incurring unreasonable costs or significant loss of time. Each Party shall without delay inform the other party in writing of a force majeure event and the termination of the force majeure event.

14.4 All formal notices and other formal communication between the Parties hereunder shall be made in the English.

14.5 Neither Party shall have the right to assign or transfer all or any of its rights, benefits and obligations under the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Company shall, however, have the right to assign the Agreement in connection with a sale or transfer of its business or a relevant part thereof.

14.6 Any terms and conditions that by their nature or otherwise reasonably should survive a cancellation or termination of the Agreement shall also be deemed to survive.