

General Terms and Conditions of ExperienceFellow GmbH

1. Scope of these General terms and conditions

These general terms and conditions (hereinafter referred to as the “**Terms**” or the “**Contract**”) apply to all products and services offered by ExperienceFellow GmbH (hereinafter referred to as „**EF**“) on its website www.experiencefellow.com as well as in the AppStore and/or Android Marketplace. Contradicting general terms and conditions of the contracting party do not apply. Such general terms and conditions also do not apply, if EF does not expressly object to them or if the contracting partner makes reference to his own contradicting terms and conditions.

2. Conclusion of the contract

The Contract between EF and the contracting partner regarding the selected products only becomes effective, after the contracting partner has confirmed the selected products in a summary and has thereafter clicked on the checkbox "I have read the General Terms and Conditions and accept them". EF will provide the customer with a user ID and password and will activate the customer account in due time after conclusion of the contract.

3. Qualification as an entrepreneur

By clicking "I have read the General Terms and Conditions and accept them " the contracting partner confirms that he is an entrepreneur in the meaning of article 1 Austrian Consumer Protection Act as amended and that according to the laws of the country where the contracting partner is located or from where he uses the products and/or services, he is not prohibited using the products and/or services offered by EF. In order to activate the products of EF the contracting partner has to provide correct information about himself and his business (such as identification and contact information) in the course of the registration process or during the use of the products and/or services provided by EF. The contracting party expressly declares that the information that is passed on in connection with the registration process is correct and current.

4. Object of the contract / Scope of services by EF

- 4.1 EF offers different products and/or services that can be selected by the contracting party in accordance with his specific needs. The products provide the contracting partner with a tool to collect and analyse the experience of its customers. In connection therewith it is pointed out that EF shall not have the right to access the personal data of the contracting partner’s customers and that the products are designed in a way that an access to the personal data of the contracting partner’s customers is technically not possible. EF may, however, use and process the non-personal data of the contracting partner customers for statistical purposes. The products offered by EF are deemed to be “software as a service” services (hereinafter referred to as „**SaaS-services**“). In general, EF offers its products and services via its website. The contract-

ing party is being provided with the technical support and the legal title to use the products that are hosted on the central server of EF in accordance with these Terms. In addition to the general system requirements the quality of the SaaS-services are solely defined by the service conditions as described in the latest product description in connection with the products selected by the contracting party. The SaaS-services include, in general, a user interface (Client), a secured communication, processing of the data and a secured access to the data of the contracting partner as well as the storage and protection of the data.

- 4.2 EF undertakes that the app, by which the customers of the contracting party are able to transfer the data regarding their experience with respect to the products offered by the contracting party in real time (hereinafter referred to as the „**Customer App**“), will be made available in the App Store and the Android marketplace at any time for free. It is hereby stated that EF does not enter into any legal relationship with the customers of the contracting party and that the obligation to make available the Customer App is owed to the contracting party and not to the customers of the contracting party. If a customer of the contracting party raises any claims in connection with the Customer App, section 12.3 of these Terms shall apply.
- 4.3 EF undertakes the maintenance and servicing of the hard- and software infrastructure that is required for the use of the products including the Customer App offered by EF.
- 4.4 On the website www.experiencefellow.com the contracting party is provided with the latest documentation exclusively in electronic form that describes the products conclusively. This documentation also includes reference and guidelines for the use of the products. There is also a description of the hard- and software that is required for the contracting party to be able to use the products. The contracting party shall be solely responsible for the application and maintenance of these technical requirements, also in case of updates.
- 4.5 The software of the contracting as required for the use of the products and/or the Client downloads automatic updates of EF on a regular basis. These updates serve to enhance, up-value and develop the services and may include bug fixing and patching, enhanced functions or complete new versions of the products. The contracting partner declares and acknowledges that it is a prerequisite for the delivery of the products offered by EF that the contracting partner accepts such updates as part of the services and allows EF to provide the contracting partner with such updates.
- 4.6 The interface with respect to the SaaS-services and services owed under this Contract is the transition point to the internet of the data processing service centre used by EF. The internet connection of the contracting partner, the maintenance of the network connection as well as the supply and provision of hard- and software on the side of the contracting partner is not subject matter of this contract. In connection therewith the contracting partner expressly acknowledges that the use of Client requires a current web-browser as specified on the website of EF. EF shall not be responsible for the installation or maintenance of any such web-browser on the local systems of the contracting partner.

- 4.7 EF aims at providing the contracting partner with permanent access to its SaaS-services – this means 24 hours per day, 365 days per year. The access at any time, however, cannot be guaranteed and is not owed under this Contract by EF. The access can be temporarily limited in particular for technical reasons such as maintenance and repairs works. If possible, required maintenance and repair works will be announced, in particular regular maintenance and repair works.
- 4.8 If not expressly specified, EF does not owe any additional services. EF has no obligation to provide the contracting partner with installation, consultancy and/or training services as well as to offer and provide individual functions and/or additional software programs.

5. License and scope of use

- 5.1 EF herewith grants the contracting partner in compliance with these Terms for the term of this Contract a limited, personal, non-exclusive, non-transferable and non-sub-licensable, worldwide effective license for the use of the selected and, if payable, also paid products within the specifications selected by the contracting partner (e.g. number of users / storage capacity please see www.experiencefellow.com/pricing) exclusively for his or her own in-house business purposes. In-house business purposes shall mean that the contracting partner is only entitled to process his own data with the ordered products. Own data, however, also include the data that is made available by customers of the contracting party in connection with the collection of customer experiences with the assistance of the Customer-App.
- 5.2 The right to use the license ends with the termination of the Contract between the contracting partner and EF. The contracting partner shall only be allowed to access the SaaS-services via the interface provided by EF or via Client. If EF makes available new versions of the offered products during the term of this Contract as a result of product enhancements, this license grant shall apply to any new version of the products *mutatis mutandis*, unless EF attaches new terms to any new version, in which case the contracting partner will be informed about such new terms.
- 5.3 The contracting partner hereby irrevocably grants EF free of charge the exclusive usage and exploitation rights with respect of his ideas, questions regarding service development, recommendations or any information that are provided by the contracting partner or any third party in connection with the offered products unless the contracting partner expressly reserves his rights thereon vis-à-vis EF in writing.
- 5.4 The contracting partner shall have the obligation to not reproduce the underlying software of the products for any purpose, to not sell, transfer, convey or otherwise exploit it by way of license or sublicense nor make it available to third parties, to not copy, change, create derivative products, de-construct, decompile nor to derive by any other means the source code of the software nor to allow any third party to do it unless EF has approved of it in a separate written agreement.

5.5 The contracting partner will use the products solely for purposes that comply with these Terms and the applicable statutory provisions and regulations in the respective jurisdiction (including statutory provisions with respect of the export of data).

6. IP and copyrights of EF

All contents of this website, products and services, newsletter, software and documentations as well as the technologies of EF are subject in particular but not limited to the (copy- and IP) rights of EF regardless of the registration of such IP or copyrights rights.

7. Usage term and termination

7.1 This Contract is entered for indefinite period of time.

7.2 The Contract can be terminated with a 14 days' prior notice at the end of each month, unless a different term or termination period is provided for in the respective . Any termination notice must be in writing.

7.3 The right to terminate the Contract for cause remains unaffected. For cause in particular means the violation of material obligations under this Contract by its parties or the repeated violation of non-material obligations and the failure to cure such violation within reasonable time upon prior notice by the other party.

7.4 EF is entitled after the lapse of 30 days after termination of this Contract to irrecoverably delete all data including the data of the customers of the contracting partner. The contracting partner shall be informed about the irrecoverable deletion of its data. EF, however, reserves its right, in particular in case of late payment to retain the data of the contracting party. EF makes express reference to the fact that after termination of this Contract the contracting partner shall not be entitled to have his data imported in the updated version of the products offered by EF.

8. User account of the contracting partner

8.1 The contracting partner shall be responsible for all activities that are carried out through his user account. The contracting partner has to keep his access data confidential, to protect it from access of unauthorised persons and to ensure the proper use of the account. The contracting partner shall be solely responsible for the use of his user account and shall be liable for any abuse and shall hold harmless and indemnify EF for any damages that EF suffers as a result of any abuse of the account or the access data.

8.2 Any non-authorised use of access data with respect to the products or any other known or suspected violation of data security shall be reported to EF without any undue delay.

8.3 Before sending any data or information the contracting partner shall check data and information with respect to any damaging contents, in particular viruses, and to use state of the art anti-virus software.

9. Usage fee and invoicing

9.1 The usage fee for the use of the subject to costs products shall be in accordance with the applicable prices that are made available under www.ExperienceFellowGmbH.com/pricing.

9.2 The monthly usage fee becomes due until the 15th of each month, unless expressly stated otherwise.

9.3 The invoicing is exclusively made electronically. If the contracting partner requires a paper invoice because of statutory requirements, an additional handling fee of EUR 9,00 per invoice becomes due.

9.4 If not expressly stated otherwise, all fees and prices are net prices that are being invoiced with VAT as applicable. The VAT will be shown separately in the invoice.

9.5 The payment options available for the contracting partner are shown in the ordering process. In any case the contracting partner shall provide the required data in connection with the respective ordering process.

9.6 Credit notes or refunds, if any, in connection with overpayments or double payments will, in general, be offset against future fees.

9.7 The assignment of accounts receivables in connection with this Contract requires the prior written approval of EF.

10. Warranty

10.1 EF warrants pursuant to section 922 et seq. Austrian Civil Code (ABGB) to exclusion of section 924 ABGB that the services are provided in a quality that is in line with the general technical standard, to the extent applicable to the products offered by EF and that the services are delivered as described in the product description for regular use and under regular conditions.

10.2 EF warrants pursuant to section 922 et seq. Austrian Civil Code (ABGB) to exclusion of section 924 ABGB that EF does not violate IP or copyrights of third parties in connection with the delivery of its products.

10.3 If the delivery of the services to be provided by EF under this Contract is defective, EF will at the choice of the contracting party and after receipt of a written complaint in due time rectify the defect or re-deliver the ordered product. If EF fails to deliver the services free of defects for reasons that are attributable to EF within a reasonable time

set by the contracting party, the contracting party is entitled to price reduction. The right of price reduction is limited to the fees paid for the defective part of the services.

11. Limitation of liability of EF

11.1 EF shall only be liable for intent and crass gross negligence.

11.2 The liability for slight and gross negligence by EF is excluded. In this case the burden of proof for fault by EF shall lie on the contracting partner. Consequential damages and loss of profit are excluded. The maximum limit for any claims of the contracting partner shall be in each case the fees paid by the contracting partner for the defective product.

11.3 EF will use state of the art software protection such as (but not limited to) virus scanner, firewalls to avoid unauthorized access to data of the contracting partner and to prevent the transfer of damaging data, in particular viruses.

11.4 The contracting partner acknowledges that a full protection against damaging data is not possible because viruses, worms, trojans, spams and other security risks are being continuously developed and invented. EF points out that the protection products applied by EF do not guarantee 100% protection against harmful contents. EF therefore shall not be liable and does not guarantee the security for the products offered against such threats, to the extent that EF has complied with its above described obligations.

11.5 Other remedies than those described in this contract, regardless of the legal basis, are excluded for the contracting partner. The contracting party therefore waives his rights to rescind this Contract or claim nullity because of error, *laesio enormis* or frustration of Contract or to request price reduction or adjustment of this Contract on any of the before mentioned legal remedies.

11.6 The website and products may have hyperlinks to other websites, contents or sources. EF has no control over websites and its contents that are being operated by third parties. For any illegal, defective or incomplete contents and in particular for any damages that result from the use or non-use of such information only the website operator shall be liable and not the person who makes reference via links to such information.

12. Indemnification

12.1 In connection with the use of the products the contracting partner shall have the obligation to comply with all laws and regulations of the country where the contracting partner is located or has its seat. The contracting partner shall be prohibited from transferring data or contents that violate laws, IP and/or copyrights or other rights of third persons. The contracting partner shall be solely responsible for the data and contents including the data he receives and processes from his customers. EF has no access to the data transferred to the server by the contracting partner and does not

check the content of such data as regards its accuracy, virus-free condition or virus processability.

- 12.2 The contracting partner shall be solely liable for any violations of his obligations under this Contract and the resulting consequences. The contracting partner shall comply in particular with the Austrian Data Protection Law (DSG) or the data protection laws of the country where the contracting partner is located or has its seat. The contracting partner shall fully indemnify and hold harmless EF with respect to all claims including reasonable legal costs resulting from the unlawful or unauthorized use of the products by the contracting partner.
- 12.3 The contracting partner shall indemnify and hold harmless EF from any claims of the contracting partner's customers in connection with the use of the Customer-App.

13. Data protection

- 13.1 The transfer of data to EF in connection with the use of the products is made at the contracting partner's risk.
- 13.2 The contracting partner shall comply with the applicable data protection laws of the country, where the contracting partner is located or has its seat. Other further statutory or professional secrecy and confidentiality obligations of the contracting partner remain unaffected.
- 13.3 EF shall be prohibited from making available, in whatever way, the personal data of the contracting partner without its prior written approval. EF shall, however, be allowed to process and use the personal data of the contracting partner for the purposes of this Contract. With respect to section 4.1 of this Contract it is pointed out that the personal data of the contracting partner does not include the data of the contracting partner's customers, which cannot be accessed by EF. Non personal anonymized data of the contracting partner's customers are exclusively processed and used for statistical purposes by EF.
- 13.4 The contracting partner collects, uses or processes the personal data of his customers. In connection therewith the contracting partner guarantees that he is entitled to do so according to applicable laws, in particular data protection laws, and that in case of any violation of such laws he will fully indemnify and hold harmless EF in connection with any claims of third parties pursuant to section 12. of these Terms.
- 13.5 EF shall not be liable for the deletion, correction, corruption, destruction, loss and failed storage, if attributable to the contracting partner, of collected data of the contracting partner.

14. Miscellaneous / Applicable Law / Jurisdiction

- 14.1 This Contract includes all agreements of the parties and supersedes all oral or written understandings and/or agreements that the parties have agreed upon prior to the conclusion of this Contract. There no side agreements to this Contract.
- 14.2 Should a provision of this Contract or a provision later on included in the Contract be or become null and void as a whole or in part, or should a gap in the Contract become evident, this does not affect the validity of the remaining provisions. Instead of the null and void provision, or in order to fill the gap, such valid and practicable regulation is deemed to be agreed with effect *ex tunc* that in legal and economic terms comes closest to what the parties intended or would have intended in accordance with the purpose of the Contract if they had considered the point at the time of conclusion of the Contract.
- 14.3 This Contract is governed by Austrian law, to exclusion of the provisions of the UN Sales Convention (CISG) and of the conflict of law rules of Austrian international private law.
- 14.4 The competent court in Vienna shall have exclusive jurisdiction with respect to all disputes in connection or arising out of this Contract. EF shall also have the right to bring an action against the contracting partner at the venue where the contracting partner is located or from where the contracting partner uses the products of EF.
- 14.5 The written form requirement under this Contract is also met, if notices are being sent by telefax or email to EF at the fax number and/or email address as published on EF's website.