

## General Terms & Conditions of OBM Dynamics B.V.

### Whereas

- OBM Dynamics B.V. is the copyright owner and intellectual property holder of the OBM Level Training series of products and exams, as listed on the OBM Dynamics B.V. website, hereinafter referred to as: "Trainings";
- The Certified Partner wishes to acquire the use of the aforementioned Trainings and OBM Dynamics B.V. is prepared to allow the Certified Partner the right of use under the following terms and conditions;
- The Certified Partner intends to solely utilize the Training(s) by entering into agreements for its (their) use with Customers, as defined herein, providing for said use;
- The Parties have agreed to what is stipulated in these Terms & Conditions and the accompanying Contract and Appendices;

### **Clause 1 – Definitions**

This clause stipulates that words in the following clauses indicated by a capital letter have the following meaning:

**Accredited Trainer**: A trainer that is accredited by APMG International to provide accredited trainings in one or more disciplines and invigilate exams on behalf of APMG International. Existing Accredited Trainers can also become Certified Instructors with OBM Dynamics B.V. by attending the Train-The-Instructor (TTI) Course and passing the TTI exam. Participants of the TTI Course who have become Certified Instructors that are not yet Accredited Trainers can also apply to become Accredited Trainers with APMG.

**APMG International Ltd.**: Official partner of OBM Dynamics B.V. (hereafter "APMG") that takes care of the examination and certification of the Participants of the Trainings.

**Appendix (Appendices)**: Any documents attached to the Contract form part of the Contract and providing the details of the agreements made under the Contract.

**Area**: The area for which a non-exclusive License is granted to the Certified Partner, also referred to as Tier. A list of these tiers and the countries that are included is stated in the Contract / Appendices.

**ATO**: Means "Accredited Training Organization". This is an organization that has been officially accredited by APMG in order to sell and invigilate the exams that can be taken by Participants *after* having ordered a License from OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery and used the Training Material that is part of the License to train Participants, adhering to APMG standards.

**Certified Instructor**: The trainer (hereafter called "Instructor") who, to the exclusion of others, is certified by OBM Dynamics B.V. and authorized to be in charge of the Trainings for or on behalf of the Certified Partner. To become a Certified Instructor, prospective instructors must follow a "Train-The-Instructor" program (hereafter called "TTI") from OBM Dynamics B.V., at the expense of the Partner of which the cost is mentioned on the OBM Dynamics B.V. website. Instructors that are also sole proprietors of an officially established business, and thus are acting as self-employed one-person operations can also become Certified Partners.

Instructors may also apply for accreditation with APMG International as Accredited Trainer and as Individual Trainer.

Certified Partner: A legal entity (hereafter called “Partner”) that:

- a. wishes to acquire the use of the aforementioned Trainings and OBM Dynamics B.V. is prepared to allow that legal entity the right of use under these standard terms and conditions;
- b. Is either one of the following:
  1. An ATO with APMG (see definitions)
  2. An Individual Trainer (see definition) with APMG

Company Information Form: The (electronic) form that is used to collect the necessary company information from the Partner in order for OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery to engage in key business processes and activities such as, but not limited to, account management, order processing, product delivery, invoicing and product or services related communication.

Contract: The document called “Partner Level Agreement” (hereafter called “Contract”), which is a separate document to be signed by the prospective Certified Partner and OBM Dynamics B.V., and to which these General Terms and Conditions and the mentioned appendices apply.

Customer: A legal entity or private person (hereafter also called “Customer”) that wishes to acquire the use of the aforementioned Training(s) by:

- becoming an ATO or Individual Trainer, or
- hiring an ATO or Individual Trainer to deliver the Training(s) to them (usually in-company), or
- enrolling in an open Training, scheduled and delivered by an ATO or Individual Trainer.

Instructor: See “Certified Instructor”

Individual Trainer: An Instructor that has also been officially accredited by APMG International in order to sell and invigilate the exams that can be taken *after* having used the Training Material that is part of the License to train Participants, adhering to APMG standards.

License: The right to use the Trainings one time by one person (the Participant).

License Fee: The fee that the Partner is obliged to pay to OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery for the use of the Trainings as described in the “Partner Level Agreement”;

Whereas the partner intends to solely utilize the Trainings by entering into agreements for its (their) use with Customers, as defined herein, providing for said use. Hereafter called ‘Partner’.

OBM Dynamics B.V.: OBM Dynamics B.V., hereafter called “OBM Dynamics B.V. ” is the copyright owner and intellectual property holder of the OBM Level Training series of products and exams as listed on the OBM Dynamics B.V. website, hereinafter referred to as: "Trainings".

Order form: Means the form that is provided to Partners by OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery for ordering licenses for participants to trainings. An order can be a single license for one Participant or a group of licenses bought together for a specific Training. In all cases, the email address of each individual Participant has to be provided on this form in order for OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery to be able to provide the Training Materials.

Participant: Means the person following the Training, as taught by a Certified Instructor, being provided the Training Materials that are part of the License;

Partner: See “Certified Partner”.

Reseller: A trading partner that enters into a commercial agreement with an ATO – or Individual Trainer – to advertise Trainings on their behalf. A Reseller:

- Does not deliver Trainings;
- Must make it clear to the market, who the ATO/Individual Trainer is;
- Is only allowed to sell named accredited OBM courses;
- Is not allowed to order for Licenses itself. Instead, the ATO/Individual Trainer does that on behalf of the Reseller.

Third party: Means any person/entity other than the parties to the Contract including Suppliers, Customers and Customer’s employees and independent contractors.

Tier: See “Area”.

Training: One of the trainings that is part of the OBM Level Training series of products, consisting of a Training Materials that can be used only once.

Training Materials: Means all materials necessary to run and complete all Trainings referred to herein, such as, but not limited to, the student workbook, software and (electronic) book. Copies of all materials are issued either physically or electronically and most of them are personalized for the Participant.

Update(s): New version(s) of the Trainings and/or Training Materials.

Vanilla slide deck: A basic version of the slide deck to be delivered in Microsoft PowerPoint.pptx format to the Partner, to which they may add their own logo and other corporate identity markers such as colors. It is to be used by the Instructor(s) they employ or hire, and may be altered to a certain extent, defined in Clause 3.

## **Clause 2 – License**

- 2.1 OBM Dynamics B.V. grants the Partner a non-exclusive and non-transferable right to use the Trainings in the Area and the Partner accepts this right by signing the Contract. It is strictly forbidden to use the Trainings in another Area.
- 2.2 The right that is granted to the Partner in accordance with the preceding Sub-clause, will give the Partner the right to the single use of the Trainings for a maximum of one (1) Participant per license.
- 2.3 The Partner must obtain a new License for each Participant of a Training through an (electronic) order form that will be provided to the Partner by OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery. A company cannot remain a Partner if no Licenses are ordered but the Partner is caught selling and giving OBM Trainings without the use of our Licenses, or using alternative Training Materials that are not part of the License.
- 2.4 The License consists of different Training Materials. These Training Materials will differ per Training level, but every Partner will receive the same set per level (e.g. OBM Foundation), and it can consist of physical and/or electronic materials.

2.5 The Partner has the non-exclusive right to deliver Trainings but must use a Certified Instructor.

### **Clause 3 – Training Materials**

- 3.1 The contents of the Training Materials are copyright protected and will remain the intellectual property of OBM Dynamics B.V. or its Third Party suppliers at all times and a right of use is granted to the Participant by the Contract.
- 3.2 OBM Dynamics B.V. will provide Updates free of charge as they become available. The provisions of this Contract apply in full force to such Updates.
- 3.3 The Partner will receive a Vanilla slide deck to be used in class. This presentation has roughly the same contents as the workbook, which is also a part of the Training Materials. The Partner may choose to add their company logo and corporate identity markings, as well as some of its own content or that of others with permission of the original author(s). Additions are limited to 10% of the total sum of slides of the original presentation. Additions must be on separate slide(s). Additions can only be used with written permission of OBM dynamics B.V.. It is not permitted to delete slides of the original presentation. The Partner is also permitted to distribute this version of the slide deck, based on the Vanilla slide deck, to Participants, either physically or digitally, as long as a License was bought for and distributed to each Participant.

### **Clause 4 – Term and Termination of the Contract / Fines**

- 4.1 The Contract is taking effect from the date of assignment as a new Partner and is subject to the provisions of this Clause 4-Term and Termination of the Contract / Fines, stated below.
- 4.2 The Contract, notwithstanding any other provisions of the Contract, can be cancelled prematurely if one Party notifies the other Party of the intention to cancel the contract, this by means of a registered letter no later than three months before the intended expiry. If no cancellation is received the Contract is extended for the same period as the first contract.
- 4.3 In the event that one Party fails to meet the obligations in the Contract, the other Party shall notify one Party by means of a registered letter, and one Party shall correct the failure as soon as possible and at the latest within thirty (30) days from the receipt of the letter. If one Party fails to correct the failure within this timeframe the other Party has the right to terminate the Contract immediately.
- 4.4 A Party has the right to terminate the Contract immediately if:
  - a. One Party is declared bankrupt or insolvent or otherwise unable to pay their debts as they fall due;
  - b. The Partner fails to meet the obligations of clauses 2.1, 2.2, 2.3, 3.3, 8.4, 8.5, 9.1, 9.2, 10 and 11.
- 4.5 In case of violation of one or more of the above mentioned clauses in 4.4. b, the partner owes a fine of € 5,000.00 per violation, without prejudice to the right of OBM Dynamics B.V. to claim full compensation. In case of violation OBM Dynamics B.V. is entitled to end the Contract immediately. OBM Dynamics is not liable for any damage incurred by the Partner.
- 4.6 In the event that this Contract terminates for whatever reason, the Partner is obliged to stop using and/or selling the Trainings and to refrain from using the OBM Dynamics B.V. “Certified Partner” and/or “Certified Instructor” logo(s) without delay. The Partner has the right to fulfill all contracts with their clients signed before the termination date.

### **Clause 5 – License Fee**

- 5.1 The License Fee as defined in the “Partner Level Agreement” is payable in Euros for each License. The Partner must pay the License Fee in full at the date of ordering. The invoice date

equals the date of ordering.

- 5.2 OBM Dynamics B.V. has the right to alter the amount set for the License Fee at the beginning of the following year upon ninety (90) days prior written notice to the Partner provided that such percentage rise shall not exceed the inflation rate of The Netherlands and is considered to be reasonable.

### **Clause 6 – Invoicing**

- 6.1 Invoicing of the licenses will take place after every order and delivery according to the contract.
- 6.2 Invoices need to be fully paid on the date of ordering unless otherwise agreed in the Partner Level Agreement.
- 6.3 The Partner needs to pay the legal interest from the date the invoice(s) is/are due and payment is not received. The actual amount of the legal interest is published on [www.rijksoverheid.nl](http://www.rijksoverheid.nl).
- 6.4 In case OBM Dynamics B.V. decides – on her sole discretion – to claim payment of one or several unpaid invoices in Court, the Partner is also due, in addition to the outstanding principal claim and interests, collection costs outside and inside the Court. The collection costs outside Court will be determined at 15% of the principal claim.

### **Clause 7 – Delivery of materials and services**

- 7.1 The Partner must obtain a new License for each Participant of a Training. Order processing and delivery will proceed after receipt of the invoiced amount. In principle OBM Dynamics B.V. uses Third parties for the sale, production and delivery of the Training Materials, unless otherwise stated in the Partner Level Agreement. These Third parties will have the Training Materials sent as soon as possible, depending on the type of material ordered, the distance and availability of transport. Electronic materials are sent directly to the provided email address of each Participant. Physical materials will be shipped to the address provided by the Partner with the order.
- 7.2 Any delivery dates that are mentioned by our Third parties are an indication only and the Partner cannot derive any rights from these. OBM Dynamics B.V. is not liable for any possible damage resulting from late receipt.

### **Clause 8 – Marketing and Sales**

- 8.1 The Partner will perform its reasonable endeavors to provide for as many Trainings as possible (and to purchase licenses accordingly for this reason) within the Area.
- 8.2 The promotion, the dealing with clients, the provision of the Trainings and the use of trade names, brand names and imaging for the Trainings shall be carried out in accordance with the views of OBM Dynamics B.V. These views are:
- OBM Dynamics B.V. is focused on people and people's behavior
  - OBM Dynamics B.V. is focused on learning and developing
  - Trainings are instruments to support personal and organizational development
  - Learning and teaching must be fun
- 8.3 OBM Dynamics B.V. will perform its reasonable endeavors to support any selling efforts by the Partner and by providing:
- a. Publicity material about the Trainings or comments and feedback on Partner's publicity material;
  - b. A high resolution file of the Certified Partner and/or Certified Instructor logo(s) for use by the Partner for the duration of the Contract;

- c. Attendance of exhibitions and speaking at e.g. corporate events, conferences, seminars, etc.;
- d. Publicity manifestations (logos and brand name) on the OBM Dynamics B.V. website which currently is: <https://obmdynamics.nl>

Ad c. The Partner will pay OBM Dynamics B.V. for any agreed travelling and overnight costs, including food & beverage expenses that relate to the attending of exhibitions and conferences that are required by the Partner. Attendance of the events themselves is free of charge for the first day-part. A day-part is considered to be any activity between zero (0) and four (4) hours. In the event that these activities take up more than a day-part, the additional time will be charged for the fee of € 1,500.00 per day-part excluding VAT.

Ad d. For the term of the Contract, and if the Partner wishes, Partner's information can be displayed on the OBM Dynamics B.V. website:

- under the button "Partners" a logo of the Partner will be placed with a hyperlink to the Partner's own website;
- a list of Certified Instructors on the payroll of Partner.

8.4 The Partner shall only market the Trainings under the OBM Dynamics B.V. current trade names, logos and imaging, designations and slogans.

Without prior written approval and as far as the OBM Dynamics B.V. trade names, logos or imaging, designations and slogans are concerned, the Partner is not allowed to change or modify these in any way.

8.5 The Partner acknowledges that any rights relating to the following items: trade names, logos and imaging, designations and slogans for the Trainings, shall be vested in OBM Dynamics B.V. Without express written permission from OBM Dynamics B.V., the Partner or any Third Party is prohibited from using the aforementioned items or any other items that resemble these or look similar after the termination of this Contract.

8.6 Demo/Promo-licenses

Partners can contact OBM Dynamics B.V. to discuss marketing and sales initiatives. Based upon the initiative and the potential spin-off business OBM Dynamics B.V. is prepared to make available free demo licenses or other products.

## **Clause 9 – Conditions of use**

9.1 During the term of the Contract the Partner is allowed to use the Training Material one single time for each License.

9.2 The License as defined under the provisions of Sub-clause 2.1-License is granted under the following restrictions or rules:

- a. It is prohibited to the Partner to sublicense or distribute the Trainings to any third party (other than to a party that is a subsidiary company, parent company or subsidiary parent company of the Partner);
- b. It is prohibited to the Partner to alter or to adapt the Trainings, with the exception of the provisions stated in article 3.3.
- c. It is prohibited to the Partner to make copies of the Trainings and or the Training Materials or to publish them, it is also prohibited to develop a similar product for which the Partner is licensed (as mentioned on the OBM Dynamics B.V. website (<https://obmdynamics.nl/partners>)). For each time infringement of this rule is noted by OBM Dynamics B.V. or one of its rightful delegates, the Partner shall pay a fine as stated in article 4.5. After each case of infringement, OBM Dynamics B.V. reserves the right to break up the agreement. All costs of such a break-up shall become payable by the former Partner.
- d. It is prohibited to the Partner to remove any designations concerning copyrights, brands, trade names or other (intellectual) property rights from the Trainings or Training Material;

- e. Having ordered a License is a prerequisite for ordering an exam. Participants are not eligible for certification if they have not had access to the Training Materials that the License consists of. The Partner with which the Participant has ordered the Training and Exam shall be held accountable;
  - f. Licenses are to be used by Participants that take the Training in the same Tier as the order was for. It is prohibited to the Partner to order a License in or for a lower Tier and use them for Participants in a higher Tier.
- 9.3 OBM Dynamics B.V. is entitled to reasonably check whether the Partner uses the Trainings in the manner agreed upon under the terms and conditions of this Contract.
- 9.4 Subject to any applicable laws relating to Data Privacy and/or Data Protection, the Partner expressly agrees with the fact that the details stated on the evaluation forms can be used by OBM Dynamics B.V. for marketing purposes unless otherwise expressly indicated on such evaluation forms. Any details relating to the Participant will naturally be treated as confidential and OBM Dynamics B.V. will only use the name of a Participant for marketing activities after expressed permission from the Partner and the client involved.
- 9.5 Subject to any applicable laws relating to Data Privacy and/or Data Protection, the Partner expressly agrees with the fact that the details stated on the Company Information Form can be used by OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery for key business activities such as, but not limited to account management, order processing, product delivery, invoicing and product or services related communication.

#### **Clause 10 – Prohibition to transfer and Sub-License**

- 10.1 The Partner is prohibited from transferring any rights arising from this Contract to a Third Party other than or to transfer any copies of the Training Materials to a Third Party. Third Party is defined as a company that is not controlled (directly or indirectly) by Partner and does not include Customers, its employees and its independent contractors.
- 10.2 The Partner is prohibited from having the Trainings used by a Third Party.
- 10.3 The Partner is prohibited from granting Sub-Licenses for the Training Materials to a Third Party other than use by Participants of a Customer.

#### **Clause 11 – Intellectual property rights**

- 11.1 All contents of Training Materials is copyright protected and shall remain the intellectual property of OBM Dynamics B.V. or its Third Party suppliers, except for the admissions stated in article 3.3.
- 11.2 All intellectual property rights relating to the Trainings shall remain vested in OBM Dynamics B.V.
- 11.3 Nothing from the Training Materials may be reproduced and / or made public without written permission from OBM Dynamics B.V., in the form of a separate agreement.

#### **Clause 12 – Liability**

- 12.1 OBM Dynamics B.V. is in no way liable for any damage, of any nature whatsoever, that is the result of (any) incorrect or incomplete information provided in connection with the Training. This includes, among other things: the information / recommendations / advice provided by the Certified Instructor or via the Training Materials, the brochure or any other work resulting from or related to a Training.
- 12.2 In case OBM Dynamics B.V. is liable for any damage suffered by the Partner on the basis of the



law, then the compensation is limited to the invoice amount of the specific License order to which the damage-causing fact relates.

### **Clause 13 – Contracting Participants and obtaining the necessary Personal data**

- 13.1 With regard to GDPR regulations, Partner is required to communicate to all future Participants that a License is needed in order to obtain the Training Material and to follow the Training. In order to be able to buy and provide that License, certain Personal data is required, which shall be relayed to OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery by means of the Order Form in order for the Training Material to be personalized (e.g. digital copy of the workbook) and activated (e.g. the personal license(s) of the software used in the Training). A failure to agree would mean that no License could be bought and delivered to the Participant. This is to be made clear to the Participant before he or she buys the seat for a Training.
- 13.2 The Personal data needed are: 'First name', 'Family name' and 'email address'.
- 13.3 The Partner will communicate to the Participant that OBM Dynamics B.V. may invite the Participant by use of the known email address to fill out an online evaluation form for the purpose of both quality improvement and feedback to Partner and Instructor(s).
- 13.4 OBM Dynamics B.V. or a company that is assigned by OBM Dynamics B.V. to take care of the order processing and delivery shall use the Personal data stated in sub-clause 13.2 for the delivery of the Training Materials, for quality improvement and feedback to Partners and Instructors only, unless with specific written consent by the Participant.
- 13.5 Partner will communicate the requirement in sub-clauses 13.1 to 13.4 through its website, its terms of service and its order form.

### **Clause 14 – Final Provisions**

- 14.1 Clauses 11 to 15 continue to apply after termination of the Contract.
- 14.2 Any Partner's general terms and (purchasing) conditions are expressly dismissed.
- 14.3 The provisions of these General Terms and Conditions shall prevail in the event that there are any contradictions between these Terms and Conditions and the Contract at any time.

### **Clause 15 – Applicable law and disputes**

- 15.1 These Terms and Conditions and any resulting Contracts are governed by the laws of The Netherlands. The Court of Amsterdam has the exclusive jurisdiction over any disputes that may arise between parties.

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