

# TERMS AND CONDITIONS

## 1. Acceptance of Agreement<sup>a</sup>

Pearson Clinical and Talent Assessment is a division of Pearson Australia Group Pty Ltd ABN 40 004 245 943 (“**Pearson**” or “**us**”).

Sales of Products<sup>b</sup> (including licensed assessments) by Pearson and the purchase and use of those Products by Customer<sup>c</sup> are conditioned upon acceptance of the terms and conditions set out in this Agreement. Customer agrees to this Agreement by submission of user qualifications, order(s) for tests or scoring services, or by paying part or all of a Pearson invoice. This Agreement constitute the entire agreement between Pearson and the Customer and supersede any purchase order terms associated with a Purchase Order (P.O.) number on any order. If any provision of this Agreement is found to be illegal or unenforceable, that provision shall be read down to the extent necessary to overcome the difficulty and the remaining provisions will be enforced.

This Agreement is subject to change without notice. The Agreement published and applicable at the time of order shall govern each order. The law of the State of Victoria, Australia, will govern this Agreement if the Products are provided in Australia, Agreement and each of Customer and Pearson irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Victoria, Australia,

## 2. Warranty

Pearson does not provide any warranty in relation to any non-Pearson product or other non-Pearson materials and to the fullest extent permitted by law excludes any liability with respect to any infringement arising from the use of the Products in combination with systems, software, or equipment, not supplied by Pearson. To the fullest extent permitted by law, Pearson gives no warranties, express or implied, with respect to the products; and all warranties, express or implied, including warranties of non-infringement, merchantability and fitness for a particular purpose, are excluded.

## 3. Geographical Embargoes and Restrictions

Please note that Pearson may restrict the sale of certain test materials within specific geographic regions because of various contractual arrangements. If the Product(s) have been rightfully obtained within Australia or New Zealand, Customer agrees and warrants that neither the Products nor any technical data received by the Customer from Pearson will be exported outside of Australia or New Zealand respectively, except as authorised by the laws and regulations of Australia or New Zealand respectively, and with Pearson’s prior written consent.

## 5. Limitation of Liability and Limitation on Claims

To the full extent permitted by law, in no event will Pearson be liable for any indirect, consequential, exemplary, or special damages arising out of this agreement or purchase or use of the products or services. Subject to any statutory guarantees that cannot lawfully be excluded, Pearson expressly excludes all warranties, guarantees, conditions and representations, whether express or implied, in relation to any products or services supplied or provided by Pearson (including as to performance, quality or fitness for use or purpose, or any warranty or representation that the products will be free from defects).

Notwithstanding any other provision or agreement between the customer and Pearson but subject to any laws the application of which cannot be lawfully excluded, Pearson’s total liability to any party, arising out of this agreement or purchase or use of products or services by the customer, except as it relates to Pearson’s willful misconduct, will not exceed the amount paid by customer for the products or services.

Where any applicable legislation implies any warranties, guarantees or conditions or imposes obligations upon Pearson which cannot be excluded, restricted or modified except to a limited extent, these terms and conditions must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which Pearson is able to do so, Pearson’s liability will be limited, at its option, to: (a) in the case of any products supplied by Pearson, either: (i) replacement of the products or supply of equivalent goods, (ii) repair of the products, (iii) payment of the cost of replacing the products or acquiring equivalent goods, or (iv) payment of the cost of having the products repaired;

or (b) in the case of any services performed by Pearson, either: (i) the performance of the services again; or (ii) the payment of the cost of having the services performed again.

## **6. Use of Product**

The Customer agrees that it is the Customer's responsibility to use any Products in accordance with [the [Pearson Qualification Requirements below](#) and] all applicable laws and regulations. The Customer understands and agrees that the Products are intended to be used as tools in the overall assessment process, and are not designed to be used alone or to replace the Customer's professional judgment. Pearson is not responsible for any claims or damages incurred in connection with the Customer's or any third party's use or misuse of the Products. Unless otherwise indicated, Products are not sold for self-guidance, or to any individual or organization engaged in testing and counselling by mail. Product users must agree to guard against the improper use of the Products in order to have and retain the right to purchase and use those Products. To protect their security and value, Products and their scoring keys must be kept secure and made accessible only to authorised personnel of the Customer. Product materials may not be resold, re-licensed, transferred or otherwise distributed without prior written permission from Pearson.

## **7. Pearson Qualification Requirements**

Not everyone who wishes to obtain a licence for a test is qualified to do so. In order to avoid delay in your order, please make sure your qualifications are known to us.

The tests listed on this website are carefully developed assessment instruments that require specialised training to ensure their appropriate professional use. Eligibility to purchase these tests, therefore, is restricted to individuals with specific training and experience in a relevant area of assessment, and hold current membership of a relevant professional organisation.. The relevant professional organisations and/or agency for the purposes of this Agreement are: Australian Health Practitioner Regulation Agency (AHPAR), Australian Psychological Association (APS), the New Zealand Psychological Society (NZPS), Speech Pathology Association (SPA) and Occupational Therapy Australia and New Zealand, and any others nominated by Pearson from time to time. .

Pearson reserves the right to require additional evidence of each Customer's qualifications. Pearson has the sole right to determine whether a Customer is qualified and under what classification. In addition, Pearson retains the right to withhold or withdraw approval for test licence where there is evidence of violation of commonly accepted testing practices or any of this Agreement.

Note: No tests are licensed for self-guidance, nor to any individual or organisation engaged in testing and counselling by mail. The Customer agrees to guard against the improper use of Pearson's tests in order to retain the right to use those tests. To protect their security and value, tests and scoring keys must be kept in locked files or storage cabinets accessible only to authorised personnel of the Customer. Pearson shall be entitled to refer the Customer to the relevant professional organisation for misconduct in the event of a breach of the provisions of this Clause 7.

Test materials may not be resold or otherwise distributed, or used as tools for performance coaching or to design performance coaching materials.

## **8. Copyright and Trade Secrets**

Pearson Products are protected by various intellectual property laws, including copyright, trade mark and/or patent laws as well as laws protecting confidential information and trade secrets. Unauthorised printing or other reproduction of copyright-protected materials or content, whether the reproductions are sold or furnished free for use, including reproduction of test items, scales, scoring algorithms, scored directions, or other content is strictly prohibited by law and by this Agreement. Pearson software outputs, including but not limited to reports, are protected as trade secrets.

Customer acknowledges and agrees that the use or disclosure of trade secrets and confidential information in a manner inconsistent with the provisions of this Agreement or without authorisation from Pearson may cause Pearson irreparable damage for which remedies other than injunctive relief may be inadequate. Accordingly, Customer may request from a court of competent jurisdiction injunctive or other equitable relief seeking to restrain such use or disclosure as appropriate under the circumstances. Customer shall seek a protective order safeguarding the confidentiality of test materials if Customer is required to produce such materials in court or administrative proceedings.

The Customer's purchase of Pearson Products does not grant the Customer a right to reproduce additional copies of materials or the content or copy or download content onto a computer medium or non-Pearson scoring systems or software, unless expressly authorised by Pearson. If the Customer licenses and uses Pearson software, the Customer may excerpt portions of the output reports, limited

to the minimum text necessary to accurately describe the qualified examiner's significant core conclusions, for incorporation into a written evaluation of the individual test taker, in accordance with the Customer's profession's citation standards, if any. The Customer may not, under any circumstance, copy or reproduce in any form the text or graphic image of any test item. No adaptations, translations, modifications, or special versions may be made without prior permission in writing from Pearson (which may be withheld by Pearson in its sole discretion) (see Section 11 below).

## 9. Maintenance of Test Security

Customer agrees to comply with the following basic principles of minimum test security:

- Test takers must not receive test answers before beginning the test.
- Test questions are not to be reproduced or paraphrased in any way.
- Access to test materials must be limited to qualified persons with a responsible, professional interest who agree to safeguard their use.
- Test materials and scores may be released only to persons qualified to interpret and use them properly.
- If a test taker or the parent of a minor child who has taken a test wishes to examine test responses or results, the parent or test taker may be permitted to review the test and the test answers in the presence of an authorised representative of the school, college or institution that is the Customer which administered the test.
- Test materials must not be resold, re-licensed, transferred or otherwise redistributed for any purpose without prior written permission from Pearson (which may be withheld by Pearson in its sole discretion).

## 10. Indemnification

To the fullest extent permitted by law, Customer agrees to hold harmless, indemnify and defend Pearson from and against any and all claims, charges, demands, damages, liabilities, losses, expenses, costs and liabilities of whatever nature (including but not limited to any legal or other professional fees on an indemnity basis and the costs of defending, prosecuting or settling any claim and any loss of profit, goodwill, business or opportunity and any other direct and indirect, special, incidental or consequential losses or damages) and howsoever arising (including, without limitation, in contract, tort (including negligence), equity, restitution, strict liability or under statute) incurred or suffered by Pearson or any of its officers, employees or agents directly or indirectly in connection with any act or omission that the Customer commits in breach of this Agreement (including any of the obligations and warranties contained in them); any software licence or other licence to Customer, or usage rules, in relation to any of the Products or services; or any applicable law (including, without limitation, privacy law).

## 11. Requests for permission to license Pearson Intellectual Property

Requests to copy, translate, modify or adapt any Products must be in writing and directed to: Intellectual Property Licensing by e-mail to [pas.licensing@pearson.com](mailto:pas.licensing@pearson.com). Pearson or its third party licensor may give or withhold its consent in respect of such requests, or may give its consent subject to terms or restrictions, in its sole discretion.

## 12. Privacy

In this Section 12, "personal information" has the meaning given to that term in the *Privacy Act 1988* (Cth).

(a) Customer shall, before the time Pearson collects personal information about an individual through that individual undertaking any test or assessment on the Product platform:

- on behalf of Pearson: (i) expressly inform that individual that if that individual consents to the disclosure of personal information about that individual by Pearson to a third party who is not in Australia or an external Territory, subclause 8.1 of the *Privacy Act 1988* (Cth) will not apply to the disclosure; and (ii) after having so informed that individual, obtain without duress the consent of that individual to the disclosure; and
- on behalf of Pearson, notify that individual of, or otherwise ensure that that individual is aware of, the content of Pearson's [Privacy Collection Statement](#).

(b) If Customer is not able to comply with any of the requirements under Section 12(a), Customer shall:

- not permit the individual referred to under Section 12(a) to undertake any test or assessment on the Product platform; and
- not permit the personal information of the individual referred to under Section 12(a) to be entered into the Product platform.

### **13. Payment**

All prices are subject to change without notice and are inclusive of the applicable Goods and Services Tax (GST) for Customers within Australia and New Zealand. Price changes will not affect orders in respect of which Pearson has already sent to the Customer an order confirmation.

Payment terms are 30 days for Customers with trading accounts otherwise payment must be made at time of purchase by credit card, direct deposit, or cheque.

Charges not paid when due are subject to a late charge accruing from the due date of 1-1/2% per month or the maximum permitted by law, whichever is less. The Customer is responsible for any legal and collection fees incurred by Pearson in collecting charges not paid when due. Payment must be made in Australian dollars if the Products are supplied in Australia and in New Zealand dollars if the Products are supplied in New Zealand.

### **14. Definitions and Notes**

<sup>a</sup> "Agreement" means these Terms and Conditions

<sup>b</sup> "Product(s)" means assessment instruments (including those formerly published by AGS Publishing and Harcourt Assessment, Inc.) and related materials (including but not limited to software, administration and user reference materials, manipulatives, reports and services) published, supplied or made available by Pearson pursuant to these Ts &Cs.

<sup>c</sup> "Customer" means the purchaser and qualified user of the Product, whose eligibility to purchase and use the Products is determined by Pearson in its sole discretion, who are individually and collectively referred to as "Customer."