



TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

Conditions: these terms and conditions as amended from time to time in accordance with condition 2.2.

Contract: the contract between the Supplier and the Customer for the Licence in accordance with these Conditions.

Customer: the person who purchases a licence to use the Worksets from the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Licence: the licence purchased by the Customer which entitles the Customer to access and use the Worksets in accordance with these Conditions.

Order Confirmation: written confirmation given by the Supplier to the Customer which sets out the description, quantity and price of Worksets to be supplied (in the case of a manual ordering process) or the Supplier delivering the Worksets to the Customer's account following receipt by the Supplier of the Customer's online registration and payment for the Worksets (in the case of an electronic registration process).

Supplier: Third Eye Resolutions Limited, trading as Appraisal 360, registered in England and Wales with company number 05289042 and registered address at c/o Professional Accountancy, 118 Main Road, Shavington, Cheshire CW2 5DP.

Supplier Delivery: in the case of an electronic registration process the delivery by the Supplier of the Worksets to the Customer's account.

Website: means www.appraisal360.co.uk or such other website as the Supplier may determine at its sole discretion from time to time.

Worksets: the worksets which the Supplier supplies to the Customer under the Licence being either:

- (a) **Instant360 Worksets** - where the Worksets comprise of off the shelf competency questionnaires created by the Supplier;
- (b) **Bespoke Competency Worksets** - where the Worksets comprise of bespoke competency questionnaires created by the Customer, or created by the Supplier in accordance with a specification provided by the Customer.

1.2 Headings do not affect the interpretation of these Conditions.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a party includes its personal representatives, successors or permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.6 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

2.1.1 apply to and be incorporated in the Contract; and



- 2.1.2 prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, specification or any other document supplied by the Customer, or which is implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.
- 3. BASIS OF SALE**
- 3.1 Any quotation given by the Supplier shall not constitute an offer and is valid for a period of 20 days only, and the Supplier may withdraw it at any time by notice to the Customer.
- 3.2 The Customer places an order by making an offer to purchase a Licence from the Supplier either verbally or in writing and in accordance with these Conditions. The Customer shall ensure that any order is complete and accurate.
- 3.3 A binding Contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues an Order Confirmation to the Customer.
- 3.4 No Contract may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 4. THE WORKSETS**
- 4.1 The quantity and description of the Worksets shall be as set out in the Supplier Delivery or Order Confirmation (as applicable) or, where there is no Order Confirmation or the quantity or description is not specified, the quotation.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues, brochures or Website are issued or published for illustrative purposes only and do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission on the Website or in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 4.4 The Supplier reserves the right (but does not assume the obligation) to make any changes to the Worksets which are required to conform with any applicable legislation.
- 5. PRICES AND PAYMENT**
- 5.1 The fee for the Licence shall be the price of the Worksets stated by the Supplier in the Order Confirmation, or, where no price has been stated, the price listed in the Supplier's published price list current at the date of acceptance of the order.
- 5.2 All sums payable by the Customer are exclusive of VAT or any other sales, withholding or other taxes as may be applicable from time to time.
- 5.3 Payment of the fee for the Licence shall be made by the Customer in advance on the date of acceptance of the order.
- 5.4 The Supplier reserves the right at its sole discretion to invoice the Customer the fee for the Licence on or at any time after the date of acceptance of the order by the Supplier. In such cases the Customer shall pay any invoice within 30 days of the date of the invoice (**Due Date**) and time for payment of the price shall be of the essence of the Contract.
- 5.5 If the Customer fails to make payment in full and in cleared funds by the Due Date, without prejudice to any other right or remedy available to the Supplier, the Supplier may without liability to the Customer:
- 5.5.1 suspend the Licence;
- 5.5.2 terminate the Contract or suspend delivery of any further Worksets to the Customer;
- 5.5.3 charge interest on the amount outstanding from the Due Date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 8% above the base lending



rate from time to time of Natwest Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

5.6 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 5.6 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall:

6.1.1 ensure that the terms of any order or any information it provides to the Supplier are complete and accurate;

6.1.2 co-operate with the Supplier in all matters relating to the Licence;

6.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Worksets under the Licence, and ensure that such information is accurate in all material respects and conforms with any applicable legislation;

6.1.4 ensure that any username and password used to access the Worksets is kept confidential;

6.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Supplier to perform its obligations under the Contract;

6.1.6 satisfy itself that the use of the Worksets does not violate any local laws or regulations;

6.1.7 comply at all times when using Worksets with the Supplier's Terms of Website Use.

6.2 The Customer shall ensure that the contents of the Worksets are suitable for its intended purpose.

6.3 The Customer shall be responsible for the provision of all necessary access and facilities required to:

6.3.1 receive the registration form from the Supplier;

6.3.2 create a username and password; and

6.3.3 make use of the Licence.

6.4 Without prejudice to the generality of the foregoing, the Customer shall maintain access to a suitable web browser and online email account.

6.5 The Customer shall be solely responsible for procuring and maintaining its network connections and telecommunications links and IT resources and the Supplier accepts no liability for any costs, problems, conditions, delays, delivery failures and or any other loss or damage incurred or sustained by the Customer arising directly or indirectly from the Customer's failure to comply with these Conditions.

6.6 If the Supplier's performance of any of its obligations under the Contract are prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

6.6.1 the Supplier shall without limiting its other rights or remedies have the right to suspend the Licence until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

6.6.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in these Conditions; and

6.6.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.



- 6.7 The Customer shall, when using the Worksets, comply with the following conditions:
- 6.7.1 the Customer shall not copy (except to the extent permissible under applicable law or for normal operation of Worksets), reproduce, translate, adapt, vary or modify any software, nor communicate it to any third party, without Supplier's prior written consent; and
 - 6.7.2 the Customer shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on Worksets on the medium on which it resides.
- 6.8 The Customer shall indemnify the Supplier against all claims, losses, damages and expenses arising from any breach by the Customer of condition 6.7.
- 7. WARRANTY**
- 7.1 The Supplier warrants that from the date the Supplier delivers the Worksets to the Customer, and for a period of 14 days from such date (**Warranty Period**), the Worksets shall conform in all material respects with the description set out in the Order Confirmation.
- 7.2 Subject to condition 7.3, if the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Worksets do not comply with the warranty set out in condition 7.1 the Supplier shall, at its option, revise or replace the defective Worksets, or refund the price of the defective Worksets in full.
- 7.3 The Supplier shall not be liable for a breach of the warranty in condition 7.1 if:
- 7.3.1 the Customer makes any use of the Worksets in respect of which it has given written notice under condition 7.2; or
 - 7.3.2 the defect arises as a result of the Supplier using any information or questionnaire, or following any other instruction supplied by the Customer, including in connection with Bespoke Competency Worksets;
 - 7.3.3 the defect arises because the Customer has failed to follow the Supplier's oral or written instructions regarding the Licence; or
 - 7.3.4 the Customer alters or modifies, or attempts to alter or modify, the Worksets without the written consent of the Supplier.
- 7.4 The Supplier makes no warranty that the use of the Worksets shall be uninterrupted or error free.
- 7.5 The Supplier makes no warranty that the Worksets shall be suitable for the Customer's intended purpose, nor in respect of the results achieved as a result of the use of the Worksets.
- 7.6 The Supplier makes no warranty that the access and use of the Worksets by the Customer does not violate, and is not prohibited by, certain national laws and regulations. The Supplier makes no representation and accepts no liability in respect of the access and use of the Worksets by the Customer outside the UK.
- 8. LIMITATION OF LIABILITY**
- 8.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 8.1.1 any breach of the Contract; and
 - 8.1.2 any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 8.3 Nothing in these conditions excludes or limits the liability of the Supplier for:
- 8.3.1 death or personal injury caused by the Supplier's negligence; or
 - 8.3.2 fraud or fraudulent misrepresentation; or
 - 8.3.3 any other liability which may not be excluded by law.
- 8.4 Subject to condition 8.2 and condition 8.3:



- 8.4.1 the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; or loss or corruption of data or information; and
- 8.4.2 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid and payable for Worksets purchased under such Contract under condition 5.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer acknowledges that, as between the Customer and the Supplier, all Intellectual Property Rights used by or subsisting in Worksets are and shall remain the sole property of the Supplier.
- 9.2 The Supplier shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract.
- 9.3 The Supplier's Intellectual Property Rights in and relating to Worksets shall remain the exclusive property of the Supplier, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.
- 9.4 If the Supplier supplies Worksets in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, including in the case of Bespoke Competency Worksets, any questionnaires, the Customer shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from the Supplier's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of the Supplier.

10. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

- 10.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives or data (including usernames and passwords) which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 10.2 All materials, documents, tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 10.3 This condition 10 shall survive termination of the Contract, however arising.

11. TERMINATION

- 11.1 Without prejudice to any other rights and remedies available to the Supplier, if the Customer has not paid for the Licence in accordance with condition 5, the Supplier may terminate the Contract or suspend the Licence with immediate effect by giving written notice to the Customer if the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts, goes into liquidation, becomes insolvent or has an administrator, receiver or similar officer appointed in respect of all or part of its undertaking (or is the subject of a filing with any court for the appointment of any such officer); ceases, or threatens to cease, to trade; or takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.



- 11.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the Supplier as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.
12. **FORCE MAJEURE**
- 12.1 Neither party shall be in breach of the Contract nor liable for any failure or delay in performance of any obligations under the Contract arising from or attributable to acts, events, omissions or accidents beyond its reasonable control including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service, telecommunications network or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (**Force Majeure Event**).
- 12.2 The Supplier reserves the right to suspend the Licence, or to terminate the Contract, if it is prevented from or delayed in performing its obligations under the Contract by a Force Majeure Event.
13. **GENERAL**
- 13.1 Waiver. A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 13.2 Severance. If any provision of the Contract (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 13.3 Entire Agreement. These Conditions and the Order Confirmation shall represent the entire agreement between the Supplier and the Customer and shall not be changed or varied by any other agreements between the parties except in accordance with condition 2.2.
- 13.4 Status of Pre-contractual Statements. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.
- 13.5 Assignment. The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.6 Third Party Rights. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 13.7 Notices. All notices in connection with the Contract shall be in writing, addressed to the recipient at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, fax or e-mail. Notices shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working day after posting; or, if sent by fax or e-mail, one working day after transmission. This condition 13.7 shall not apply to the service of any proceedings or other documents in any legal action
- 13.8 Governing Law and Jurisdiction. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.