

Terms and Conditions

In these terms and conditions **software** means the testing software called “FePsy”, the neuropsychological test battery software of THE PSYCHOLOGY COMPANY, all versions thereof, including but not limited to the computer version, the online/website version and the application of “FePsy”, and any updates thereto.

I. Offer and Order

1. Offers by THE PSYCHOLOGY COMPANY are not binding.
2. An order is accepted when our order confirmation is issued to you or when we execute the order.
3. The software is invoiced on the basis of the price applicable on the day of delivery.
4. Unless otherwise agreed, prices are in Euros and do not include packaging, customs duties, (international) transport, applicable tax and other expenses.
5. The scope of THE PSYCHOLOGY COMPANY’S performance does not include installation of the software, training on how to use the software or other instructions and adaptations of the software to meet any system requirements of the customer. If required, installation of the software and training on how to use the software and other instructions may be specifically arranged. These services are invoiced separately on the basis of the price applicable on the day of delivery.

II. Delivery

1. THE PSYCHOLOGY COMPANY makes every effort to meet the agreed date of delivery so far as it lies within our powers. The date of actual delivery may vary from the agreed date. We are only in default with respect to delivery after the expiration of an extension period of one month that takes the remedial options available to us into account and then only after receipt of a written notice from the customer to us.
2. If THE PSYCHOLOGY COMPANY, through no fault of its own, is unable to deliver the software or services ordered on time because third parties (suppliers etc.) do not fulfil their contractual obligations to THE PSYCHOLOGY COMPANY, THE PSYCHOLOGY COMPANY shall be entitled to terminate the agreement with the customer. In this case, the customer is informed that the ordered software or services are no longer available.
3. The customer bears the cost and risk of transportation of the software. Unless otherwise agreed upon, the USB sticks with the software on it are dispatched with a carrier of our choice.
4. THE PSYCHOLOGY COMPANY is not responsible for claims for damage and loss in transport and such claims shall only be directed against the carrier.

III. Warranty

THE PSYCHOLOGY COMPANY expressly rules out any express, statutory or implied warranties other than those set out herein. This also includes implicit guarantees for the customary market suitability of a product for a specific purpose.

1. We warrant that upon delivery the software has no material fabrication defect in the sense that the software is in such state that it cannot reasonably be used by the customer. We warrant that, in all material respects, the software corresponds to the software specification, as set out on the website www.fepsy.nl, applicable at the time of delivery.
2. The warranty period is 12 months, provided that at the moment of installation of the software the customer had the most recent operating system of Windows.
3. After the expiry of the warranty period, THE PSYCHOLOGY COMPANY does not provide any software support or other technical maintenance of the software for material fabrication defects. The customer should buy an updated version of the software.
4. THE PSYCHOLOGY COMPANY accepts no liability for functioning, use and service disruptions resulting from the following:

- a) the customer's technical equipment, network infrastructure or unmet system requirements;
 - b) force majeure; and
 - c) tampering by the customer or third parties.
5. THE PSYCHOLOGY COMPANY does not guarantee or warrant that (i) the software will meet your requirements or expectations, (ii) the use of the software will be uninterrupted, timely, secure or error-free, (iii) any material fabrication defect in the software can be corrected during the warranty period.
 6. THE PSYCHOLOGY COMPANY makes no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the software.
 7. THE PSYCHOLOGY COMPANY disclaims any, and makes no, representation, warranty or covenant that the software or any other software or services provided hereunder complies with any law in the jurisdictions for which it is used.

IV. Technical Support

1. Support staff can be reached by e-mail at info@fepsy.com from Monday to Friday from 9:00 a.m. to 17:00 p.m. CET, except during public holidays in the Netherlands. Changes to these times may be agreed upon at any time; if changes are agreed upon, the cost of the services will be recalculated.
2. If technical issues occur, the customer undertakes to cooperate to the best of its ability and to provide THE PSYCHOLOGY COMPANY with support and all necessary information. If this is not the case, THE PSYCHOLOGY COMPANY reserves the right to discontinue to work on solving the issues.

V. Liability

1. Our liability, whatever the legal basis, is restricted to the monetary amount of the order in question during the period 12 months prior to the claim. We are not liable for lost profit, lost savings, damages arising from claims of third parties against the customer, indirect damages, property damages, punitive damages, incidental damages, exemplary damages and consequential damages or any damage to customer's data created and/or stored in the customer's application of the software.
2. Any claim for damages will expire one year after the date on which the customer is informed of possible loss or damage and will in any event lapse after three years.
3. THE PSYCHOLOGY COMPANY is not liable for damages resulting from any open source software or third party software used or embedded in the software.
4. We are not liable for any warranty and/or liability claim if the software does not meet the customer's requirements and/or if the software is not compatible with other software products not developed by us or any hardware. Any modification of the software will be the sole responsibility of the customer.
5. Claims of any sort must be immediately notified to us by the customer in writing and are not valid otherwise. Notification does not affect the period of limitation of liability.
6. The results provided are computer-generated. They are based on the candidate's response behavior and the technical infrastructure used for the test, and they depend on the test presentation conditions and on other factors including the candidate's experience, motivation, interest, self-awareness and mental and physical state on the test day. In accordance with the APA Standards for Educational and Psychological Testing (2014) and Standard 9.0, it is established that the test user bears ultimate responsibility for evaluating whether the use of a test in a specific setting is justified. The test user must take cultural and legal factors into account when making this decision.
7. THE PSYCHOLOGY COMPANY therefore cannot accept responsibility for analysis, diagnosis, decision and interpretations made on the basis of the test results and cannot be held liable for the consequences of using them, regardless of how such consequences arise.
8. The customer understands, acknowledges, and agrees that under no circumstance is the software or THE PSYCHOLOGY COMPANY acting as a physician, health care provider or practitioner or diagnostic service (hereafter called "**health care provider**"), and that the

software is an information processing tool only and does not establish any analysis, diagnosis, decision or interpretation of any kind, including any health matter. The software is not intended to replace the professional skills and judgments of a health care provider. The customer and/or relevant health care provider shall alone be responsible for the accuracy and adequacy of any analysis, diagnosis, decision or interpretation based on the information and data of the test results and any use of, or the reliance on, the test results by the customer and/or such health care provider. The customer represents and warrants that it and/or the relevant health care provider shall consider the results of the test only in conjunction with a variety of other information for any diagnostic and treatment decisions.

9. This limitation of liability section applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis.

VI. Indemnification

You shall defend, indemnify and hold harmless THE PSYCHOLOGY COMPANY and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents from and against any and all claims, proceedings, actions, fines, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) any non-compliance with import or export control regulations (ii) a (alleged) claim that you violated any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (iii) a claim arising from the breach by you or your users of the agreement or these terms and conditions or any law, rule, regulation or treaty; (iv) third-party claims on account of product liability due to a deficiency in a service delivered by you to a third party that consisted in part of databases or other materials supplied by the software of THE PSYCHOLOGY COMPANY.

VII. Restrictions on use

1. The customer undertakes not to use the software in a way that contravenes THE PSYCHOLOGY COMPANY'S applicable instructions for use or the ethical directives or guidelines of any test board (or of a similar institution).
2. The customer undertakes to use the supplied software only in compliance with the law as it applies at the place of use and with professional regulations and data protection requirements. The customer also undertakes to comply with import or export conditions that apply to the software and with any restrictions on use imposed by the EU or other countries of origin.
3. The customer agrees that the software will be used by him or her or under his or hers direct supervision in a manner that complies with these terms and conditions and any professional test guidelines and standards.
4. The tests may not be used for training purposes. Training means any form of preparation of a respondent for the test situation, in particular explaining the item material, which goes beyond the necessary and usual instructions at the beginning of a test; in particular, allowing respondents to do the test "*for the sake of trying it out*" or "*to get used to it*" in whole or in part. It is also forbidden to use information about the tests given by THE PSYCHOLOGY COMPANY or taken from the manuals to give volunteers tips on how to perform at their best.
5. All persons whom the customer allows to access the software in any way or to whom the customer in any way transfers the software shall be instructed by the customer to comply with these restrictions on use. The customer shall make sure that any person (e.g. contractors for tests and test subjects) using or operating the software on its behalf is aware of, and adheres to, these contractual obligations and the restrictions on use and the customer is responsible for any non-compliance thereof by such users.
6. Unless otherwise stated explicitly and in writing in the purchase agreement, we grant a non-exclusive, world-wide and temporally unlimited right to use the software. This right to use the software does not include the right to edit it (in any way whatsoever). The customer's right to use the software cannot be transferred to third parties except with our prior written consent.
7. The use of the software is limited exclusively to the licenses that the customer has purchased. It is especially not allowed to install the software on more computers than for which the customer has purchased a license.
8. The copying of the software is permitted only for the purpose of backing up data from the test results.

The customer is responsible for all damage, expenses and costs incurred by THE PSYCHOLOGY COMPANY as a result of infringement of the restrictions on use by the customer, its employees and other agents or otherwise by persons whom the customer allows to access the software in any way or to whom the customer in any way transfers the software, whether arising from claims of third parties or from official action.

VIII. Data Ownership and Protection

1. All data (a) created and/or (b) stored by the customer within the customer's applications of the software are the property of the customer and are intended exclusively for use by the customer unless access to such data is authorized by the customer.
2. The customer is obligated to comply with all relevant international data protection laws and relevant national data protection regulations and guidelines. In particular on ensuring that the customer has received sufficient approval from the individuals tested by him or her as test results are confidential.

IX. Copyright

1. The customer as well as authorized user(s) hereby acknowledge that the entire content of the software as well as all other products and material made available by THE PSYCHOLOGY COMPANY are protected by copyright. THE PSYCHOLOGY COMPANY retains the unlimited copyright to the software and the unlimited right to use it.
2. The customer expressly acknowledges and agrees that software license does not transfer to the customer any intellectual property right in, or ownership title to, the software or open source or third party software but only the non-exclusive right to use the software, and that the customer is prohibited from performing any corrections of errors/defects, modifications, adaptations or translations of the software.

X. References

We are entitled to make reference to the customer's name, logo and other business-related information in all our advertising material, and in particular on the internet and on our website, for referencing purposes for former, existing and new business relations without any payment obligations towards the customer. This arrangement is subject to written revocation by the customer.

XI. Payment

1. Unless otherwise agreed in the quotation, the agreed price is payable net, plus all applicable taxes and any additional charges that may be due, within 14 days of invoice date. Costs of any international transport are for the customer.
2. We retain the title to the software license until the purchase price has been paid in full.
3. In the event of payment default, we may require the customer to hand over to us the software on the USB stick supplied by us that have not yet been paid for in full. In the event of default, all our claims against the customer become due for payment and we have the right to terminate the purchase agreement and to claim damages.
4. Services such as installation, training or instructions may be billed to the customer 14 days after ordering, even if they have not yet been used by the customer. The aforementioned services may be billed to the customer even when the customer does not issue an approval or provides information necessary to provide the services with no fault of THE PSYCHOLOGY COMPANY despite being requested to do so.

XII. Place of Jurisdiction

Sales are governed by Dutch law excluding the UN Convention on Contracts for the International Sales of Goods. The place of performance and payment is the Netherlands. Disputes will be exclusively submitted to the courts in Amsterdam, the Netherlands.

XIII. Severability

Should individual provisions of these terms and conditions be rendered ineffective or unenforceable or rendered ineffective or unenforceable after concluding the agreement, the effectiveness of the agreement shall otherwise remain unaffected. The ineffective or unenforceable provisions shall be replaced by those effective and enforceable provisions which most closely match the effects of the economic purpose which the contractual parties pursued with the ineffective or unenforceable provision. The abovementioned provisions shall apply correspondingly for the case that the agreement turns out to have omissions.

XIV. Modification to terms

THE PSYCHOLOGY COMPANY reserves the right to modify these terms and conditions at any time and without notice, effective upon posting of an updated version of these terms and conditions on its website. You are responsible for regularly reviewing these terms and conditions on our website. Continued use of the software after any such changes shall constitute your consent to such changes.