

## Face Fit Testing UK Limited

We operate the website <http://www.facefittestinguk.com>

We are Face Fit Testing UK Limited, a Company registered in England and Wales under Company number 10717576 with our registered office at The Old Stables Decoy Lane, Poling, Arundel, West Sussex, BN18 9QA

To contact us, please see our Contact Us page.

The parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

In this Contract, unless the context otherwise requires, the following terms shall have the following meanings:

**“Data Processing Legislation”** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**“Delegate”** shall mean the person or persons nominated by the Client to undertake the Face fit test .

**“Fees”** shall mean the payment made by the Client to the Company in exchange for the services provided.

**“Input material”** shall mean delegate lists, test material, medical forms and other paperwork.

**“Output Material”** shall mean test details, joining instructions, and other paperwork.

**“Personal Data”** shall mean any information relating to an identified or identifiable individual.

**“The Client”** shall mean the Client or Clients and former Clients of the Company and who is party to this Contract and who purchases services from the Company.

**“the Company”** shall mean Face Fit Testing UK Limited.

**“the Contract”** shall mean this contract between the Company and the Client for the supply of services in accordance with these conditions.

**“Tester”** shall mean the person or persons employed by the Company to provide the Test.

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“Test” shall mean the face fit test that is provided by the Company.

## **2. OBLIGATIONS OF THE COMPANY**

The Company shall:

- 2.1 Ensure the Tester delivers Test in a professional manner using every care to accomplish a satisfactory service and shall at its own expense supply the Client with necessary documents or other materials and all necessary data relating to the test in accordance with the contract.
- 2.2 Ensure the accuracy of all Output Material.
- 2.3 Be responsible for the provision of test equipment including manuals and test aids.
- 2.4 Provide if necessary, to all test Delegates an appropriate handout for the test including any supporting material agreed between the Company and the Client.
- 2.5 Comply with all applicable laws, including health and safety laws.

In the event that no Delegates attend a confirmed Test the Tester will wait at the test venue for a maximum 1 hour or until instructed to leave by the Client or the Company.

## **3. OBLIGATIONS OF THE CLIENT**

The Client shall:

- 3.1 provide the venue for the test unless otherwise agreed in writing. The Client shall ensure that the venue is suitable for the Company's requirements and is clean and tidy. Please contact the Company to discuss prior to the provision of the service.
- 3.2 be liable for providing all supporting equipment required by the Tester unless otherwise agreed between the Client and the Company.
- 3.3 at its own expense supply the Company with any other necessary documents or other materials and any other necessary data or other information relating to the testing within sufficient time to enable the Company to provide the test in accordance with the contract. The Client shall ensure the accuracy of all input material.
- 3.4 at its own expense retain duplicate copies of all input material and insure against its accidental loss or damage. The Company shall have no liability for any such loss or damage, however caused. All output material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.
- 3.5 Ensure payments are made on time and in accordance with the booking form or any Contract in place.

## **4. BOOKINGS**

- 4.1 Telephone bookings will be accepted but must be confirmed in writing in line with the booking form.
- 4.2 The Client must advise the Company in writing if it requires any amendments to a confirmed training course at least 3 days before the course otherwise additional fees may be payable, to be charged at the Company's discretion.

## **5. PRICE AND PAYMENT**

- 5.1 The Client must pay the Fees to the Company as per the sum shown on the booking form within the agreed term as defined in the booking form.
- 5.2 In the event of any unavoidable non-attendance of the Company's Tester for any reason outside of the Client's control, a refund will be issued.
- 5.3 A refund will not be given if the Company is unable to carry out its duties due to power failure, fire, flood or other unforeseen disruption beyond its control in accordance with clause 14.
- 5.4 The Company shall be entitled to vary the Company's standard charges from time to time.
- 5.5 All charges quoted to the Client for the provision of the Test are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.
- 5.6 The Company shall be entitled to invoice the Client following the end of each month in which Test are provided or at other times agreed with the Client.
- 5.7 The Charges will be stated in the Quotation and unless agreed otherwise by the Company in writing will be exclusive of VAT and delivery.
- 5.8 Invoices issued in accordance with the Contract will be payable by the Client within agreed terms
- 5.9 If the Client fails to make payment in full on the due date, then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Company, the Company may:
  - 5.9.1 terminate the Contract or suspend any further services to the Client; and
  - 5.9.2 charge interest on such sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

## **6. TEST INFORMATION**

- 6.1 Good time keeping throughout the test is essential. It is the responsibility of the Client to ensure that the delegate is fully briefed and made aware of all test requirements before the test takes place. This must include the provision of all relevant PPE as required under the HSE legislation and policies.
- 6.2 Delegates must attend the whole of the test to qualify for certification. Late arrivals (up to 30 minutes) may not be admitted onto tests.
- 6.3 The Company will provide certification to the Client as soon as possible after payment for the course.
- 6.4 Tests may be altered if 24 hours' notice is provided by both parties. If the Client does not provide 24 hours' notice, then the Company is entitled to charge the full fee as outlined and confirmed when the booking was made is due.

## **7. CANCELLATION**

- 7.1 Tests may be cancelled; the following cancellation terms are applicable:
  - <24hrs = 100% of fee chargeable
  - >24hrs but <3 working days = 50% of fee chargeable
  - Thereafter = Nil

- 7.2 If a Test needs to be cancelled, notification of cancellation must be sent in writing via post or email to the Company.
- 7.3 The Company reserves the right to cancel or postpone any test. If this is necessary, as much notice will be given to the Client.
- 7.4 The Company shall not be liable for any transport or accommodation costs if a course is cancelled due to circumstances beyond our control.
- 7.5 The Company shall not be liable to the Client or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the service, if the delay or failure was due to any cause beyond their reasonable control as set out in clause 14.

## **8. CONFIDENTIALITY**

- 8.1 All notes, computerised memory, memoranda, correspondence, records, documents and other tangible items made, used or held by the Company in the course of providing the test will be and remain at all times the intellectual property of the Company. At any time, whether prior to or upon the termination or expiration of this Contract, the Client shall promptly on request deliver to the Company all such tangible items which are in its possession or under its control relating to the Company, its business affairs and Clients and/or the test and it may not make or retain copies.

## **9. DATA PROTECTION AND DATA PROCESSING**

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Company is the data processor.
- 9.3 Without prejudice to the generality of clause 9.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of this Contract.
- 9.4 Without prejudice to the generality of clause 9.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this Contract:
- 9.4.1 process that Personal Data only on the written instructions of the Client;
  - 9.4.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected;
  - 9.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 9.4.4 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Applicable Data Processing Law to store the Personal Data.

## **10. RIGHTS IN INTELLECTUAL PROPERTY OF INPUT MATERIAL AND OUTPUT MATERIAL**

- 10.1 The property and any copyright or other intellectual property rights in – any input material shall belong to the Client.
- 10.2 Any output material shall, unless otherwise agreed in writing between the Client and the Company, belong to the Company, subject only to the right of the Client to use the output material for the purposes of utilising the test.
- 10.3 Any input material or other information provided by the Client which is so designated by the Client and all output material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client; but the foregoing shall not apply to any documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 10.4 The Client warrants that any input material and its use by the Company for the purpose of providing the training courses will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 10.5 Subject to paragraph above, the Company warrants that any output material and its use by the Client for the purposes of utilising the training courses will not infringe the copyright or other rights of any third party, and the Company shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

## **11. WARRANTIES, LIABILITY AND INSURANCE**

- 11.1 The Company warrants to the Client that the test will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the specification and at the intervals and within the times referred to in the specification sheet. Where the Company supplies in connection with the provision of the training courses any goods (including output material) supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.
- 11.2 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any input material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client nor arising from any failure of the Company's Tester to comply with his or her obligations to the Company.
- 11.3 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in these Terms, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its trainees or agents or otherwise) which arise out of or in connection with the provision of the training courses or their use by the Client, and in any event the entire liability of the Company under or in connection with the Contract shall not exceed the amount of the Company's charges for the provision of the test, except as expressly provided in these Terms.
  - 11.3.1 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the

Company's obligations in relation to the test, if the delay or failure was due to any cause beyond the Company's reasonable control and as further set out in clause 14.

- 11.3.2 The Company carries appropriate insurance and if the Client requires a copy of that insurance the Company shall provide the policy to the Client if requested.

## 12. TERMINATION

- 12.1 Either party may (without limiting any other remedy) at any time terminate the contract by giving notice to the other if:

- 12.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so; or
- 12.1.2 if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.
- 12.1.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 12.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

- 12.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Client if:

- 12.2.1 the Client fails to pay any amount due under the Contract on the due date for payment
- 12.2.2 the Client breaches the payment terms in clause 5;

## 12.3 CONSEQUENCES OF TERMINATION

If the Contract is terminated for any reason:

any sums due to the Company will become immediately payable by the Client without set-off or deduction; and

termination of the Contract howsoever caused will:

- a. be without prejudice to any obligations or rights of either of the Parties hereto accrued prior to such termination; and
- b. not affect any provision of the Contract which is expressly or by implication intended to come into effect on, or to continue in effect after such termination.

## 13. GENERAL

- 13.1 The Company may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the test without any liability to the Client.
- 13.2 The Company may at any time without notifying the Client make any changes to the test which are necessary to comply with any applicable safety or other statutory requirements.

#### **14. FORCE MAJEURE**

- 14.1 Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an obligation to pay money), because of an event beyond that Party's reasonable control, including but not limited to a breach or failure that was the result of an act of God, insurrection or civil disorder, riots, war or military operations, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, national or local emergency, acts or omissions of government, highway authority or other government authority, compliance with any statutory obligation, industrial disputes of any kind or any other cause beyond that Party's reasonable control ("Force Majeure Event").
- 14.2 If a Force Majeure Event occurs, the party suffering the Force Majeure Event must:
- a. give the other party notice of the Force Majeure Event promptly and an estimate of the non-performance and delay;
  - b. take reasonable steps to overcome the effects of the Force Majeure Event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
  - c. resume compliance as soon as practicable after the Force Majeure Event ends.

Either party may terminate this Contract by immediate notice in writing if the other party is unable to perform its obligations in the circumstances described in clause 14.1 for a continuous period of more than thirty (30) working days.

#### **15. ENTIRE CONTRACT**

- 15.1 These Conditions (together with the terms, if any, set out in the specification sheet) constitute the entire Contract between the parties, supersede any previous Contract or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by Law.

#### **16. NOTICES**

- 16.1 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.2 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

#### **17. GOVERNING LAW AND JURISDICTION**

- 17.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, with the law of England and Wales.
- 17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

End