

Last Updated: 19 September 2023

QATS Terms and Conditions – Schools Purchase

1. BACKGROUND

- 1.1. This Agreement sets out the terms and conditions (**Terms**) for which Janison Solutions Pty Ltd trading as QATS (ABN 35 081 897 494) of Level 1, 80 Bay Street Ultimo, Australia 2007 (**Janison, we, us and our**) will deliver the QATS Assessments to Registered Schools in which you are one (**you, School**).

In making a purchase, you acknowledge that you have read, understood and agreed to these Terms to which you agree to be bound. If you have any objections to the Terms herein, you must immediately cease use of all Janison Products.

qats.com.au is a website operated by Janison. QATs assessments are purchased by accessing a downloadable, fillable, PDF Brochure/Order Form from this website and emailing your order to qatsadmin@janison.com for processing.

2. DEFINITIONS

Exam Assessment Task means an assessment associated with the Product in *examination* format.

Brochure/Order Form is the electronic or printed form that lists the QATs Products for sale, including; item number, pricing, product code, product description, unit/level/stage information. The form also includes details to be filled in by the purchasing school in order to place an order, including; name, school name, address, email address, phone number, school order number. The electronic version of the form can be found on the QATs Website. The hardcopy versions of the form will be mailed to schools as a part of the QATs assessment promotional campaign. Both versions of the form are identical and once filled in, should be emailed to qatsadmin@janison.com for processing.

Embargoed period means the period of time an assessment task is not to be openly available. Teachers and schools must ensure that students are not given open access to their Examination Assessment Tasks until the end of the embargoed period. Teachers may scrutinise papers with students in class during the embargoed period; however, papers must be carefully collected by the teacher at the end of the lesson (or similar). This is to ensure task content is secure until all schools have completed their examination period. When the embargoed period has expired, assessments may be permanently returned to students and shared with the wider school community.

Intellectual Property Rights means all forms of intellectual property rights throughout the world including (present and future) but not limited to copyright, database rights, confidential information, know-how, trade secrets, registered patents, designs, trademarks, signs, distinctive marks, devices, models, formulae, graphs, photographs, drawings, business plans, methodologies, inventions, policies, records, memoranda and notes.



QATs is a wholly owned enterprise of Janison Solutions Pty Limited and is a provider of educational assessments for schools

Loss includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses).

Non-Exam Assessment Task means an assessment associated with the Product in the format that is not a formal exam. Formats may include, but are not limited to, a multiple-choice test, a case study, a skills analysis, an oral presentation, and/or a research task.

Order means an order from you for the purchase of the Products from Janison, including a School Purchase Order.

Payment Receipt Date means the date on which Janison receives payment from a Registered School for the Products.

Personal Information has the meaning given to that term in the Privacy Act.

Price means the price for the Product as set out or referred to on the QATs Brochure/Order Form, at the time of Order.

Privacy Act means the *Privacy Act 1988* (Cth), including the Australian Privacy Principles.

Product means the QATs Exam Assessment Tasks which are in the form of an examination, and QATs Non-Exam Assessment tasks which are in a non-exam format.

QATs Customer Service means the QATs customer service team who may be contacted using the details at qats.com.au/contact.html

QATs Website means the QATs website setting out the details of the QATS Products, located at qats.com.au

Refund Request Form means the form that a Registered School must use to request a refund for any QATS Product and as provided by Janison upon request by the Registered School.

Registered School means a school registered by the relevant government department or agency responsible for administering the school system in the jurisdiction in question being a designated Institution.

School Order Number means the purchase order number that the Registered School is required to use by their accounts team in order to process the order. This number is provided by the school to Janison on the Brochure/Order Form.

Secondary QATs Website refers to a secondary website, in addition to the main QATs website, that is accessible to download NSW trial and year 11 exam papers. This website is only accessible via a secure link and login details and only relevant to NSW schools.

Student means a student of a Registered School.

Support Materials means the associated supporting documents that are required to deliver the Exam Assessment Tasks and Non-Exam Assessment Tasks and other administrative instructions or protocols on how to use the Product, as published by Janison or on the QATs Website or as communicated to the Registered School from time to time.

3. WARRANTY

3.1. Janison warrants that:

- 3.1.1 our Products will be provided to you using all reasonable care and skill;
- 3.1.2 our Products will have been produced with any industry best practices as would be expected in the education industry; and
- 3.1.3 the delivery of our Products will be undertaken in compliance with all applicable Australian laws, standards and industry regulations.

4. METHODS OF PURCHASING & CONTRACT

- 4.1. Registered Schools can purchase Exam Assessment Tasks and Non-Exam Assessment Tasks by placing an order using the Brochure/Order Form. Once the Brochure/Order Form has been filled out with the ordering details schools then email the order form to gatsadmin@janison.com for processing.
- 4.2. These Terms and Conditions (**Terms**) apply when you submit an order for the supply of Products by us in addition to the privacy policy at janison.com/privacy-policy/ and is the entire agreement between Janison and your School in relation to the QATs Exam Assessment Tasks and Non-Exam Assessment Tasks. In accepting these Terms, you acknowledge that you have not relied on any warranties, representations or promises that are not set out in this agreement.

5. PURCHASING PROCESS

5.1. Registration

You may only purchase the Products if you provide a School Order Number (purchase order number) which will be assigned by your accounts department as a way of identifying your order when Janison send an invoice for payment.

5.2. Purchase

- 5.2.1 To make a purchase of our Products, you must list your School Order Number, name, school/institution, address, post code, email and phone number. Your email address must be connected to your school/institution i.e. your State's education authority email address. If you are ordering with an alternative email address, Janison will contact your school to verify your position at the school before completing your order.
- 5.2.2 You may pay Janison for the Product via Electronic Funds Transfer only. Janison will not accept cheques, credit card or any other payment options.

6. ACCEPTANCE

- 6.1. Each item listed on our QATs Brochure/Order Form is an invitation for you to purchase that item.
- 6.2. Placing your order through a completed Brochure/Order Form will be taken as your acceptance of these Terms and Conditions, and your offer for us to deliver the Products associated with your purchase order.
- 6.3. When you receive our confirmation email of your order, a contract will have been formed between you and Janison for the delivery of the Products which are subject to these Terms.

7. YOUR OBLIGATIONS

- 7.1. It is your responsibility to ensure that:
 - 7.1.1 the information provided by you in the Brochure/Order Form is complete and accurate;
 - 7.1.2 you provide us with any information and materials that are reasonably required by us in order to supply you with the Products;
- 7.2. If our ability to deliver the Products is prevented or delayed by any failure by you to fulfil the obligations in Clause 7.1 (**Obligation Failures**):
 - 7.2.1 we will be entitled to suspend your access to our Products until you remedy your Obligation Failures;
 - 7.2.2 you will be responsible for any costs or losses you sustain or incur arising directly or indirectly from your Obligation Failures.

8. FEES AND CHARGES FOR SCHOOL PURCHASE

- 8.1. The consideration for this Agreement is the price/s of the Products as set out on the QATs Brochure/Order Form found on the QATs Website at the time of your Order plus any Goods and Services Tax (**GST**) that is payable.
- 8.2. When you are purchasing QATs Products through the QATs Brochure/Order Form, you will pay the Price of each Product when order fulfillment occurs. In some cases, Products will not be available at the time of order and therefore you will not be invoiced until the Product is available. Once the Product is available, it will be sent to you via email or via download from a specific Secondary QATs Website (NSW schools only), with an invoice to follow.
- 8.3. Invoices for Products can only be paid by Electronic Funds Transfer to the nominated Janison account. You must pay each invoice issued by Janison to you within 30 days of the issuing of the invoice.
- 8.4. By making a purchase, you agree that you have carefully considered the Prices and have accepted them.
- 8.5. Janison retains the right to change our Prices on the QATs Website without notice.

9. DELIVERY OF THE PRODUCTS PURCHASED

- 9.1. Janison will deliver the Product to you as soon as it is available. In some instances, the Products are available at the time of order, in other instances the Product has not yet been released.
- 9.2. When a Product is available at the time of order, it is usually supplied via email within 5 working days. Janison will use all reasonable endeavours to ensure that you receive access to the Product within a reasonable timeframe. Upon delivery of Products via email an invoice is sent to you via a separate email from Janison's finance team. This invoice is usually sent within 7 days of the Product being delivered.
- 9.3. When a Product is not available at the time of order, it will be supplied as soon as the Product has been released for publication. Please refer to the release date on each state/subject's Brochure/Order Form before placing your order.
- 9.4. A description of the rules relating to the various Products is as set out in Schedule 1.

10. CANCELLATIONS BY JANISON

- 10.1. Your order may be cancelled:
 - 10.1.1 where you are in breach of these Terms;
 - 10.1.2 where the relevant Product is not available or is no longer available; or
 - 10.1.3 there is an error in the price or description of the Product listed.
- 10.2. If your order is cancelled by us due to clause 10.1.2 or 10.1.3, we will notify you in writing, and a refund will be issued to you (if applicable).

11. CANCELLATIONS AND REFUNDS

- 11.1. A Registered School may request a refund or exchange for a Product by completing a Refund Request Form within 3 months of purchase provided that the order has not been dispatched as at the date of such request.
- 11.2. A Registered School may request a refund or exchange for a Product, by completing a Refund Request Form, in the event that the Registered School has reordered in error a Product they have already purchased in the current or previous calendar year/s resulting in the duplication of an order.
- 11.3. Janison will not provide a refund where you have changed your mind about the purchase or have erroneously purchased an electronic Exam Assessment Task or Non-Exam Assessment Task (which cannot practically be returned to us).
- 11.4. Janison may consider, in its absolute discretion, whether to grant a refund or exchange if it receives a Refund Request Form from a Registered School pursuant to clause 11.2.
- 11.5. If Janison is unable to deliver an Exam Assessment Task or Non-Exam Assessment Task by the release date advertised due to reasons within Janison's reasonable control, Janison will provide the Registered School with the Product as soon as practically possible. In the event that the delayed publication date is not practical for the Registered School to deliver the assessment, then Janison will provide a refund if the product has been paid for.
- 11.6. In the event that Janison must cancel the delivery of an Exam Assessment Task or Non-Exam Assessment Task, which cannot be made available at all, Janison will notify the school as soon as practically possible and provide an alternative option.

12. USE OF JANISON PRODUCTS

12.1. Registered Schools:

- 12.1.1 must ensure that their staff and Students use the Product in accordance with this Agreement and the 'Important Security of Resource Information' provided with each Exam Assessment Task and Non-Exam Assessment Task.
- 12.1.2 must ensure that only Students who meet the relevant Eligibility Criteria sit the Assessment (last two senior high school years for each participating state);
- 12.1.3 will arrange for Students undertaking Assessments to be supervised by a registered teacher or a member of staff nominated by the principal of the Registered School;
- 12.1.4 must ensure that the Product is only accessed through their teacher's email account or the Secondary QATs Website (NSW schools only) by the teacher/school staff who have ordered the Assessments and who are responsible for the delivery of QATs within the Registered School. The teacher/school staff will also be responsible for keeping the assessments secure. We reserve the right to refer fraudulent or abusive or illegal activity to the relevant authorities; and
- 12.1.5 ensure that all hardware and firewall restrictions do not prevent or limit access to the Product via email or the secondary QATs website in accordance with this Agreement.

12.2. Registered Schools must not:

- 12.2.1 place the content of any of the purchased QATs Products on any school network, student management system or social media site (such as Wikispaces, Facebook, Google Docs, Google Drive, Microsoft One Drive etc.) at any time. It should only be stored on a local device drive of the teacher who made the purchase. If the electronic file is misplaced, replacements can be requested but only for a period of up to three months from the date of purchase.
- 12.2.2 pass on the use of any QATs Products to private tutors, parents or any other groups outside of the purchasing Registered School.
- 12.2.3 interfere or disrupt any technological protection measures on the Secondary QATs Website (NSW schools only) or in the Product;
- 12.2.4 resell, reproduce, copy, or duplicate the Product in any way whatsoever.
- 12.2.5 disclose any username or password to any other person for access to the Secondary QATs Website (NSW schools only). If such disclosure has, or the Registered School believes that such disclosure may have, occurred (whether intentionally or accidentally), then the Registered School must immediately inform Janison. The Registered School must (and must procure that its staff) change School Passwords regularly.
- 12.2.6 sell, lend, borrow, or upload any of the Exam Assessment Tasks or Non-Exam Assessment Tasks without prior written authorisation from us.
- 12.2.7 distribute any of the Exam Assessment Tasks or Non-Exam Assessment Tasks to anyone other than the staff and students of the Registered School.

13. COMMUNICATION

- 13.1. All our communication with you, including where notice is provided in relation to these Terms, will be done through the contact details nominated by you upon registration.
- 13.2. Once a staff member of a Registered School places an order via gatsadmin@janison.com, Janison may communicate (e.g. by email) or otherwise contact the staff member and/or the Registered School from time to time in order to:
- 13.2.1 share information, products, offers, events and news about QATs and other Janison products and services;
 - 13.2.2 provide information relating to the Product purchased, and;
 - 13.2.3 invite the Registered School to participate in research, marketing and promotional activities undertaken by Janison for its QATs assessment products and other Janison products and services.
- 13.3. The Registered School may opt out of receiving promotional, marketing or similar communications from us at any time, by emailing us at gatsadmin@janison.com or by responding to the email with the heading 'unsubscribe'.

14. LIABILITY AND INDEMNITY

14.1. Disclaimer of Warranty

To the maximum extent permitted by law but subject to clause 14.3, Janison excludes all implied representations, warranties, terms and conditions of any kind whatsoever (whether implied by common law, statute or otherwise) and the application or availability of any statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees that the Products are of satisfactory quality or fit for their purpose).

14.2. Limitation of Liability

- 14.2.1 Subject to Clause 14.3, neither party will be liable to the other party under or in respect of this Agreement for any consequential, indirect or special damages, regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising.
 - 14.2.2 To the maximum extent permitted by law, Janison's total liability of any kind to a Registered School arising out of or related to this Agreement (including but not limited to warranty claims), regardless of the forum and regardless of whether any action or claim is based on contract, tort (including negligence or consequential loss), breach of statute or otherwise, will not exceed the total Price paid by the Registered School in respect of the Products in the immediately preceding 6-month period (determined as of the date of any final judgment in an action).
- 14.3. Nothing in this Contract is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of the Australian Consumer Law (**ACL**) in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (ACL), or the exercise of a right conferred by such a provision, in relation to a failure by us to comply with a guarantee that applies under the ACL.

15. CONFIDENTIALITY & PRIVACY

- 15.1. When you submit Personal Information to us, you warrant that you have authority to do so and agree to our privacy policy at janison.com/privacy-policy.
- 15.2. Janison may collect Personal Information from a Registered School for the purposes of:
- 15.2.1 delivering the Products to the Registered School; and
 - 15.2.2 generating reports, conducting research and analysis for the purpose of improving its Products. Each party will only collect, use and disclose Personal Information in accordance with the *Privacy Act* and *Australian Privacy Principles*, and must do all things requested in writing by the other party (acting reasonably) to enable the other party to comply with all requirements of the Privacy Act.
 - 15.2.3 sending email communications to you for marketing purposes, to notify you of new products being released, or offers relating to our products or services that you may be interested in. You may opt out of receiving marketing communications from us at any time using the unsubscribe facility in our emails to you.

16. INTELLECTUAL PROPERTY

- 16.1. Janison owns, or is entitled to the use of, all copyright and other Intellectual Property Rights in the online and printed versions of the Product.
- 16.2. You, your staff and students must not produce, transmit, communicate, distribute, license, sell, publish or otherwise use, any part of the Product without our permission. This material includes, but is not limited to, the design, layout, look, text, appearance and images in the Product.
- 16.3. It may be deemed necessary for security or compliance purposes, or for other reasons, to edit or change Exam Assessment Tasks and Non-Exam Assessment Tasks. Permission is granted to do this for internal school purposes. However, care should be taken to maintain the quality of the material in relation to its design and layout, including such elements as marking schemes, pagination, cross referencing and so on. You may insert your school logo/identification on pages of the Products purchased at your discretion. Janison assumes no responsibility for the integrity of the task once it is edited, adapted, or changed. If an assessment has been edited the QATs and Janison logo and other publishers' references should be removed, including the copyright footer published on each page.
- 16.4. Janison grants you a non-exclusive, royalty-free licence to reproduce, publish or communicate the Product to the extent necessary to conduct an Assessment only. This grant of licence does not include the right to sell, lend, or borrow the Product. You must not upload, post on a School's intranet, or distribute any of the tests or past papers (except for the sole purpose of conducting the tests). Staff and students are prohibited from taking photographs, photocopies, screen shots or otherwise copying the text or images of any test items (questions) that appear in the Exam Assessment Tasks and Non-Exam Assessment Tasks.
- 16.5. Unauthorised use of the Product or any materials in which intellectual property rights subsist may give rise to a claim for damages or criminal action.

17. TERMINATION

- 17.1. In the event that a Registered School fails to pay for the Products purchased by the due date, then Janison shall be entitled to terminate this agreement.
- 17.2. Termination of this Agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Agreement that existed at or before the date of termination.

18. RESTRICTING YOUR ACCESS

- 18.1. Janison may restrict your access to download QATS assessments if:
- 18.1.1 There is a breach of these Terms; or
 - 18.1.2 There is an emergency, and the site needs to be restricted as a response.

19. SURVIVAL OF TERMS

- 19.1. Even after the Contract is completed and we have delivered the Products, Clauses 14, 15, and 16 continue to apply.

20. MISCELLANEOUS

20.1. Governing Law

This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

20.2. Assignment

A Registered School may not assign, transfer, novate or otherwise dispose of any or any of its rights and/or obligations under this Agreement without prior written consent from Janison (which must not be unreasonably withheld).

20.3. Execution

This Agreement may be executed via an online process or by way of electronic signature or other method and may be executed in counterparts, all of which taken together constitute one document.

20.4. Force Majeure

- 20.4.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (Force Majeure Event).
- 20.4.2 If a Force Majeure Event Occurs that affects our obligations or performance, we will contact you as soon as reasonably possible to notify you of possible alternative assessment publication dates. A refund may be provided at the discretion of Janison.

20.5. Changes to Terms & Conditions

We reserve the right to update and change these Terms from time to time. The terms and conditions that apply to you will be the terms and conditions that you accept at the time of purchasing a Product.

SCHEDULE 1 –

Rules for use of Products

1. Storage

- 1.1 This resource is sold on condition that it is NOT placed on any school network, student management system, third-party assessment-sharing platform, or social media site (such as Wikispaces, Facebook, Google Docs, Google Drive, Microsoft One Drive etc.) at any time. It must only be stored on a local device drive of the teacher who made the purchase.

2. Not for Private Tutor Use

- 2.1 The assessments and resources supplied by Janison are for use in the purchasing school or institution only. Unlimited copies can be made in this circumstance and to meet the needs of the school in conducting the assessment, however, these Products are strictly **not** for use by private tutors.

3. Embargo

- 3.1 In order to protect the integrity of each state's assessment process, Embargoed Periods apply to some of the assessments. As stated on the website and Brochure/Order Form, specific assessments cannot be returned to students before the end of the term in which it was undertaken. You may indicate the results to students and/or dedicate class time to working through student responses but do not allow students to retain their work until the term has concluded. The dates for the end of the Embargoed period are listed on the website and Brochure/Order Forms.

We advise that you use a variety of assessment tasks from one year to the next to further enhance the integrity of your assessment program.

4. Disclaimer

- 4.1 QATs assessments are an initiative of Curriculum Australia. Every effort has been made to prepare QATs Exam Assessment Tasks and Non-Exam Assessment Tasks in accordance with each Australian state's educational authority's assessment requirements. No guarantee or warranty is made or implied that the tasks mirror in every respect the actual assessment requirements in any or all courses to be examined. These tasks do not constitute 'advice', nor can they be construed as authoritative interpretations of each state's curriculum intentions. No liability for any reliance, use or purpose related to the QATs assessments is taken. Advice on assessment issues is only to be obtained from each state's education authority. QATs do not accept any responsibility for accuracy of results once modified.

5. Product Availability and Technical Support

- 5.1 Janison will use all reasonable commercial endeavours to ensure that any online version of the Product provided via the Secondary QATs Website are available for use by a Registered School during the published release period.
- 5.2 Janison will use all reasonable commercial endeavours to ensure that Support Materials that are required to deliver the Exam Assessment Tasks and Non-Exam Assessment Tasks and other administrative instructions or protocols on how to use the Product, are available for use by a Registered School following their purchase of the selected QATs Products.
- 5.3 A Registered School may contact QATS Customer Service if they require any support during usual business hours.



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