

Terms and Conditions for NFER Tests (paper) Purchases

Modified on Wednesday 23 September

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Thank You for choosing to use NFER Tests as part of Your Establishment's assessment approach. We are committed to providing an excellent service and to handling Your data with the utmost care. We have outlined Our Terms and Conditions of use within this document and request that You read these carefully.

This document governs Your Agreement with the National Foundation for Educational Research (NFER) or its assignees, of The Mere, Upton Park, Slough, Berkshire, SL1 2DQ and sets forth the Terms and Conditions under which NFER provides the Products and/or Services to each participating Establishment (School).

These Terms and Conditions constitute a binding Agreement between NFER and the Establishment, constituted under English Law, on ordering NFER Tests and using the NFER Reporting Tool.

1 Services to be provided

1.1 NFER Tests including:

- Reading, mathematics or grammar and punctuation tests for years 3, 4 or 5 – autumn
- Reading, mathematics or grammar and punctuation tests for years 3, 4 or 5 – spring
- Reading, mathematics or grammar and punctuation tests for years 3, 4 or 5 – summer
- Reading and mathematics test for year 1 – spring
- Reading and mathematics test for year 1 – summer
- Reading and mathematics test for year 2 – autumn
- Reading and mathematics test for year 2 – spring
- Spelling tests for years 3, 4 and 5
- Reading, mathematics or grammar, punctuation, and spelling tests for year 6 – autumn
- Reading, mathematics or grammar, punctuation, and spelling tests for year 6 – spring
- Associated teacher guides for each of the Tests as described above.

1.2 NFER Reporting Tool:

Access details to the NFER Reporting Tool will be sent to Establishments following dispatch of their first order of NFER Tests. Establishments will set up an account with an Establishment Administrator who will then be able to add Learner and other authorised User details to the system. Through the NFER Reporting Tool, authorised Users can log in and record item or Test level data for each Learner. A number of reports can then be generated showing progress and attainment against the national standardisation sample for the benefit of the Establishment.

NFER, a registered charity, reserves the right to use the data held by the NFER Reporting Tool for the purposes of research for the public benefit and the improvement of the assessments and the Tool. If the Establishment does not wish for its data to be used in this way, please opt out as directed below. Insights from the research conducted using data extracted from the NFER Reporting Tool will be shared with the education community.

2 Orders

By placing an order, You accept NFER's Terms and Conditions as they apply to Your orders and will be subject to those in force at the time of Your order acceptance. However, Our Terms and Conditions are subject to change, please refer to clause 22 below for further details.

Orders are accepted at Our discretion. It is Your responsibility to ensure that all details provided are accurate. When placing Your order, You are accepting these Terms and Conditions. Please note, NFER Products and Services are not available to non-school customers.

NFER will issue an invoice (or receipt in case of pre-payment by card). This will be Our formal acceptance of Your order. After this time cancellations will not be accepted and the full invoice amount is payable.

Orders made by Establishments where payment for previous orders has not been made may be withheld until full payment of the debt is received.

3 Pricing

Pricing is available on the NFER website and prices are correct at the time of ordering; however We reserve the right to change prices without prior notice.

4 Payment

Unless otherwise stated within these Terms and Conditions, invoices must be paid within 30 days of the invoice date.

5 Postage and Packaging

Prices quoted **exclude** postage and packaging costs. These will vary according to Your location and size of Your order and will be added to the cost of Your order.

6 Orders for delivery outside the UK

When ordering Products from NFER for delivery outside the UK You may be subject to import duties and taxes, which are levied once the package reaches the specified destination. Any additional charges for customs clearance must be borne by You; We have no control over these charges and cannot predict what they may be. Customs policies vary widely from country to country, so You should contact Your local customs office for further information. Additionally, please note that when ordering from NFER, You are considered the importer of record and must comply with all laws and regulations of the country in which You are receiving the Products. Depending on the requirements of the receiving country, it may be necessary to provide a Certificate of Origin; the additional cost of this can be advised as this varies by country.

We would like Our customers ordering Products from the NFER for delivery outside the UK to be aware that cross-border deliveries may be subject to opening and inspection by customs authorities.

Payment for non-UK orders must be received before Products will be dispatched.

7 Returns

We are able to accept returns within 30 days of the original order date. If You wish to return items, these must be in the original untampered packaging. We are unable to accept returns that have been defaced or marked.

Please note that We are unable to accept returns, unless faulty, after this 30 day period. In addition, We will only give refunds for the value of the items ordered and not postage and packaging costs. Courier arrangement and costs will be the customer's responsibility.

8 Cancellations

In certain limited circumstances, cancellations may be permitted at the sole discretion of NFER.

9 Delivery

Tests will be dispatched within ten working days of acknowledgement of receipt of order for orders from the UK. Orders placed with NFER within ten working days of Christmas, Easter and Summer English school holidays will be delivered at the start of the following term, unless otherwise arranged between NFER and the Establishment. Tests will also not be dispatched during English school half term holidays. Holiday dates are available on NFER's website.

Orders from outside the UK will be dispatched from the NFER as above, but the delivery time to the non-UK destination is beyond NFER's control.

10 Copyright

All materials, technical design, content, images and information, know-how, methodologies, and other intellectual property used in providing the Tests, including but not limited to the software design and content of the Tests, NFER Reporting Tool, administration instructions and letters are all copyright NFER and cannot be reproduced or used for any purpose other than that permitted and/or licensed by a single purchase of that Product or Service.

11 Confidentiality

All NFER staff, both permanent and temporary, are required to agree to conditions of service that include requirements to maintain the confidentiality and security of all data. On joining, NFER staff are provided with Our Data Security Policy (available on request) and are directed towards the associated policies and procedures on the NFER intranet. All staff are required to sign and return a statement to HR confirming that they have read and will comply with them. They re-affirm this commitment annually following the update of the policy.

12 Security

All appropriate technical and organisational measures are in place to protect data. NFER is ISO/IEC 27001 certified which demonstrates that We have the policies, practices, procedures, organisational structures, and system functions to maintain the confidentiality, integrity, and availability of information. We also hold Cyber Essentials Plus. Current Certificate numbers can be provided on request. Data uploaded to the NFER Reporting Tool is encrypted at rest and in transit using HTTPS/TLS. Data in NFER products are securely stored within NFER and its hosting provider. We conduct an annual penetration test on Our IT systems to ensure that they are secure and protected from malicious attack.

The technical and organisational security arrangements of any third parties who process Personal Data on NFER's behalf are assessed to ensure they are appropriate.

13 Privacy

NFER takes the privacy and security of Your Establishment's data very seriously. Our approach to data protection is set out in the data protection statement on Our website. Privacy notices for the sale of NFER's educational resources and use of the NFER Reporting Tool are available.

Your agreement to these Terms and Conditions is Your explicit authorisation to the use of Personal Data in accordance with the relevant privacy notices in relation to Our Products and Services.

If at any time You wish to access, withdraw, restrict, or object to its processing, or correct errors in it, please see section 8 of the NFER Reporting Tool Privacy Notice.

If You have a concern about the way Personal Data is processed as part of any of these services, please see section 10 of the NFER Reporting Tool Privacy Notice.

13.1 Data processing and the use of the NFER Reporting Tool

13.1.1 NFER Acting as a Data Processor

The NFER Reporting Tool allows Establishments that have purchased NFER Tests to use the NFER Reporting Tool to collate Learner and Assessment data for the purpose of analysing test results and viewing reports.

Where Establishments use the NFER Reporting Tool for this purpose they are the Data Controller and are responsible for data uploaded to the Service.

13.1.1.1 Account creation

NFER uses, the name (forename and surname), role and email address of the member of staff receiving the delivery of paper-based tests ("**User Data**") to create and administer the initial Establishment User account for the NFER Reporting Tool.

The Establishment is responsible for the creation of any additional User accounts required, including the provision of relevant User Data. The Establishment can also suspend, delete, and modify User's accounts.

13.1.1.2 Establishment use of the NFER Reporting Tool

Any data uploaded to the NFER Reporting Tool is at the discretion of the Establishment.

The Establishment is responsible for adding Learner Data. "**Learner Data**" includes for each pupil, pupil name, date of birth, class, unique pupil number (UPN) and gender.

Establishments can choose how much additional Learner Data (for example, free-school meal status, any special education provision and ethnicity which shall be considered as Learner Data) they upload alongside Assessment outcomes. Some of the reporting built into

the Tool will not provide meaningful reports when this data is excluded. Establishments must have the appropriate permissions in place before uploading any sensitive data to the Reporting Tool in accordance with data protection legislation.

In anticipation of continued use of this Service by the Establishment, data will be stored securely to allow progress measures to be shown. If an Establishment's account is inactive for 24 months, it will be prompted to review any data uploaded to the Reporting Tool. If the Establishment no longer intends to use the Reporting Tool and informs NFER, its account will be deleted by NFER 45 days after this point in time. Retention of Learner personal data extracted from the Reporting Tool for research purposes is covered in section 7 of the NFER Reporting Tool Privacy Notice.

When an Establishment is the Data Controller and NFER the Data Processor, the following apply:

- NFER will only process Personal Data on a Establishment's instruction unless that use is subject to clause 13.1.2, or otherwise required by law to act without such instruction.
- All NFER's staff are subject to a duty of confidentiality (see section 11).
- NFER has taken appropriate measures to ensure the security of relevant personal data (see section 12).
- The Establishment provides NFER with a general authority to appoint sub-processors to process personal data on NFER's behalf. If NFER engages any new sub-processors, NFER will provide reasonable notice of the new sub-contractor prior to their appointment.
- All sub-processors have a written contract containing appropriate terms that are equivalent to the terms set out in this Agreement;
- NFER will provide the Establishment with reasonable assistance:
 - to respond to requests from data subjects to exercise their rights under applicable data protection legislation
 - to meet the Establishment's UK GDPR obligations in relation to the security of processing its personal data, the notification of personal data breaches and carrying out data protection impact assessments.
- NFER will make available, on request, to Establishments purchasing Assessments and using the NFER Reporting Tool any information that is necessary to demonstrate our compliance with the obligations in this Agreement. If a Establishment wants to conduct an audit or inspection, we are happy for this to happen provided (1) the Establishment gives NFER reasonable advance written notice, (2) such audit or inspection occurs on a normal business day during NFER's normal working hours and not more than once per 12 month period, and (3) any Establishment personnel or representatives participating are subject to an appropriate contractual duty of confidentiality. NFER will also inform you, when you are the Data Controller, of any instructions we receive in relation to NFER's processing of your personal data, which do not comply with data protection legislation.

13.1.2 NFER Acting as a Data Controller

13.1.2.1 Sales and marketing of NFER Tests

NFER is the Data Controller in relation to personal data exchanged in relation to the sales and marketing of the NFER Tests and the NFER Reporting Tool. Establishment contact details including contact names, email addresses and phone numbers provided by the Establishment will be held on a Spirit CRM and may be used to inform the Establishment about related NFER research projects, Products and Services for sales and marketing purposes.

For the avoidance of doubt, please note that Learner Data is not exchanged when purchasing NFER Assessments.

Further details are provided in the Privacy Notices for the sale of NFER Tests and NFER Online Assessments.

13.1.2.2 NFER Research and Assessment Improvement Purposes

NFER is the Data Controller in relation to its processing of User Data and Learner Data extracted from the NFER Reporting Tool to allow NFER to undertake its own research and assessment improvement purposes as described in the NFER Reporting Tool Privacy Notice.

Any User Data and Learner Data which is personal data will not be shared for the purpose of Establishment accountability or for commercial usage. It will never be sold.

If you wish to opt out of sharing personal data for NFER's research and assessment improvement purposes, you may opt out of future extractions by writing to NFER at: National Foundation for Educational Research, Research Operations, The Mere, Upton Park, Slough, Berkshire, SL1 2DQ.

If an individual, or the Establishment acting on their behalf, wishes to make a data subject access request, or to exercise an individual's rights under UK data protection legislation, see section 9 of the NFER Reporting Tool Privacy Notice for information about how to exercise those rights.

14 Licensing

Subject to the payment of the applicable NFER Tests invoice, NFER grants to the Establishment a non-exclusive and non-transferable licence to the NFER Reporting Tool in accordance with these Terms and Conditions. The licence is granted on an on-going basis and can be used by all Establishment employees, once registered as a User. The licence can be terminated at any point by the Establishment by contacting NFER. NFER can terminate the licence at any time by giving the Establishment 3 months' notice or with immediate notice if there has been a serious breach of the Terms of this Agreement.

15 Permitted use

The Establishment may use the NFER Reporting Tool only for its own internal purposes. The Establishment shall not use or permit a third party to use the web application or its content for any other purpose, including distribution or selling.

Any research reports shared with Establishments should be used in line with the Copyright terms set out [here](#).

16 Warranties

The NFER Reporting Tool cannot be tested in every possible combination and operating environment. The software may not operate in an uninterrupted manner on operating systems or browsers that do not meet the minimum technical requirement (Windows 8.1 and above, iOS11, IE11, Microsoft Edge and the latest versions of Google Chrome, Firefox, and Safari web browsers).

17 Products and Services purchased

All materials, technical information, know-how, methodologies, and other intellectual property used in providing the Products and Services purchased by you are all copyright NFER and cannot be reproduced or used for any purpose other than that permitted by a single purchase of that Product or Service.

See above for more specific copyright information. If you are in any doubt on the permitted use, please contact us: enquires@nfer.ac.uk

18 Website materials and publications

For usage of NFER copyright protected material (re-use, distribution, or publication etc.), written permission is required. You can apply for permission via the NFER enquiries team (details below).

Some visual media on the Reporting Tool are licensed from third parties; others are the property of NFER. Any visual media that is the property of NFER may be reproduced in certain instances, but not without prior written approval. If you wish to copy or use logos from this site, you must also contact us by email at enquiries@nfer.ac.uk, or in writing to: Enquiries, National Foundation for Educational Research, The Mere, Upton Park, Slough, Berkshire, SL1 2DQ

19 Force majeure

Where there is a delay or failure to deliver Products or Services, or where damage or defect has occurred to Products due to circumstances beyond our reasonable control, NFER shall not be liable. This condition does not affect your statutory rights.

20 Law

This Agreement is governed by English law. You hereby irrevocably submit to the exclusive jurisdiction of the English courts, notwithstanding the jurisdiction where you are based.

21 Limitation of Liability

Nothing in these Terms and Conditions affects any rights You may have under applicable consumer protection laws, including Your right to a refund where required by the Consumer Contracts Regulations.

If You cancel Your Agreement/contract with us, or if We fail to deliver the Products or Services within 30 days (or any other timescale we have agreed with You), Our liability for that failure will be limited to the amount paid for the relevant Products or Services.

Subject to the remainder of this clause, NFER's total liability to the Establishment, whether arising in contract, negligence or otherwise, shall not exceed the fees paid by the Establishment under this Agreement during the 12 months immediately before the event giving rise to the claim.

NFER will not be liable for any indirect or consequential losses, or for any loss of profit, revenue, business, goodwill, reputation or data.

To the extent permitted by law, all warranties, conditions and other terms implied by law in relation to the quality, satisfactory quality or fitness for purpose of the Products and Services are excluded.

The Establishment must not infringe any copyright, intellectual property rights or other legal rights belonging to NFER or any third party. The Establishment will indemnify NFER against all losses, liabilities, costs and expenses (including legal costs) incurred by NFER arising from any breach of this obligation. This indemnity is not subject to any limitation or exclusion of liability. Nothing in this Agreement excludes or limits either party's liability for:

- death or personal injury caused by negligence;
- fraud or fraudulent misrepresentation; or
- any liability that cannot legally be excluded or limited.

This clause will continue to apply after the Agreement has ended.

22 Changes to Terms and Conditions and website

NFER reserves the right to make changes to their Terms and Conditions and their website.

On first accessing the NFER Reporting Tool You will be presented with and asked to accept NFER's Terms and Conditions in force at the time.

NFER may need to change these Terms and Conditions to reflect changes in the law or best practice or introduce or supplement them with specific terms that apply to how We provide Our Products and Services.

Should the Terms and Conditions change after You have started using the NFER Reporting Tool, the current version of the Terms and Conditions will be available on Our website. Details of any changes will also be flagged within the Tool itself. If You do not wish to accept those changes, You can contact NFER at products@nfer.ac.uk

If, for any reason, any element of these Terms and Conditions is deemed invalid, void, or unenforceable, the validity and enforceability of any remaining condition shall not be affected.

23 Validity

By ordering this Product, You accept the Terms and Conditions. The Terms and Conditions are subject to change at any time and it is Your responsibility to check these Terms and Conditions before ordering. The current version of these Terms and Conditions will be available on Our website.

24 Definitions

The following definitions apply to the Products and Services referred to in this document:

“Agreement”: means these Terms and Conditions and Your acceptance of them by purchasing and using the NFER Products and Services .

“Assessment”: this refers to the sets of NFER Tests in paper format as detailed in clause 1.1 above

“Customer”: the Establishment meaning School or Multi Academy Trust (MAT).

“Customer/Establishment Account”: the Establishment account required to make a purchase of a NFER Product(s) or Services on the NFER Resources Shop.

“Data Protection Legislation”: refers the UK General Data Protection Regulation (UK GDPR), the UK Data Protection Act 2018 (UK DPA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any amending or replacement legislation from time to time to the extent that it relates to processing of Personal Data and privacy and all applicable law about the processing of Personal Data and privacy. All references to elements of this

legislation including but not limited to Personal Data, Data Processor, Data Controller, Data Subject, Data Subject Access Request, Privacy Notice shall all have meanings as defined in UK GDPR.

“Establishment”: this refers to either the School or MAT to which the NFER account will belong.

“Establishment Administrator”: a “User” with full access and permissions to the NFER Reporting Tool who can add, edit, and delete Establishment Administrators/ Teachers and Learners from within their Establishment Account. They can also upload Learner Data and Assessment results.

“Establishment Teacher”: a User with access to the NFER Reporting Tool who can upload Learner Data, Assessments results, and view the NFER Reporting Tool. They will not be able to add/amend/delete Establishment Administrators, Teachers or Learners.

“Learners”: this term refers to the Establishment’s pupils who will be undertaking (or currently are/have already undertaken) one or more Assessments.

“Learner Data”: see clause 13.1.1.2

“NFER Reporting Tool”: the online platform where Establishment Administrators and Teachers can manage their User account, including adding new and amending existing Users (Establishment Administrator only) uploading Learner Data and Assessment results, and viewing Assessment data and reports.

“Test”: an individual Test being a component of an Assessment e.g., maths, Mathematical Reasoning – Paper 2.

“User”: the member/s of staff registered within the Tool by the Establishment to administer their account

“We,” “Us,” “Our”, “NFER”: refers to The National Foundation for Educational Research (NFER) in England and Wales. Head office and registered address: The Mere, Upton Park, Slough, Berkshire, SL1 2DQ. Registered charity number 313392. Registered number 900899 (England and Wales). A company limited by guarantee.

“You” or “Your”: refers to the individual authorised to act and acting on behalf of their Establishment visiting Our website/NFER Resources Shop to buy Products from Us.