

SaaS License Terms – Consumer Valuation Tools

A summary of the key terms of the SaaS License Terms – Consumer Valuation Tools is set out below for convenience and is not to be taken to be binding on the parties – please ensure to read the Tender Terms in full:

1. We offer valuation tools relating to diamonds, jewellery, gemstones and precious metals via the Platform (Tools) which you may be granted access to, subject to your payment of any relevant fees.
2. You acknowledge and agree that any valuations or outputs from any of the Tools made available to you on the Platform are based on your inputs and based on information available at the time of the valuation. There may be fluctuations or changes to market conditions and as such you should apply an abundance of caution and monitor and review the situation utilising your own internal and external research and resources on a regular basis.
3. FABA does not accept responsibility or liability for losses arising from:
 - (a) changes in your diamond or jewellery value due to changes in market conditions or fluctuations;
 - (b) the accuracy and/or correctness of any inputs that you provide to FABA for the purposes of the Valuation (including any images provided or questionnaire responses);
 - (c) any errors, acts or omissions by you;
 - (d) the interpretation of any Valuation;
 - (e) any reliance, by you, on the Valuation including for insurance purposes; and
 - (f) any decisions made by you, based on any Valuation

1. General

- 1.1 By agreeing to these Terms, you, being the person or entity that registers with us and/or purchases goods/services from us (**you**) are entering into a binding legal agreement with Fine Art Bourse Australia Pty Ltd (ACN 168 030 331) of Level 7, 167 Macquarie Street, Sydney, NSW, 2000, Australia its successors, assignees and related bodies corporate (defined in the *Corporations Act 2001* (Cth)) (**FABA, we or us**) and agree to comply with any and all applicable laws and regulations, whether domestic or international.
- 1.2 We offer a software-as-a-service platform that allows access to a several different valuation tools relating to diamonds, jewellery, gemstones and precious metals as set out in clause 4 (**Platform**). Our provision of the Platform and any related tools and services are collectively referred to as the **Services**.
- 1.3 By accessing, purchasing, or otherwise using the Platform, including registering for our Services, you agree to be legally bound by these terms of use (**Terms**) from the date that you agree to these Terms and are granted access by FABA (**Commencement Date**). If you do not agree to these Terms, you must cease using the Services immediately.
- 1.4 You warrant and represent to FABA that you have read and understood these Terms and have the authority and legal capacity to enter into and be bound by these Terms. You agree to pay any fees specified by us for the use of and access to the Services.
- 1.5 Capitalised terms are defined throughout these Terms, including in the Schedule.
- 1.6 We reserve the right to audit your use of the Services and your compliance with these Terms.

1.7 Our **Privacy Policy (Privacy Policy)** is incorporated into these Terms. You agree to the terms of our Privacy Policy when accessing or using our Services. In the event of any inconsistency, these Terms will take precedence.

1.8 You agree to allow FABA to send you emails regarding the Services, including any information regarding or relating to our products, in accordance with our Privacy Policy.

2. Creating an account with us

2.1 To access and use the Services, you may be required to register for a user account and provide us with information such as your name, email address and billing details and you may be provided a unique access code, token, username and/or password (**Security Credentials**).

2.2 You must not release, share, distribute, publish or otherwise make public any Security Credentials provided to you in relation to the Services to any person or entity. You agree that you are solely responsible for maintaining the confidentiality of your Security Credentials.

2.3 When you register an account with us, please note that your Personal Information (as defined in our Privacy Policy) will be accessible by us in accordance with our **Privacy Policy**.

3. User Content

3.1 By providing or sending to us, uploading, publishing, transmitting or making available any data, content or other material to FABA including such information required to provide the Valuation (**User Content**), you agree to grant FABA, its affiliates, licensees and successors a non-exclusive, royalty-free, perpetual, irrevocable, worldwide and fully sub-licensable right to use, communicate, reproduce, modify, adapt, publish, publicly perform, translate, create derivative works from, distribute and display in any form, any such content, including but not limited to text, images, videos, graphics, audio and photographs without attribution, including for the purpose of completing any requests in relation to the Services and the Valuation.

3.2 By uploading, publishing, transmitting or making available any User Content to FABA, you warrant and represent to FABA that:

- (a) you hold all the intellectual property rights to the User Content and have the authority to upload or make available the User Content and licence the User Content to FABA;
- (b) as the User Content is not in any way developed or provided by FABA, FABA will not be responsible to check or verify any User Content nor assess it for suitability or accuracy for any purpose including for the Valuation Certificate and any use of or reliance by you upon anything contained in the User Content will be at your own risk;
- (c) to the extent that the User Content includes any Personal Information, you have obtained consent and authority from the relevant individuals to use and disclose any such Personal Information as contemplated in these Terms, and that use of the User Content will not put FABA in breach of the Privacy Act 1988 (Cth);
- (d) FABA's use of the User Content will not infringe or violate any third-party rights, including but not limited to defamation, intellectual property rights, moral rights and privacy rights and will not give rise to an obligation to make any payment to a third party;
- (e) any User Content you provide to us or within the Services is accurate, complete, not false or misleading;
- (f) the disclosure and use of the User Content to FABA will not cause harm to any other user or third party, or violate their rights including any patent, trade mark, trade secret, copyright or other intellectual property or proprietary right (such as User Content that contains copyrighted material without permission) or right to privacy;

- (g) the use by FABA of the User Content will not breach the security of FABA or its users by containing viruses, Trojan horses, worms or other harmful or disruptive scripts, code, programs or content;
 - (h) the disclosure and use of the User Content by FABA does not violate these Terms or other policies, or any applicable law, rule or regulation;
 - (i) the disclosure and use of the User Content by FABA will not bring FABA into disrepute; and
 - (j) the User Content does not contain, promote or enable illegal or unlawful activities.
- 3.3 You agree that FABA may, in its absolute discretion, limit your access to, or use of, the Services if, in its opinion, your use of the Services is excessive (being use outside of normal business use) or unreasonable or impacts on the usability or reliability of the Services for FABA or other users, or breaches these Terms.
- 3.4 FABA may require that you remove or delete any content uploaded onto the Services, or FABA may suspend your Valuation or your account for any reason in its sole discretion, including if FABA reasonably considers that such content or your account is in breach of these Terms.

4. Insurance Valuations

- 4.1 The Platform provides a software that provides a tool for users to procure a valuation certificate, which provides an automated valuation figure for diamonds and jewellery based solely on the information you provide to FABA (**Valuation/Valuation Certificate**). You acknowledge and agree that the Valuation is based solely on the information you have inputted to the Platform, and that we make no representations as to any other factors that may affect the Valuation.
- 4.2 In purchasing a Valuation, you acknowledge and agree that:
- (a) any Valuation produced by FABA is current as at the date of Valuation only and any use reliance on the Valuation after such date is at your own risk;
 - (b) Valuations are based on current market conditions and that there can be significant fluctuations and the value assessed may change significantly and unexpectedly over a relatively short period of time (including as a result of general market movements and factors specific to your particular diamonds and diamond jewellery);
 - (c) given clause 4.2(b), you should apply an abundance of caution and monitor and review the situation utilising your own internal and external research and resources on a regular basis, and FABA does not accept responsibility or liability for losses arising from such changes in your diamond or jewellery value; and
 - (d) you are solely responsible for the full disclosure of relevant information and undertake to provide all accurate and complete information and documents in your possession that may have an effect on Valuation to be provided.
- 4.3 You agree that you are solely liable for any and all liability, loss, expense or action in relation to:
- (a) the accuracy and/or correctness of any inputs that you provide to FABA for the purposes of the Valuation (including any images provided or questionnaire responses);
 - (b) the interpretation of any Valuation;
 - (c) any reliance, by you, on the Valuation including for insurance purposes; and
 - (d) any decisions made by you, based on any Valuation.

5. Valuation Orders and Fees

- 5.1 A Valuation request is accepted upon the latter of the following to occur (**Valuation Order**):

- (a) you have submitted all of the requisite information to FABA;
 - (b) you have paid the purchase price in full for the Valuation, including any taxes and duties; and
 - (c) we have issued a Valuation Order confirmation.
- 5.2 By placing a Valuation Order, you are making an offer to purchase the Valuation Certificate for the purchase price (including the delivery and other charges and taxes) specified at the time that you place your Valuation Order (**Valuation Fees**).
- 5.3 FABA reserves the right to:
- (a) accept or reject your Valuation Order or a part of your Valuation Order for any reason, including, without limitation, incorrect information provided, information provided that does not suit the requirements set by FABA to procure a Valuation, the unavailability of the Services, inaccuracies, errors or omissions in your data, where fraud is suspected, or where there is an error in your Valuation Order;
 - (b) request identification from you, including photo ID or any other such documentation for verification purposes before we process your Valuation Order;
 - (c) cancel a Valuation Order at any time, for any reason; or
 - (d) restrict the quantity of Valuation Certificates available for purchase to each person or address.
- 5.4 Where we exercise the rights above, we will notify you by email and provide a refund of the Valuation Fees where applicable and FABA shall not be liable for any loss or damage whatsoever arising from such acts.
- 5.5 In consideration of the Valuation Certificate provided under these Terms, you agree to pay us all Valuation Fees due according to these Terms and as notified to you by FABA.
- 5.6 You must provide any information required by us to process payments, including providing any business and taxation information and any relevant payment processing account details.
- ## 6. Pricing
- 6.1 The Valuation Fees are exclusive of all federal, state and other governmental taxes, goods and services tax and other such charges (**Taxes**). You are required to pay all Taxes at the same time as your payment of the Valuation Fees. Valuation Fees may change from time to time and are specified on the Platform.
- 6.2 Except as expressly set out under these Terms, or as required by law, the Valuation Fees paid or payable under these Terms are non-refundable irrespective of your use or non-use of the Services or Licence.
- 6.3 Payment may be made by the methods and to the accounts specified or approved by FABA in writing.
- 6.4 You must not pay or attempt to pay Valuation Fees through any fraudulent or unlawful means. If your payment is not able to be successfully processed, or if we, in our sole discretion, suspect that it has been paid for using any fraudulent or unlawful means, we may cancel the Valuation Order.
- 6.5 Please note that you cannot cancel or amend a Valuation Order once it has been placed (except as required by Australian Consumer Law).
- 6.6 FABA reserves the right, in its sole discretion, to offer free trials and other promotions of its Services.

7. Intellectual Property

7.1 In these Terms, unless the context otherwise requires:

FABA IP refers to all intellectual property rights in the Platform and Services, including but not limited to:

- (a) any information relating to the Services, including the Valuation and any algorithms or formulae for calculating the results generated from the Valuation, except to the extent that the data is already owned by its respective owner;
- (b) all text, graphics, user interfaces, photographs, trade marks (whether registered or common law trade marks), patents, designs, copyright, any corresponding property rights under the laws of any jurisdiction, logos and artwork, including but not limited to the design, structure, selection, coordination, expression, “look and feel” and arrangement of such content, contained on or in our Services;
- (c) any intellectual property rights in the Services, and Platform and any related software, interface and documentation;
- (d) all rights in respect of an invention, improvements, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, formula or work product; and
- (e) all software, code, documents, products and services developed wholly or partially by FABA.

7.2 For the avoidance of doubt, FABA IP does not include any data obtained from third party sources such as Google or uploaded to the Services by you.

7.3 FABA retains all title, rights in and ownership of the FABA IP and reserves all rights not expressly granted to you in these Terms. Unless explicitly stated herein, nothing in these Terms may be construed as conferring any licence to, or assignment of, any FABA IP, whether by estoppel, implication or otherwise.

7.4 No licence in any FABA trade marks or patents is granted under these Terms.

8. Use of Services

8.1 You agree that you will not, either alone or through any other party:

- (a) violate a security measure set up by FABA or violate a condition defined by FABA for the use of the Services;
- (b) make the Services available to a third party (whether wholly or partially);
- (c) alter or remove the copyright notices, trade marks or other proprietary rights or communications of FABA IP;
- (d) make any copies of any FABA IP;
- (e) distribute, sub-licence, disclose, market, or transfer the Services to any party, or permit any person or entity to have access to the Services by any sharing, remote computing or hosting services or time-sharing arrangement;
- (f) circumvent, disable or otherwise interfere with security-related features of the Services or features that determine whether you are acting in accordance with these Terms;
- (g) use the Services in a way which impairs the functionality or reliability of the Services;
- (h) remove, obscure, deface or alter any of FABA or any third party’s copyright notices, trade marks or other proprietary rights affixed to the Services or any FABA IP;
- (i) copy, decompile, modify, reverse engineer, disassemble, attempt to derive the source code of FABA IP or any of their components, except as expressly permitted by these Terms or in writing by FABA; or

- (j) in any form or by any means, adapt, reproduce, store, distribute, display, publish or create derivative works from any part of the Services or any FABA IP without FABA's express written permission.

9. Third Party Information and Services

- 9.1 The Services may access, or contain links to, websites or services controlled by third parties. FABA does not guarantee the availability, accuracy, completeness, reliability, or timeliness of such websites or services, nor its stock information, location data or any other data displayed or located thereon. You agree and acknowledge that FABA is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of third-party materials or websites. You agree that such actions are your responsibility.
- 9.2 You agree that FABA, its affiliates, agents, principals, contractors, or employees shall have no liability to you for content that may be found to be incorrect, offensive, indecent, objectionable or illegal either on the Services or any third-party website or software.

10. Warranties

- 10.1 You warrant and represent to FABA that you:
 - (a) have the legal capacity and authority to enter into these Terms;
 - (b) have the authority to act on behalf of any person or entity to whom the Services are provided; and
 - (c) are responsible to determine that the Services meet your needs and are suitable for the purposes for which they are used.
- 10.2 You agree that you will not and, will not permit any third party to:
 - (a) use the Services for any purpose other than for your own lawful purposes, in accordance with these Terms;
 - (b) alter, copy, modify or create any derivative works of the Services, the underlying source code, or any documentation in any way, including but not limited to, customisation, translation, or localisation;
 - (c) rent, lease, license, sublicense, encumber, sell, offer for sale, or otherwise transfer rights to the Services or documentation, including for timesharing;
 - (d) port, reverse compile, reverse assemble, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code in the Services;
 - (e) copy, distribute, link, frame, mirror or otherwise make available any portion of the Services to any third party, except where such copies or links are made available through FABA;
 - (f) remove or alter any logos, trade marks, links, copyright or other notices, legends or markings from the Services;
 - (g) upload or distribute any data that contains viruses, corrupted files, or any other similar software or programs that may damage the operation of the Services;
 - (h) use any programs, scripts, bots, or other automated technology to scrape or access the Services or hijack user accounts or log-in sessions;
 - (i) use the Services for benchmarking purposes or otherwise to analyse its workings and features for any competitive purposes or in a manner that imposes unusual demands on the service outside of normal functions and operations; or
 - (j) use the Services other than for their intended purpose.

11. Disclaimer and Limitation of Liability

- 11.1 The Australian Consumer Law contains warranties, guarantees, and conditions that cannot be excluded. These Terms do not purport to exclude, restrict, or modify the application of the ACL where to do so would contravene the ACL or cause any part of these Terms to be void.
- 11.2 Subject to the above, and except for warranties that cannot be excluded by law, FABA disclaims all representations and warranties with respect to the services, either express or implied, including but not limited to, warranties of merchantability, fitness for a particular purpose, reliability, accuracy, or achievement of results. You agree that your use of the Services is at your own risk, and that the Services are provided to you on an “as is” basis. FABA's express warranties in these Terms shall not be varied or increased and no obligation or liability shall arise out of FABA rendering technical or other advice or service in connection with the Services. It is your responsibility to ensure that the Services are appropriate for your proposed use.
- 11.3 As the Services may rely on third party data sources, we do not make any representations or warranties with regards to the content or availability of the Services or the content of such third-party data sources, including their accuracy, reliability, correctness, or genuineness.
- We will use reasonable endeavours to ensure that the Services are updated to function when third party data sources are updated or changed, however we make no representations as to the availability of any data source for the provision of the Services.
- 11.4 Nothing in these Terms will exclude or limit any liability (by you or another party, whether for breach of these Terms or otherwise) which cannot be excluded or limited by law. Neither party accepts, and each party excludes, any liability for loss of or damage to tangible property other than that caused by its gross negligence and hereby excludes any other liability for negligence arising pursuant to these Terms
- 11.5 You agree that, to the maximum extent permitted by law, in no event shall FABA, its affiliates, agents, principals, contractors or employees or any party acting on FABA's behalf, be liable for loss or damages (including, but not limited to direct or indirect, special, incidental or consequential damages), howsoever caused (including, but not limited to loss or corruption of data, loss of profit, failure to transmit or process data, system failures, business or service interruption, reliance on third party data or the Valuation or results generated by any Valuation), whether arising in contract, negligence, tort, equity or statute, in connection with, arising out of, or relating to, your use or inability to use the Services.
- 11.6 You agree that to the maximum extent permitted by law, any liability of FABA that cannot be excluded by law is limited, at FABA's option, to the re-supply of the Services or a refund of the total price actually paid by you to FABA for the Services for the six (6) months preceding the date on which the liability arose.

12. Release and indemnity

- 12.1 You agree to indemnify, hold harmless, release and discharge FABA, its affiliates, agents, principals, contractors and employees in respect of any claim, action, cost, charge, expense, penalty, fine, payment, loss or damage which FABA suffers, incurs or is liable for, whether directly or indirectly, including but not limited to any special, incidental or consequential damages and legal costs arising from or in connection with your act, omission fraud, wilful misconduct or negligence, your use or misuse of the Services, your breach of these Terms, or your breach of any third party agreement (including in relation to any third party agreements entered into on your behalf by FABA under these Terms).

13. Information Disclaimer

- 13.1 The Valuation, Valuation Certificate and any data, information, advice, and similar information generated from the Valuation or contained on the Platform or any other data obtained or generated from the Platform (**Information**) has been prepared by FABA for general

informational purposes only. You acknowledge that the Information has not been tailored for the use by any individual based on their particular situation and does not constitute professional advice.

- 13.2 We use best efforts to gather and share information from reputable and accredited sources. However, the Information is provided as general information only and is not meant to serve as a substitute for professional advice and as a result it may be incomplete or incorrect. FABA do not make any warranties or representations as to the accuracy or completeness of the Information.
- 13.3 The accuracy of the methodology used to develop the Valuation Certificate generated by the FABA Services and the accuracy of the predicted value are estimates based on available data and are not guaranteed or warranted. Any Valuation Certificate generated does not include a physical inspection of the diamonds by a licensed or certified diamond valuer. Any estimated amounts in the Valuation Certificate are not intended to replace a professional valuation through an appropriately qualified person (such as a valuer) as the Valuation Certificate is only generated against the information you have provided to FABA and does not take into account any other information. If you rely on the Valuation for any purpose, you do so entirely at your own risk.
- 13.4 The content we provide is for general information purposes only, and to the maximum extent permitted by law, FABA will not be liable for any claim, action, loss, damage, injury arising out of or in connection with the Information. The Information is provided as-is and FABA make no representation or warranties, either express or implied, including but not limited to, implied warranties of merchantability or fitness for a particular purpose.

14. Support

- 14.1 If you have any support enquiries, you may send through a support ticket via the Platform. We will use reasonable endeavours to provide acknowledgement of the support enquiry within five (5) business days.

15. Dispute Resolution

- 15.1 If there is a dispute between the parties, the parties agree to adhere to the dispute resolution procedure set out in this clause.
- 15.2 The complainant must advise the respondent in writing regarding the nature of the dispute, the desired outcome of the dispute, and the action the complainant believes will settle the dispute. The parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**) within 14 days of the respondent receiving the complainant's notice.
- 15.3 If the parties cannot agree on how to resolve the dispute at the Initial Meeting, either party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The parties must attend the mediation in good faith and seek to resolve the dispute.
- 15.4 Any attempts made by the parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the parties under these Terms, by law or in equity.
- 15.5 Except in relation to urgent, injunctive, or interlocutory proceedings, the parties agree that neither party may issue proceedings until they have acted in accordance with this clause.

16. General

- 16.1 **Amendment:** FABA may, in its sole discretion, modify these Terms or include new or additional terms regarding the use of the Services and FABA's associated software and services. Such modifications or additions are incorporated into these Terms and will be effective immediately upon notice to you. Your continued use of the Services will constitute your agreement to be

bound by the Terms, as amended. If you do not agree to the amended Terms, you may terminate these Terms by providing written notice to FAB A within 30 days of the date of notification of the change and any pre-paid unused portion of your Valuation Fees will be refunded.

- 16.2 **Assignment:** You may not assign, sell, lend, sub-licence or otherwise deal with or transfer your rights to access and use the Services to another party without prior written permission from FAB A.
- 16.3 **Benefit of Terms:** These Terms are made for the benefit of the parties only and are not intended for the benefit of any third party or to be enforceable by a third party. The rights of the parties to terminate, rescind, or agree to any amendment, waiver, variation, or settlement under or relating to these Terms are exclusive to each party and not subject to the consent of any third party.
- 16.4 **Entire Agreement:** These Terms (and all other terms and conditions and policies that are incorporated by these Terms) make up the entire agreement between the parties, and supersede all prior written and oral agreements, representations, undertakings and understandings. Where there is an inconsistency between these Terms and any additional terms, these Terms will prevail.
- 16.5 **Force Majeure:** You agree that FAB A will not be liable for any delay or failure to perform its obligations under these Terms if such delay is due to any circumstance beyond its reasonable control. If FAB A is delayed in performing its obligations due to such a circumstance for a period of at least one (1) month, FAB A may terminate these Terms by providing five (5) business days' notice in writing.
- 16.6 **Relationship of parties:** The parties are independent contractors and nothing in these Terms gives rise to any other relationship in partnership, joint venture, agency, employment or representative. Neither party shall have the right or power to create or assume any obligation or liability on behalf of the other party as a result of these Terms or any term, activity, right or obligation contemplated by these Terms.
- 16.7 **Set-off:** You shall not be entitled to set off against or deduct from any amounts owed to FAB A, any sums owed or claimed to be owed to you by FAB A, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.8 **Severability:** If, for any reason, a court of competent jurisdiction finds any portion of these Terms to be unenforceable or ineffective, then that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties. If any portion of these Terms are severed on the basis of unenforceability or ineffectiveness as set out in this clause 16.8, the remainder of the Terms shall continue in full force and effect.
- 16.9 **Waiver:** A waiver by a party of a provision or a right under these terms is binding on the party granting the waiver only if it is given in writing and is effective only in the specific instance and for the specific purpose for which it is given.
- 16.10 **Governing law and jurisdiction:** These Terms shall be governed by and will be construed in accordance with law of the State of New South Wales in Australia and without regard to conflict of law principles. The parties agree to submit without objection to the jurisdiction of the courts of New South Wales. The operation of the United Nations Convention on Contracts for the International Sale of Goods in respect of these Terms is expressly excluded in these Terms.