

STANDARD CONDITIONS OF CONTRACT

1. **PRELIMINARY**
Acenseo Ltd. (Acenseo) contracts subject to the terms and conditions set out below. No additions or modifications thereof shall form part of the contract unless accepted by ACENSEO in writing. These terms and conditions shall override and take the place of other terms and conditions in any document or other communication of/with the Customer used in concluding the contract with ACENSEO.
- In these conditions the Equipment means any equipment, machinery, parts, spares, software and any other goods supplied by ACENSEO.
2. **TIME**
(a) Any period or times stated for delivery or for compliance with any other contractual obligations of ACENSEO are estimates only and in any event ACENSEO accepts no responsibility for loss or damage resulting from delay or failure to notify the Customer of any such delay.
(b) Changes in specification or additional work or revised instructions relating to any aspect of the contract will entitle ACENSEO to vary any estimates of price and/or time for completion of the contract.
3. **PRICES**
Unless otherwise specified prices exclude VAT and are for delivery at ACENSEO's offices and are subject to ACENSEO's right to increase any price to take account of delivery charges, insurance costs, special handling charges (if any) and/or packaging charges (if any), agreed changes in the Specifications or changes in any taxes, duties or levies charged on or in relation to the Equipment or goods, materials or services used on or in relation to this contract and/or any extra costs or expense incurred by ACENSEO as a result of site conditions, delays, interruptions, lack of information, changes in exchange rates and/or without limitation any other factors beyond ACENSEO's control.
4. **DESPATCH AND DELIVERY**
(a) Unless otherwise agreed in writing delivery of the Equipment will be ex-works.
(b) Where despatch is delayed through the Customer's unwillingness or inability to arrange carriage or to make any payment due prior to despatch ACENSEO may effect delivery of the Equipment by giving written notice that it is ready for despatch.
(c) If the Equipment is stored by ACENSEO at the customer's request or after notice has been given that the Equipment is ready for despatch the Customer shall reimburse ACENSEO for all costs and expenses of storage (including any necessary transit costs and insurance).
5. **SHIPMENT**
(a) The Customer shall be responsible for inspecting the Equipment on arrival and shall notify ACENSEO immediately if there is any damage, discrepancy or shortage or within 7 days after receipt of notice of despatch in the event of non-arrival.
(b) The Customer specifically authorises ACENSEO to make any such contract of carriage and/or insurance on behalf of the Customer as ACENSEO considers necessary and ACENSEO will be under no obligation to notify the Customer thereof so as to enable the Customer to insure the Equipment during sea transit (if any). The Customer shall be responsible for complying with all conditions and requirements of the carrier.
6. **RETENTION OF TITLE**
(a) ACENSEO and the Customer expressly agree that until ACENSEO has been paid in full for the equipment comprised in this or any other sales contract between them and that all outstanding amounts due to ACENSEO from the Customer or any associated or subsidiary or holding company of the Customer or from any director or shareholder of the Customer or any other such company:-
(i) the equipment shall remain the property of ACENSEO and the Customer, as bailees of them for ACENSEO will store the same for ACENSEO in a proper manner without charge and in such a way that the equipment is clearly identified as being the property of ACENSEO, notwithstanding that the risk therein shall pass to the Customer as provided herein.
(ii) at any time ACENSEO may recover from the Customer the equipment remaining in the Customer's possession, and for the purpose thereof may enter upon any premises of or occupied by the Customer or any third party (with the consent of that third party).
(iii) the Customer has the right to dispose of the equipment in the course of its business for the account of ACENSEO and to pass good title to the equipment to their customers being bona fide purchasers for value without notice of ACENSEO's rights.
(iv) in the event of such disposition the Customer, and its Director (if a Limited Company) have the fiduciary duty to account to ACENSEO for the proceeds thereof but may retain therefrom an excess of such proceeds over the amount outstanding to ACENSEO under this or any other sales contract between them and for all outstanding amounts due to ACENSEO from the Customer or any associated or subsidiary or holding company of the Customer or from any director or shareholder of the Customer of any other such company.
(b) The risk in the Equipment shall pass to the Customer on despatch, thereafter the Customer shall be responsible for the satisfactory care and protection of the Equipment.
7. **PAYMENT**
(a) Unless otherwise agreed in writing the price must be paid in full within 14 days of order date.
(b) In no case shall any dispute concerning any item or separate part of the Equipment or work or any further contractual obligation of ACENSEO to the Customer affect the Customer's obligation in respect of payments for other parts if any part or instalment of the price is not paid when due, or work on the Equipment is held up for any reason attributable to the Customer, or the Customer incurs bankruptcy, insolvency, liquidation or the appointment of a Receiver, the full price of the Equipment less any sums already paid in respect of the Equipment and/or work done by ACENSEO shall immediately become due and payable by the Customer and ACENSEO may at its option cancel the contract or cancel or suspend despatch.
(c) Without prejudice to any other right of ACENSEO all overdue payments shall carry interest at the rate of two per cent per month on the amount or amounts for the time being outstanding.
(d) In the event that the Customer does not take delivery of the whole quantity of the goods which are subject of any contract to which these conditions apply on the date or within the time laid down by such contract then, without prejudice to any other remedy available to ACENSEO any discount or other allowance in respect of quantities of goods ordered which is or would be otherwise allowed to the Customer shall be recalculated to the level of goods or services actually accepted by the Customer.
8. **WARRANTIES**
(a) Equipment supplied by ACENSEO is supplied with the benefit of any warranties provided by the producer, and where no such warranty applies, ACENSEO warrants to the Customer only that the Equipment shall be free of defects in workmanship and materials for the period of 12 months after delivery to the Customer.
(b) If such a defect arises within the warranty period in respect of the Equipment or one or more of its component parts ACENSEO will at its option, either repair or replace the defective Equipment or component provided that:-
(i) ACENSEO is notified of the defect within 14 days of the time the Customer becomes, or ought reasonably to have become aware of the defect, and in any event within the warranty period; and, (where ACENSEO elects to investigate the defect at its repair facility, as opposed to an on-site investigation),
(ii) the Customer obtains appropriate authorisation from ACENSEO for the return of the relevant equipment, which ACENSEO will issue if its technical support department has been unable to correct the defect within 7 days of ACENSEO receiving notification;
(iii) the risks and any cost of de-installation and transportation of the defective equipment to ACENSEO's repair facility shall be borne by the Customer, and any cost of return transportation and re-installation shall be borne by ACENSEO. If ACENSEO reasonably determines that the equipment is not defective the customer shall reimburse ACENSEO for any costs of transportation or re-installation.
(c) Software supplied by ACENSEO is either the Equipment producer's own software, or third party software. ACENSEO does not warrant any software, and the only warranties which attach to it are those given by the producer of the software.
(d) ACENSEO accepts no liability for any failure of the equipment or software, or for any defect, fault malfunction or unfitness for use, associated with the processing of dates prior to, during or after the Year 2000. Where the customer requires confirmation that equipment or software is capable of correctly processing such dates, ACENSEO shall give all commercially reasonable assistance to the customer to obtain satisfactory confirmation from the equipment producer or software proprietor, as the case may be.
(e) Disputes in quality or dimensions of any one delivery shall not be a ground for cancellation of the outstanding part of the order, agreement or contract.
(f) The warranty given by ACENSEO above shall not apply if:-
(i) the repair or replacement of a part or parts is required because of accident, neglect or misuse of the Equipment by the Customer or interference with the Equipment by persons other than ACENSEO's engineers, or
- (ii) there are used in the Equipment supplies from sources which have not been authorised by ACENSEO.
9. **PERFORMANCE DATA**
Any performance figures quoted or referred to in any specification or other document used in concluding a contract, are estimates only, based on assumed conditions in a well managed office with experienced, adequate and efficient operators and efficient services, and proper use of satisfactory materials.
10. **SPECIFICATION**
ACENSEO reserves the right on the sale of any Equipment to make before delivery any alteration to or departure from the specification or design of the Equipment details overlaid provided that it shall not to a material extent adversely affect the performance of the Equipment or the quality of the workmanship or the materials used. All specifications, drawings and technical documents issued by ACENSEO either before or after conclusion of the contract are issued solely for the Customer's use in connection with the Equipment and shall not be copied reproduced or communicated to any third party without express consent in writing.
11. **TELECOMMUNICATIONS EQUIPMENT**
When the Equipment supplied by ACENSEO is to be used in conjunction with British Telecom lines or apparatus then the following additional conditions shall apply:-
(i) British Telecom shall have the right to require modifications to be carried out to Equipment that is already installed and in use. Any modifications required will be carried out at the Customer's expense.
(ii) in no event shall ACENSEO be liable for damage, loss or injury to British Telecom equipment or personnel in conjunction with or arising out of the Customer's actions or omissions.
12. **FORCE MAJEURE AND FRUSTRATION**
ACENSEO shall:-
(i) in any event not be liable for loss or damage, and
(ii) be entitled to cancel or rescind the contract,
If the performance of its obligations under the contract is in any way hindered or prevented by any cause whatsoever, beyond its control including but not limited to the delays or defaults of suppliers or the default of any sub-contractor, war, strike, lock-out, trade dispute, flood, accident to plant or machinery, shortage of materials or labour.
13. **CANCELLATION**
No contract or order may be cancelled without ACENSEO's written consent. In the event that cancellation is agreed for whatever reason the Customer shall indemnify ACENSEO against all costs, claims, loss and expenses occasioned thereby including any consequential loss and loss of profits.
14. **EXCLUSIONS AND LIMITATIONS**
14.1 ACENSEO shall not be liable to the customer in connection with or arising out of the subject matter of these conditions, except to the extent that the loss or damage results from misrepresentation, the negligence of, or breach of contract or other default by ACENSEO, its agents or contractors, in which case such liability shall be subject to the exclusions and limitations expressed in these conditions.
14.2 ACENSEO does not, and nothing stated in this Clause 14 shall be construed or be deemed as operating to exclude or restrict its liability in damages or otherwise.
14.2.1 for death or personal injury to the extent that such liability results from the negligence of ACENSEO or its employees, agents or contractors, or
14.2.2 for breach of the obligations arising from Section 12 of the Sale of Goods Act 1979 (as amended from time to time);
14.2.3 under the Consumer Protection Act 1987, but to the extent only that ACENSEO is prohibited by any law from seeking to restrict or exclude its liability thereunder.
14.3 ACENSEO's liability for any loss or damage which shall include without limitation costs and expenses related to any claim, however caused, in connection with or arising out of the subject matter of these conditions, will:-
14.3.1 in the case of direct physical damage to any tangible property (other than the Equipment) to the extent it results from the negligence of ACENSEO, or of its employees, agents or contractors, be limited in respect of any one claim or series of claims arising out of the same event or circumstances, to £1m.
14.3.2 in the case of any other claim or series of claims arising out of the same event or circumstances be limited to the amount of the price payable by the Customer pursuant to the Contract governed by these conditions (excluding VAT thereon).
14.4 Notwithstanding Clause 14.3 above, ACENSEO shall not be liable to the customer or to any other person for:-
14.4.1 loss of use, operating time, contracts, business, profits, goodwill, revenue, anticipated savings or any other like economic loss, however caused;
14.4.2 any indirect or consequential loss or damage however caused;
14.4.3 any loss or damage to any intangible property (including but not limited to loss of programmes or data) or for any inconvenience caused to the customer, however caused.
14.4.4 any claim, unless made with reasonable details in writing to ACENSEO no later than 2 months (or such longer period as may be reasonable in the circumstances) after the date the claimable event first comes or ought reasonably to have come to the notice of the customer, its employees, agents or contractors.
14.5 The term "however caused" shall mean arising by reason of breach of contract, misrepresentation, negligence or other tort, breach of statutory duty or other wrongful act, omission (whether deliberate or not) or otherwise, however fundamental the result.
14.6 Notwithstanding any other provisions herein, all exclusions and limitations of liability contained in these Conditions shall apply to all liabilities of ACENSEO under or in connection with or in relation to the subject matter of these conditions and regardless of whether or not the loss or damage was foreseeable, and of whether the Customer notifies ACENSEO of the possibility of any greater loss or damage, and shall apply only so far as is permitted by law.
14.7 The customer agrees to indemnify ACENSEO at all times hereafter against all claims, demands, costs and expenses in excess of the liability expressly accepted by ACENSEO hereunder.
14.8 No representation of fact, oral or written, including but not limited to statements regarding the capacity, suitability for use or performance of the Equipment, whether made by ACENSEO, its employees or otherwise shall be deemed to be a warranty by ACENSEO for any purpose, or give rise to any liability of ACENSEO whatsoever, unless made by ACENSEO in writing.
14.9 Save as set out in these conditions, all other express or implied terms, conditions and warranties (whether statutory or otherwise) including without limitation, terms as to satisfactory quality, year 2000 compliance, and fitness for purpose are hereby excluded to the fullest extent permitted by law.
14.10 Where any valid claim in respect of any of the Equipment which is based on any defect in the quality or condition of the Equipment or its failure to meet specification is notified to ACENSEO in accordance with these conditions, ACENSEO shall be entitled to repair or replace the equipment (or the part in question) free of charge or at ACENSEO's sole discretion, refund the customer the price of the equipment (or a proportionate part of the price) but ACENSEO shall have no further liability to the customer.
14.11 The customer acknowledges that it has had the opportunity to negotiate different terms of these conditions.
15. **DATA PROTECTION ACT**
15.1 Personal Data (as defined in the Data Protection Act 1984, or any amendment or re-enactment thereof) in respect of a Customer which is obtained in the course of any Contract to which these Terms and Conditions relate, will be held on ACENSEO's computer system, and may be used by ACENSEO for the purposes of assessing the level of credit which should be extended to the Customer. The information may also be used for the future marketing of related products and services, unless the subject of the Personal Data gives ACENSEO notice in writing to the contrary.
15.2 Personal Data will be used only for the purposes stated, and information held will not be disclosed to any third party save where permitted by law, or to protect against fraud, or after obtaining the Customer's consent.
15.3 These uses of Personal Data are covered by ACENSEO's registration under the Data Protection Act, and a Customer may obtain copies of the Personal Data held by ACENSEO upon payment of the prescribed fee.
16. **LAW**
This contract shall be subject to and construed in accordance with the laws of England in any respects as an English contract subject to the jurisdiction of the English Courts. The uniform laws of international sales shall not apply.

Signed: _____

Name: _____

Title: _____

Date: _____