ACAPS Ltd - Terms and Conditions of Business

Interpretation

“Agreement” the agreement made between ACAPS Ltd and the Customer as set out in the order incorporating the Terms and Conditions

“Company: ACAPS Limited whose registered office is situate at Easthope Coppice, Bridgebank, Ironbridge, Shropshire. TF8 7JT

“Customer” “ and or “Client”: the person(s) firm or company who purchases the Specified Goods and Services from ACAPS Ltd

“Installation” the Installation of the Specified Goods and/or other refurbishment carried out ACAPS Ltd in accordance with the Order

“Order”, “Purchase Order”, “Confirmation”, “Confirmation email”, “Verbal go ahead”, the duly accepted offer made by the Customer or client for ACAPS Ltd to supply the Specified Goods and Services subject to the matters contained within the Quotation and subject to these Terms and Conditions.

“Order Confirmations” the confirmation that the Customer accepts the Quotation with the Order Confirmation Number endorsed thereon

“Order Confirmation Number” the number endorsed on the Order Confirmation and the Order

“Planning Services” advice and implementation thereon in relation to planning matters to include the completion of applications for planning permission and building regulations consent

“Price” the price set out in the Quotation and Order Confirmation

“Quotation” will mean the quotation for the provision of the Specified Goods and Services which accompanies these Terms and Conditions

“Specified Goods” “Goods” the goods supplied by ACAPS Ltd as specified in the Order

“Specified Goods and Services “: the goods and services specified in the Order

“Special Conditions” any special conditions as set out in the Order

“Terms and Conditions” the terms and conditions set out below

These Terms and Conditions are the only basis on which ACAPS Ltd undertakes business and constitute the entire Agreement between the parties. For the avoidance of any doubt no terms or conditions which the Customer purports to apply under any purchase order, specification or similar document will form part of the Agreement. Where there is conflict between matters contained in the Quotation and the Order Confirmation, the Order Confirmation will take precedence.
1. Orders
Quotations comprise an invitation to treat only and shall be valid for 30 days from the date of the Quotation. ACAPS Ltd will formally accept all Orders by the issue of an Order Confirmation Number order confirming by email. An Order Confirmation Number will only be issued following receipt of an order together with the requisite deposit or payment on account as set out in the Quotation.
If for whatever reason the Customer issues no formal Order Confirmation Number or Verbal instruction has been given, the Customer in accepting delivery and Installation of the Specified Goods and Services shall be bound by these Terms and Conditions. Once the Order Confirmation has been issued by Purchase order in a rare cases verbally in instances of emergency works by the Company to ACAPS Ltd. it may only be cancelled or the Installation date deferred with the written agreement of the Company signed by a director and on the condition that the Customer indemnifies the ACAPS Ltd. for all costs incurred as a result of the cancellation or deferment including labour, materials, professional fees, travel, time, fuel and any other charges and expenses. These terms and conditions exclude any other terms and conditions inconsistent therewith which a Customer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms or conditions inconsistent with them or may be contained in any offer acceptance or counter offer made by the Customer.

2. Installation
2.1 The Specified Goods and Services shall be installed by ACAPS Ltd at the address specified in the Order Confirmation unless otherwise agreed in writing.
2.2 Any date specified by the Customer in the Order Confirmation for the Installation of the Specified Goods and Services is approximate only. This date shall not be made of the essence by virtue of this confirmation. Where no dates are specified, Installation will be within a reasonable time. Subject to the other provisions of these Terms and Conditions the Company will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery or in the actual Installation of the Specified Goods, nor will delay in Installation entitle the Customer to terminate or rescind the Agreement. Any liability of the Company for non-delivery of the Specified Goods and Services shall be limited to refunding the deposit.
2.3 The Customer must ensure that the Installation site is easily accessible. In addition that the Installation site is sound, level and free from any obstructions or dangers. ACAPS Ltd shall use all reasonable endeavours not to cause damage to the Customer’s property. If damage occurs ACAPS Ltd will after reasonable discussion and upon both parties in agreement correct and repair damage occurred within a reasonable time scale. No costs for damages repaired by a third party will be paid to the customer / client / third parties without prior consent in writing from ACAPS Ltd. ACAPS Ltd will ensure that during the course of the Installation, it will comply with all relevant health and safety legislation as it applies to the Installation. The Customer will remain liable to comply with all relevant health and safety regulations as may be applicable to areas of that than in which the Installation is taking place. The Customer shall also ensure that (so far as is practicable) is shall prevent any person (other than the employees, servants or agents of the Company) from having access to the place where the Installation is taking place. Where it is not practicable to prevent any person from having access to the place where the Installation is taking place, the Customer shall ensure that proper notice of the Installation is given to any such person and that they are advised to take proper note of any of the health and safety procedures employed by ACAPS Ltd and the Customer during the course of the Installation.
2.4 If in the reasonable opinion of ACAPS Ltd the Installation / Works site does not comply with any of the requirements set out in Clause 2.3 ACAPS Ltd may in its absolute discretion either defer Installation until such time as the Customer has resolved the matter to the Company’s reasonable satisfaction or the Company may cancel the Agreement by seven days written notice. The Customer shall pay to the Company a deferral payment of £300 + VAT per day per person together with any additional costs incurred due to any such deferment. Where the Agreement is cancelled pursuant to this Clause the Customer’s deposit will be forfeited in its entirety. Where the Customer has not paid a deposit upon cancellation of the Agreement in accordance with this clause 2.4 the Customer shall be liable for all costs, which ACAPS Ltd incurs as a result of such cancellation to include all consequential losses that arise without limitation.
2.5 On completion of the Installation ACAPS Ltd will issue a final completion certificate confirming that the Specified Goods and Services have been installed to the Customer’s satisfaction.
2.6 ACAPS will use its reasonable endeavours to remove all rubbish and waste from the site (which has come into existence as a result of the Installation) and to dispose of the same in accordance with any applicable statutory obligations concerning the disposal of waste which might be applicable from time to time.
3. Warranty and Indemnity
3.1 ACAPS Ltd the Specific Goods and Services supplied for a period of three months unless otherwise specified from the date of the issue of the (final completion certificate if applicable) to the Customer pursuant to clause 2.5.
3.2 Where ACAPS Ltd supplies Goods, which have the benefit of a manufacturer guarantee the Customer shall have the benefit of such guarantee subject to the terms and conditions of any such guarantee by the manufacturer but not including any labour.
3.3 ACAPS Ltd warrants that upon Installation the Specified Goods and Services shall be free from any significant defect in other materials or workmanship.
3.4 ACAPS Ltd also warrants that it will employ reasonable care and skill in the supply and Installation of the Specified Goods and Services.
3.5 If the Specified Goods and Services does not conform to these warranties ACAPS will take such steps as it deems necessary where practically reasonable to bring the Specified Goods and Services into a condition where they are free from such defects.
3.6 ACAPS Ltd shall not be liable for a breach of the warranty set out above caused by any settlement, subsidence or out of ACAPS control of the Installation or works.
3.7 Any repaid or replaced goods will be guaranteed on these terms for the unexpired portion of the three-month period.
3.8 All warranties, conditions and other terms implied by statute or Common Law (save for conditions implied by Section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law, excluded from the Agreement.
4. Alteration in Specification
4.1 If any information supplied by or on behalf of the Customer is insufficient, incorrect, inaccurate or misleading or if the Customer notifies the ACAPS of any change of requirements in relation to any Order after acceptance thereof by the ACAPS, ACAPS shall be entitled to amend the Price, the terms of payment and the delivery date or delivery schedule as in the circumstances ACAPS shall consider fair and reasonable. ACAPS shall as soon as practicable notify the Customer in writing of such amendments. In particular all wasted journeys undertaken by ACAPS as a consequence of such information or notification shall be charged to the Customer at net cost of labour and transport.
4.2 Any variation or amendment requested by the Customer will only be valid and binding on ACAPS when subject to a variation order relating to the Order Confirmation duly placed upon and accepted in writing signed by a duly authorised representative and subject to appropriate adjustment in Price delivery dates and other matters.
5. Planning – Building control
5.1 Save where as part of the Services ACAPS Ltd is providing Planning Services to the Customer, The Customer shall ensure that the Installation of the Specified Goods and Services does not contravene any planning or other regulation or legislation and ACAPS Ltd accepts no responsibility for the failure of the Customer to comply with such regulations or legislation and the Customer shall indemnify ACAPS Ltd in respect of any failure to do so.
5.2 The Customer shall ensure that it applies for and obtains the consent of the landlord, owner, freeholder and or building control of the premises in which the Installation is to take place prior to the Installation work being undertaken.
6. Properties and Risk
The risk in the Specified Goods shall pass to the Customer upon delivery of the Specified Goods to the Customers premises and responsibility for effecting and maintaining insurance cover passes to the Customer at that time. Title in the Specified Goods shall not pass to the Customer until ACAPS Ltd has received payment in full (whether in cash or cleared funds) of all sums due to it in respect of the Specified Goods and Services.
7. Price and Payment Terms
7.1 The Price for the provision of the Specified Goods and Services shall be set out in the Order Confirmation. The Price shall be exclusive of any value added tax or any other applicable tax which the Customer shall pay in addition.
7.2 Subject to other provisions in these Terms and Conditions any deposit set out in the Quotation and Order Confirmation is payable on ordering the Specified Goods and Services from the Company. The balance of the Price is payable within 30 days of the date of ACAPS’s invoice for the provision of the Goods and Services (“Due Date”). Time for payment shall be of the essence.
7.3 Where the Installation is expected to take a period in excess of one-month ACAPS reserves the right to render interim invoices on a monthly basis until such time as the Installation comes to an end and the final installation certificate is issued. Should any such interim invoice remain unpaid for a period in excess of 30 days from the date of such interim invoice, ACAPS reserves the right to forthwith cease all work on the Installation and to remove all Goods from the Customers premises until such time as payment is made in full against any invoice so outstanding. ACAPS will not be liable for any losses which the Customer may incur as a result of ceasing the Installation in accordance with this clause 7.3
7.4 The Customer shall make the full payment due without any deduction whether by way of retention or set-off, counterclaim or otherwise and no payment shall be deemed to have been received until ACAPS Ltd has received cleared funds.

8. Failure to Make Payment
8.1 If the Customer fails to pay the full payment on the Due Date then without prejudice to its other rights and remedies ACAPS Ltd may charge interest both before and after judgement on the amount unpaid at the rate of 5% per annum above the Bank Plc base lending rate from time to time compounded monthly until payment is made in full with a part of a month being treated as a full month for the purposes of calculating interest. Notwithstanding this provision, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. And or ACAPS Ltd reserve the right to charge interest and reasonable debt recovery costs on overdue sums as per the Late Payment of Commercial Debts (Interest) Act 1998 and amendments of 7 August 2002.
8.2 Notwithstanding the above, if full payment has not been made on the Due Date, the Agreement may be terminated forthwith by ACAPS Ltd serving not less than 48 hours written notice to the Customer, whereupon ACAPS shall be entitled to remove the Specified Goods and Services and for such purpose ACAPS shall have an irrevocable licence or authority to enter upon the Installation site with such transport as may be necessary to recover the Specified Goods. The Customer shall render all reasonable assistance to ACAPS Ltd to enable the Customer to disconnect any supply and dismantle and remove the Specified Goods and Services from the site.
8.3 In the circumstances set out in clause 8.2 the Customer shall be liable for a removal charge of £600 plus VAT per day per engineer together with the cost of administration for Engineers for disconnection, making safe and removal. ACAPS Ltd. Are not responsible for or liable to any counter claims for any alterations, changes i.e. holes to the property once items have been removed.

9. Enforceability and Severability
Any provision of these Terms and Conditions which is held to be illegal, invalid, unenforceable or unreasonable by law whether in whole or part shall to the extent necessary be deemed severable and the other provisions of these Terms and Conditions shall remain unaffected.

10. Amendment
These Terms and Conditions shall not be amended, modified or varied except in writing signed by a director of ACAPS Ltd.

11. Assignment
ACAPS Ltd may assign or sub-contract such part, parts or the whole of the Order as it is, in its absolute discretion, as Acaps sees fit.

12. Damages
Save as described in these Terms and Conditions ACAPS Ltd shall not be liable to the Customer for any loss or damage whether direct or indirect and howsoever caused. In any event ACAPS Ltd liability to the Customer in respect of the non-performance of any of ACAPS Ltd obligations shall be limited to the 5% (ten percent) of the Price net of VAT.

13. Force Majeure
ACAPS Ltd shall not be liable to the Customer or deemed to be in breach of these Terms and Conditions because of any delay or failure to perform any of ACAPS obligations if the delay or failure was due to any cause beyond ACAPS control. Provided that if the event in question continues for a continuous period in excess of 30 days either party may terminate the Agreement by giving written notice to the other party to terminate the Agreement.

14. Termination
If the Customer shall go into liquidation whether compulsory or voluntary (except for the purposes of a bona fide reconstruction or amalgamation) or if a petition shall be presented or an order made for an administrator or if a receiver, administrative receiver or manager shall be appointed over any part of the assets or undertaking of the Customer or the Customer being an individual shall become bankrupt or make any arrangement with its creditors, then ACAPS Ltd shall be entitled to immediately recover from the Customer all sums then due and all losses arising to ACAPS Ltd as a result of such circumstances arising, and shall be entitled to give written notice to the Customer to terminate the Agreement.

15. Notices
Any notices to be given shall be in writing and be deemed to be given if left at the last known address of the Company or the Customer as the case may be or sent to the same by first class post or facsimile and shall be deemed to have been received two working days after despatch if sent by post or on receipt of a transmission in legible form if by facsimile or on delivery if by hand.

16. Waiver
No failure or delay on the part of ACAPS Ltd to exercise any right or remedy under these Terms and Conditions shall be construed or operate as a waiver thereof. The rights and remedies provided are cumulative and are not exclusive to any rights or remedies provided by law.

17. Governing Law
Any claim or dispute arising out of these Terms and Conditions shall be governed by the laws of England and Wales and the parties submit to the jurisdiction of a High Court of Justice.

Sincerely,

Acaps Ltd.