

Actenzo Terms and Conditions of use

V1.2 (last updated 27-12-2021)

Introduction

This website and online application (hereafter referred to as the “Service”) are owned and operated by Actenzo BV, a Dutch registered company at the Dutch Chamber of Commerce with number 84818271 located at Cargadoorskade 16, 3071 AW Rotterdam, the Netherlands, acting under the trading name Actenzo (hereafter referred to as “Actenzo”, “we” or “us”), in accordance with these Terms and Conditions of Use (“Terms of Use”).

These Terms of Use govern your use of the Service. By accessing or using the Service, you accept these Terms of Use in full and without reservation.

We recommend that you read these Terms of Use, furthermore, Actenzo may change these Terms of Use at any time by updating this webpage of which we will inform you via e-mail. Please review the Terms of Use regularly to ensure you are aware of any changes. Your continued access to and/or use of the Service after changes have been made to these Terms of Use indicates your agreement to be legally bound by the updated and/or amended Terms of Use.

IF YOU DO NOT AGREE TO THESE TERMS OF USE AND/OR THE PRIVACY POLICY OR OTHER POLICIES, GUIDELINES OR INSTRUCTIONS POSTED ON THE SERVICE, DO NOT USE THE SERVICE.

Use of the Service

1. In order to use the Service, you are required to establish a user account (an “Account”) for the Service. If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures giving access to your Account, you must treat such information as confidential, and you must not disclose it to any third party. User accounts are strictly personal and individual: it is not allowed to share a user account with other individuals. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our opinion you have failed to comply with any of the provisions of these Terms of Use.
2. Subscription to the Service is only possible on behalf of a business, and you represent to Actenzo that you have the authority to bind that business and that your acceptance of this Agreement will be treated as acceptance by that business. The name or logo of your business may be used by Actenzo on its website and other promotional material as a customer of the service, unless you inform Actenzo otherwise.
3. Minors below 18 (“Child” or “Children”) are not permitted to use the Service. If the laws of your country of residence so permit, Children may utilize the Service, provided that their parent or legal guardian establishes the account. If you permit your Child to use the Service, you hereby agree to these Terms of Use on behalf of both yourself and your Child. You further agree that you are solely responsible for any and all use of the Service by your Child regardless of whether such use was authorized by you.
4. As long as you comply with this Agreement, Actenzo grants you a limited, revocable, non-exclusive, non-assignable, non-sublicensable right to access and use the Service as it is intended to be used and in accordance with this Agreement and applicable law. Actenzo grants you no other rights, implied or otherwise.



5. You may not use the Service to disseminate any unlawful or other objectionable material, or to harm others or the Service itself. For example, you must not:

- (i) use the Service to harm, threaten, or harass another person, organization, or Actenzo;
- (ii) damage, disable, overburden, or impair the Service;
- (iii) resell or redistribute any part of the Service or access to the Service, including the sale or purchase of an Account, unless you have written consent by us to do so;
- (iv) use or attempt to use any unauthorized means to modify, reroute, or gain access to the Service;
- (v) use any automated process or service (such as a bot, a spider, periodic caching of information stored by Actenzo, or metasearching) to access or use the Service, to use actions within the Service, or to copy or scrape data from the Service; or
- (vi) obtain (or try to obtain) any data from the Service, except the data that we intend to make available to you.

User Content

6. By using the Service, you grant Actenzo a worldwide, irrevocable, non-exclusive, royalty free license to use all material (including text, images and other visual material, hereafter referred to as the "User Content") you post to the Service for the sole purpose of providing the Service and solely for the duration of the Agreement. The content as given will not be shared with Third Parties except for the Parties as chosen by you. You hereby acknowledge that all content as posted to the Service is already publicly available with exception to content that is retrieved from password protected servers.

7. You may not upload or post to the Service or otherwise use in any way in connection with your use of the Service User Content which includes any text, images or other material protected by copyright, trademark, or any other proprietary right without the express permission of the owner of such copyright, trademark or other proprietary right. The burden of determining that any material is not protected by any such right is on you. You shall be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights, or any other harm resulting from your violation of this prohibition. All trademarks and/or service marks displayed on the Service are the exclusive property of their respective owners, and may not be used without the owner's permission.

8. Actenzo does not claim ownership of the User Content. Although Actenzo reserves the right to edit or remove any User Content you upload or post to the Service, we do not control or verify the User Content that you upload or post to the Service, nor do we undertake to monitor the User Content uploaded or posted to the Service.

9. You control who may access your User Content. When you give others access to your User Content on the Service, you grant them free, nonexclusive permission to use, reproduce, distribute, display, transmit, and communicate to the public such User Content solely in connection with the Service. If the User Content includes a photograph or other digital image, you also expressly waive any and all rights of privacy and publicity with respect to the image. If you do not want others to have those rights, do not use the Service to share your User Content.

10. Actenzo may need, and you hereby grant to Actenzo the right, to use, modify, adapt, reproduce, distribute, publish and display any User Content posted on the Service. These rights apply solely to the extent necessary for the operation of the Service.

11. User Content that violates these Terms of Use or your local laws is not permitted on the Service. Actenzo reserves the right to review content for the purpose of enforcing these Terms of Use. If you share User Content on the Service in a way that infringes others' copyrights, other intellectual property or proprietary rights, or publicity or privacy rights, you are breaching these Terms of Use. You represent and warrant that you have all the rights necessary for you to grant the rights in this section and that the use of the User Content does not violate any law. We may remove your content from the Service at any time and for any reason after a thirty (30) days notice period, including if: (i) you breach these Terms of Use; (ii) the User Content exceeds limits as set by your chosen subscription; or (iii) your access to the Service is canceled by yourself or suspended by us. Actenzo performs monitoring activities to ensure suitability of content as set out in these Terms of Use, and, whether as a result of such monitoring or upon receiving notification of unsuitable content from third parties, Actenzo reserves the right to remove any or all User Content from the Service. You agree to immediately take down any Content that violates the Terms of Use, including pursuant to a take down request from Actenzo. In the event that you elect not to comply with a request from Actenzo to take down certain User Content, Actenzo reserves the right to directly take down such Content or to disable access to the Service.

12. You are responsible for backing up the User Content that you store on the Service. We may permanently delete your User Content from the Service if your access to the Service is suspended or canceled. We do not have any obligation to return User Content to you after your access to the Service has been suspended or canceled. If User Content is stored with an expiration date, we may also delete the User Content as of that date. User Content that is deleted may be irretrievable.

Payment

13. All functionalities and features of the Service are paid functionalities (hereafter collectively referred to as "Functionalities"). You agree to pay the charge associated with the use of Functionalities within fourteen (14) days. We may suspend or cancel your access to the Service if we do not receive such charge on time. Suspension or cancellation of your access to the Service for nonpayment could result in a loss of access to and use of your Account, as well as loss of your User Content stored on the Service. This suspension or cancellation will not relieve you of your duty to pay any outstanding charges.

14. To pay the charges for Functionalities delivered through the Service, you will be asked to provide a payment method at the time you sign up for such Functionalities. You can access and change your billing account information and payment method in your account dashboard in the Service. You agree to keep this information current at all times.

15. By providing Actenzo with a payment method, you

(i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate;

(ii) authorize Actenzo to charge you for the Functionalities using your payment method; and

(iii) authorize Actenzo to charge you for the Functionalities. We will bill you in advance of each billing period and on a recurring basis. Typically, a billing period entails a month.

16. Subscription to our Service is automatically renewed each billing period. The charge for each billing period is based on the Functionalities of the Service you use in combination with other factors including, but not limited to, the number of imported items, number of orders and number of channels. Calculation of the height of the charge is done automatically and can vary each billing

period. More information on pricing can be found on our website (actenzo.com/pricing-and-plans). To end your subscription, you must cancel the Functionalities before the billing date to avoid being billed for the renewal. If you cancel your recurring payment option, your account will remain active until its next renewal date. In case of such cancellation, you will not be given any refund. If you delete your account before the end of the period for which you paid, your cancellation will take effect immediately. In case of deletion of your account, you will not be given any refund.

17. We will provide you with an invoice via email. You are also able to view these invoices in your account dashboard in the Service. If we make an error on your bill, you must inform us within thirty (30) days after the error first appears on your bill. We will then promptly investigate the charge. If you do not inform us within that time, you release us from all liability and claims of loss resulting from the error and we will not be required to correct the error or provide a refund. If Actenzo has identified a billing error, we will correct that error within fourteen (14) days.

18. When you use Functionalities from us, you agree that we may begin to provide Functionalities immediately. You will not be entitled to a cancellation or “cooling off” period, except if the law requires a cooling off period. Payment for Functionalities (whether these are transactions or subscriptions) is non-refundable.

19. Actenzo may change the price of the Functionalities at any time and will notify you by email at least thirty (30) days before the price change. This does not include the change in subscription because of the factors as stated in paragraph 16. If you do not agree to the price change, you must cancel and stop using the Functionalities before the price change takes effect. If there is a fixed term and price for your Functionalities offer, that price will remain in force for the term.

20. You must pay for all reasonable costs we incur to collect any past due amounts. These include reasonable attorneys’ fees and other legal fees and costs, in event of default.

21. If Actenzo owes you a payment, then you agree to timely and accurately provide us with any information we need to get that payment to you. You are responsible for any taxes and charges you may incur as a result of this payment to you. You must also comply with any other conditions we place on your right to any payment. If you receive a payment in error, we may reverse or require return of the payment. You agree to cooperate with us in our efforts to do this. We may also reduce the payment to you without notice to adjust for any previous overpayment.

Intellectual Property Rights

22. All information, data, text, documents, graphics, logos, designs, images, pictures, photographs, videos, weblogs, interactive features or other content, services or materials (or any part of them) accessible on the Service (hereafter referred to as the “Materials”) are protected by copyright, trade marks, database rights and other intellectual property rights and are owned by or licensed to Actenzo or are otherwise used by Actenzo as permitted by applicable law. Nothing contained herein shall be construed as conferring by implication, estoppel or otherwise, any license or right to use the Materials other than as permitted in these Terms of Use. Unless you have permission from the creator or original content supplier, you agree not to download, cache, reproduce, modify, edit, alter or enhance any of the Materials.

23. Actenzo owns and retains all proprietary rights to the Service and all associated copyrights, trademarks, brands, service marks, patents, object’s library, characters, props or other proprietary rights under law. All of the trademarks, service marks, brand and trade names and logos appearing



on the Service are the proprietary intellectual property of the owners of such marks or names and you may not use, modify, remove or otherwise infringe any of such proprietary intellectual property.

24. By agreeing to use the Service you agree to receive newsletters, alerts, promotional and other emails from Actenzo. You may unsubscribe from these mailing lists as required by law via the Service.

Privacy and Security

25. We are committed to protecting your privacy and security. All personal data that we collect from you will be processed in accordance with our Privacy Policy. You should review our Privacy Policy, which is incorporated into these Terms of Use by this reference, and you confirm that when using the Service, you consent to your personal data being used and processed in accordance with our Privacy Policy.

Disclaimers of warranty

26. PLEASE NOTE THE FOLLOWING IMPORTANT DISCLAIMERS OF WARRANTIES:

ACTENZO DOES NOT WARRANT THAT THE FUNCTIONAL ASPECTS OF THE SERVICE WILL BE ERROR FREE, OR THAT THE SERVICE WILL BE CONSTANTLY AVAILABLE, OR THAT TRANSMISSION OF DATA TO / FROM THE SERVICE WILL OCCUR AT ANY MINIMUM SPEED OR THAT THE SERVICE OR THE SERVERS THAT MAKE IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ACTENZO DOES NOT WARRANT OR REPRESENT THAT ANY CONTENT ASSOCIATED WITH OR USED IN CONNECTION WITH THE SERVICE IS FACTUAL OR ERROR-FREE OR THAT THE USE OF SUCH MATERIAL WILL NOT INFRINGE RIGHTS OF THIRD PARTIES. ACTENZO RESERVES THE RIGHT TO CORRECT ANY ERRORS ON IN THE SERVICE.

WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE AND AGREE THAT EVERYTHING ASSOCIATED WITH THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ACTENZO MAKES NO WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE MATERIAL CONTAINED ON THE SERVICE OR RESULTS TO BE OBTAINED FROM USING THE SERVICE. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, ACTENZO DOES NOT MAKE ANY REPRESENTATION ABOUT THE QUALITY OF ANY PRODUCT, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH USE OF THE SERVICE.

Limitation of Liability

27. YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE AND OUR DIRECT AFFILIATES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF, OR RESULTING FROM, (A) THE USE OR THE INABILITY TO USE THE SERVICE; (B) THE USE OF ANY MATERIALS, USER CONTENT OR OTHER MATERIAL ON THE SERVICE OR ANY WEBSITE OR WEBSITES LINKED TO THE SERVICE, (C) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (D) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (E) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (F) ANY OTHER MATTER RELATING TO THE SERVICE. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION

(WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU IN THE LAST TERM, IF ANY, FOR ACCESSING THE SERVICE, AND IN NO EVENT EXCEED THOUSAND EURO (€1.000). IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE, OR WITH ANY OF THE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS THE DISCONTINUATION OF YOUR USE OF THE SERVICE. IF ANY PORTION OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

Indemnification

28. You hereby indemnify Actenzo and undertake to keep Actenzo indemnified against any losses, damages, costs, liabilities and expenses (including without limitation legal expenses and any amounts paid by Actenzo to a third party in settlement of a claim or dispute on the advice of Actenzo legal advisors) incurred or suffered by Actenzo arising out of any breach by you of any provision of these Terms of Use, or arising out of any claim that you have breached any provision of these Terms of Use. The only exceptions to this indemnification clause are mentioned in our Data Processing Agreement (DPA) and any Enterprise Service Level Agreements (SLAs), which both override, extend and/or further clarify certain parts of this Agreement, whereas the DPA is only applicable for the Actenzo Order Management functionality.

Third Party Links

29. The Service may contain links to or allow you to interact with and make use of other independent third-party websites, products or services ("Third-Party Services"). Access to Third-Party Services is provided solely as a convenience. Third-Party Services are not under Actenzo's control and Actenzo does not necessarily endorse the content, advertising, products, services or other materials on or available from such Third-Party Services. Your use of any Third-Party Services may be subject to the third-party provider's terms and conditions and privacy policy and may involve the disclosure or transfer of information from or about you to the third-party provider. You will need to make your own independent judgment regarding your use of and interaction with any Third-Party Services. You acknowledge and agree that Actenzo is not responsible for the availability of any Third-Party Services and that Actenzo shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with you use of or interaction with any Third-Party Services.

30. You agree that Actenzo is not responsible for any Product or Professional Service that is shown within the Service and originates from a source other than Actenzo. All matters concerning the Products or Professional Services offered by Third Parties, including, but not limited to, purchase terms, payment terms, warranties, guarantees, maintenance and delivery, are solely between you and the Third Parties. We make no warranties or representations whatsoever with regard to any Products or Professional Services by Third Parties. You will not consider us (and we will not be construed as) a party to such transactions, whether or not we may have received some form of revenue or other remuneration in connection with such transactions, and we will not be liable for any costs or damages arising out of, either directly or indirectly, you or any other person involved or related to the transactions.

Termination

31. Actenzo may at any time terminate your Account in its sole discretion, for breach by you of any of your representations, warranties or obligations under these Terms of Use if you have failed to remedy the breach within thirty (30) days of a written notice to do so.

32. You may terminate this agreement and thereby your access to the Service at any time, with or without cause. Information and direction on how to terminate your access to the Service will be provided on request by Actenzo. Upon any termination of your access to the Service: (i) your Account may be canceled and closed or suspended and your user identification code and password shall be deactivated; (ii) all User Content uploaded by you shall be removed from the Service.

33. Cancellation of your Account shall not relieve you of any payment obligations that may have arisen prior to such termination, or any other obligations pursuant to any other agreement that has not been specifically terminated.

Miscellaneous

34. All terms and conditions of these Terms of Use which are destined (whether expressed or not) to survive the duration or termination of the agreement between Parties shall so survive.

35. These Terms of Use constitutes the final and complete expression of the Parties' agreement and understanding with respect to the subject matter herein and supersede all other prior agreements.

36. Your use of the Service does not give you any authority to act as an agent, legal representative or employee of Actenzo or of any third party with whom Actenzo has a relationship, and you agree not to represent that you are otherwise.

37. Actenzo may transfer, sub-contract or otherwise deal with Actenzo's rights and/or obligations under these Terms of Use without notifying you or obtaining your consent. You may not transfer, sub-contract or otherwise deal with your rights and/or obligations under these Terms of Use.

38. Should any of the provisions of these Terms of Use be determined to be null and void, invalid and/or otherwise unenforceable, this shall in no way affect the legality, validity and/or enforceability of the other provisions of these Terms of Use. Moreover, upon such determination of one or more provisions of these Terms of Use being, in whole or in part, void, invalid or unenforceable, the Parties shall negotiate in good faith in order to replace the provision in question with a valid and enforceable provision which in its economic effect complies most with the void, invalid or unenforceable provision.

39. These Terms of Use and any renewal and/or modification thereof shall be governed by and construed in accordance with the laws of the Netherlands. Any dispute or difference arising out of or in connection with these Terms of Use shall be the exclusive jurisdiction of the Dutch courts.