



## Service Plan Terms and Conditions

Effective January 1, 2021

### SERVICE PLAN:

Acuity Intelligent Spaces Inc. or the subsidiary, division or affiliated entity of Acuity Intelligent Spaces Inc. identified on the quote or order acknowledgement (collectively, "Acuity"), agrees to service the lighting controls equipment listed on the Service Plan Confirmation provided to customer (the "Equipment") in accordance with these Service Plan Terms and Conditions and the Acuity service plan purchased by the end user of the Equipment indicated on the Service Plan Confirmation (the "Service Plan").

### TERM:

The initial term of the Service Plan shall be as set forth in the Service Plan Confirmation (the "Initial Term"). The Initial Term of the Service Plan shall not commence until after installation and any commissioning or start-up of the Equipment has been completed. The Initial Term shall be automatically extended for one-year terms thereafter (each a "Renewal Term"), unless terminated by the mutual written consent of Acuity and the customer, or by either Acuity or the customer in writing at least thirty (30) days prior to the end of said Initial Term or any such Renewal Term. The Initial Term and the Renewal Term(s) are collectively referred to as the "Term". At least sixty (60) days prior to the end of the Initial Term and each Renewal Term, Acuity will notify customer of any change in pricing of the Service Plan during the applicable Renewal Term.

### ON-SITE VISITS:

Customer hereby grants Acuity reasonable access to the locations at which the Equipment is located for the performance of services. Customer agrees that all service must be done in compliance with Acuity's safety procedures, which may include temporarily disabling or de-energizing the controls system and other equipment connected to the controls system. Acuity will respect the customer's confidentiality and will utilize job-specific information only as needed to complete the service visit. If customer cancels a confirmed on-site visit with less than two (2) business days' notice prior to the scheduled on-site visit date, customer shall be charged for any expenses incurred (including, but not limited to, associated travel expenses and field engineer time). If Acuity is unable to complete an on-site visit due to customer's failure or inability to reschedule the on-site visit within ninety (90) days after the original proposed on-site visit date, Acuity's obligations with respect to that on-site visit shall be considered to have been fulfilled and no refund for such on-site visit shall be due. Customer shall be responsible for all expenses incurred (including, but not limited to, associated travel expenses and field engineer time) for any delay or stoppage of on-site services caused by customer, and shall be responsible for all costs associated with use of union labor or any licensed electrician or electrical contractor when required by customer.

### REMOTE SERVICES:

Customer acknowledges and agrees that Acuity has a preference for remote services (e.g., via telephone or internet connection) wherever possible and has priced the Service Plan with this in mind. Customer also acknowledges and agrees that, through such remote services, Acuity may need access to, to collect information from, and to push updates to Customer's network and the Equipment (including without limitation, Customer's usage, the performance of, and any connection to Customer's systems), all of which Acuity will only use for the purpose of providing the Service Plan to Customer and internally evaluating and improving Acuity's provision of the Service Plan and the Equipment generally. Customer agrees to undertake commercially reasonable efforts to facilitate such remote services at Customer's own expense, including the provision of access to Customer's network and systems and the Equipment as reasonably specified by Acuity. A remote service response satisfies Acuity's obligations hereunder, even if Acuity is unable to connect to the Customer's network (but excluding where such inability results from a failure of Acuity). This paragraph shall not apply where the underlying issue was not of a kind that Acuity reasonably could have resolved remotely.

### ADDITIONAL WORK:

During the Term of the Service Plan, customer may request that Acuity perform services or provide materials which are not set forth in the Service Plan or included in the prices stated in the Service Plan ("Additional Work"). Acuity hereby agrees to perform such Additional Work, provided that customer has provided the scope or definition of such Additional Work and has authorized, in writing, the compensation payable to Acuity for the performance of the Additional Work. The performance of any and all such Additional Work shall be subject to and governed solely by these Service Plan Terms and Conditions.

### EXCLUSIONS:

As set forth in the Statement of Limited Warranty For Services located at <http://www.acuitybrands.com/resources/terms-and-conditions>, Acuity shall not be responsible for damages or errors in any Equipment for which customer has authorized service, operation and/or modification by a party other than Acuity or where the Equipment has not been maintained in accordance with Acuity's recommendations and/or has a pre-existing condition. In the event of such an occurrence, and upon customer's request, Acuity will inspect such Equipment and invoice customer, separate of any Service Plan, for costs incurred to return such Equipment to good working condition in accordance with Acuity's then-current time and materials rates. Acuity shall not be responsible for furnishing any service, parts or materials in the event that incorrect, or an inadequate quantity of, Equipment was ordered or installed prior to commencement of the Service Plan. Labor costs to remove and reinstall components, fixtures, ballasts/LED drivers, and/or line voltage electrical equipment are not included. Parts, except for those covered by the applicable Equipment warranty, are not included. Computers, associated equipment, and other software are not included. Activities reasonably required for Customer to provide appropriate access for remote services as set forth herein are not included, and where Acuity specifies requirements it remains Customer's exclusive responsibility to determine and execute any steps necessary to ensure such access is secure. Acuity is not providing Customer guidance on appropriate network security.

### PAYMENT TERMS:

Invoices for services shall be due and payable within (30) days after the date of the invoice. If customer does not pay any invoice, in whole or in part, when due, Acuity shall assess a finance charge on any past due balance at the maximum legal rate permitted on open accounts. In addition to all other rights and remedies available under these Service Plan Terms and Conditions and under applicable law, Acuity may, in its sole discretion, withhold services under the Service Plan until such time as customer's account is paid in full or immediately terminate the Service Plan without further liability to customer, notwithstanding anything to the contrary set forth herein. If any amount due Acuity is collected by or through an attorney, Acuity shall be entitled to recover all costs of collection, including attorney's fees equal to 15% of the total principal and interest owed.

### TAXES:

Customer has responsibility for paying and reporting all applicable taxes of any jurisdiction, foreign or domestic, levied or based on the services provided under the Service Plan. Any taxes borne by customer under this paragraph shall not reduce the amount owed by customer under the Service Plan.

### TERMINATION:

Notwithstanding anything to the contrary in these Service Plan Terms and Conditions, either Acuity or customer shall have the right to terminate the Service Plan, in whole or in part, at any time and for any reason, upon thirty (30) days' prior written notice to the other party, which notice shall specify the date of termination. If Acuity terminates the Service Plan, Acuity shall refund customer a pro-rated amount of any prepaid Service Plan charge, less any amounts which are owed to Acuity by customer. If customer terminates the Service Plan, customer shall only be entitled to any refund of amounts previously paid for any future years remaining on the Service Plan, and previous years and the current year are not eligible for a refund.

### LIMITED WARRANTY:

The services performed by Acuity pursuant to the Service Plan shall be warranted as set forth in the Statement of Limited Warranty For Services located at <http://www.acuitybrands.com/resources/terms-and-conditions>.

Equipment covered by the Service Plan shall be warranted as set forth in the applicable Acuity published product warranty located at <http://www.acuitybrands.com/resources/terms-and-conditions> in effect at the time of purchase of such Equipment.

### LIMITATION OF LIABILITY:

IN NO EVENT WILL ACUITY BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THE PERFORMANCE

OF ANY SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS THE RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY. IN FURTHERANCE AND NOT IN LIMITATION OF THE FOREGOING, IN NO EVENT WILL ACUITY, ITS AFFILIATES, SERVICE PROVIDERS OR LICENSORS BE LIABLE TO CUSTOMER FOR LOSS OF TIME, PROFITS OR REVENUES, LACK OR LOSS OF PRODUCTIVITY, INTEREST CHARGES OR COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, SYSTEMS OR SERVICES, DOWNTIME COSTS, LOSS OR CORRUPTION OF DATA, LOSS OF USE OF PROPERTY OR EQUIPMENT, OR ANY INCONVENIENCE ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES, OR ANY BREACH OF WARRANTY OR OBLIGATIONS UNDER WARRANTY. THE TOTAL LIABILITY OF ACUITY ON ANY AND ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH, OR RESULTING FROM, ACUITY'S PERFORMANCE OF ANY SERVICES, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE PLAN.

### FORCE MAJEURE:

Acuity shall not be liable for damages that result from the performance of services that do not occur within customer's specified time frame or for any delay or default in performing services where occasioned by any cause beyond the control of Acuity, including without limitation embargoes; shortages of labor, raw materials, or fuel; fires; floods; accidents; acts of war; or other similar causes.

### TRANSFER:

Customer may transfer its rights or obligations under the Service Plan only upon providing written notice thereof to Acuity. There is no fee for transfer of the Service Plan.

### CHOICE OF LAW; CONSENT TO JURISDICTION:

These Service Plan Terms and Conditions shall be construed and enforced in accordance with the substantive laws of the State of Georgia, USA, without regard to such state's laws related to choice of law. Any State or Federal Court in Fulton County, Georgia shall have jurisdiction for the purpose of any suit or other proceeding arising out of the transactions under these Service Plan Terms and Conditions. The parties agree that this is a contract for services and is not subject to the uniform commercial code of any state.

### GENERAL:

Unless otherwise specifically agreed in writing by an authorized representative of Acuity, any different or additional terms and conditions proposed by any customer in a purchase order, response to a quotation or other proposal, are hereby rejected by Acuity and shall not be incorporated into any order or other agreement for the provision of services by Acuity. Customer's assent to these Service Plan Terms and Conditions shall be conclusively presumed from customer's acceptance of all or part of any services provided under the Service Plan. If an authorized representative of Acuity has acknowledged customer's order or proposal, and such acknowledgement is found to constitute an acceptance of an offer, such acceptance is expressly made conditional on customer's assent solely to these Service Plan Terms and Conditions which shall form part of the acknowledgement, and acceptance by customer of any services provided under the Service Plan shall be deemed to constitute such assent. If any quotation or other document of Acuity is deemed to constitute an offer to customer, customer's acceptance of such offer is limited to these Service Plan Terms and Conditions. These Service Plan Terms and Conditions constitute the entire agreement between Acuity and customer, unless they are made part of a written agreement between Acuity and customer. No custom, practice, or course of prior dealings between the parties and no usage of trade shall modify or otherwise affect these Service Plan Terms and Conditions. Acuity objects to and rejects any terms between customer and any other party, and no such terms, including but not limited to any government regulations or "flowdown" terms, shall be a part of or incorporated into any order from customer to Acuity, unless agreed to in writing by an authorized representative of Acuity. These Service Plan Terms and Conditions supersede all those published or issued previously by Acuity. All orders are subject to final acceptance by Acuity and credit approval. Acuity price sheets are not offers to sell and possession of a price sheet does not entitle one to purchase. Acuity shall not be bound to provide any services unless it shall (in its sole discretion) accept submitted purchase orders.

***Acuity reserves the right to change these Service Plan Terms and Conditions at any time without notice.***

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