

## **TERMS AND CONDITIONS**

### **THESE TERMS AND CONDITIONS APPLY WHEN A.D.E SYSTEMS, INC. AND/OR ITS AFFILIATES (COLLECTIVELY “SELLER”) SELLS GOODS, EQUIPMENT AND/OR SERVICES TO YOU (THE “BUYER”).**

#### **1. Acceptance and Modification of Terms.**

(a) The following terms and conditions (“Terms”) are the only Terms that apply to A.D.E Systems, INC., ADE Systems-NJ, Inc, Air Distribution Enterprises, Inc. and/or its affiliates (collectively “Seller”) sale of goods, equipment and/or services to Buyer and they shall control and/or govern the sale of such goods, equipment and/or services by Seller and the purchase of such goods, equipment and/or services by Buyer to the entire exclusion of any and all other terms and conditions (including any terms and conditions Buyer purports to generally apply to its purchases contained in and/or under any purchase order, communication or other document), except those which relate to prices, quantities, delivery schedules and the description and specifications of the goods, equipment and/or services stated in Seller’s quotation, transmittal, acknowledgement or confirmation of an order, submittal or on its invoice. Seller specifically objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to Buyer’s purchase order, submittal, website, guidebook, any communication or other document as these Terms supersede and prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller’s sale of any goods, equipment and/or services to Buyer is expressly conditioned on Buyer’s assent to all of the Terms set forth herein regardless of whether or not Seller references these Terms at the time of sale. Buyer expressly waives the right to enforce any terms proposed or supplied by Buyer in any of Buyer’s documents.

(b) Buyer shall be deemed to have acknowledged and accepted the Terms hereof upon the earlier of (i) by signing and returning a copy hereof; or (ii) when Buyer is made aware of or could have been aware of these Terms without written objection for five (5) days; or (iii) requests a quote from Seller; or (iv) establishes a line of credit with Seller; or (v) when Buyer accepts the submittal; or (vi) when Buyer issues a purchase order and/or release against a purchase order for Seller to place an order with the manufacturer; or (vii) when Buyer accepts delivery of all or part of the goods, equipment and/or services; or (viii) Buyer removes the goods and/or equipment from the shipping container or packaging; or (ix) when Buyer has otherwise assented to the Terms hereof.

(c) Terms and conditions different from or in addition to these Terms, whether contained in any purchase order by Buyer, or with any approval related to the purchase of any goods, equipment and/or services, or contained in any other document exchanged between Buyer and Seller or otherwise, will not be binding on Seller, whether or not they would materially alter these Terms, and Seller hereby rejects them without need of further notice of objection and shall be of no force or effect. Any reference to, acknowledgment of and/or acceptance by Seller of Buyer’s bid, proposal, purchase order or approvals does not constitute acceptance of any terms or conditions thereof by Seller.

(d) These Terms supersede all prior oral and/or written understandings between Seller and Buyer and constitute the entire agreement between them concerning the subject matter hereof. No course of dealing, course of performance, or the failure of Seller to strictly enforce any term, right or condition hereof shall be construed as a waiver of any term, right or condition. These Terms shall not be waived, modified or amended, whether by Buyer's purchase order or any other document or instrument issued and/or executed by or on behalf of Buyer, except by a writing signed by an authorized representative of Seller specifically acknowledging such document acts as a waiver, modification and/or amendment and accepting it as such waiver, modification or amendment of these Terms. Any such writing purporting to respond to, amend, modify, replace, waive and/or supersede these Terms, or any provision thereof, not executed by Seller shall be null and void and of no effect. Seller's acknowledgment and/or acceptance of an order shall not be deemed an acceptance of any of Buyer's terms and/or conditions generally applicable to its purchases or a waiver of the provisions hereof.

2. **Governing Law, Consent to Jurisdiction and Service of Process.** These Terms shall be deemed to be made in New York and shall be interpreted under the laws thereof applicable to contracts to be performed wholly therein. Buyer hereby consents and submits to the exclusive jurisdiction of any court of the State of New York, County of Nassau, and of the United States District Court for the Eastern District of New York. In the event Seller brings any action or proceeding hereunder, service of process may be made upon Buyer by mailing same to Buyer by certified mail return receipt request at the address of Buyer last known to Seller.

3. **Prices.** Unless otherwise noted in writing by Seller, all prices quoted by Seller are those in effect as of the date quoted; provided, however, Seller may change the prices of goods, equipment and/or services at any time and for any reason prior to shipment. All prices quoted may be increased because of any escalation of the manufacturers' prices in effect at the time shipment is made. Any discounts provided to Buyer by Seller in relation to the price of the goods, equipment and/or services are conditioned upon payments for the goods, equipment and/or services being made strictly in accordance with these Terms and Buyer's account being current. Buyer's failure to timely pay voids any discount provided by Seller. All applicable taxes arising out of transactions contemplated between Buyer and Seller will be borne by Buyer, except as otherwise agreed by Seller in writing in advance.

4. **Payment, Default and Security.**

(a) With the granting of the extension of credit, Buyer agrees to pay all invoices in accordance with these Terms. Payment terms are thirty (30) days from date of invoice unless otherwise expressly agreed by Seller and Buyer in writing; provided, however, Seller may, in its sole discretion, require full payment in cash before order entry, shipment, or delivery. In the event Buyer fails to make any payment to Seller when due, the maximum legal rate of interest shall be due from Buyer (compounded monthly) on any unpaid amount and Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand.

(b) In the event Seller deems itself insecure with respect to Buyer's ability to pay or upon Buyer's breach of these Terms or any other agreement with Seller, Seller may, in its sole

discretion, suspend or change credit terms, fix a limit on credit, require progress payments, demand payment in full of any outstanding balance, accelerate all unpaid amounts owed by Buyer, withhold shipments, demand Cash on Delivery or request other assurances of payment, cancel or terminate any order or agreement, or repossess all goods and/or equipment previously delivered (as Seller retains title to all goods and/or equipment until fully paid for by Buyer), which goods and/or equipment shall become the absolute property of Seller. Buyer hereby grants Seller a purchase money security interest in all goods, equipment and/or services which passed to and/or sold to Buyer, and in any proceeds and/or accounts receivable arising from any invoices, until all charges, including shipping, late payment charges, and attorney's fees, if any, are paid in full. Buyer agrees that Seller may execute all documents, in its name and in Buyer's name, including financing statements, deemed necessary by Seller to perfect, maintain, or protect Seller's security interest. Notwithstanding any other provision of these Terms, Seller reserves the right in its absolute discretion from time to time to require payment in full of the price of the goods, equipment and/or services before delivery of all or any of the goods, equipment and/or services. Seller may set-off and/or deduct for any sums owed by Buyer (including its subsidiaries and affiliates). Buyer has no right to withhold or set-off amounts against Seller or its affiliates.

(c) In the event of any breach and/or default by Buyer hereunder, Seller shall be entitled to retake possession of and/or remove goods and/or equipment (even if installed) without legal process and Buyer irrevocably grants Seller permission to enter its premises in which such goods and/or equipment are located and/or installed for that purpose. Buyer agrees that the time within which Seller is entitled to file a mechanic's lien is extended up through and until such time as all goods, equipment and/or services are fully paid hereunder and Buyer consents to the extension of such time to file a mechanic's lien and/or a lis pendens, or any other mechanism and/or enforcement document, to effectuate the foregoing. Moreover, Seller may recover the costs and expenses of collecting on its invoice, whether or not an action is commenced, including reasonable attorneys' fees in an amount not less than thirty percent (30%) of the amount due, as well as any costs and expenses of retaking possession, the removal of such goods and/or equipment and the costs and expenses of filing, foreclosing, and/or releasing a mechanic's lien and/or lis pendens. In no event shall Seller be liable for any damages of any kind in connection with the retaking possession and/or the removal of such goods and/or equipment.

(d) Unless otherwise indicated, all prices and charges are exclusive of taxes, including sales, use or excise tax, which may be imposed by any taxing authority upon the manufacture, sale or delivery of the goods, equipment and/or services sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the goods, equipment and/or services sold and Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of its invoice. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall provide a capital improvement certificate and shall save Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the goods, equipment and/or services are held to be taxable.

5. **Invoice.** Invoices shall be paid upon receipt. Buyer is responsible for the payment of all invoices and Buyer specifically waives the right to use, as a defense of non-payment, a third

party's obligation to pay or execution thereof. Any invoices outstanding more than thirty (30) days from the date thereof shall accrue service charges at the rate of two percent (2%) per month until the date of payment. Any dispute with Seller's invoice must be made by Buyer by written notice received by Seller within forty-eight (48) hours of the date of the invoice. Failure to notify Seller in accordance herewith shall be deemed an irrevocable acceptance that the invoice properly identifies the goods, equipment and/or services sold and delivered, including the price, quantity and description.

**6. Delivery of Goods and/or Equipment.**

(a) Delivery dates set by Seller shall be considered estimates only and Seller shall not be liable for any late or delayed delivery. Despite anything set forth in any other document, time for delivery by Seller shall not be deemed to be of the essence. Buyer agrees to have an agent and the facilities available to accept all delivery of goods, equipment and/or services at the designated delivery location. Buyer is responsible for the unloading, assembly, rigging and setting of all goods and/or equipment from the delivery vehicle as well the proper maintenance, handling and/or storage of all goods and/or equipment once delivered. Buyer shall be responsible for all costs and expenses charged and/or incurred arising out of any such failure of Buyer of the foregoing, including but not limited to restocking freight, demurrage, hold-over, storage, transportation and the like, regardless of the origin location of the delivery. Buyer shall be liable for any and all costs and expenses arising out of Buyer's failure to pay C.O.D. or accept delivery of any goods and/or equipment for any reason, including storage and transportation fees, whether such storage or transportation is provided by Seller or by a third party. Buyer acknowledges that storage fees are charged at a minimum monthly storage rate at Seller's sole discretion and as Seller deems appropriate. Buyer shall accept partial or pro rata deliveries as full performance under Buyer's order.

(b) Regardless of the method of delivery, risk of loss shall pass to Buyer upon Seller's or manufacturer's delivery to a third party carrier or delivery to Buyer. For shipments directly from the manufacturer, freight terms are F.O.B. factory (standard freight allowed to New York) with all freight and delivery charges paid by Buyer. For shipments from Seller's inventory, freight terms are F.O.B. warehouse with all freight and delivery charges paid by Buyer. Any and all incurred freight, insurance and handling costs, charges and fees will be added to Buyer's invoice. If goods and/or equipment are damaged in transit, Buyer's sole recourse is to file a claim with the carrier.

**7. Buyer's Inspection and Acceptance of Goods and/or Equipment.**

(a) Buyer must fully inspect the goods and/or equipment at the time of delivery to reject defective or nonconforming goods and/or equipment.

(b) As used in this Section, "defective goods" means only goods and/or equipment shipped to Buyer which contain manufacturer defects which fail to operate consistent with the instructions and/or manual provided by the manufacturer and shall specifically exclude, without limitation, any goods and/or equipment (i) which have been subjected to negligence, accident, or improper maintenance, installation, handling or application, after Seller's delivery or (ii) which

have been modified, altered, serviced or repaired, including any attempts to modify, alter, service or repair, after Seller's delivery. As used in this Section, "nonconforming goods" means only the following: (i) the goods and/or equipment shipped to Buyer which are different from those identified in Buyer's approved submittal subject to Section 8 or (ii) the labels or packaging of the goods and/or equipment incorrectly identifies them.

(c) To be effective, Buyer's rejection of defective or nonconforming goods, equipment and/or services must be made at time of delivery thereof. Failure to notify Seller in accordance herewith shall be deemed an irrevocable acceptance of such goods and/or equipment. After such acceptance, Buyer shall have no right to reject the goods and/or equipment for any reason or to revoke acceptance, accepts the goods and/or equipment in whatever condition and releases Seller from and for any and all claims and damages pertaining to, or resulting or arising from or in connection therewith, it being agreed that Buyer's sole recourse shall be against the manufacturer and/or carrier at issue. Buyer shall have no right to order any change or modification to any goods and/or equipment previously ordered by Buyer, or cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Acceptance of any such requested modification or cancellation shall be in writing at Seller's discretion, and shall be upon such terms and conditions as Seller may require. Seller reserves the right to make substitutions of equal goods, equipment and/or services without prior approval of Buyer.

(d) In the event it is determined by Seller in its sole discretion that any goods and/or equipment rejected and/or returned is not defective or nonconforming, Buyer shall be liable for any and all costs and expenses incurred by Seller arising out of Buyer's rejection or return.

(e) Buyer may not reject any good and/or equipment without first testing each such good and/or equipment. Lot rejections and/or rejections of the entire order based upon a sampling of the order is not permitted and returns based upon such rejections will not be accepted by Seller.

(f) All orders for goods, equipment and/or services may not be canceled and such goods and/or equipment may not be returned, and no refund will be made for any attempted cancellations and/or returns. Seller may in its sole discretion accept the return, in writing, of an order, provided it is in accordance with Seller's instructions in good merchantable condition in the same packaging and/or wrapper condition as when delivery thereof was made and provided the manufacturer will in turn accept the return and Buyer shall be subject to the following deductions: (a) cost of putting goods and/or equipment in salable condition; (b) freight and transportation charges, if not prepaid; (c) handling and restocking charges of manufacturer and/or Seller and (d) any other costs and expenses incurred by Seller as a result of such approved return.

(g) A cancellation charge in the minimum amount of twenty-five percent (25%) of the purchase price will apply to orders cancelled by Buyer after Seller receives a purchase order and Seller's submittals are approved unless cancellation is due to a rejection of the submittal in full by the owner, architect or engineer of the project.

(h) Requests for delivery of goods, equipment and/or services to the job site are not recommended. However, such requests may be honored in Seller's sole discretion provided Buyer or Buyer's agent agrees to be present at the jobsite to accept all delivery of all such goods, equipment and/or services. Buyer acknowledges and agrees that if Buyer requests delivery to the job site, Buyer shall be deemed to have irrevocably accepted all such goods, equipment and/or services delivered at the job site, waiving its right to inspect. Buyer shall have no right to reject the goods and/or equipment for any reason or to revoke acceptance thereafter. Seller shall not be liable for any missing or incorrect goods, equipment; any visible or concealed damages of the goods, equipment; or additional freight and storage charges incurred if Buyer or Buyer's agent is not present at the job site to accept deliver, or delivery is refused at the job site, or carrier cannot reach consignee for delivery of goods and/or equipment, or to schedule an appointment for delivery. Buyer shall also be liable for any and all costs and expenses arising out of any failure to accept delivery of any goods and/or equipment, including but not limited to restocking, freight, demurrage, hold-over, storage (monthly or daily as Seller deems appropriate) and the like.

8. **Substitution of Goods and/or Equipment.** Seller shall have the right at its sole discretion to modify and/or substitute any goods and/or equipment sold to Buyer, including but not limited to connectors, controllers and/or any other equipment by other manufacturers sold by Seller associated with such goods and/or equipment, whenever Seller deems it necessary and/or appropriate, without prior approval of Buyer. Seller shall also have the right at its sole discretion to fulfill Buyer's order with respect to any goods and/or equipment not specifically specified by Buyer with any goods and/or equipment Seller deems necessary and/or appropriate, without prior approval of Buyer. Buyer agrees that such modification and/or substitutions shall be considered in compliance with the requirements set forth in the quotation, purchase order, submittal, sales order, invoice or any other contract document between Buyer and Seller and Buyer waives its right to challenge such modifications and/or substitutions made by Seller. Buyer further agrees that Seller will not be deemed in violation of any term which requires Seller to provide goods and/or equipment in strict compliance with the quotation, purchase order, submittal, sales order, invoice or any other contract document between Buyer and Seller as a result of any such modification and/or substitution.

9. **Seller's Disclaimers of Warranties.** Buyer acknowledges that Seller is a distributor and not the installer or manufacturer of the goods and/or equipment. Seller is not responsible for the design, fabrication or manufacture of any materials, equipment, tools or other goods provided by or on behalf of Seller, including any defects. Seller is also not liable for defects in information, labeling, instructions, or packaging provided by the manufacturer or secondary sources. Any warranty issued by the manufacturer shall be solely that of the manufacturer and not of Seller. Seller authorizes Buyer to make or settle any claims under such manufacturer's warranties directly with any such manufacturer and Buyer acknowledges that it shall have recourse only under such warranties and only as against such manufacturer. Seller makes no warranties of any kind, express or implied, and disclaims all other warranties, including, without limitation, any warranty of merchantability, fitness for particular purpose, non-infringement, any warranty against defects in design, materials or workmanship, and any warranty arising by usage of trade, course of dealing, or course of performance. Without limiting the foregoing, Seller does not warrant that the goods and/or equipment sold by Seller will be suitable for Buyer's specific

needs, will work in any particular environment, will perform without interruption, will be error free, or will work in conjunction with Buyer's equipment. Buyer agrees that Buyer's sole and exclusive warranty, if any, is that provided by the manufacturer of the goods and/or equipment and Buyer agrees to look solely to the manufacturer for any warranty claims. The warranty for each individual good and/or equipment shall commence on the day following Seller's delivery of the individual good and/or equipment regardless of whether or not it was part of a partial shipment or if any other good and/or equipment of the order was not accepted. Manufacturers' warranties will only apply to those goods and/or equipment (including installation) which have been paid for in full. The manufacturer's warranty shall be void and of no effect if: (a) Buyer fails to follow any instructions provided by Seller and/or manufacturer; or (b) Buyer modifies, alters, tampers or repairs (or attempts to modify, alter, tamper or repair) the goods and/or equipment; or (c) Buyer uses the goods and/or equipment, in whole or in part, in a manner not intended by manufacturer or in a manner not disclosed by Buyer; or (d) the breach resulted from the actions or omissions by another party or misuse of the goods and/or equipment. Except as expressly set forth in this paragraph, all goods, equipment and/or services provided by Seller and its employees and agents are provided "as is," "where is," and "with all faults." Buyer agrees that any communications between Seller and the manufacturer of any goods and/or equipment sold to Buyer shall not be deemed or construed at any time for any purpose as an admission by Seller of any liability, wrongdoing or unlawful conduct of any kind. Further, Seller makes no warranty whatsoever, with respect to goods and/or equipment manufactured and/or designed to Buyer's own specifications and Buyer shall, at its own expense with attorneys of Seller's choice, defend and hold Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against Seller by reason of its sale of such goods and/or equipment and/or services rendered.

**10. Limitation of Damages.**

(a) To the maximum extent permitted by law and under no circumstances, and in no event, will Seller be liable to Buyer or to any other company, entity or individual including Buyer's agents, contractors, assignees or representatives, or end users of any goods, equipment and/or services provided by Buyer for: (i) personal injury, property damage or any other loss, damage, cost of repairs or incidental, ancillary, reliance, punitive, exemplary, special, consequential, liquidated, direct or indirect damages, of any kind, including without limitation, loss of profits or revenue, business, use, time, date, financing, reputation, or income, whether based upon warranty, contract, products liability, strict liability, negligence or any other cause of action arising in connection with the design, manufacture, sale, transportation, installation, use or repair of the goods and/or equipment sold by Seller, or services rendered by Seller and whether or not Seller had notice, or should have known, of the possibility thereof; (ii) claims pertaining to or resulting or arising from ordinary wear and tear, misuse, abuse, misrepair, misapplication, modification, unauthorized combination, improper selection, failure to maintain, and/or improper installation of goods and/or equipment; and/or (iii) claims ancillary, attributable to, resulting from or arising under any repair and/or replacement of any goods and/or equipment, including but not limited to the removal and/or re-installation of the goods and/or equipment subject to the repair and/or replacement. This disclaimer of damages shall remain in full force and effect in the event that Buyer's sole and exclusive remedy against manufacturer shall fail of its essential

purpose. This paragraph shall survive termination or expiration of any agreement between Buyer and Seller.

(b) Buyer hereby acknowledges and agrees that under no circumstances, and in no event, shall the liability of Seller, if any, for any claims, losses, damages or expenses from any cause whatsoever (including claims of infringement and acts or omissions of third-parties) regardless of the form of action, whether in contract, tort, equity or otherwise (collectively “Claims”), exceed the lesser of the direct damages proven, the replacement cost, or the purchase price of the individual good or equipment that directly gave rise to the Claim (with no additional allowance made for the labor or expense of repairing or replacing defective goods and/or equipment or workmanship or damage resulting from the same) provided, however, that before Seller is liable for any Claim, that any goods and/or equipment supplied by Seller and/or services rendered by Seller (i) are proven by clear and convincing evidence to be defective and that Seller is the sole cause of such defect; (ii) are proven by clear and convincing evidence to have been handled properly after leaving the possession of Seller; (iii) that Buyer has, in accordance with these Terms, given notice in writing of such defect; and (iv) that Buyer has given Seller a reasonable opportunity to inspect such goods, equipment and/or services after notifying Seller in accordance herewith of any alleged defects.

(c) Should Buyer have any Claims hereunder, Buyer shall notify Seller in writing within ten (10) days of the date that such Claim and/or cause of action accrues and the failure to do so shall be deemed a waiver of same. Any action or proceeding commenced by Buyer against Seller must be commenced within twelve (12) months of the accrual of the cause of action or shall be barred. Buyer and Seller waive trial by jury in any action between them. Should Seller substantially prevail in any litigation between them, then the Buyer shall pay Seller’s legal fees and costs, including reasonable attorneys’ fees. In any action commenced by Seller against Buyer, Buyer shall not be permitted to interpose any counterclaims, affirmative defenses, set offs or recoupments of any nature or kind.

(d) Buyer shall defend, indemnify and hold Seller harmless for all expenses, damages, penalties, fees and the like, including reasonable attorney's fees and sales tax, incurred by or asserted against Seller at Buyer's expense with attorneys of Seller's choice for any claim or suit based, in whole or in part, on, including but not limited to, breach of contract, breach of warranty, strict tort liability, products liability, infringement or the intentional or negligent acts or omissions of Seller.

11. **Technical Advice and/or Assistance.** Seller may, from time to time, furnish such technical advice or assistance as it has available in reference to the use of the goods, equipment and/or services it has sold to Buyer. However, it is expressly understood, that all such technical advice or assistance is given “AS-IS”, Seller assumes no obligation or liability for the advice or assistance given or results obtained, and Buyer agrees to look solely to the manufacturer for any warranty claims and/or claims of alleged defect irrespective of any advice or assistance provided by Seller, as all such advice or assistance being given and accepted at Buyer's risk.

12. **Buyer Responsibilities.** Buyer, its employees and agents will take all necessary steps to ensure that the goods and/or equipment sold by Seller will be set-up, assembled, installed and

used (whether by Buyer or a third party) in accordance with the manufacturer's instructions as well as all requirements of all applicable governmental authorities pertaining to the installation and operation of the goods and/or equipment. Seller is not liable or responsible for the installation of any goods and/or equipment sold or the handling of such goods and/or equipment once delivered. Buyer takes sole responsibility for any installation or application that involves utilization of any goods and/or equipment with components or other items whether or not supplied by Seller. It is expressly understood that Seller does not warrant the compatibility, or Buyer's application, of any goods and/or equipment sold with the goods and/or equipment of other manufacturers, or with the control pad, management system or any other similar system of the premises in which the goods and/or equipment are being connected to, installed to and/or utilized with.

13. **Mock-up Products.** Seller may, from time to time, provide Buyer with a sample or a mock-up product for test, illustration, and evaluation purposes only. Actual product may vary in size, dimensions, and features. However, it is expressly understood that any and all such products are given "AS-IS" without warranty of any kind. Buyer agrees that any use of such product is at Buyer's sole risk and Seller assumes no obligation or liability for any use of such product by Buyer.

14. **Law, Ordinances and Regulations.** Seller shall not be responsible for, or compliance with, local interpretation of federal safety regulations or insurance codes, nor with any local laws, ordinances, codes and/or regulations which may at any time be in effect (collectively, "Laws, Ordinances and Resolutions") with respect to the goods, equipment and/or services, unless such responsibility shall be expressly assumed by Seller in writing. Further, Seller shall have no responsibility whatever for compliance with such Laws, Ordinances and Resolutions by goods and/or equipment manufactured or designed by others.

15. **Severability and Waiver.** Buyer and Seller recognize that these Terms are necessary and that in the event that any such term or condition is deemed to be unreasonable by a court of competent jurisdiction, then Buyer and Seller agree to submit to such a limitation thereof as said court may deem reasonable. Further, if any of the provisions hereof or the application of same shall be determined by said court to be invalid and/or unenforceable to any extent, the remainder hereof and/or the application of same, other than those as to which it is so determined to be invalid and/or unenforceable, shall not be affected thereby. No waiver by Seller of any breach of these Terms shall be construed as a waiver of any succeeding breach of the same or of any other term or condition contained herein, and in no event shall this provision itself be waived.

16. **Force Majeure.** Seller will not be liable for any delay in performance or non-performance of orders, contracts or services, or in the delivery or shipment of goods and/or equipment, or from any damages or losses suffered by Buyer by reason of such delay or non-performance, when performance in the sole determination of Seller would be inadvisable, economically unfeasible and/or commercially impractical or when such delay or non-performance is directly or indirectly caused by, or in any manner arises from fires, floods, accidents, disease, riots, acts of God, war, acts of terrorism, governmental interference or embargoes, strikes, labor difficulties, equipment breakdowns, shortage of material and/or labor, fuel, power, materials and supplies, transportation delays, pandemics, epidemics or other

illnesses, governmental intervention, actions, or omissions (including quarantine and isolation orders), whether under federal law, state law, or local law, rule, order or regulation, or any other governmental (including court) restraints of any kind, whether valid or invalid, national or regional emergency or any other cause or causes (whether similar in nature to any of these herein specified) beyond Seller's control; and Seller shall, in its sole discretion, have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price to reflect any increase occasioned by such delay.

17. **Remedies.** Each of the rights and remedies reserved to Seller in these Terms shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Seller in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Seller shall be deemed to be a waiver of any such right or remedy.

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**1. Acceptance and Modification of Terms.**

(a) The following terms and conditions (“Terms”) are the only Terms that apply to A.D.E Systems, Inc., ADE Systems- NJ, Inc., Air Distribution Enterprises, Inc. and/or its affiliates’ (collectively “Buyer”) order and purchase of goods, equipment and/or services from Seller and they shall control and/or govern the sale of such goods, equipment and/or services by Seller and the purchase of such goods, equipment and/or services by Buyer to the entire exclusion of any and all other terms and conditions (including any terms and conditions Seller purports to generally apply to its sales contained in and/or under any quotation, confirmation or acknowledgement of an order, submittal or on its invoice, communication or other document) except those which relate to prices, quantities, delivery schedules and the description and specifications of the goods, equipment and/or services stated in Buyer’s purchase order. Buyer specifically objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to Seller’s quotation, transmittal, acknowledgement or confirmation of an order, submittal, invoice, website, guidebook, any communication or other document as these Terms supersede and prevail over any of Seller’s general terms and conditions of sale regardless of whether or when Seller has submitted its quotation, transmittal, acknowledgement or confirmation of an order, submittal, invoice or such terms and conditions. Buyer’s purchase of any of Seller’s goods, equipment and/or services is expressly conditioned on Seller’s assent to all of the Terms set forth herein regardless of whether or not Buyer references these Terms at the time of Buyer’s purchase. Seller expressly waives the right to enforce any terms and conditions proposed or supplied by Seller in any of Seller’s documents.

(b) Seller shall be deemed to have acknowledged and accepted the Terms hereof upon the earlier of (i) by signing and returning a copy hereof; or (ii) when Seller is made aware of or could have been aware of these Terms without written objection for five (5) days; or (iii) Seller’s commencement of performance of an order or shipping of all or part of the goods and/or equipment or rendering of services; or (iv) Seller’s acceptance of any payment; or (v) Buyer’s completion of any ordering screen and/or tab accessible through Seller’s online ordering system and/or portal; or (vi) Seller’s issuance of a transmittal, confirmation or acknowledgment of an order; or (vii) when Seller issues an order transmittal without objecting to these Terms which the order was made subject to; or (viii) when Seller has otherwise assented to the Terms hereof.

(c) Terms and conditions different from or in addition to these Terms, whether contained in any transmittal, acknowledgment or confirmation of an order, Seller’s invoice, with delivery of any goods and/or equipment and/or rendering of services under an order, or contained in any other document exchanged between Buyer and Seller or otherwise, will not be binding on Buyer, whether or not they would materially alter the order, and Buyer hereby rejects them without need of further notice of objection and shall be of no force or effect. Any reference to Seller’s quotation, transmittal, acknowledgement or confirmation of an order, submittal, or invoice does not constitute acceptance of any terms or conditions thereof by Buyer.

(d) These Terms supersede all prior oral and/or written understandings between Buyer and Seller and constitute the entire agreement between them concerning the subject matter hereof. No course of dealing, course of performance, or the failure of Buyer to strictly enforce any term, right or condition hereof shall be construed as a waiver of any term, right or condition. These Terms shall not be waived, modified or amended, whether by Seller's acknowledgment, transmittal or confirmation of an order, invoice or any other document or instrument issued and/or executed by Seller. Any waiver, modification amendment and/or claimed course of dealing specifically agreed to by Buyer must be (i) in writing signed by an authorized representative of Buyer, (ii) as limited as possible, (iii) with consideration, and (iv) contain a specific acknowledgment by Buyer that such document acts as a waiver, modification, amendment and/or claimed course of dealing. Any such writing purporting to respond to, amend, modify, replace, waive and/or supersede these Terms, or any provision thereof, not executed by Buyer shall be null and void and of no effect. Buyer's utilization of Seller's online ordering system shall not be deemed an acceptance of any of Seller's terms and/or conditions generally applicable to its sales or a waiver of the provisions hereof.

2. **Governing Law, Consent to Jurisdiction and Service of Process.** These Terms shall be deemed to be made in New York and shall be interpreted under the laws thereof applicable to contracts to be performed wholly therein. Seller hereby consents and submits to the exclusive jurisdiction of any court of the State of New York, County of Nassau, and of the United States District Court for the Eastern District of New York. In the event Buyer brings any action or proceeding hereunder, service of process may be made upon Seller by mailing same to Seller by certified mail return receipt request at the address of the Seller last known to Buyer.

3. **Price.** The purchase price for goods, equipment and/or services sold to Buyer shall be as listed on the purchase order or as otherwise agreed to in writing in advance by both Buyer and Seller. An order may not be filled at a price higher than shown on the face of the purchase order. If the price set forth on the purchase order is not honored and a higher price is charged by the Seller, then Buyer shall nevertheless pay the higher price, without waiving any other rights or remedies it may have and specifically reserving its right to dispute, set off or recoup, at any time, the difference between the price Buyer paid and the price set forth in the purchase order against any amount payable by Buyer to Seller. Seller waives the statute of limitations with respect to any of Buyer's causes of action that arise out of the higher amount charged by the Seller and/or paid by the Buyer for any purchase order. If no price is set forth on the front of the purchase order, the goods, equipment and/or services will be billed at the price last quoted or at the most favorable customer pricing then in effect, whichever is lower, and, in any event, the unit price of any goods, equipment and/or services purchased under the purchase order will not be billed at a higher price than last quoted or charged without Buyer's prior written authorization. No extra charges of any kind, including charges for packing, shipping or handling, will be allowed unless specifically agreed to in writing by Buyer. All applicable taxes arising out of transactions contemplated by an order will be borne by Seller except as otherwise specified by both Buyer and Seller in writing. If Seller reduces its standard prices for such goods, equipment and/or services during the term of an order, Seller shall proportionally reduce the prices of goods, equipment and/or services thereafter to Buyer.

4. **Invoices, payment, and taxes.**

(a) Invoices shall be rendered on completion of services and/or delivery of goods and/or equipment and shall contain Buyer's purchase order number, item number, description of the goods, equipment and/or services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice rendered by Seller must refer to one, and only one, purchase order of Buyer. Duplicate invoices by Seller referencing the same purchase order of Buyer will be void and Buyer shall not be liable for payment of duplicate invoices. Seller shall take all steps necessary to avoid fulfilling duplicate purchase orders. In no event shall Buyer be responsible to pay any portion of any invoice until the entire order of conforming goods is shipped by Seller.

(b) Buyer will pay undisputed invoices forty-five (45) days after Buyer's receipt of all of the goods, equipment and/or services ordered. Cash discount periods shall be computed from either the date of actual delivery of the goods and/or equipment and/or services rendered or the date an acceptable invoice is received by Buyer, whichever is later. Buyer will be entitled at all times to set off any amount owed at any time by Seller or any of its affiliates to Buyer or any of its affiliates against any amount payable at any time by Buyer in connection with an order.

(d) Seller recognizes that Buyer will be treated as a sales tax exempt entity, and Buyer will provide Seller with its exemption certificate on request. All invoices of Seller to Buyer shall exclude taxes that are excludable under Buyer's sales tax exempt status or in connection with a capital improvement.

5. **Packaging.** All goods and/or equipment must be packaged in the manner specified by Buyer and shipped in the manner and by the route and carrier to the address designated by Buyer. If Buyer does not specify the manner in which the goods and/or equipment must be packaged, Seller shall package the goods and/or equipment so as to avoid any damage in transit. If Buyer does not specify the manner of shipment, route, or carrier, then Seller shall ship the goods and/or equipment at the lowest possible transportation rates, consistent with Seller's obligation to meet the delivery schedule set forth in the order. Seller shall pay for damaged goods and/or equipment resulting from improper packing or marking. Itemized packing lists must accompany each shipment. Buyer's count will be final and conclusive on shipments not accompanied by Seller's itemized packing list.

6. **Changes.** Buyer may at any time (including without limitation by email or facsimile), make changes in the drawings, specifications, quantities, delivery location or schedules, method of shipment or packaging, or, prior to the delivery date, suspend and/or cancel its purchase of goods, equipment and/or services under any order and these Terms, without penalty. Should any such change increase or reduce the cost of, or the time required for performance of, an order, an equitable adjustment will be made in the purchase price or delivery schedule, or both. Failure to agree upon an equitable adjustment shall not relieve Seller from proceeding without delay in performance under the order, as changed. Any change in purchase price or delivery time by Seller must be pre-approved by Buyer in writing. No substitutions shall be made without Buyer's prior written consent. Goods and/or equipment shall be tendered by Seller in a single delivery unless otherwise agreed. Shipments shall be F.O.B. Buyer's designated destination or otherwise in accordance with shipping terms in the purchase order.

7. **Delivery.**

(a) Goods and/or equipment shipped by Seller in advance of schedule may be returned to Seller at Seller's sole expense or payment of invoice may be withheld until the required delivery dates, unless Buyer grants prior written authorization for advance delivery. Partial shipments of goods and/or equipment where no partial shipment is specified may be returned to Seller at Seller's expense unless prior written authorization is granted by Buyer for partial delivery, or payment of invoices may be withheld until the order is complete.

(b) Whenever any actual or potential cause delays or threatens to delay performance of an order, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information concerning such causes of delay and its background. Seller shall keep Buyer advised during the period such actual or potential cause exists of its effect on the schedule or work and shipments or deliveries and of the measures being taken to remove it. Delivery time is of the essence with all orders. Failure to tender conforming goods, equipment and/or services by the delivery date specified therein shall constitute a breach by Seller, and Seller shall have no right to make a later conforming tender except upon prior written authorization of Buyer.

(c) Title and risk of loss shall not pass to Buyer until delivery of the goods, equipment and/or services to the location designated on the face of the purchase order and acceptance by Buyer. If Buyer rejects the goods, equipment and/or services, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Seller. The responsibility for freight damaged merchandise will be assumed by Seller. No charges for unauthorized transportation will be allowed.

8. **Inspection.** All goods and/or equipment may be subject to inspection and test by Buyer, in its sole discretion, at all times and places, and in any event prior to final acceptance. Failure to inspect and accept or reject goods, equipment and/or services or failure to detect defects by inspection, will neither relieve Seller from responsibility for such goods, equipment and/or services as are not in accordance with the purchase order nor impose liabilities on Buyer for them. Buyer's payment for the goods, equipment and/or services shall not constitute its acceptance of the goods, equipment and/or services.

9. **Seller Warranties.**

(a) Seller represents, warrants, and covenants that (i) all of the goods, equipment and/or services are free of any claim of any nature by any third person and that Seller will convey clear title to Buyer, (ii) all goods, equipment and/or services sold will be of merchantable quality, free from all defects in design, workmanship and materials, and fit for the particular purposes for which they are purchased and that the goods, equipment and/or services are provided in strict accordance with the submittals, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer, (iii) the prices for the goods, equipment and/or services sold to Buyer under an order are not less favorable than those currently extended to any other customer for the same or similar goods, equipment and/or services in equal or lesser quantities, (iv) all goods, equipment and/or services and their use, sale, lease and distribution will not infringe, misappropriate or violate trademarks, service marks, copyrights, patents, patent rights, trade secrets or other intellectual property rights of a third party, and (v) all goods, equipment and/or services provided to Buyer will comply with all applicable laws, codes, standards and regulations.

(b) Buyer's inspection, test, acceptance or use of the goods, equipment and/or services shall not affect Seller's obligations under these warranties. Goods, equipment and/or services supplied in excess of quantities ordered may be returned to Seller at Seller's sole expense. Seller shall replace or correct, at Buyer's sole election and at Seller's sole cost and expense (including, but not limited to, all transport, packaging, removal, testing, re-install and other labor costs), any of the goods, equipment and/or services found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of an order, these Terms and/or warranties. If Seller fails to correct defects in or replace nonconforming goods, equipment and/or services within ten (10) days from the date Buyer notifies Seller of the defect or defects, Buyer may, in addition to such other rights and remedies it may have by contract or by law or equity, may either (i) make such corrections or replace such goods, equipment and/or services and charge Seller for all costs incurred by Buyer, or (ii) revoke its acceptance of the goods, equipment and/or services in which event Seller shall be obligated to promptly refund the purchase price and make all necessary arrangements, at Seller's cost, for the return of the goods and/or equipment to Seller. Any returns shall be F.O.B. Seller's facility and Seller shall have all risk of loss from and after the time of shipment.

(c) All warranties of Seller herein or that are implied by law shall survive any inspection, delivery, acceptance, or payment by Buyer. Any attempt by Seller to limit, disclaim or restrict these warranties or any remedies of Buyer, by acknowledgment or otherwise, in accepting or performing an order, will be null, void and ineffective without Buyer's written consent.

(d) The foregoing warranties are enforceable by Buyer and its direct and indirect customers receiving such goods, equipment and/or services (collectively "Customers") and each shall remain valid for the longer of: (i) eighteen (18) months from the date of shipment from Seller; (ii) such longer period as is offered by Seller in its then standard warranty; or (iii) such longer period as is required by applicable law. These warranties shall begin anew on the date of repair or replacement pursuant to this Section.

(e) Seller's liability under any order and these Terms shall apply to any and all claims, actions or lawsuits and shall include, without limitation as to amount, incidental or consequential damages of any form or nature. Further, and without limiting the foregoing, Seller's liability is not limited to the price of the goods, equipment and/or services and shall include damages for loss of profits or revenue or the loss of either as well as damages allowable under Labor Law 191-a.

10. **Indemnification.** Seller shall indemnify, defend and hold harmless Buyer, its parent, subsidiaries, Customers, and affiliates, and its/their officers, directors, employees, agents, contractors and representatives (collectively "Indemnitees"), from and against any and all actual or asserted claims, actions, damages, injuries, fines, penalties, settlements, judgments, losses, costs and expenses (including court costs and attorneys' fees) (collectively "Losses") arising out of, pertaining to, in connection with, or resulting directly or indirectly from: (a) Seller's breach of any representation, warranty or covenant hereunder; (b) the goods, equipment and/or services of Seller, including the use, sale, lease, delivery or non-delivery, design, manufacture, distribution, failure or malfunction of such goods, equipment and/or services; (c) recall of any such goods and/or equipment initiated or required by Seller, a governmental agency or applicable

laws, rules, orders or regulations; or (d) negligence, gross negligence, recklessness, fraud, strict liability, fault, violation of law, or willful misconduct of Seller, its employees, suppliers, manufacturers, contractors, officers, directors, guests, invitees or agents. Seller acknowledges and agrees that its indemnity obligations under this Section 10 shall be enforceable against Seller regardless of whether or not any insurance Seller maintains covers such indemnity obligations. The foregoing shall not be construed to negate, abridge, or otherwise reduce any other right or obligation that would otherwise exist as to Seller or to any party or person described herein. In the event that any indemnity provisions herein are contrary to applicable law, then such indemnity obligations shall be construed to apply to the fullest extent allowed by applicable law.

11. **Confidential Information.** Buyer may disclose Confidential Information (as defined below) to Seller in connection with its purchase of goods and/or equipment from Seller. Seller shall not disclose any Confidential Information or any portion thereof to any person or entity and shall only use such Confidential Information to fulfill its obligations hereunder, it being understood that such Confidential Information provides Buyer with a competitive advantage in its trade because it is not generally known or available to the public. In that regard, Seller acknowledges and agrees that Buyer has taken and is taking reasonable steps to protect the confidentiality of, and its legitimate interests in, the Confidential Information. The term “Confidential Information” means information concerning Buyer’s business, personnel, data, financial and marketing plans, intellectual property rights (including, without limitation, patents, trademarks, copyrights and trade secrets), forecasts, strategies and statements, and Customer related information. Seller shall notify Buyer in writing in advance of any intended disclosure of Confidential Information required by law, court or administrative order, with enough advance notice to allow Buyer to seek court intervention.

12. **Limitation of Liability.** To the maximum extent permitted by applicable law, in no event shall Buyer, or its parent or affiliates, or any of its/their directors, officers, employees or agents, be liable hereunder for any special, reliance, consequential, exemplary, punitive, enhanced, incidental or indirect damages, including, without limit, from damages to property, for loss of profits or revenues, income, use or time, whether in tort, contract, or otherwise pertaining to or arising or resulting from performance or non-performance hereunder, and whether or not it knew of the possibility thereof. Should Buyer nevertheless be found liable for any damages, Buyer’s aggregate liability shall be limited to the amount paid by Buyer for the particular goods, equipment and/or services.

13. **Assignment.** Buyer shall have the right to assign an order without Seller’s consent to an affiliate of Buyer. Assignment of an order or any interest in it or any payment due or to become due under it, by Seller without the advance written consent of Buyer, will be void.

14. **Severability and Waiver.** Seller recognizes that these Terms are necessary and that in the event that any such term or condition is deemed to be unreasonable by a court of competent jurisdiction, then Buyer and Seller agree to submit to such a limitation thereof as said court may deem reasonable. Further, if any of the provisions hereof or the application of same shall be determined by said court to be invalid and/or unenforceable to any extent, the remainder hereof and/or the application of same, other than those as to which it is so determined to be invalid and/or unenforceable, shall not be affected thereby. No waiver by Buyer of any breach of these

Terms shall be construed as a waiver of any succeeding breach of the same or of any other term or condition contained herein, and in no event shall this provision itself be waived.

15. **Force Majeure.** Buyer will not be liable for any modification, suspension and/or cancellation of an order, any delay in payment or acceptance of goods, equipment and/or services, or from any damages or losses suffered by Seller by reason of such modification, suspension cancellation and/or delay, when performance in the sole determination of Buyer would be inadvisable, economically unfeasible and/or commercially impractical or when such modification, suspension cancellation and/or delay is directly or indirectly caused by, or in any manner arises from fires, floods, accidents, disease, riots, acts of God, war, acts of terrorism, governmental interference or embargoes, strikes, labor difficulties, equipment breakdowns, shortage of material and/or labor, fuel, power, materials and supplies, transportation delays, pandemics, epidemics or other illnesses, governmental intervention, actions, or omissions (including quarantine and isolation orders), whether under federal law, state law, or local law, rule, order, or regulation or any other governmental (including court) restraints of any kind, whether valid or invalid, national or regional emergency or any other cause or causes (whether similar in nature to any of these herein specified) beyond Buyer's control.

16. **Remedies.** Each of the rights and remedies reserved to Buyer in an order shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Buyer in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Buyer shall be deemed to be a waiver of any such right or remedy in the future.