

**A. Order and Acceptance**

1. **Applicability.** Each Quotation issued by LOGICALIS (%Quotation+) and/or Statement of Work issued by Logicalis (%SOW+) is an offer to sell software, hardware, and services sold by part number (+Products") and/or professional services, managed services or cloud services (%Services+) to purchaser for its own internal use and not for resale (%CUSTOMER+) and includes and is governed by these Terms and Conditions of Sale (%Terms of Sale"). For the avoidance of doubt, the term %services sold by part number+refers to services, which, although ordered from LOGICALIS, are purchased from and supplied by a vendor (i.e., LOGICALIS does not directly perform or control the work) and are therefore considered **Products**. LOGICALIS%Quotation and/or SOW and these Terms of Sale shall be deemed accepted by CUSTOMER upon LOGICALIS%receipt of a purchase order, a signed Quotation, a signed SOW, or a signed third party lease agreement for the purchase of Products and/or Services or through any other conduct that evidences the existence of a contract with respect to the Products and/or Services that are the subject of LOGICALIS%Quotation and/or SOW. Acceptance of LOGICALIS%Quotation and/or SOW and these Terms of Sale is expressly limited to the terms contained in LOGICALIS%Quotation and/or SOW and these Terms of Sale. LOGICALIS rejects any terms and conditions contained in CUSTOMER's forms that are additional to or different from those set forth in LOGICALIS% quotation and/or SOW or in these Terms of Sale.

**B. Additional Terms for Product Sales****2. Product Returns and Warranty Assistance.**

(a) CUSTOMER acknowledges that LOGICALIS is reselling (and not itself providing) all Products purchased by CUSTOMER, including, without limitation, software and Services Sold by Part Number.

(b) LOGICALIS shall pass through to CUSTOMER, the manufacturer's warranties for each product and agrees to facilitate utilization of manufacturer's product return policies. In no event will LOGICALIS provide product return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer's applicable restocking fee(s).

(c) CUSTOMER acknowledges the terms and conditions governing the use of such Products shall be solely between CUSTOMER and the manufacturer.

3. **Product Use and Product Warranty Disclaimer.** CUSTOMER will not use the Products sold by LOGICALIS for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. CUSTOMER agrees that LOGICALIS and the manufacturer of Products are not liable, in whole or in part, for any claim or damage arising from such use.

**LOGICALIS MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PRODUCTS. LOGICALIS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.**

4. **Shipment and Risk of Loss for Product Sales.** All shipments of Products by LOGICALIS to CUSTOMER will be FOB point of shipment. Insurance coverage, transportation costs and all other expenses applicable to shipment from LOGICALIS to CUSTOMER's identified point of delivery will be the responsibility of the CUSTOMER. Risk of loss will pass to the CUSTOMER upon delivery of the products to the common carrier (regardless of who pays such common carrier) or the CUSTOMER's representative at LOGICALIS's point of shipment.

5. **Product Security Interest.** CUSTOMER grants LOGICALIS a security interest in and to the Products as security for payment in full of the purchase price. CUSTOMER authorizes LOGICALIS to file and/or record any documents it deems necessary to perfect this security interest.

6. **Permitting Compliance for Product Sales.** CUSTOMER will obtain all licenses, permits and approvals required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

**C. Additional Terms for Service Sales**

7. **Limited Warranty and Acceptance of Services.** LOGICALIS represents and warrants to Customer that the Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Logicalis according to the generally accepted standards of the industry to which the Services pertain. All Service deliverables will be deemed accepted by CUSTOMER if not rejected in a reasonably detailed writing within five (5) days, or as otherwise identified in the applicable Statement of Work, of submission to CUSTOMER. In the event the Services provided by Logicalis are not in conformance with this warranty, LOGICALIS will take the steps necessary to correct the deficiency at no charge to the CUSTOMER. THIS IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY.

8. **Limited Warranty for Staffing.** LOGICALIS warrants that any consultant provided to CUSTOMER will have the qualifications and hold the certifications represented to CUSTOMER by LOGICALIS. LOGICALIS makes no other representations or warranties with respect to the services to be provided and makes no representation or warranty that services provided by a consultant will not interrupt CUSTOMER's operations.

9. **Service Warranty Disclaimer.** EXCEPT AS PROVIDED FOR UNDER SECTION 7, LOGICALIS MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE Services.. LOGICALIS DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE Services, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. **Logicalis Property.** LOGICALIS software, equipment or consulting, programming, or management tools which may be furnished or utilized by LOGICALIS in the performance of these services shall remain the property of LOGICALIS and shall be immediately returned to LOGICALIS upon its request or upon completion of the Services.

11. **Service Work Assignments.** LOGICALIS retains the right to assign such personnel, including subcontractors, as it deems appropriate to the performance of Services under these Terms of Sale.

12. **CUSTOMER Coordination for Service Sales.** CUSTOMER will provide a primary point of contact and make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by LOGICALIS. LOGICALIS will assign a primary contact person for the Services.

**D. Terms Applicable to All Sales**

13. **Price and Payment.** The prices set forth in any Quotation and/or SOW are exclusive of all applicable taxes, duties, licenses, and tariffs levied upon the sale, purchase or delivery of the Products and/or Services which remain the CUSTOMER's obligation. Prices quoted are firm for thirty (30) days unless otherwise provided on the Quotation and/or SOW. Payment for Products is due thirty (30) days from the date of the invoice issued to the CUSTOMER and payment for Services is due thirty (30) days from the date of acceptance. In the event CUSTOMER chooses to finance the purchase of Products and/or Services from a third party leasing company, CUSTOMER remains liable for payment to LOGICALIS for all Products and Services purchased until LOGICALIS receives complete payment from such leasing company. Where the Quotation and/or SOW includes the purchase of both Products and Services, the transactions shall be deemed to be a separate for the supply of Products and the supply of Services. No default or delay in

the delivery of Products shall relieve the CUSTOMER's payment obligation for Services delivered and accepted by CUSTOMER and no default or delay in the delivery of Services shall relieve the CUSTOMER's payment obligation for Products delivered and accepted by CUSTOMER. All payments will be made in US currency. Out of pocket expenses will be charged as incurred. Unless expressly provided to the contrary, items designated as estimates are not binding commitments to sell at the estimated price or to deliver on the estimated schedule. CUSTOMER will pay interest in the amount of one and one half percent (1.5%) per month, or the maximum allowed by law whichever is lower, on any outstanding balance owed.

**14. Confidential Information.** Information designated as confidential by either party whether before or after the effective date of these Terms of Sale shall be held in strict confidence and used only for purposes of these Terms of Sale. Except as required by law, no Confidential Information shall be disclosed without the prior written consent of the party designating the information as confidential. If either party is legally required to disclose any confidential information of the other party, the party so required shall notify the other party immediately and shall cooperate in seeking a reasonable protective order. This Section shall not apply to information, which is (i) in the public domain, (ii) already known to the recipient, (iii) developed independently or (iv) received from a third party without similar restriction and without breach of this or a similar agreement.

**15. Export.** CUSTOMER agrees to comply with all applicable export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce. CUSTOMER covenants that it will not, either directly or indirectly, sell, export (including without limitation any deemed export as defined by applicable law), re-export, transfer, divert, or otherwise dispose of any Product or Service deliverable to any country (or national thereof) subject to antiterrorism controls, U.S. embargo, encryption technology controls, or to any other person, entity (or utilize any such person or entity in connection with the activities listed above), or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. CUSTOMER certifies, represents and warrants that no Product or Service shall be used for any military or defense purpose, including, without limitation, being used to design, develop, engineer, manufacture, produce, assemble, test, repair, maintain, modify, operate, demilitarize, destroy, process, or use military or defense articles. Notwithstanding any provision of IT services or designs by Logicalis, CUSTOMER acknowledges that it is not relying on LOGICALIS for any advice or counseling on export control requirements. CUSTOMER agrees to indemnify, to the fullest extent permitted by law, LOGICALIS from and against any fines, penalties and reasonable attorney fees that may arise as a result of CUSTOMER's breach of this Section.

**16. Limitation of Liability. NO MONETARY RECOVERY IS AVAILABLE FROM LOGICALIS FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL LOGICALIS' LIABILITY TO CUSTOMER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT OR SERVICE THAT IS THE BASIS FOR THE PARTICULAR CLAIM. FOR REMOTE MANAGEMENT OF CUSTOMER'S ENVIRONMENT (MANAGED SERVICES) AND/OR LOGICALIS ENTERPRISE CLOUD SERVICES, THE TOTAL LIABILITY OF LOGICALIS FOR THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS SHALL NOT EXCEED SIX MONTH'S BASE CHARGE FOR THE SERVICE(S) THAT IS THE BASIS FOR THE PARTICULAR CLAIM. LOGICALIS WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR SERVICE, OR IN ANY WAY CONNECTED TO THESE TERMS OF SALE, EVEN IF LOGICALIS HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.**

**17. Encryption.** Customer shall encrypt at the application level all data that is considered sensitive data that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

**18. Cancellation of Order.** The purchase of Products or Services may be cancelled by CUSTOMER only upon written approval of LOGICALIS and upon terms that indemnify LOGICALIS against all losses related to such cancellation.

**19. Additional Contractual Rights for Default.** If CUSTOMER defaults in performance of any obligation under these Terms of Sale, including the payment of any amount due, LOGICALIS may, at its option, suspend performance, require prepayment, or terminate its performance and collect payment for all Products and Services provided up to the date of termination.

**20. Attorney Fees.** CUSTOMER shall reimburse LOGICALIS for any and all expenses including, without limitation, reasonable attorney fees and legal expenses that LOGICALIS pays or incurs in protecting and enforcing the rights of LOGICALIS under these Terms of Sale.

**21. Publication.** Nothing contained in these Terms of Sale shall be interpreted so as to prevent LOGICALIS from publicizing its business relationship with CUSTOMER or the nature of the Products sold to or Services performed for CUSTOMER.

**22. No Solicitation.** CUSTOMER agrees not to solicit for employment or to employ any LOGICALIS employee for a period of twelve (12) months following the conclusion of the work performed under these Terms of Sale.

**23. Indemnification.** CUSTOMER agrees to defend, at its expense, and to indemnify LOGICALIS against any award of damages and costs based on the claim that any materials or documentation provided by CUSTOMER to LOGICALIS during this engagement infringes a U.S. patent, copyright or other intellectual property right of any third party.

**24. Governing Law and Jurisdiction.** The validity, construction and interpretation of these Terms of Sale and the rights and duties of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought either in the federal court in the Eastern District of Michigan or state courts located in Oakland County, Michigan and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. The U.N. Convention On The International Sale Of Goods (UNCISG) shall not apply to these Terms of Sale.

**25. No Waiver.** The failure of either party to insist upon strict performance of any of the provisions of these Terms of Sale will not be deemed a waiver of any breach or default. The remedies provided to LOGICALIS hereunder are not a waiver of the remedies of LOGICALIS under applicable law.

**26. Severability.** If any provision of these Terms of Sale are unenforceable as a matter of law, all other provisions will remain in effect.

**27. Excusable Delay.** LOGICALIS will not be liable for any delay or failure of performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics or other circumstances beyond LOGICALIS' control.

**28. Time for Bringing Claims.** Any claim by CUSTOMER against LOGICALIS arising from or in connection with LOGICALIS's sale of Products and/or Services cannot be filed, made or maintained unless filed within six months after LOGICALIS shipped or provided the Products and/or Services in question.

**29. Understanding of the Parties.** These Terms of Sale supersede all prior or current written or oral statements, representations, negotiations, agreements and understandings.