Terms & Conditions of Purchase
Products and Services for Internal Use
February 12, 2021 Version
For prior versions please go to www.us.logicalis.com/tcpurchase

A. Order and Acceptance

1. **Applicability.** Each Purchase Order (a "PO") issued by Logicalis, Inc. ("LOGICALIS") is an offer to purchase software, hardware, or services sold by part number ("Products") and/or services ("Services") from the seller listed on the PO ("SELLER"), for LOGICALIS' own internal use and not for resale. These Terms & Conditions of Purchase ("**Terms**") govern all LOGICALIS POs, in lieu of any terms set forth on the face of an individual quotation or SOW (a "Quote") issued by the SELLER. Acceptance by SELLER of any Offer from LOGICALIS is expressly limited to the terms of the Offer and these Terms, and LOGICALIS hereby rejects any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties. SELLER shall be deemed to have accepted LOGICALIS' PO (1) by delivering a writing evidencing such acceptance or (2) by initiating performance in response to the PO. In the event of any conflicting terms between the Quote, PO, and Terms, the terms of the PO and Terms shall control. For the avoidance of doubt, LOGICALIS' submission of a PO in response to a Quote shall not be construed as LOGICALIS' acceptance of terms provided on such Quote unless LOGICALIS' acceptance of such terms is expressly stated on the PO.

B. Warranty and Shipping

2. **Warranty.** SELLER warrants that:
    a. The Products and Services will strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions, and samples.
    b. The Products will be free from defects in workmanship and material and will be new and of the highest quality.
    c. LOGICALIS will receive title to the Products that is free and clear of any liens, encumbrances, and any actual or claimed patent, copyright, or trademark infringement, and that it otherwise has the right to sell the Products to LOGICALIS and has taken all actions and obtained all authorizations necessary to allow LOGICALIS' use and enjoyment of the Products (for example, by executing any necessary software license terms).
    d. The Products will be merchantable, safe, and fit for LOGICALIS' intended purposes, which have been communicated to SELLER.
    e. The Products will be adequately contained, packaged, marked, and labeled.
    f. The Products will be manufactured, labeled, transported, licensed, approved, or certified in compliance with all applicable federal, state, and local laws, regulations, or orders and agency or association standards or other standards applicable thereto, including but not limited to the Occupational Health and Safety Act, the Fair Labor Standards Act, and any law or order pertaining to discrimination.
    g. All Services performed by SELLER will be performed in a good and workmanlike manner in accordance with the highest standards of the industry to which the Services pertain.

These warranties will be in addition to all other warranties, express, implied, or statutory. These warranties will survive inspection, test, delivery, acceptance, use, and payment by LOGICALIS and will inure to the benefit of LOGICALIS, its successors, assigns, and end users of SELLER's products. These warranties may not be limited or disclaimed by SELLER. LOGICALIS' approval of SELLER's design, material, process, drawing, specifications, or the like will not be construed to relieve SELLER of the warranties set forth in these Terms, nor will a waiver by LOGICALIS of any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered unless stated by LOGICALIS in writing.

If in LOGICALIS' sole determination the Products or Services fail to be in conformance with the warranties set forth herein, LOGICALIS will have the right to take the following actions, at LOGICALIS' option:

1. Retain Products in whole or in part with an appropriate adjustment in the price therefor;
2. Require SELLER to repair or replace the non-conforming Products or re-perform the non-conforming Services in whole or in part at SELLER's sole expense, including, without limitation, all shipping, transportation, installation, and out-of-pocket costs;
3. Correct or replace Products with similar items and recover the total cost from SELLER, including the cost of Product recalls;
4. Cancel the PO, in which case SELLER shall refund the total purchase price paid for the nonconforming Products or Services; or
5. Exercise all other rights under the UCC and any other applicable laws.

To the extent that any SELLER is reselling any Products, SELLER shall, to the extent available, pass through to LOGICALIS the manufacturer's warranties for each Product and facilitate the manufacturer's return policies.

3. **Delivery and Freight Charges**. Sale of all Products is FOB destination. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to LOGICALIS' identified point of delivery shall be the responsibility of SELLER. Risk of loss shall pass to LOGICALIS upon delivery of the Products to the identified point of delivery.

4. **Timely Delivery.** Time is of the essence in fulfillment of SELLER's obligations under the PO. Shipment and delivery shall be made in accordance with the PO; provided that, if not addressed in the PO, delivery shall be made within ten (10) days of LOGICALIS' issuance of the PO. LOGICALIS may, at its option and without limitation of any of its other rights, cancel any unfilled part of the PO if complete, conforming delivery is not made within the times specified. LOGICALIS is not required to accept partial or incomplete delivery. LOGICALIS' issuance of a PO shall not bind LOGICALIS to accept any future Products or Services.

C. Terms Applicable to All Sales

5. **Price and Payment.** The prices set forth in any Quote 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 SELLER's obligation. LOGICALIS shall make payment forty-five (45) days after receipt of an undisputed invoice or acceptance by LOGICALIS of the Products or Services, whichever is later. All payments will be made in US currency. SELLER shall bear the risk of fluctuation in foreign exchange rate. LOGICALIS shall have the right to reduce and set off against amounts payable any indebtedness or other claim which LOGICALIS may have against SELLER, however and whenever arising.

6. **Confidential Information.** All information that is not generally known to the public that is disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") or that is otherwise learned by the Receiving Party in the course of its discussions or business dealings with, or its physical or electronic access to the premises of, the Disclosing Party, that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential, shall be considered "Confidential Information" which shall be held in strict confidence by the Receiving Party for three (3) years from the date of disclosure and shall be used only for purposes of the delivery of Products or Services. Except as required by law, no Confidential Information shall be disclosed to a third party without the prior written consent of the Disclosing Party. If the Receiving Party is legally required to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall notify the Disclosing Party immediately in writing, provide the Disclosing Party with a copy of such order, and shall cooperate in seeking a reasonable protective order. If a protective order is not granted, the Receiving Party will disclose only such Confidential Information as is legally required and will use its best efforts to obtain confidential treatment for any Confidential Information that is so disclosed. This Section shall not apply to information which is (i) in the public domain, (ii) already known to the Receiving Party, (iii) developed independently, or (iv) received from a third party without similar restriction and without breach of this or a similar agreement.

7. **Export.** SELLER 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. SELLER agrees to indemnify LOGICALIS, to the fullest extent permitted by law, from and against any fines, penalties, and reasonable attorney fees that may arise as a result of SELLER's breach of this Section. SELLER agrees to cooperate with LOGICALIS and execute any and all necessary documentation to ensure that LOGICALIS is in compliance with all applicable U.S. Export Control Laws and Regulations.

8. **Limitation of Liability. IN NO EVENT WILL LOGICALIS' LIABILITY TO SELLER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT OR SERVICE 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, 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.**

9. **Cancellation of Order.** LOGICALIS may, by written notice to SELLER, cancel or terminate the PO, or any part thereof, for any or no reason. Upon notice of cancellation or termination, SELLER shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the cancelled or terminated PO, or portion thereof. LOGICALIS shall pay SELLER for Products and Services accepted as of the date of termination. LOGICALIS shall have no responsibility for work performed after SELLER's receipt of notice of cancellation or termination.

10. **Additional Contractual Rights for Default.** If SELLER for any reason does not perform according to these Terms, LOGICALIS may, at its option, enforce specific performance of these Terms or declare the PO to be void and be entitled to the return of the monies paid to SELLER under these Terms.

11. **Attorney Fees.** SELLER 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 its rights under these Terms.

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

13. **No Solicitation.** SELLER 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.

14. **Indemnification.** SELLER agrees to defend, at its expense, and to indemnify LOGICALIS against any award of damages and costs based on the claim that any Product(s) or Service(s), or related materials or documentation, provided by SELLER to LOGICALIS pursuant to a PO infringes a U.S. patent, copyright, or other intellectual property right of any third party (an "IP Claim"). If SELLER believes there is a basis for an IP Claim, SELLER shall promptly notify LOGICALIS in writing. LOGICALIS shall have the right, at its sole option, to cancel the PO or any part thereof. In the event that LOGICALIS does not cancel the PO accordingly, SELLER shall have the right, at its sole option and expense, to either (a) procure the right for LOGICALIS to continue receiving the Services or using the Products as provided in these Terms, or (b) replace or modify the applicable Service or Product with a service or product that has substantially similar functionality and that SELLER believes would not be subject to the IP Claim. If SELLER deems (a) or (b) not feasible or commercially reasonable in its reasonable judgment, SELLER has the right to terminate performance under the applicable part(s) of the PO. In the event of any termination by LOGICALIS or SELLER hereunder, SELLER shall refund to LOGICALIS the unused portion of any amounts paid by LOGICALIS for the affected Service(s) or Product(s).

SELLER agrees to indemnify and hold harmless LOGICALIS and all of its respective directors, officers, employees, and agents (herein collectively and individually referred to as "Indemnitee(s)") from and against any and all loss, cost, damage, and expense of every kind and description, including, but not limited to, attorneys' fees and litigation expenses, that may be incurred by any Indemnitee as the result of any claims (including lawsuits, administrative claims, regulatory actions, and other proceedings to recover for personal injury or death, property damage, or economic losses) that are related in any way to or arise in any way from SELLER's representations, warranties, or performance of or failure to perform obligations under these Terms. SELLER's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise.

If SELLER performs any work on LOGICALIS' or LOGICALIS' customer's premises or utilizes the property of LOGICALIS or its customer, whether on or off LOGICALIS' or its customer's premises, SELLER shall indemnify and hold harmless any Indemnitee(s) from and against any liabilities, claims, demands or expenses (including actual fees for attorneys, experts and consultants, settlement costs, and judgments) for damages to the property of or injuries (including death) to LOGICALIS or its employees or any other person arising from or in connection with SELLER's performance of work or use of LOGICALIS' or its customer's property.

15. **Governing Law and Jurisdiction**. The validity, construction, and interpretation of these Terms 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 these Terms 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.

16. **No Waiver.** The failure of either party to insist upon strict performance of any of the provisions of these Terms 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.

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

18. **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.

19. **Time for Bringing Claims.** Any claim by SELLER against LOGICALIS arising from or in connection with these Terms cannot be filed, made, or maintained unless filed within six (6) months after SELLER shipped or provided the Products and/or Services in question.

20. **Understanding of the Parties.** These Terms supersede all prior or current written or oral statements, representations, negotiations, agreements, and understandings between the parties concerning the matters contained in these Terms.

21. **Amendment.** These Terms may be amended or modified only with the written consent of the parties.

22. **Third-Party Beneficiaries.** These Terms do not confer any enforceable rights or remedies upon any person or party other than the parties.

23. **Compliance with Laws.** The parties shall comply with all applicable federal, state, and local laws, statutes, rules, and regulations.

24. **Relationship of Parties.** The parties are independent contractors, and these Terms shall neither create nor imply an agency relationship between the parties. Neither party shall have any authority to act, attempt to act, or represent itself, directly or by implication, as an agent of the other or in any manner assume, create, or attempt to assume or create any obligation on behalf of or in the name of the other, nor shall either be deemed the agent or employee of the other.

25. **Notices.** Any notices or other communications required or permitted to be given or delivered under these Terms shall be in writing and shall be sufficiently given if hand-delivered or sent by first-class certified or overnight delivery mail, postage prepaid:

If to LOGICALIS, then to:

Logicalis, Inc.
Attn: General Counsel
2600 S. Telegraph Rd., Ste. 200
Bloomfield Hills, MI 48302

If to SELLER, then to the person who accepted the PO on behalf of SELLER or to SELLER itself at the address indicated on the Quote.

A party may change its address for notices by sending a notice in accordance with this Section 25.

26. **Captions.** The descriptive headings of the sections and subsections of these Terms are for convenience only, do not constitute a part of these Terms, and do not affect these Terms' construction or interpretation.

27. **Survival.** Those provisions that by their nature should survive termination will survive.