

A. Order and Acceptance

1. **Applicability.** Each Purchase Order issued by LOGICALIS ("PO") is an acceptance to purchase software, hardware ("Products"), and/or services ("Services") from SELLER, the name listed on the PO. These Terms & Conditions of Purchase ("Terms") apply to all LOGICALIS POs, in addition to any terms set forth on the face of an individual quotation or SOW ("Offer") issued by the SELLER. Acceptance by LOGICALIS of any Offer from SELLER 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. In the event of any conflicting terms between the Offer, PO, and Terms, the terms of the PO and Terms shall control.

B. Warranty and Shipping

2. **Warranty.** SELLER warrants that:

- The Products will strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions, and samples.
- The Products will be free from defects in workmanship and material and will be new and of the highest quality.
- 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.
- The Products will be merchantable, safe, and fit for LOGICALIS' intended purposes, which the purposes have been communicated to SELLER.
- The Products will be adequately contained, packaged, marked, and labeled.
- The Products will be manufactured in compliance with all applicable federal, state, and local laws, regulations, or orders and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval, or certification, including by way of illustration and not by way of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, and any law or order pertaining to discrimination.
- All services performed by SELLER will be performed in a competent, skillful manner in accordance with industry standards.

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 LOGICALIS or its end users experiences any defect, failure, or nonconformity, LOGICALIS will have the right to take the following actions, at LOGICALIS' option:

- Retain Products in whole or in part with an appropriate adjustment in the price for the goods;
- Require SELLER to repair or replace Products in whole or in part at SELLER's sole expense, including all shipping, transportation, and installation costs;
- Correct or replace Products with similar items and recover the total cost from SELLER, including the cost of Product recalls; or
- Exercise all other rights under the UCC and any other applicable statutes.
- Repair or replace the Services at no charge to LOGICALIS
- Refund the total purchase price paid for the Services.

3. **Delivery and Freight Charges.** Sale of all Products is FOB destination. SELLER assumes responsibility for all packing, crating, and delivery of the equipment, including transportation costs.

4. **Timely Delivery.** Time is of the essence in fulfillment of the Offer. Shipment and delivery shall be made in accordance with the Offer; provided, that if not addressed in the Offer, 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 Offer if complete, conforming delivery is not made within the times specified. LOGICALIS is not required to accept partial or incomplete delivery. Acceptance of any part of the Offer shall not bind LOGICALIS to accept any future shipments or Services.

C. Terms Applicable to All Sales

5. **Price and Payment.** The prices set forth in any Offer 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 days after receipt of invoice or acceptance by LOGICALIS. All payments will be made in US currency. SELLER shall bear the risk of fluctuation in foreign exchange rate. LOGICALIS shall have no obligation to pay any amount prior to LOGICALIS' receipt of a correct and proper invoice. 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.** Information designated as confidential by either party whether before or after the effective date of these Terms shall be held in strict confidence and used only for purposes of these Terms. 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.

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, 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 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 required U.S. Export Control Laws and Regulations, with regards to SELLER'S purchase hereunder.

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 OF PURCHASE, 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 Products or Services in the Offer, 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 Products or Services in the Offer. 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 Offer and 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 the rights of LOGICALIS 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 materials or documentation provided by SELLER to LOGICALIS during this engagement infringes a U.S. patent, copyright or other intellectual property right of any third party. 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, SELLER's 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 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, 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 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.