

EQUIPMENT SCHEDULE

This Schedule is effective for Equipment provided on or after 1 September 2013. Terms and Conditions applicable to Equipment provided prior to this date are available from Logicalis on request.

Customer and Logicalis agree as follows:

- A. This Equipment Schedule, including the Proposal and the Logicalis Terms and Conditions a link to which will be found at www.au.logicalis.com/terms.aspx will together form an agreement ("the Agreement") for the provision of Equipment ("the Equipment") between Logicalis and the Customer.
- B. The Customer agrees to be bound by the Agreement on the date that (i) both parties sign, or confirm acceptance in writing of, the Proposal; or (ii) Logicalis supplies the Equipment to the Customer; (whichever occurs earlier).

1. Term of Agreement

- 1.1. The Equipment will be provided during the Term identified in the Proposal.
- 1.2. Unless otherwise provided in the Proposal, the supply of any Equipment may not be cancelled by the Customer, except with the agreement in writing of Logicalis and payment by the Customer of the Termination Charges set out in the Logicalis Terms and Conditions.

2. Provision of Equipment

- 2.1. Logicalis will during the Term, and in accordance with the provisions of the Agreement, supply to Customer the Equipment. The quantity and description of the Equipment shall be as set out in the Proposal.

3. Manufacturer's Terms and Documentation

- 3.1. Equipment will be supplied subject to the Manufacturer's Terms, with any standard documentation, including user manuals, which the Manufacturer makes generally available, at no cost, for customers purchasing the Equipment. Any other documentation, or updates to documentation, will be subject to clause 5.3. (Contract Changes) of the Logicalis Terms and Conditions.

4. Specifications

- 4.1. The sole specifications applicable to the Equipment are the Manufacturer's specifications. The parties agree that:
 - a) any other drawings, descriptive matter, and advertising issued in respect of the Equipment are for illustrative purposes only and they do not form part of the Agreement;
 - b) any typographical, clerical or other error or omission in any document or information issued in respect of the Equipment shall be subject to correction without any liability on the part of Logicalis; and
 - c) Logicalis' employees, contractors and agents are not authorised to make any representations concerning the Equipment except as set out in the Agreement. The Customer waives any claim for breach of any representations which have not

been set out in the Agreement.

5. Timetable

- 5.1. The timetable for provision of the Equipment will be set out in the Proposal. Alternatively, for large projects, the Proposal may provide for preparation of a Project Plan by Logicalis for Customer's approval. The Customer will not unreasonably delay or withhold approval for the Project Plan. Once approved, the Project Plan will form part of the Agreement.
- 5.2. Logicalis shall use reasonable endeavours to meet any dates or times specified in the Proposal or Project Plan but, except where otherwise specified in the Agreement, any such dates or times shall be estimates only.
- 5.3. Logicalis will not in any event be liable for delays caused by Customer, or Force Majeure and may make a reasonable change to the timetable or Project Plan and a reasonable Charge at its then current standard commercial charges in respect thereof.
- 5.4. Each party will in good faith attempt to accommodate extensions of time reasonably requested by the other. However, Customer acknowledges that the Equipment will be delivered directly from the Manufacturer to the Customer's Premises. Accordingly, if the Customer is not ready to accept delivery on and from the delivery date estimated in the Proposal or the Project Plan (Estimated Delivery Date) then the terms of clause 6.7 below will apply.

6. Delivery and Risk

- 6.1. Except where alternative delivery arrangements are specified in the Proposal, Equipment will be delivered directly from the Manufacturer to the Premises.
- 6.2. Unless delivery costs are specifically included in the Proposal, the Customer is responsible for all delivery costs, including (without limitation) import duties, packaging, freight and insurance costs for the Equipment.
- 6.3. Subject to clause 6.7, risk in the Equipment shall pass to the Customer when the Equipment has been delivered to the Premises.
- 6.4. Logicalis shall use its reasonable endeavours to deliver the Equipment on the Estimated Delivery Date, but any Estimated Delivery Date is dependent on the Manufacturer and approximate only. If no Estimated Delivery Date is specified, then delivery shall be as estimated by the Manufacturer.
- 6.5. Delivery shall be made during the hours of 9.00 a.m. to 5.00 p.m. Monday to Friday (excluding bank or public holidays). Logicalis may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 6.6. Logicalis may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of clause 6 (Charges) of the Logicalis Terms and Conditions.
- 6.7. If Logicalis is unable to deliver Equipment to the Premises on or after the Estimated Delivery Date because Customer is unable or unwilling to accept delivery, or due to any other act or omission of Customer, then:
 - a) Risk in the Equipment shall pass to the Customer on the date on which Logicalis offers to deliver the Equipment; and

- b) The Customer shall pay all costs of any storage, handling and further delivery or attempted delivery of the Equipment.
- 6.8. Unless otherwise stated in the Proposal the Customer shall be responsible (at the Customer's cost) for preparing the Premises for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required for delivering and installing the Equipment. If Logicalis is prevented or impeded from carrying out delivery or installation on or after the Estimated Delivery Date because no such preparation has been carried out or because the preparation is inadequate, then Logicalis may make an additional Charge at its then current standard commercial charges in respect thereof.
- 6.9. Logicalis will rectify any damage, shortage, or loss, in transit, provided that the Customer notifies Logicalis of such damage, shortage, or loss, within five working days after delivery of the Equipment. Any remedy under this clause shall be limited, at the option of Logicalis, to (i) the replacement of any Equipment which is verified to have been undelivered; (ii) the replacement or repair of any Equipment which is verified to have been lost or damaged in transit; or (iii) the issuing of a credit note against any invoice raised for such Equipment.

7. Title

- 7.1. Ownership of the Equipment shall pass to the Customer when Logicalis has received payment in full for the Equipment.

Until ownership of the Equipment has passed to the Customer the Customer shall:

- a) hold the Equipment on a fiduciary basis as Logicalis' bailee;
 - b) properly store the Equipment (at no cost to Logicalis) so that it remains readily identifiable as Logicalis' property;
 - c) not destroy, deface or obscure any identifying mark on the Equipment;
 - d) keep the Equipment properly insured for its full price against all risks and hold the proceeds of such insurance on trust for Logicalis;
 - e) keep the Equipment free from all third party interests including charges, liens and encumbrances;
 - f) not sell, modify or alter the Equipment;
 - g) permit Logicalis to enter any premises on which the Equipment is stored; to inspect, and if clause 7.2 becomes applicable, recover and remove the Equipment; and
 - h) provide all assistance reasonably required by Logicalis to protect its title to the Equipment, including registration on the Personal Property Securities Register.
- 7.2. The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 8.2 (Termination for insolvency) of the Logicalis Terms and Conditions arise; or if the Customer fails to comply with clause 7.1 above; or if the Customer fails to make any payment to Logicalis on the due date.

8. Customer Obligations

- 8.1. Supply of the Equipment will be subject to any Customer Obligations set out in the

Proposal. In addition, the Customer agrees:

- a) to respond within reasonable timeframes to requests for information, input or approval, including: (i) responses to requests for information within four (4) working days; and (ii) responses to and/or (where required in the Proposal) approval of documents, specifications, Project Plans and/or Acceptance Test Plans within seven (7) working days;
- b) to provide Logicalis with reasonable and safe access to its Premises, facilities, supplies and consumables and such of the Customer's employees and contractors, infrastructure topology diagrams and equipment as shall be necessary for timely supply of the Equipment;
- c) to provide copies of any policies, procedures, security and safety requirements which apply to the Customer's Premises and to provide to Logicalis staff accessing the Premises, free of charge, the same policies, procedures, security and safety training that it provides to its own staff;
- d) to give not less than 10 (ten) working days notice of any requested changes to a previously agreed timetable; and
- e) to provide any other facilities or assistance reasonably requested by Logicalis to enable Logicalis to supply the Equipment.

9. Invoices and Charges

- 9.1. Unless milestone payments are specified in the Proposal, Charges for Equipment will be invoiced on delivery of the Equipment to the Premises and will be payable within 30 days of the date of invoice.
- 9.2. The Charges for the Equipment shall be as set out in the Proposal.

10. Acceptance

- 10.1. **Equipment subject to acceptance testing:** The Proposal will specify if the Equipment is subject to acceptance testing. If so:
 - a) the Equipment will be subjected to the test procedures recommended by the Manufacturer within 7 days after installation. Any additional acceptance testing will be specified in the Proposal;
 - b) Logicalis will conduct the tests in the presence of the Customer's designated representative to verify that the Equipment complies in all material respects with the Manufacturer's specifications. Any failures will be agreed, documented and rectified until the acceptance tests are successfully completed;
 - c) If the Equipment repeatedly fails the acceptance tests, Logicalis will either withdraw the defective Equipment and refund the Equipment Charge, or alternatively arrange for the Manufacturer to repair or replace the defective Equipment, in accordance with the Manufacturer's Terms and then rerun the tests in the presence of the Customer's designated representative until the tests are successfully completed. Logicalis has no other liability for an Equipment defect;
 - d) After successful completion of the acceptance tests, Logicalis will issue the Customer with an invoice or written confirmation of completion and the Equipment will be deemed to be accepted.

- 10.2. **Equipment not subject to acceptance testing:** if the Proposal does not specify that the Equipment is subject to acceptance testing then:
- a) the Customer must provide written notice of any claim of defects in relation to the Equipment within 5 business days after delivery of the Equipment;
 - b) on receipt of a defect claim, Logicalis will validate the existence of the defect and if validated, Logicalis will either withdraw the defective Equipment and refund the Equipment Charge, or alternatively arrange for the Manufacturer to repair or replace the defective Equipment in accordance with the Manufacturer's Terms. Logicalis has no other liability for an Equipment defect;
 - c) If the Manufacturer authorises return of the Equipment then the Customer must return the Equipment in accordance with the Manufacturer's instructions. Unless otherwise agreed by the Manufacturer the Customer will be liable for packaging, freight and insurance costs for the Equipment the subject of a return. Logicalis reserves the right to charge a reasonable fee for assisting with returns.
- 10.3. **Deemed Acceptance:** Equipment shall be deemed accepted by Customer upon any operational use of the Equipment by Customer.

11. Warranty

- 11.1. Logicalis warrants that it has full power and authority to enter into and perform its obligations under the Agreement and that it will comply with all laws and regulations which are applicable to Logicalis in the performance of its obligations under the Agreement.
- 11.2. All Equipment is supplied subject to the Manufacturer's Terms. Logicalis shall pass to the Customer so far as it is permitted by the Manufacturer to do so, any warranty provision applicable to the Equipment and provided by the Manufacturer of the Equipment. Logicalis is not the Manufacturer of the Equipment and does not provide any warranty in relation to the Equipment.

12. Software

- 12.1. The Customer acknowledges and agrees that:
- a) Logicalis gives no warranties in relation to Third Party Software;
 - b) The licences for all Third Party Software will be between the Customer and the Manufacturer and the Customer will comply with the Manufacturer's Terms;
 - c) The Customer is buying only the media on which the Third Party Software is recorded and the accompanying user manuals;
 - d) Nothing contained in the Agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals.
- 12.2. Where the Customer has registered with the Manufacturer or other third party to obtain support for Third Party Software (whether or not such registration was originally effected by Logicalis) it is the responsibility of the Customer to maintain such registration and to give notice of any relevant changes to the Manufacturer or other third party.

13. Manufacturer's Maintenance Services

- 13.1. Where the Customer is purchasing new Equipment Logicalis may include and charge

the Customer for Manufacturer's Maintenance Services, where this is available from the Manufacturer of the Equipment, except where provided otherwise in the Proposal, or where the Customer is purchasing Logicalis Maintenance Services for that Equipment.

- 13.2. Manufacturer's Maintenance Services are provided subject to the Manufacturer's Terms. Logicalis gives no warranties in relation to Manufacturer's Maintenance Services.
- 13.3. Manufacturer's Maintenance Services will be provided for the Term identified in the Proposal or in the Manufacturer's Terms. The minimum Term is 12 months. Unless otherwise agreed by the Manufacturer, the supply of Manufacturer's Maintenance Services may not be cancelled by the Customer.
- 13.4. All Manufacturer's Maintenance Services are payable in advance, for the full term, within thirty (30) days after the date of Logicalis' invoice and are not refundable.

14. Export Control

- 14.1. Equipment may be subject to United States, Australian and other government export control laws and regulations. Each party warrants that it will comply with those laws and regulations.

15. Product safety

- 15.1. The Customer acknowledges that the Manufacturer of the Equipment is solely responsible for compliance with Australian product safety laws, regulations and standards applicable to the Equipment, (including, without limitation, electrical safety laws) and Logicalis gives no warranties in relation to compliance with those requirements.