



## STANDARD TRADING TERMS AND CONDITIONS

### 1. STANDARD TRADING TERMS AND CONDITIONS TO PREVAIL

The Customer agrees that Prologix is prepared to do business on the basis that, notwithstanding anything in the Customer's enquiry, specification, acceptance, order or other documentation (including, without limitation, the Customer's standard terms and conditions) or discussions to the contrary (collectively the "Customer Terms"), the terms and conditions contained in these standard trading terms and conditions (the "STCs"), read together with any special terms and conditions of quotation contained in a written quotation provided by Prologix to the Customer from time to time (the "Quotation"), shall constitute the sole terms of the agreement between Prologix and the Customer.

### 2. NO VARIATIONS OR AMENDMENTS

- 2.1. No amendment or consensual cancellation of these STCs or any provision or term of these STCs or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these STCs and no settlement of any disputes arising under these STCs and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of these STCs or of any agreement, bill of exchange or other document issued pursuant to or in terms of these STCs shall be binding unless recorded in a written document signed by an authorised representative of Prologix.
- 2.2. No extension of time or waiver or relaxation of any of the provisions or terms of these STCs or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these STCs, shall operate as an estoppel against Prologix in respect of its rights under these STCs, nor shall it operate so as to preclude Prologix thereafter from exercising its rights strictly in accordance with these STCs.
- 2.3. Prologix shall not be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced these STCs between Prologix and the Customer or not.

### 3. QUOTATIONS

- 3.1. Any Quotation given is not an offer by Prologix to sell the goods but constitutes an invitation by Prologix to the Customer to do business with Prologix. A contract shall only come into force between Prologix and the

Customer if after receipt by Prologix of the Customer's order or acceptance of the Quotation (such order and/or acceptance of Quotation constituting an offer on the terms and conditions contained in these STCs read with the terms of the Quotation), Prologix accepts such offer.

- 3.2. The purchase order is based on the designs, quantities, specifications and other information supplied to Prologix by or on behalf of the Customer. If the Customer requires any modification or addition to any of the foregoing at any time after the purchase order is given, Prologix shall have the sole and absolute discretion to accept or reject such proposed modification or addition. Any proposed modification or addition by the Customer must be furnished to Prologix in writing and agreed to by both parties
- 3.3. If the Customer requires any variation to the purchase order, subsequent to the date of the purchase order, Prologix shall be entitled (in its discretion) to requote, or adjust the amount of its purchaser order.

#### 4. **PLACING OF ORDERS**

- 4.1. All orders are to be sent in writing (using an official purchase order from the Customer) and no telephone orders will be accepted by Prologix.
- 4.2. Any order may not be withdrawn until accepted or rejected by Prologix save as otherwise agreed in writing between the parties from time to time. Any such order shall upon acceptance thereof by Prologix be irrevocable. Should the Customer decide to change or cancel an order, the Customer will be liable for the full costs incurred to date by Prologix, in relation to that order.
- 4.3. Where the goods or any part thereof are to be imported, any acceptance by Prologix is subject to the condition that Prologix's order is accepted and confirmed by Prologix's own suppliers and that delivery is made thereunder in due course.
- 4.4. The Customer shall forthwith after acceptance of any order furnish Prologix with all information reasonably required by Prologix to enable it to comply with its obligations.

#### 5. **PURCHASE PRICE AND PAYMENT**

- 5.1. Orders (other than those in respect of which a Quotation was given and was duly accepted) are accepted by Prologix only on the basis that the prices charged will be those ruling at the date of acceptance by Prologix, unless otherwise expressly stated.
- 5.2. Unless otherwise expressly stated, prices are exclusive of value-added tax which shall be for the account of the Customer unless the Customer has given acceptable proof to Prologix that the supply is a zero-rated or

an exempt supply. The Customer shall pay or reimburse to Prologix the amount of any value-added tax simultaneously with the purchase price.

- 5.3. The Customer shall be obliged to pay to Prologix, in addition to the contract price, the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined. In particular, but without limiting the generality of the foregoing, Prologix shall be entitled to increase the contract price in order to make provision for any increases in cost arising as a result of or during the period of any delay or special request by the Customer.
- 5.4. Any expenses incurred by Prologix at the instance of the Customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by Prologix due to instructions given, or a failure to give instructions by the Customer, shall be added to the contract price.
- 5.5. Unless otherwise specified by Prologix in writing, payment is to be effected within 30 (thirty) calendar days from date of statement. All amounts shall be payable by the Customer to Prologix, in cash in South African Rands without deduction or set-off and free of any exchange. Prologix does not accept any cheque payments. Default interest may be charged on all overdue amounts at 2% (two percent) per annum, compounded monthly in arrear, above the prime overdraft bank rate charged by Prologix's bankers from time to time on all overdue amounts from the date upon which such amount became due and payable until the date on which such amount together with all interest accrued on such amount has been paid by the Customer to Prologix.

## 6. DELIVERY AND RISK

- 6.1. Prologix and Customer at order acceptance stage, will discuss and confirm order quantities and reasonable timings for the delivery of all orders in accordance with the Customer requirements. Prologix shall use reasonable commercial endeavours to meet the estimated delivery dates. Prologix will not be liable for any losses or damages (including, without limitation consequential loss) due to a delay in delivery.
- 6.2. The Customer shall not be entitled to refuse delivery or to resile from the contract, nor to withhold or defer any payment, nor to reduce the contract price on account of delays in effecting delivery, whether occasioned by any negligent act or omission on the part of Prologix, its servants, agents or any other persons.

- 6.3. The Customer is required to sign Prologix's invoice and/or delivery note as proof of receipt and return the signed copy to Prologix electronically. Risk in and to the goods shall pass to the Customer on delivery.
- 6.4. The Customer shall be obliged to inspect all goods upon receipt by it of the goods and shall endorse the delivery note and/or invoice as to any missing or damaged goods. No claims for missing or damaged goods shall be valid unless the delivery note and/or invoice has been appropriately endorsed and, in addition, the Customer notifies Prologix in writing within 5 (five) business days of receipt by it of the goods of the claim in question, furnishing full details in regard thereto. The Customer shall bear the onus of proving that upon receipt by it of the goods, any goods are missing or damaged. If the Customer successfully discharges this onus Prologix shall replace the damaged or missing goods free of charge.
- 6.5. If Prologix is unable to deliver the goods to the Customer due to any act or omission on the part of the Customer and Prologix is required to store such goods then the Customer shall re-imburse Prologix, on demand, for all fees and costs incurred by Prologix in respect of such storage.
- 6.6. Should the Customer fail or refuse to take delivery of the goods when delivery is tendered, or fail or refuse to furnish the information necessary to enable delivery thereof to be effected, then upon notification by Prologix to the Customer that the goods are ready for delivery:
  - 6.6.1. the goods shall be deemed to have been delivered to the Customer;
  - 6.6.2. risk in and to the goods shall pass to the Customer on the date of such notification;
  - 6.6.3. the Customer shall be liable to pay the contract price of such goods to Prologix;
  - 6.6.4. the Customer shall be liable for all expenses, losses and/or damage suffered or incurred by Prologix as a direct or indirect result of the failure and/or refusal by the Customer to take delivery of the goods when delivery is tendered and/or failure or refusal to furnish the information necessary to enable delivery thereof to be effected.

## 7. OWNERSHIP

- 7.1. Ownership of the goods shall not pass to the Customer until the entire contract price (including interest, if applicable) in respect of the goods has been paid in full. The provisions hereof shall apply notwithstanding that the goods may be incorporated into or form part of other goods or change their essential character. All goods, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable without injury to either property.

- 7.2. Prologix reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The Customer shall be obliged to advise Prologix of the name and address of the owner/landlord of any such premises and shall promptly advise Prologix of any change in the name and/or the address of any owner/landlord or of any new owner/landlord.
- 7.3. The Customer shall take all such steps as may be necessary to notify interested third parties that ownership of the goods in question has not passed from Prologix. In particular the Customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The Customer shall produce written proof of such notices to Prologix on demand.

## 8. WARRANTIES

- 8.1. Prologix offers a standard 1 (one) year manufacturing warranty from date of production.
- 8.2. The warranties provided herein and the obligations of Prologix hereunder are in lieu of, and the Customer waives, all other warranties, guarantees, conditions or liabilities, express or implied, arising by law or otherwise, including without limitation, any obligation of Prologix in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods and whether or not occasioned by Prologix's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing Prologix does not warrant that the goods will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the goods is known to Prologix). For the purposes hereof, any reference to Prologix shall include its servants, agents or contractors or any other person for whose acts or omissions Prologix may be liable in law.
- 8.3. Prologix shall be relieved of all obligations under any warranties in terms hereof, if:
- 8.3.1. repairs and/or modifications have been made by persons other than Prologix, unless such repairs or modifications are made with the prior written consent of Prologix; or
  - 8.3.2. any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by Prologix; or
  - 8.3.3. the goods have been operated for any purpose other than the purpose for which they are designed to be used; or
  - 8.3.4. the goods are not been properly installed.

8.4. If repairs or replacements are effected by Prologix, only the parts actually worked on and not the complete goods shall be subject to new warranties, if any, hereunder unless a complete overhaul of the goods is undertaken.

9. **INSURANCE**

Any Customer-issued stock, jigs, fixtures, tools, PCs, equipment or other items provided to Prologix is to be insured under the Customer's insurance, while in Prologix's possession. The cover should be for fire, theft and goods-in-transit. The Customer shall at its own expense and prior to taking delivery of the goods, insure the goods and thereafter keep the goods insured until such time as the goods have been paid for in full. The insurance policy shall record the interest of both Prologix and the Customer. The Customer shall, if required by Prologix, cede to Prologix all its rights in terms of such insurance policy.

10. **BREACH**

If the Customer breaches any of these STCs or any other agreement with Prologix or fails to pay any amount payable on or before the due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice Prologix's rights hereunder or at all, or allows any judgment against the Customer to remain unsatisfied for 7 (seven) days or is placed into provisional or final liquidation or enters into business rescue proceedings or is placed under provisional or final sequestration or if the Customer's estate is voluntarily surrendered, Prologix shall have the right, without prejudice to any other right which Prologix may have against the Customer (including, without limitation, Prologix's right to claim damages from the Customer), to elect to:

10.1. treat as immediately due and payable all outstanding amounts which would otherwise become due and payable and to claim such amounts as well as any other amounts in arrear including interest and to cease performance of its obligations hereunder as well as under any other contract with the Customer until the Customer has remedied the breach; or

10.2. cancel these STCs and retake possession of any of the goods sold.

11. **NO CESSION**

The Customer shall not be entitled to cede or assign any rights and/or obligations which the Customer may have in terms of these STCs to any third party without Prologix's prior written consent.

12. **SECURITY FOR OBLIGATIONS**

Prologix reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligations hereunder including but not limited to the payment of the contract price. If Prologix so requires, the Customer shall deliver to Prologix prior to Prologix complying with any of its obligations hereunder confirmed irrevocable letters of credit by financial institutions acceptable to Prologix, or, an irrevocable and unconditional guarantee issued by a South African registered bank acceptable to Prologix for all and any sums of money owing by the Customer to Prologix.

13. **CLAIMS FOR THE CUSTOMER'S MATERIALS OR TOOLS**

It is the Customer's responsibility to maintain all Customer-issued stock, jigs, fixtures, tools, PCs, equipment, or other items provided to Prologix. Prologix will communicate timeously with the Customer should any maintenance or repairs be required. If the Customer supplies materials and/or patterns and/or tools for use in connection with its order to Prologix, Prologix shall only be liable for loss or damage occurring to such materials and/or patterns and/or tools while on Prologix's premises or under its control if such loss or damage is a direct result of its negligence.

14. **EXEMPTION AND INDEMNITY**

14.1. The Customer shall have no claim of any nature whatsoever whether for damages, a remission of the purchase price, cancellation or otherwise, against Prologix, its servants, agents or others on whose behalf Prologix would be liable, in respect of any loss or damage sustained by the Customer of any nature whatsoever or any damage caused to the assets of the Customer or assets kept on its premises by any third parties or in regard to the Customer's business or sustained by any of its Customers, howsoever caused including the negligent acts or omissions of Prologix, its servants, agents or others for whom it may be liable in law. This constitutes also a stipulatioalteri (namely, a benefit in favour of a third party which may be accepted by such third party) in favour of such persons the benefits of which may be accepted by them at any time.

14.2. In all cases where the goods are supplied to a specification, drawing, design or description of the Customer, the Customer indemnifies Prologix, its servants, agents or person for whom it may be liable in law against any loss, damage or expense, including legal costs, which may be demanded from or sustained by one or more of Prologix, its servants, agents or person for whom it is liable in law, by reason of any claim brought by any third party (not restricted to claims contemplated in this clause), arising out of the implementation of these STCs or any act or omission on the part of the Customer, its servants, agents or person for whom it is liable in law.

15. **LIMITATION OF LIABILITY**

- 15.1. Under no circumstances whatsoever, including (without limitation) as a result of its negligent acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable shall Prologix be liable to the Customer (whether in contract or in delict) for:
- 15.1.1. any claims, losses, damages or liabilities suffered or incurred by the Customer in relation to these STCs which exceed the contract price actually paid by the Customer to Prologix pursuant to these STCs, on the basis that the aggregate amount recoverable by the Customer from Prologix, from whatever cause arising, shall be limited to the aforesaid amount; and/or
- 15.1.2. any consequential, indirect or special loss or damage (whether the loss or the special circumstances relating thereto was actually foreseen or reasonably foreseeable).
- 15.2. No claim, regardless of form, arising out of these STCs may be brought by the Customer against Prologix more than 12 (twelve) months after the cause of action in respect of such claim occurred.
- 15.3. Each provision of these STCs, excluding or limiting liability of Prologix, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts will continue to apply.

16. **FORCE MAJEURE**

- 16.1. For the purposes of this clause vis major or force majeure or casus fortuitus (the "**Interrupting Circumstances**") include, without limitation, acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, legal and illegal strikes, interruption of transport, lockouts, inability on the part of Prologix to obtain the goods (including, without limitation, a part of such goods) from the Customer, prohibition of exports or imports, rationing of supplies, flood, storm, fire or any other circumstances beyond the reasonable control of Prologix.
- 16.2. If the Interrupting Circumstances cause delays in or failure or partial failure of performance by Prologix of all or any of its obligations hereunder, these STCs, or as the case may be, the affected portion thereof shall be suspended for the period during which the Interrupting Circumstances prevail.
- 16.3. Where Interrupting Circumstances exist the period within which Prologix is required to perform under these STCs shall be extended by a period equal to the time that its performance is so prevented; and Prologix shall be entitled to elect, upon written notice to the Customer, to terminate these STCs in which case the Customer shall be obliged to pay Prologix the full outstanding contract price of the goods delivered by

Prologix to the Customer prior to the date upon which Prologix delivers such termination notice to the Customer.

**17. REDUCTION OF PURCHASE PRICE**

If the amount of the price payable by the Customer or interest on such amount receivable by Prologix is reduced in the hands of Prologix, as a result of:

- 17.1. the enactment, introduction or change in or in the interpretation of, any law or regulation or any applicable jurisdiction; or
- 17.2. a request from any central bank or other fiscal, monetary or other authority of applicable jurisdiction (whether or not having the force of law), which imposes, modifies or deems applicable any reserve requirement or similar requirement including, without limitation, a requirement on Prologix to make any payment on or in relation to a sum received by it from the Customer on account of tax (other than tax on the overall income of Prologix), or any law or regulation of any applicable jurisdiction or any request from any such authority requires that the Customer suspend or otherwise defer payment of the price or interest on such amount;

the Customer shall, in any event, pay to Prologix on demand an amount sufficient to indemnify and hold Prologix harmless against the effects of any such requirement, including without limitation, the effects of any increased costs or tax as aforesaid. If the enactment of or any change in, or in the interpretation of, any applicable law makes it unlawful for the Customer to perform its other obligations hereunder, the Customer shall on demand by Prologix prepay without payment of any bonus or penalty of interest, an amount equal to the principal amount of the price then outstanding together with all interest accrued on such amount to the date of such prepayment and all other sums payable under these STCs, and the Customer shall thereupon be discharged from its obligations hereunder.

**18. CONSUMER PROTECTION ACT**

18.1. If the Consumer Protection Act, 2008 (the "CPA") is:

- 18.1.1. applicable between the Customer and Prologix pursuant to these STCs then the provisions of these STCs shall be read and interpreted as being subject to the relevant provisions of CPA; or
- 18.1.2. not applicable to these STCs then the STCs shall not be read as being subject to the CPA.

18.2. If the Customer is not the final consumer of the goods supplied to it in terms of these STCs then the Customer hereby indemnifies Prologix against any claims made by the final consumer of the goods against Prologix in relation to the CPA on the basis that the Customer shall pay Prologix one Rand for each one Rand's worth of loss or damage suffered or incurred by Prologix pursuant to any aforesaid claim made by the final consumer against Prologix.

19. **GOVERNING LAWS**

19.1. This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with these STCs, including any question regarding its existence, validity, interpretation, termination or enforceability, (a "**Dispute**") shall be resolved in accordance with the laws of the Republic of South Africa.

19.2. Notwithstanding anything to the contrary contained in clause 20, Prologix shall be entitled to apply for any interdict (or any other matter that cannot be resolved pursuant to clause 20) to be heard by any competent court having jurisdiction.

20. **SETTLEMENT OF DISPUTES**

**Amicable Settlement**

If any Dispute arises between any of the Parties, they shall use all reasonable endeavours to resolve the matter amicably and in good faith. If one Party gives any other Party notice that a Dispute has arisen and the Parties are unable to resolve such Dispute within 30 (thirty) days of service of such notice or as soon as possible, then such Dispute shall be referred to the managing director of the Parties. No Party shall resort to arbitration against any other Party under these STCs until at least 30 (thirty) days after such referral. This shall not affect a Party's right to seek interim relief.

**Arbitration**

20.1. Unless provided for to the contrary in these STCs, a Dispute which arises in regard to:

20.1.1. the interpretation of;

20.1.2. the carrying into effect of;

20.1.3. any of the Parties' rights and obligations arising from;

20.1.4. the termination or purported termination of or arising from the termination of; or

20.1.5. the rectification or proposed rectification of these STCs, or out of or pursuant to these STCs or on any matter which in terms of these STCs requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction)

and which is not amicably resolved, shall be submitted to and decided by arbitration.

20.2. That arbitration shall be held:

20.2.1. with only the Parties and their representatives present thereat; and

20.2.2. at Durban, South Africa.

20.3. It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty-one) business days after it has been demanded. The Parties shall use their reasonable endeavours to procure the expeditious completion of the arbitration.

20.4. Save as expressly provided in these STCs to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.

20.5. There shall be one arbitrator who shall, if the question in issue is:

20.5.1. primarily a legal matter, a practising senior counsel or, alternatively, a practising attorney of not less than 15 (fifteen) years' experience as an attorney; or

20.5.2. an accounting matter, an independent auditor agreed to in writing between the Parties (or, failing agreement within 5 (five) Business Days of a request therefor, such appointment shall be made by the President of the South African Institute of Chartered Accountants (or its successor body)); or

20.5.3. any other matter, a suitably qualified person.

20.6. The appointment of the arbitrator shall be agreed upon by the Parties in writing or, failing agreement by the Parties within 10 (ten) business days after the arbitration has been demanded, at the request of any of the Parties shall be nominated by the Chairman for the time being of the Arbitration Foundation of South Africa (or its successor body in title) ("**AFSA**"). If that person fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 20.7. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 20.8. The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 20.9. The provisions of this clause are severable from the rest of these STCs and shall remain in effect even if these STCs is terminated for any reason.
- 20.10. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration, which judgment the arbitrator shall be entitled to rescind on good cause shown in terms of the legal principles applicable to rescission of judgments.

21. **COSTS**

The Customer shall be liable for all costs incurred by Prologix in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

22. **SEVERABILITY**

Any provision in these STCs which is or may become illegal, invalid or unenforceable in any jurisdiction affected by these STCs shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the balance of these STCs, without invalidating the remaining provisions of these STCs or affecting the validity or enforceability of such provision in any other jurisdiction.