



GENERAL CONDITIONS OF PURCHASE

1. DEFINITIONS

In terms of these General Conditions of Purchase, the following shall have the meanings assigned to them, unless inconsistent with or expressly indicated by the context:

- 1.1. **"Delivery"** means the delivery of the Goods in terms of the Order;
- 1.2. **"General Conditions of Purchase"** means these general conditions of purchase;
- 1.3. **"Goods"** mean any goods, services, work, equipment, machinery, tools, materials, or anything whatsoever the nature, to be supplied by the Seller to Prologix in terms of the Order;
- 1.4. **"Order"** means this General Conditions of Purchase, any annexures and any other documents specifically referred to in connection therewith, which combine to make up the whole of the agreement between Prologix and the Seller;
- 1.5. **"Prologix"** means Production Logix Proprietary Limited, registration number 2016/049673/07;
- 1.6. **"Purchase Price"** means the price(s) quoted by the Seller and accepted by Prologix for the Goods;
- 1.7. **"Quotation"** means a verbal or written offer from the Seller based on and complying in full with the General Conditions of Purchase;
- 1.8. **"Seller"** means the seller or manufacturer or any organisation or person who undertakes to execute the Order.

2. CONDITIONS

- 2.1. These General Conditions of Purchase shall supersede the Seller's Quotation.
- 2.2. Any special conditions specified in the Order shall supersede any of the general conditions hereof with which it may be in conflict.

3. **ACCEPTANCE OF THE ORDER**

The Seller shall – within a period of 5 (five) days from the date of the Order, provide written confirmation to Prologix, of its acceptance and/or any comments in respect of such Order. Should the Seller fail to provide any such response, it shall be deemed to constitute an acceptance, of the Order, by the Seller.

4. **PRICES**

- 4.1. Prices shall be considered fixed and shall include the cost of packing materials and all costs for Delivery of Goods at Prologix's stores, unless otherwise specified in the Order.
- 4.2. If prices are subject to escalation, the changes therein shall be calculated on the basis set out in the Seller's Quotation, and as may have been accepted by Prologix. Should the basis not be agreed upon prior to the issue of the Order, documentary proof of all changes shall be furnished by the Seller to Prologix.
- 4.3. Should the Order be issued on a "Price to be Advised", "Estimated Price", "Price subject to Adjustment" or any other similar basis, it shall be a condition of the Order that Prologix shall be advised of details of the proposed price prior to the Seller tendering its invoice. Prologix may demand, before payment is made, that the price computation be supported by documentary evidence.
- 4.4. Goods sold by weight are purchased by nett weight only. The Seller shall be required to state the gross and nett weights on its waybill.

5. **ADDITIONAL CHARGES OR INCREASED PRICES**

Unless stipulated to the contrary in the Order, no additional charges of whatsoever nature shall be accepted by Prologix unless the Seller has obtained Prologix's acceptance in writing of such additional charges, prior to the execution of the Order. Failure to obtain such prior approval, shall entitle Prologix to pay based on the original prices contained in the Order.

6. **TERMS OF PAYMENT**

- 6.1. Subject to any deductions authorised and subject to the Seller having performed all its obligations in terms of the Order, and unless other arrangements have been specifically agreed upon, Prologix shall as far as reasonably possible, pay for such Goods delivered to its stores and inspected and accepted by it within 30 (thirty) days after receiving the Seller's monthly statement.
- 6.2. The closing date for the processing of invoices shall be the 25th day of each month. Invoices received by Prologix's creditors department after such closing date shall only be processed in the following month.

7. EXCHANGE RATE DIFFERENCES

- 7.1. The basic sum in the monetary unit stated in the Order, shall only be subject to change as a result of variation in the rate of exchange which has been ruled on a given date and the rate of exchange ruling on another date, subject to the following conditions:
- 7.1.1. if the Seller has clearly stated the rate of exchange in its Quotation as well as the percentage or part of the Order value to be remitted overseas;
 - 7.1.2. if payment is made to an overseas concern before the Seller has received payment from Prologix (the “**Pre-Payment**”), the rate of exchange applicable to the Pre-Payment will be taken into consideration for purposes of adjustment;
 - 7.1.3. if payment is made to an overseas concern after the Seller has received payment from Prologix (the “**Post-Payment**”), and if Delivery is effected within the agreed contractual delivery period, the rate of exchange applicable to the Post-Payment, up to the date 17 (seventeen) calendar days after Prologix's payment has been received by the Seller, shall be taken for purposes of adjustment;
 - 7.1.4. if an advance payment is made, the conditions contained clause 7.1.3 shall *mutatis mutandis* apply.
- 7.2. The Seller shall not be entitled to take advantage of any changes in the rate of exchange and, should any profit accrue to the Seller through a change in the rate of exchange, such sum shall be paid over to Prologix without any delay. After having remitted the amount overseas, the Seller shall submit supporting documentary evidence from its bankers of the transfer date of the foreign currency and the exchange rate at which it was remitted, to enable Prologix to verify these particulars.

8. DELIVERY

- 8.1. The date of Delivery by the Seller shall be specified in the Order and time is of the essence in respect thereof.
- 8.2. Goods delivered at Prologix, will initially only be accepted with regard to quantity of packages and contents will thereafter, within a reasonable time, be inspected to verify Order quantity and quality in accordance with clause 14
- 8.3. Should the Seller fail to deliver the Goods at Prologix on or before the due date, then in addition to the remedies available to Prologix in terms of clause 11, the Seller indemnifies Prologix against all loss and/or

damages, direct or indirect which Prologix may suffer in consequence of such failure (including such penalties for which Prologix may be liable to its customers).

8.4. If it should appear to the Seller that the despatch of Goods covered by the Order will, for any reason, be delayed so that the stated delivery requirements cannot or are unlikely to be fulfilled, the Seller shall be obliged immediately to obtain written confirmation from Prologix that the Goods are still required. Failing such confirmation being given, Prologix shall be entitled to cancel the Order in terms of clause 11.

8.5. Goods shall be received by Prologix only between the hours of 08h00 and 16h00 from Mondays to Thursday and from 08h00 to 15h00 on Fridays. Delivery of Goods outside of these specified times must be specially arranged.

9. **RISK AND LIABILITY**

9.1. All risks in and to the Goods, shall:

9.1.1. in respect of road transportation, pass from the Seller to Prologix once the Goods have been delivered to Prologix stores and confirmation of receipt by Prologix, has been obtained in respect thereof;

9.1.2. in respect of any other form of transport, pass from the Seller to Prologix at the point as defined in the agreed upon Incoterm.

9.2. Notwithstanding the provisions of clause 9.1, Prologix shall not be liable for:

9.2.1. any defective, grey or non-compliant Goods, including Goods where Prologix did not conduct a first article inspection (as more fully set out in clause 14.2.3); and/or

9.2.2. any other supply-related risks;

9.2.3. any damages caused as a result of the defective Goods.

9.3. For the sake of clarity and avoidance of doubt, the liability contemplated in clause 9.2, shall at all times remain with the Supplier.

10. **SELLER'S RESPONSIBILITIES**

The Seller shall:

- 10.1. ensure that the Goods are of the qualities and descriptions and in every way in accordance with the specifications, drawings, patterns, and samples specified in the Order or in documents relating to the Order. Should there be no description, or sample or pattern provided, the Goods shall be to the satisfaction of Prologix;
- 10.2. ensure that there are no counterfeit Goods supplied to Prologix at any time;
- 10.3. procure the timeous delivery of the Goods, in accordance with the Order;
- 10.4. provide Prologix with the certification as contemplated in clause 19.

11. DEFAULT

- 11.1. Should the Seller fail to comply with any of its obligations in terms of clause 10, Prologix shall, without prejudice to any other remedy, which it may have, including a claim for damages for breach of contract, be entitled:
 - 11.1.1. to claim from the Seller, liquidated damages in an amount equal to 1/14% (one fourteenth percent) of the Purchase Price of the late delivered Goods, for every day, including Sundays and public holidays, that such Goods are delayed; and/or
 - 11.1.2. to cancel the Order, either wholly or to the extent of such default; and/or
 - 11.1.3. to purchase from another vendor Goods of the same or similar description, or order Goods to be manufactured as Prologix thinks fit to rectify such default.
- 11.2. Any sum payable by Prologix to such other vendor over and above the Purchase Price which would have been payable to the Seller shall be recoverable from the Seller together with the liquidated amount of any loss or any damage directly or indirectly, sustained by Prologix as a result of such late or non-delivery. The liability imposed upon the Seller under this clause shall be in addition to and not in substitution of any other liability, which it may incur under these conditions.

12. DOCUMENTS AND MARKING

- 12.1. Every container delivered shall:
 - 12.1.1. be clearly marked with Prologix's Order number and the Seller's name;

- 12.1.2. contain a packing slip/delivery note showing the name of the Seller, Prologix's Order number and a detailed listing of the contents of the container;
- 12.1.3. be accompanied by a waybill, which reflects the Seller's name, Prologix's Order number and the Goods delivered.
- 12.2. Tax invoices quoting Prologix's Order number shall be delivered together with the Goods marked "For attention - Creditors Department".

13. **JIGS, TOOLS, TEMPLATES, ETC**

Unless otherwise agreed, the cost of all jigs, tools, templates and similar equipment which may be necessary for the execution of the Order, shall be quoted for separately and shall on completion or cancellation of the Order, become the property of Prologix. The said equipment shall be delivered in good condition to Prologix by the Seller properly marked with the Order number and the relevant code number as supplied by Prologix for the finished Goods.

14. **INSPECTION**

- 14.1. Prologix reserves the right to inspect the quality of any workmanship, Goods or materials at Prologix or at the Seller's premises or where so ever it may think suitable and in accordance with these conditions.
- 14.2. Prologix may adopt any means it may deem fit or necessary to satisfy itself that the correct Goods as stated in the Order have been supplied or that the correct materials and sound workmanship are being used/applied in any work undertaken for Prologix and it shall have the right to:
 - 14.2.1. inspect in whatever manner it may think fit giving prior notice to the Seller;
 - 14.2.2. reject any Goods which in its opinion do not comply with the terms of the Order;
 - 14.2.3. a first article inspection ("FAI") will be carried out where deemed necessary. For the sake of clarity and the avoidance of doubt, Prologix reserves the right to rely solely on the Release Certificate (as more fully set out in clause 19) in instances where it does not conduct the FAI.
- 14.3. Notwithstanding any receipt that may have been given on Delivery of the Goods, Prologix reserves the right to:
 - 14.3.1. reconcile such Goods with the Seller's Delivery note with regards to quantity and quality at a later stage and the Seller shall be obliged to rectify any discrepancies which become apparent;

provided that Prologix shall so notify the Seller thereof within a reasonable period of such Delivery; and

- 14.3.2. reject any Goods found not to be in accordance with the Order. Rejected Goods will be held at the risk and expense of the Seller who, before such Goods are returned shall refund the Purchase Price and all charges and expenses incurred by Prologix in respect of such Goods. Rejected Goods shall, if required by Prologix, be replaced by the Seller upon receipt of notification of rejection. Should the Seller fail within any reasonable time required by Prologix to replace the Goods, Prologix shall be entitled to the remedies set out in clause 11.

15. **AUDIT OF SUPPLIER RECORDS**

Prologix reserves the right to audit the records of the Supplier from time-to-time.

16. **INSOLVENCY**

Prologix may, by notice in writing cancel the Order forthwith if the Seller becomes insolvent or makes any arrangements with its creditors or being a company, goes into liquidation, either voluntary or compulsory or is placed under judicial management or business rescue.

17. **GUARANTEE**

The Seller guarantees the Goods delivered to be as specified in the Order and against defect in workmanship and material for a period of not less than 12 (twelve) months from the date of Delivery to Prologix or as otherwise specified and mutually agreed upon.

18. **CANCELLATION OF ORDER**

Prologix reserves the rights to cancel the Order by notice in writing without being obliged to furnish any reasons therefore, and in the event that the Seller is not in default, Prologix shall be liable only for payment in respect of:

- 18.1. Goods completed and delivered at the date of such notice at the Purchase Price;
- 18.2. work in progress at prices to be agreed upon, but such prices shall in no instance exceed a pro rata part of the cost of the item as specified in the Order;
- 18.3. raw materials which have been ordered by the Seller for this particular Order at ruling market price, provided that such raw materials shall be delivered to Prologix;

18.4. the reasonable cost of any special equipment such as jigs, tools and templates that cannot be utilised for other purposes carried out by the Seller, provided that such equipment is delivered to Prologix and only to the extent that the cost thereof has not already been paid by Prologix.

19. **RELEASE CERTIFICATE (CERTIFICATE OF CONFORMANCE)**

19.1. The Seller shall, at its own cost and as soon as reasonably possible, furnish Prologix with "Test and Clearance Certificates" and a Certificate of Conformance in duplicate, certifying that the Goods have been manufactured, tested and inspected, and conform to the full requirements of the drawings and/or specifications relevant thereto and as stated on the Order.

19.2. In addition, the "Release Certificate" shall certify that the raw materials and/or parts used in manufacturing the Goods were obtained from approved sources of manufacture and are supported by Release Certificates.

19.3. In addition, where Goods are procured internationally by the Seller, original equipment manufacturer (OEM) Release Certification shall be provided to Prologix, by the Seller.

19.4. Prologix shall be permitted to retain the release certification contemplated herein for a period of 10 (ten) years from the date of receipt of such certification.

20. **CONTAINERS**

In the event of the containers being returnable, this shall be specifically stated by the Seller on its waybills or Delivery notices. All such containers shall be returned to the Seller, at the Seller's own expense.

21. **AMENDMENT OR VARIATIONS TO THE ORDER**

It is a specific condition of the Order that no variations or modifications thereto will be recognised unless authorised in writing and signed by an authorised official of Prologix or its duly authorised representative.

22. **CESSION**

The Seller shall not cede any of its rights nor assign any of its obligations under the Order without the prior written consent of Prologix.

23. **LIABILITY FOR PATENT RIGHTS**

The Seller hereby indemnifies and holds Prologix harmless from and against any claims, damages, losses or costs incurred arising from the infringement or alleged infringement of any patent rights, trade marks or other protected rights of a similar nature.

24. **DOMICILIUM**

As *domicilium citandi et executandi* for all purposes of the Order, Prologix selects its place of business situated at 5 Moss Road, Westmead, Pinetown, 3610.

25. **GOVERNING LAWS**

25.1. This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with these General Conditions of Purchase, 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.

25.2. Notwithstanding anything to the contrary contained in clause 26, Prologix shall be entitled to apply for any interdict (or any other matter that cannot be resolved pursuant to clause 26) to be heard by any competent court having jurisdiction.

26. **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 General Conditions of Purchase until at least 30 (thirty) days after such referral. This shall not affect a Party's right to seek interim relief.

Arbitration

26.1. Unless provided for to the contrary in these General Conditions of Purchase, a Dispute which arises in regard to:

26.1.1. the interpretation of;

- 26.1.2. the carrying into effect of;
- 26.1.3. any of the Parties' rights and obligations arising from;
- 26.1.4. the termination or purported termination of or arising from the termination of; or
- 26.1.5. the rectification or proposed rectification of these General Conditions of Purchase, or out of or pursuant to these General Conditions of Purchase or on any matter which in terms of these General Conditions of Purchase 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.

26.2. That arbitration shall be held:

- 26.2.1. with only the Parties and their representatives present thereat; and
- 26.2.2. at Durban, South Africa.

26.3. 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.

26.4. Save as expressly provided in these General Conditions of Purchase to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.

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

- 26.5.1. 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
- 26.5.2. 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
- 26.5.3. any other matter, a suitably qualified person.

26.6. 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.

26.7. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

26.8. The arbitrator shall be obliged to give his award in writing fully supported by reasons.

26.9. The provisions of this clause are severable from the rest of these General Conditions of Purchase and shall remain in effect even if these General Conditions of Purchase is terminated for any reason.

26.10. 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.

27. **CONFIDENTIALITY**

The Seller undertakes to keep any information related to the interface with Prologix strictly confidential and not to disclose any details thereof without the written consent of Prologix. Any documents, plans, drawings, sketches or other information furnished to the Seller for purposes of executing or completing the Order, or data, measured results, or any other information generated in the execution of the order, shall be treated as confidential and shall remain the property of Prologix and shall be returned on demand.