

CREDIT APPLICATION

BUSINESS CONTACT INFORMATION

Full registered name		Duxbury Account number (please note if you do not have one, contact accounts@duxnet.co.za)	
Trading as		Registered company address	
		City, ZIP Code	

MANAGEMENT DETAILS

Please provide the full names of the owner/s, shareholders, principal/s, director/s, member/s

Full Name	ID Number	Residential Address

DETAILS OF FIXED PROPERTY OWNED

Address	Stand number and Township	Estimated Value	Bond Value	Bondholder	Name in which property registered

DETAILS OF BOND/CESSIONS OVER MOVABLE ASSETS

Amounts	Details

FOR OFFICE USE ONLY

Account Number		Date of Approval	
Credit Limit approved			

BANKING DETAILS

Bank		Account no	
Branch		Branch no	

AUDITORS

Auditors Company Name		Telephone number	
Auditor name			

PROPERTY

Are you premises	<input type="checkbox"/> Owned <input type="checkbox"/> Leased <input type="checkbox"/> Rented		
Landlords name		Landlords number	

FACILITY REQUIRED

Average Annual purchase	R	
Average monthly purchase	R	
Value of initial order	R	
Terms required	STRICTLY 30 DAYS FROM STATEMENT	
Credit Limit required	R	

NAME OF PERSON RESPONSIBLE FOR ACCOUNTS

Name or person/s handling accounts, queries, etc.	Telephone	Position	Email Address
1.			
2.			
3.			
4.			
Address to which statement should be sent		Statement email address	

BUSINESS/TRADE REFERENCES

Please make sure that the references are from the IT industry

Company name		Phone	
Contact Person			
Company name		Phone	
Contact Person			
Company name		Phone	
Address			

REQUIRED DOCUMENTATION

Failure to attach the forms below may impact your approval process

<input type="checkbox"/> ID of authorized signatures <input type="checkbox"/> Cipro Documentation <input type="checkbox"/> Financial Statements

DEED OF SURETYSHIP AND INDEMNITY

I/We the undersigned

FULL NAME	MARITAL STATUS	RESIDENTIAL ADDRESS	I.D. NUMBER
1.			
2.			
3.			
4.			

Do hereby bind myself/ourselves, as surety/ies and co-principal debtor/s jointly and severally and in solidum with:

.....

FULL LEGAL NAME

(hereinafter referred to as the "Principal Debtor/s")

Unto and in favour of

DUXBURY TRANSMISSION EQUIPMENT CC

(Hereinafter referred to as the "Creditor")

Or its Successors in title or assigns for the due and punctual payment of all amounts of whatsoever nature and or for the performance of any obligation, all of which may not be or in the future become due payable or owing by the principal Debtor/s to the Creditor for any reason whatsoever, subject to the following conditions:

1. Joint and Several Liability

All signatories to this document shall be liable to the Creditor jointly and severally as debtor, surety or co-principal debtor for all the obligations of the debtor under this agreement.

2. Cession of Claims

The Creditor shall be at liberty, in its sole and absolute discretion, without my/our prior knowledge or consent, and without releasing me/us from my/our liability hereunder to cede, assign and/or transfer any of its right, title and interest in and to any or all of its claims against the Principal Debtor/s which are now in existence or may come into existence in its own discretion and on such cession my/our liability shall continue in favour of the cessionary for both the existing Liability at the date of the cession and also in respect of any further liability incurred by the Principal Debtor/s with the cessionary arising from any cause whatsoever.

3. Discretion of the Creditor

The Creditor may in its discretion and without reference to me/us:

- 3.1. determine the extent, nature and duration of any facility granted to the Principal Debtor/s;
- 3.2. arrange or compromise any debt due by the Principal Debtor/s to the Creditor;;
- 3.3. release in whole or in part any security the Creditor may hold;
- 3.4. cede its claim or any other right that it may hold against the Principal Debtor/s, without prejudice to its rights in terms hereof;
- 3.5. institute any such proceedings or take such steps as it may deem fit against the Principal Debtor/s including the right to repossess any goods sold to the Debtors and to deal therewith or sell same in such manner, at such price and on such terms as the Creditor in its sole discretion may decide, in which event the selling price shall be deemed to be the true market value of the goods sold;

Int. signature _____ Int. Witness _____

- 3.6. grant any leniency, indulgence or extension of times to the Principal Debtor/s or vary any agreement, undertaking and/or arrangement with the Principal Debtor/s in any other manner whatsoever;
- 3.7. enter into agreements or cancellation with the Principal Debtor/s in respect or any existing or future arrangement and/or to enter into new arrangements and/or substitute new purchasers for the Principal Debtor/s;
- 3.8. shall be at liberty, without discharging me/us from liability hereunder, to grant time or other indulgences to the Principal Debtor/s and shall likewise be at liberty to give such terms to and make such conditions with the Principal Debtor/s, as the Creditor shall think fit, and at all or any time or times, to alter, vary and revise the same or any part thereof, as the Creditor may consider advisable in its own interest, without reference to me/us, and the Creditor shall also be at liberty to take any security/ies which it may think fit from the Principal Debtor/s, or any other surety/ies and in its discretion to realise and discharge or otherwise deal with any such security/ies or any part thereof

4. Allocation of payments and deposits

- 4.1. The Creditor shall be entitled to apply any payment received or recovered from the debtor or any surety of the debtor in such a manner as it may deem fit.
- 4.2. This discretion includes the right to hold the amount in a separate account without any obligation to utilise such amount in discharge or part discharge of the Principal Debtor/s obligation for as long as the Creditor deems fit.

5. Insolvency and Liquidation

If the estate of the Principal Debtor/s or any person who binds himself/herself as surety or co-principal debtor hereunder is sequestrated or placed under judicial management, business rescue, administration or curatorship:

- 5.1. the Creditor may institute a claim against such estate without affecting or diminishing any claim remaining hereunder;
- 5.2. the Creditor shall be entitled to apply all proceeds or payments received from the estate, in diminishing the amount owed without diminishing any liability hereunder;
- 5.3. the Creditor shall be entitled to prove against the Estate for the full amount of the indebtedness and/or to accept any offer of compromise, whether at common law or in terms of any statutory provision, without prejudice to its rights to recover from me/us to the full extent hereof any sum which may be owing by the Principal Debtor/s;
- 5.4. any liability existing hereunder shall not be affected by the existence of the possibility of a future dividend payable by the insolvent estate;

6. Renunciation of Benefits

I/We hereby renounce the following exceptions and/or benefits and declare that I/we am/are acquainted with the meaning thereof:

- 6.1. *beneficium ordinis seu excussion;*
- 6.2. *beneficium divisionis;*
- 6.3. *exceptio non causa debiti;*
- 6.4. *exceptio errore calculi;*
- 6.5. *exceptio non numerate pecuniae;*
- 6.6. revision of accounts;
- 6.7. *beneficium de duobus vel pluribus reis debendi;*

7. Continuing Security

- 7.1. This suretyship shall be a continuing covering security for all debts due under this Agreement, notwithstanding any intermediate extinction or settlement of the amount owing, until the Creditor has received notice in writing from me/us or my/our executor, trustee or other legal representative terminating this suretyship.
- 7.2. The suretyship shall nevertheless remain in existence until the amount owing plus all costs and interest, which may have accrued, is settled, provided that this notice shall have no force or effect unless it is accompanied by a similar notice addressed to the debtor.

8. Domicilium citandi et executandi

- 8.1. I/We choose the address as stipulated above as the address for the service of all notices, communication or legal processes arising from this suretyship.
- 8.2. This address shall only be changed after proper notification to the creditor.

Int. signature _____ Int. Witness _____

9. Certificate

A certificate signed by the Secretary/Controller/Credit Manager of the Creditor, for the time being, shall be sufficient proof of the amount owing in terms hereof and the applicable rate of interest for purposes of judgment, including provisional judgment and summary judgment, and to prove any claim against an insolvent or deceased estate. It will not be necessary to prove in such certificate the capacity of the person signing the certificate.

10. Jurisdiction

I/We hereby agree and consent that the Creditor shall be entitled, at its option, to institute any legal proceedings which may arise out of or in connection herewith in any Magistrate’s Court having jurisdiction in respect of my/our person notwithstanding that the claim or the value of the matter in dispute might exceed the jurisdiction of the Magistrate’s Court.

11. Indemnity

11.1. I/We hereby indemnify and hold the Creditor harmless against any loss or damage which it may sustain for any reason whatsoever, irrespective of the validity and or enforceability of its claim/s against the Principal Debtor/s.

11.2. It is agreed and declared that all admissions or acknowledgements of indebtedness by the Principal Debtor/s shall be binding on me/us.

12. Legal Costs

I/we agree that we will be liable for all costs which may be incurred in the enforcement of this suretyship, including collection costs on the scale of attorney and client.

13. Whole Agreement

13.1. This agreement constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties.

13.2. The parties agree that no other terms or conditions, whether oral or written, and whether expressed or implied apply.

Dated atthis the.....day of20.....

SIGNATURES			
Witness 1		Surety 1	
Signature		Signature	
Name and Title		Name and Title	
Date		Date	
Place		Place	
Witness 2		Surety 2	
Signature		Signature	
Name and Title		Name and Title	
Date		Date	
Place		Place	
Witness 3		Surety 3	
Signature		Signature	
Name and Title		Name and Title	
Date		Date	
Place		Place	

TERMS AND CONDITIONS

1. INTERPRETATION AND DEFINITIONS

- 1.1. In these Terms and Conditions:
 - 1.1.1. Clause headings are for convenience and reference only and shall not be used in its interpretation, and unless the context clearly indicates a contrary intention, an express which denotes:
 - 1.1.1.1. A singular includes the plural and vice versa;
 - 1.1.1.2. Any gender includes the other gender;
 - 1.2. The following expressions shall bear the meanings assigned to them below:
 - 1.2.1. "Agreement" means the Credit PRINCIPAL DEBTOR Application (attached hereto) and these Terms and Conditions;
 - 1.2.2. "Commencement date" shall be the date of signature of the Credit PRINCIPAL DEBTOR Application;
 - 1.2.3. "Contract" shall mean the contract arising out of the acceptance, by DUXBURY and/or the PRINCIPAL DEBTOR of any offer or agreement;
 - 1.2.4. "Contract Price" shall mean the foreign currency value ruling at the date of acceptance of the quote, subject to DUXBURY's discretion;
 - 1.2.5. "CPA" means the Consumer Protection Act, 68 of 2008;
 - 1.2.6. "Due date" shall mean the date that payment is due by the PRINCIPAL DEBTOR to DUXBURY in terms of any contract between DUXBURY and the PRINCIPAL DEBTOR;
 - 1.2.7. "DUXBURY" shall mean DUXBURY TRANSMISSION EQUIPMENT (PTY) Ltd, registration Number 2018/441897/07 a duly incorporated company in terms of the Laws of the Republic of South Africa, alternatively, DUXBURY TRANSMISSION EQUIPMENT (CAPE) CLOSE CORPORATION, registration Number 1993/005004/23, a duly incorporated close corporation in terms of the Laws of the Republic of South Africa;
 - 1.2.8. "Goods" means any products, items or services of whatsoever nature that are supplied to the PRINCIPAL DEBTOR in terms of this Agreement;
 - 1.2.9. "NCA" means the National Credit Act 34 of 2005;
 - 1.2.10. "PRINCIPAL DEBTOR" shall mean the natural person or juristic entity whose name appears on the Credit PRINCIPAL DEBTOR Application and subsequent statement or delivery note;
- 1.3. In the event of any conflict between the terms hereof and the terms of any order or offer made by the PRINCIPAL DEBTOR, the terms hereof, unless in writing agreed otherwise, shall at all times prevail.

2. OWNERSHIP

- 2.1. DUXBURY shall retain ownership of the goods until the PRINCIPAL DEBTOR has paid the full purchase price, including any arrear interest thereon, under this Agreement.
- 2.2. All goods, whether affixed to immovable property or not, shall be deemed moveable property and are therefore severable, without destruction or damage, from the immovable or moveable property to which the Goods are attached.

3. CHARGES AND PAYMENTS

- 3.1. Payment is due in accordance with the terms as set out in this Agreement.
- 3.2. All payments shall be made by the PRINCIPAL DEBTOR to DUXBURY:
 - 3.2.1. on a cash on delivery basis for PRINCIPAL DEBTORS who take delivery of the goods at DUXBURY's premise; or
 - 3.2.2. within 30 (Thirty) days of the date of statement by DUXBURY to the PRINCIPAL DEBTOR subject to DUXBURY's credit application terms; or
 - 3.2.3. upon such other due date as may in writing be agreed upon between the parties.
- 3.3. All payments for goods sold or services rendered will be made free of exchange to DUXBURY, at its elected domicilium, by the PRINCIPAL DEBTOR in accordance with these terms and the conditions or as amended in any written agreement between DUXBURY and the PRINCIPAL DEBTOR.
- 3.4. Orders are accepted by DUXBURY on the basis that the price charged will be the contract price at the date of acceptance of the quotation by DUXBURY, unless otherwise expressly stated.
- 3.5. A certificate by DUXBURY's bankers shall at all times be conclusive proof of the Rand equivalent of any foreign currency amount on any particular date.
- 3.6. The granting of any credit facility based on this Agreement shall be entirely at DUXBURY's sole discretion and DUXBURY reserves the right to terminate, suspend, withdraw, increase or decrease any credit facility at any time, at its sole discretion.
- 3.7. The PRINCIPAL DEBTOR shall be obliged to pay to DUXBURY, in addition to the purchase price, any amount of tax, duty or other charge of any nature, regulation or enactment of whatsoever nature, which comes into force on the date after the date on which any price change is determined;

Int. signature _____

- 3.8. No deductions and/or trade discounts will be allowed, unless they are in terms of a written agreement providing for such deductions or discounts. All overdue amounts will be subject to interest at the maximum permissible legal rate.
- 3.9. Any deductions and/or discounts allowed in terms of any written agreement will automatically be revoked should payment not be received by the due date.
- 3.10. Unless otherwise stated the price quoted in any written contract or quotation, are inclusive of customs duties ruling at the date of quotation and/or contract. Any variation of such customs or importation duties shall be for the account of the PRINCIPAL DEBTOR, and DUXBURY shall be entitled to adjust the contract price accordingly.
- 3.11. Any additional expenses incurred by DUXBURY, at the instance of the PRINCIPAL DEBTOR, in modifying or otherwise altering or making additions to the design, quantities or specifications for goods or services, and any expenses arising as a result of suspension of work by DUXBURY due to instructions given by the PRINCIPAL DEBTOR, shall be added to the purchase price.
- 3.12. Where the PRINCIPAL DEBTOR purchases goods from DUXBURY or has an installation made by DUXBURY, and the contract price thereof is not to be paid by the PRINCIPAL DEBTOR, but through a financial institution, the PRINCIPAL DEBTOR shall have no claim of whatsoever nature against DUXBURY. The PRINCIPAL DEBTOR acknowledges that all claims which it shall have, shall be against the financial institution and not against DUXBURY. The PRINCIPAL DEBTOR acknowledges that the sale to the financial institution shall at all times be subject to these standard conditions.

4. DELIVERY AND INSTALLATION

- 4.1. Delivery shall always be subject to the PRINCIPAL DEBTOR carrying out its obligations and shall further be subject to the PRINCIPAL DEBTOR furnishing all necessary information to carry out all orders and deliveries. Unless stated to the contrary, in any contract between DUXBURY and the PRINCIPAL DEBTOR, delivery shall either be:
 - 4.1.1. at DUXBURY's premises, in which instance risk shall pass as soon as the PRINCIPAL DEBTOR is in possession of the goods; or
 - 4.1.2. at the PRINCIPAL DEBTOR'S premises in which instance risk in the goods shall pass from DUXBURY to the PRINCIPAL DEBTOR upon delivery of the goods at the premises of the PRINCIPAL DEBTOR;
- 4.2. Where DUXBURY is only able to perform partial delivery of any goods that are ordered and/or partial performance of any services agreed upon (unless otherwise agreed in writing) providing that such partial performance be fully functional, DUXBURY shall, nonetheless, be entitled to issue a statement to the PRINCIPAL DEBTOR for such partial performance of the contract. Where, DUXBURY in such circumstances issues a statement to the PRINCIPAL DEBTOR, payments shall be due in respect of such partial performances within 30 (Thirty) days of issue of such statement. Where in the absence of an agreement setting out individual prices for the individual items to partially performed, DUXBURY shall be entitled to charge the PRINCIPAL DEBTOR its standard charges which shall at all times be deemed to be proper proof of such prices.
- 4.3. If the PRINCIPAL DEBTOR cannot accept delivery or should it request DUXBURY to suspend or delay the delivery of goods in terms of any contract, DUXBURY reserves the right to claim any additional costs involved from the PRINCIPAL DEBTOR, including any costs associated with the storage of the Goods.
- 4.4. DUXBURY reserves the right to make any reasonable change to the design or form of any goods ordered during the execution of a contract provided that the stated performance, quality and specification of the goods remain unaffected.
- 4.5. Any delivery date indicated by DUXBURY shall merely be regarded as an estimated date of delivery, which shall not bind DUXBURY to effect delivery on or near such date and shall not constitute a reason to withhold, defer or set-off, either in whole or in part, the purchase price or give rise to a claim for damages, unless caused by the gross negligence of DUXBURY or its agent.
- 4.6. Notwithstanding any agreed amendments to Clause 4.5 above, neither party will be held liable for damages resulting from events over which it has no control. Such events shall include but not be limited to acts of God or government, wars, strikes, riots, lockouts, civil commotion, embargos, sanctions, epidemics, crude oil and associated by-products shortages, damage or loss during transit.
- 4.7. The PRINCIPAL DEBTOR understands and accepts that DUXBURY will manage the delivery of any Goods to be exported to an export country and is therefore allowed to charge VAT at 0%. The PRINCIPAL DEBTOR also understands and accepts that if delivery takes place within the Republic of South Africa that Duxbury will charge VAT at 15%, irrespective of whether the client is registered for VAT or not.
- 4.8. The PRINCIPAL DEBTOR shall accept delivery whenever it is tendered and shall not be entitled to withhold or defer any payment, nor be entitled to a reduction in the price, nor to any other right or remedy against DUXBURY or its agents whether for losses, costs, damages, expenses, interest or otherwise on account of any delays in effecting delivery.
- 4.9. If the Goods are to be delivered by road, the PRINCIPAL DEBTOR shall ensure that the delivery destination shall be easily accessible to road transport vehicles and the PRINCIPAL DEBTOR shall be responsible for off-loading the Goods at the delivery destination.

Int. signature _____

- 4.10. The PRINCIPAL DEBTOR shall be obliged to inspect all Goods upon delivery and shall endorse the delivery note as to any missing or damaged Goods. No claims for missing or damaged Goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the PRINCIPAL DEBTOR notifies DUXBURY in writing within 3 (Three) business days of the delivery of the Goods of the claim in question and the Goods relating to such claim, furnishing full details in regard thereto. The PRINCIPAL DEBTOR shall bear the onus of proving that upon delivery, any Goods are missing or damaged or that the PRINCIPAL DEBTOR'S order was in any way not complied with.
- 4.11. The PRINCIPAL DEBTOR shall reimburse DUXBURY for any agreed cost incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. The parties will agree to the cost herein in writing, prior to any special delivery being made
- 4.12. The PRINCIPAL DEBTOR warrants that any Signatory to any tax statement, delivery note or other documentation of DUXBURY made out in the name of, or to the PRINCIPAL DEBTOR, is duly authorized to bind the PRINCIPAL DEBTOR in respect of the relevant transaction.
- 4.13. DUXBURY'S goods are, wherever practicable, submitted to strict inspection and standard tests before dispatch, but if further tests are required by the PRINCIPAL DEBTOR then all costs incurred shall be for the PRINCIPAL DEBTOR'S account unless specifically provided for in an agreement between the parties.
- 4.14. Where any agreement includes the installation by DUXBURY of its goods then:
 - 4.14.1. The PRINCIPAL DEBTOR shall at his own expense prepare and make ready the site for the required installation.
 - 4.14.2. The PRINCIPAL DEBTOR shall be charged for any additional cost incurred by DUXBURY, by reason of suspension of work, delays, overtime or other such similar causes beyond DUXBURY'S control, arising from the PRINCIPAL DEBTOR'S instructions or default.
 - 4.14.3. The PRINCIPAL DEBTOR shall be solely responsible for the adequate storage of DUXBURY'S goods from the time of arrival thereof on site.

5. DEFAULT

- 5.1. Should the PRINCIPAL DEBTOR:
 - 5.1.1. default in paying his account strictly on the due date or commit a breach of any of the terms and conditions of this Agreement with DUXBURY; or
 - 5.1.2. being an individual, die or be provisionally or finally sequestrated or surrender or make application to surrender his estate or commit any act of insolvency or is under an administration order or debt rehabilitation as provided for in the NCA; or
 - 5.1.3. being a partnership, the partnership is terminated; or
 - 5.1.4. being a company or close corporation is placed under provisional or final order of liquidation or business rescue or judicial management; or
 - 5.1.5. has a judgment recorded against it which remains unsatisfied for 7 (Seven) days; or
 - 5.1.6. compromises or attempts to compromise generally with any of the PRINCIPAL DEBTOR'S creditors; or
 - 5.1.7. enters into any transaction which has the effect of changing the beneficial ownership of the PRINCIPAL DEBTOR'S business; or
 - 5.1.8. if the PRINCIPAL DEBTOR as a company or close corporation enters into any transaction which has the effect of a change in the effective control of the company or corporation;

then without prejudice to any other right it may have in Law:

- 5.1.9. DUXBURY shall be entitled, but not compelled, forthwith to demand payment, within 5 (Five) business days, of all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other agreement with the PRINCIPAL DEBTOR until the PRINCIPAL DEBTOR has remedied the breach; and/or
- 5.1.10. DUXBURY shall furthermore be entitled to cancel any agreement which exists between it and the PRINCIPAL DEBTOR should any of the items listed in 5.1.2 to 5.1.8 occur, and suspend the carrying out of any of its uncompleted obligations, in which event the PRINCIPAL DEBTOR shall have no claim or claims of whatsoever nature against DUXBURY arising out of such cancellation of the suspension by DUXBURY to carry out any obligations.
- 5.2. DUXBURY'S rights in terms Clause 5.1 above shall not be exhaustive and shall be in addition to its Common Law rights.
- 5.3. No relaxation which DUXBURY may have permitted on any one occasion, with regard to the carrying out of the PRINCIPAL DEBTOR'S obligations, shall prejudice or be regarded as a waiver of DUXBURY'S rights to enforce its obligations on any subsequent occasion.

Int. signature_____

- 5.4. The PRINCIPAL DEBTOR hereby indemnifies DUXBURY against any and all indirect and consequential damages of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of goods, excluding any gross negligence by DUXBURY, and without derogating from the generality of the foregoing, the removal of repossessed goods from the premises of the PRINCIPAL DEBTOR or any other premises where the goods may be located.

6. JURISDICTION AND DISPUTES

- 6.1. The PRINCIPAL DEBTOR agrees that DUXBURY shall be entitled but not obliged to institute any proceedings against the PRINCIPAL DEBTOR arising out of its contract with the PRINCIPAL DEBTOR for the full balance outstanding in any Magistrate's Court having jurisdiction over the PRINCIPAL DEBTOR from time to time notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate's Court. Further, the PRINCIPAL DEBTOR agrees to be liable for all legal costs including costs on the scale as between attorney and client and collection charges and tracing costs.
- 6.2. A Certificate by any Director or Manager of DUXBURY showing the amount due and owing by the PRINCIPAL DEBTOR to DUXBURY at any given time shall be prima facie evidence of the amount due by the PRINCIPAL DEBTOR and such certificate shall be sufficient for purposes of judgment or provisional sentence or other legal proceedings.
- 6.3. If at any time a dispute or claim arising out of or relating to this contract or a breach thereof should occur between the PRINCIPAL DEBTOR and DUXBURY either party may give notice to this effect to the other in writing and such dispute, claim or breach shall be referred to a mutually agreed arbitrator, and failing agreement then to an arbitrator appointed at the request of either party by the Chairman for the time being of the Association of Arbitrators. Such arbitrator's decision shall be final and binding on DUXBURY and the PRINCIPAL DEBTOR. Notwithstanding this provision, DUXBURY shall at all times be entitled to approach the Courts. All costs incurred by DUXBURY in any legal proceedings and/or arbitration proceedings, shall, in the event of DUXBURY being successful, be recoverable on the scale as between Attorney and client. Where DUXBURY elects to take any dispute between the parties to a Court of Law, the PRINCIPAL DEBTOR hereby consents to the jurisdiction of the Magistrate's Court for the hearing of such dispute notwithstanding the fact that the amount in dispute might exceed the normal jurisdiction of such Court.

7. DOMICILIUM AND NOTICES

- 7.1. The PRINCIPAL DEBTOR chooses as its respective *domicilium citandi et executandi* for the purpose of sending or receiving any notice or service provided for or necessary in terms of this agreement, by fax, e-mail or registered post the address as set out in the Credit Dealer Application and reflected on the statement or delivery note.
- 7.2. DUXBURY chooses **DUXBURY TRANSMISSION EQUIPMENT (PTY) Ltd Block 2, Riviera Office Park, 66 Oxford Road, Riviera, 2193, alternatively, DUXBURY TRANSMISSION EQUIPMENT (CAPE) CLOSE CORPORATION1 Mews Close, Waterhouse Place, (off Century Boulevard), Century City, Cape Town, 7441** as its respective *domicilium citandi et executandi* for the purpose of sending or receiving any notice or service provided for or necessary in terms of this agreement, by fax, e-mail or registered post
- 7.3. Either party may notify the other party of a change in its *domicilium citandi et executandi* to another physical address in the Republic of South Africa provided that the change shall become effective on the 5th (Fifth) day after receipt of such notice.
- 7.4. Any notice required or permitted under this agreement will be valid and effective only if it is in writing. Written notice actually received by a party shall be regarded as adequate communication provided it is addressed and delivered in accordance with the provisions of this Clause.
- 7.5. Any notice given to either party and delivered by fax, e-mail or by hand shall be deemed to have been received on the date of delivery and if sent by pre-paid registered post, such notice shall be deemed to have been received 10 (Ten) days after the date of posting.

8. LAW APPLICABLE

The contract of sale to which the statement/invoice/quote/delivery note relates is governed by the Laws of the Republic of South Africa.

9. INSURANCE

- 9.1. The PRINCIPAL DEBTOR shall at its own expense, and prior to taking delivery of the goods adequately insure the goods against all forms of loss and thereafter keep the goods insured until such time that the Goods have been paid in full.
- 9.2. Pending payment to DUXBURY for the Goods purchased, all benefits in terms of any insurance policy relating to the insurance of such Goods are hereby ceded to DUXBURY.

Int. signature _____

10. NON-VARIATION AND WAIVER

- 10.1. No variation, alteration or consensual cancellation of any of these terms and conditions shall be of any force or effect, unless in writing and signed by the parties hereto.
- 10.2. No waiver or abandonment by DUXBURY of any of its rights in terms of this Agreement and these terms and conditions shall be binding on it unless such waiver or abandonment is in writing and signed by DUXBURY.

11. CANCELLATION

- 11.1. In the event of cancellation and/or repudiation by the PRINCIPAL DEBTOR of any Agreement, contract, delivery or part thereof, DUXBURY shall without limiting its rights under the common law be entitled at its sole discretion to either:
 - 11.1.1. Claim specific performance; and/or
 - 11.1.2. Claim such damages as DUXBURY may be able to prove; and/or
 - 11.1.3. Claim payment of a standard cancellation fee of 10% (Ten Per Centum) of the value of the cancelled purchase order already placed;

12. EXCLUSIONS

- 12.1. DUXBURY's liability to the PRINCIPAL DEBTOR for any direct damages sustained by the PRINCIPAL DEBTOR in the goods being lost, damaged or destroyed, owing to the negligence of DUXBURY, its agents, servants or employees, will be limited to the extent that DUXBURY will assume liability for such loss or damage provided that:
 - 12.1.1. such liability will be limited to the replacement value of the Goods; and
 - 12.1.2. Duxbury must be notified in writing, of any loss or damage, within seven days of either delivery of the Goods or the estimated date of delivery of the Goods, subject to Clause 4.5, failing which Duxbury will have no obligation or liability of whatsoever nature to the Principal Debtor; and
 - 12.1.3. the onus of proving any loss or damage will be borne by the PRINCIPAL DEBTOR;
- 12.2. Except as provided for in Clause 12.1 above, DUXBURY shall in no circumstances whatsoever be liable for any loss of profit or any indirect, consequential damages sustained by the PRINCIPAL DEBTOR.
- 12.3. Insofar as any of DUXBURY obligations under the contract are carried out by any of its servants, agents, subcontractors, associates or subsidiaries, the provision of clause 12.1 and 12.2 above are stipulated for their benefit as well as for DUXBURY and each of them shall be exempted accordingly.
- 12.4. Neither party shall have any claim of any nature whatsoever against the other for any failure by the other to carry out any of its obligations under its contract as a result of causes beyond its control, including but without being limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier, riot, political or civil disturbances, the elements, any act of any State or Government, any delay in securing any permit, consent or approval required for the supply of Goods under the contract or any other authority of any other cause whatsoever beyond either party's absolute and direct control.

13. WARRANTY

- 13.1. DUXBURY shall inform the PRINCIPAL DEBTOR of the warranty that can be expected from the Goods that it supplies. The warranties only apply to goods purchased from DUXBURY. Goods purchased from any third party, even if the same brand as that distributed by DUXBURY, will not be the responsibility of DUXBURY and will not be entitled to any support, replacement or credit by DUXBURY.
- 13.2. Any warranty provided for herein shall be suspended during any period that the PRINCIPAL DEBTOR is in default in respect of any payments due.
- 13.3. No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise, which are not set forth in this Agreement or in the actual product warranty shall be binding on DUXBURY, and the PRINCIPAL DEBTOR irrevocably waves any right it may have to rely thereon.
- 13.4. The PRINCIPAL DEBTOR acknowledges that the warranty in respect of the goods supplied shall be in accordance with that stipulated in any product documentation and/or user manual.
- 13.5. The PRINCIPAL DEBTOR shall within 10 (Ten) days after the defect arises, notify DUXBURY of the alleged defect, provided that DUXBURY shall have been given a reasonable opportunity to inspect any alleged defect. DUXBURY shall notify the PRINCIPAL DEBTOR of its decision regarding the alleged defect, which decision shall be binding on the PRINCIPAL DEBTOR.
- 13.6. In order to be valid, a claim in terms of the warranty must be in writing, specifying the alleged defect, and be supported by the original invoice. In addition the Goods must be returned by the PRINCIPAL DEBTOR to DUXBURY at the PRINCIPAL DEBTOR's expense, packaged in their original undamaged packaging material.

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signature_____

- 13.7. The Parties agree that DUXBURY shall have no liability in respect of any injury, loss or damage arising out of the use of, or inability to use the goods.
- 13.8. The PRINCIPAL DEBTOR hereby acknowledges that DUXBURY shall be under no liability in terms of this Clause 13:
- 13.8.1. to the PRINCIPAL DEBTOR until the PRINCIPAL DEBTOR has paid the full amount due to DUXBURY in respect of the goods concerned;
- 13.8.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow DUXBURY’s instructions (whether oral or in writing), improper use outside DUXBURY’s specifications, damage to Goods caused by improper maintenance, service or repair by untrained personnel or technicians, and unauthorized alterations or modifications of the Goods;
- 13.8.3. in respect of parts, materials or equipment which are accepted in the industry to have a limited life expectancy or parts, materials or equipment which need to be replaced at specified and published service intervals (“consumable parts”); or
- 13.8.4. in the event that spare parts and consumable parts other than those recommended for use by DUXBURY are fitted, attached or used on the goods.
- 13.9. Notwithstanding anything to the contrary in this Agreement, DUXBURY shall not be liable to the PRINCIPAL DEBTOR by reason of any representation not set out in this agreement or implied warranty, condition or other term or any duty at common law, or under the express terms of this Agreement, for any consequential loss or damage arising out of or in connection with any act or omission of DUXBURY relating to the supply of the goods, their resale by the PRINCIPAL DEBTOR or use by any third party.

DECLARATION

- I/We the undersigned in my/our capacity as an authorised representative of the Applicant hereby apply for the extension of credit facilities from Duxbury Transmission Equipment cc trading as Duxbury Networking (the supplier). The following information is submitted as basis for your consideration of my/our application.
- I/We hereby certify that the foregoing details are true and correct in each and every respect and undertake to notify the SUPPLIER in writing of any change or details shown above including change of ownership, name and address.
- By entering into this Agreement you acknowledge and agree that we may provide any registered credit bureau with any details provided by you in your application; and/or details of the conduct of your credit account; and/or details of the transfer of our rights as a credit provider under this Agreement to another person;
- I/We consent to Duxbury collecting our Personal information and where lawful and reasonable, from public sources for credit, fraud and compliance purposes
- I/We warrant that the Directors/Partners/Proprietor have never been insolvent or associated with any business failure.
- I/WE DO HEREBY ACCEPT THE TERMS AND CONDITIONS OF CONTRACT AS SET OUT ABOVE HEREOF WHICH CONDITIONS I ACKNOWLEDGE HAVING READ AND UNDERSTOOD, AND AGREE WILL BE APPLICABLE TO ALL CONTRACTS FOR THE PURCHASE OF GOODS FROM THE SUPPLIER.
- I/We acknowledge that should credit facilities be granted as a result of this application that they may be withdrawn (and/or altered) by the SUPPLIER at any time without prior notice, and that the decision of whether or not to grant credit facilities to the PURCHASER is at the sole discretion of the SUPPLIER. The credit facilities granted by the SUPPLIER will be advised in writing.
- Duxbury agrees and confirms to respect your privacy and will take reasonable measure to protect it.
- I/We the undersigned do hereby authorise the Manager of a Recognised Financial Institution to furnish a Director, Credit Manager, Administration Manager of DUXBURY TRANSMISSION EQUIPMENT CC with any information to assist them in accessing the credit worthiness of the applicant and/or its sureties.

DATE: COMPANY STAMP:.....

SIGNATURES			
Authorized signatory		Authorized signatory	
Signature		Signature	
Name and Title		Name and Title	
Date		Date	
ID Number		ID Number	

