

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;

- 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, DUXBURY cannot 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 14%, 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, partial delivery or non-delivery, occasioned by the gross negligence on the part of DUXBURY or its agents.
- 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.

- 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 cost incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.
- 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 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.

- 5.4. The PRINCIPAL DEBTOR hereby indemnifies DUXBURY against any and all 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 own 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.

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 contract or agreement so cancelled;

12. EXCLUSIONS

- 12.1. DUXBURY's liability to the PRINCIPAL DEBTOR for any damages sustained by the PRINCIPAL DEBTOR from any cause whatsoever including any damages arising out of DUXBURY's negligence or that of its servants, agents or sub-contractors shall in any event and under all circumstances, be limited to the replacement of the goods at DUXBURY'S premises, which at the date of delivery thereof are subject to a patent defect arising from defective materials.
- 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 damage direct or indirect, consequential or otherwise sustained by the PRINCIPAL DEBTOR whether or not caused by the negligence of DUXBURY, its agents or employees.
- 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. The PRINCIPAL DEBTOR shall not have any claim of any nature whatsoever against DUXBURY for any failure by DUXBURY to carry out any of its obligations under its contract with the PRINCIPAL DEBTOR as a result of causes beyond DUXBURY'S 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 of DUXBURY, riot, political or civil disturbances, the elements, any act of any State or Government, any delay in securing any permit, consent or approval required by DUXBURY for the supply of Goods under the contract or any other authority of any other cause whatsoever beyond DUXBURY 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 and whether they induced the contract or not, 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 guarantee 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.
- 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 and whether or not occasioned by DUXBURY'S negligence or any act or omission on its part.

- 13.8. The PRINCIPAL DEBTOR hereby acknowledges that DUXBURY shall be under no liability in terms of this Agreement:
- 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 us 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 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.