

GENERAL TERMS AND CONDITIONS



WARNING

THE GOODS SUPPLIED BY DONTUWIRE AS CONTEMPLATED IN THESE TS & CS MAY CAUSE SERIOUS INJURY OR DEATH IF NOT CORRECTLY USED AND MAINTAINED. IT IS THEREFORE IMPERATIVE THAT THE OPERATING MANUAL AND DIRECTIONS OF USE OF THE GOODS ARE STRICTLY ADHERED TO.

PART A – DEFINITIONS, INTERPRETATION AND DURATION

1. DEFINITIONS AND INTERPRETATION

In these Ts & Cs, unless clearly inconsistent with, or otherwise indicated by, the context:

- 1.1. **“Additional Work Fees”** has the meaning ascribed thereto in clause 5.4.1;
- 1.2. **“Applicable Laws”** means all statutes, enactments, laws, ordinances, treaties, conventions, protocols, by-laws, rules, regulations, guidelines, notifications, notices, judgments, decrees, injunctions, writs or orders of any court, statutory or regulatory authority, tribunal, board or stock exchange, revenue authority and/or tax authority in any jurisdiction as may be applicable to either Party;
- 1.3. **“Business Day”** means a day which is not a Saturday, Sunday or official public holiday in South Africa;
- 1.4. **“Cancellation Fee”** means an amount equal to the sum of:
 - 1.4.1. the reasonable costs incurred by Dontuwire in respect of the transportation of the Goods up to the date on which the Customer rejects the Additional Work Fees in writing (as contemplated in clause 5.4.2.3) (the **“Rejection Date”**);
 - 1.4.2. the fees of Dontuwire for the Services rendered up to the Rejection Date;
 - 1.4.3. any further fees to be incurred by Dontuwire in order to uninstall and remove from the Site any Goods that had already been installed and/or delivered to the Site prior to the Rejection Date; and
 - 1.4.4. the costs attributable to any Non-Refundable Goods (if any);
- 1.5. **“Consideration”** means the sum of the Initial Fees and the Deferred Fees;
- 1.6. **“CPA”** means the Consumer Protection Act, No. 68 of 2008;
- 1.7. **“Customer”** means the customer of Dontuwire who agreed to these Ts & Cs by accepting the Quotation as contemplated in clause 5.1;
- 1.8. **“Deferred Fees”** has the meaning ascribed thereto in clause 6.1.2;
- 1.9. **“Dontuwire”** means Dontuwire Proprietary Limited (registration number 2022/346704/07), a private company duly incorporated in accordance with the Applicable Laws of South Africa;

- 1.10. **“Dontuwire’s Bank Account”** means the bank account of Dontuwire, the details of which is reflected in the Quotation, or such other bank account as Dontuwire may nominate by written notice to the Customer by no later than 5 (five) calendar days prior to the due date for payment of the Initial Fees, the Deferred Fees or any other amount payable by the Customer to Dontuwire, as the case may be;
- 1.11. **“Effective Date”** means the date on which the Customer accepts the Quotation as contemplated in clause 5.1;
- 1.12. **“Excess Fees”** has the meaning ascribed thereto in clause 5.3;
- 1.13. **“Final Invoice”** has the meaning ascribed thereto in clause 6.2;
- 1.14. **“Goods”** means the goods to be supplied by Dontuwire to the Customer, as set out in the Quotation;
- 1.15. **“Initial Fees”** has the meaning ascribed thereto in clause 6.1.1;
- 1.16. **“Losses”** means any losses, expenses (including legal costs relating to any disputes and/or claims in connection with any breach of warranty or indemnity in these Ts & Cs), interest, penalties, fines and/or damages of any nature whatsoever (whether direct, indirect, exemplary, special, consequential, a loss of profits or otherwise) and howsoever arising, and **“Loss”** shall have a corresponding meaning;
- 1.17. **“NCA”** means the National Credit Act, No. 34 of 2005;
- 1.18. **“Non-Refundable Goods”** has the meaning ascribed thereto in clause 5.4.2.3.2;
- 1.19. **“Parties”** means, collectively, Dontuwire and the Customer, and **“Party”** means either of them as the context may require;
- 1.20. **“Personnel”** means any and all persons and/or entities that perform any service or any obligations under these Ts & Cs at the instance of Dontuwire, including (without limitation) employees, subcontractors, and/or agents of Dontuwire;
- 1.21. **“Prime Rate”** means the publicly quoted rate of interest, as certified by any manager (whose appointment or authority or designation its shall not be necessary to prove) of the bankers of Dontuwire (from time to time) as being the prime rate at which such bank lends in South African Rands from time to time on the basis of such interest being calculated daily on a 365 (three hundred and sixty-five) day year and compounded monthly in arrear, irrespective of whether the year in question is a leap year;

- 1.22. **“Qualifying Customer”** means a Customer which is:
- 1.22.1. a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, as at the Effective Date, equals or exceeds the threshold value determined by the Minister of Trade and Industry in terms of section 7(1) of the NCA;
 - 1.22.2. the state; or
 - 1.22.3. an organ of state;
- 1.23. **“Questionnaire”** means the Customer and Site information questionnaire completed by the Customer on Microsoft Forms (or, alternatively, via email or WhatsApp) and sent to Dontuwire prior to acceptance of the Quotation;
- 1.24. **“Quotation”** means the quotation, which incorporates these Ts & Cs by reference, issued by Dontuwire and accepted by the Customer as contemplated in clause 5.1;
- 1.25. **“Quoted Fees”** means the estimated Consideration set out in the Quotation;
- 1.26. **“Services”** means the services to be rendered by Dontuwire to the Customer, as set out in the Quotation;
- 1.27. **“Site”** means the premises at which Dontuwire shall deliver the Goods and/or render the Services, as set out in the Quotation;
- 1.28. **“Site Inspection Fees”** has the meaning ascribed thereto in clause 11.2; and
- 1.29. **“Ts & Cs”** means these terms and conditions.

2. INTERPRETATION

- 2.1. Words importing the singular shall include the plural and *vice versa*, and words importing one gender shall include the other genders and words importing persons shall include partnerships, trusts and bodies corporate.
- 2.2. The headings to the clauses in these Ts & Cs are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.3. Any reference to an enactment is to that enactment as at the Effective Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Effective Date, and as amended or re-enacted from time to time and/or an

equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in these Ts & Cs are changed, the relevant provision of these Ts & Cs shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.

- 2.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Ts & Cs.
- 2.5. When any number of days is prescribed in these Ts & Cs, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a non-Business Day, in which case the last day shall be the next succeeding Business Day.
- 2.6. If figures are referred to in numerals and in words and if there is any conflict between the two, the numerals shall prevail.
- 2.7. If any term is defined within the context of any particular clause in these Ts & Cs, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of these Ts & Cs, notwithstanding that that term has not been defined in this interpretation clause.
- 2.8. The expiration or termination of these Ts & Cs shall not affect such of the provisions of these Ts & Cs as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.9. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 2.10. The words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 2.11. The words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* (i.e. of the same kind) with any preceding words if a wider construction is possible.
- 2.12. Any reference to "**writing**" shall be construed to include email and WhatsApp.

3. DURATION

These Ts & Cs shall become effective as between Dontuwire and the Customer on the Effective Date and shall endure indefinitely.

PART B – QUOTATIONS, PAYMENT TERMS, SUPPLY OF GOODS AND PROVISION OF SERVICES

4. SUPPLY OF GOODS AND SERVICES

By accepting the Quotation as contemplated in clause 5, the Customer appoints Dontuwire to supply the Goods and/or render the Services, as the case may be, and Dontuwire accepts such appointment on the terms and conditions set out in these Ts & Cs.

5. QUOTATION

5.1. The Quotation constitutes an offer to the Customer. If the Customer does not accept such offer by:

5.1.1. selecting the “accept” option or signing on PandaDoc, Xero or Jobber (as applicable); or

5.1.2. signing a hard copy of the Quotation and delivering a signed copy thereof to Dontuwire,

in each case by no later than 7 (seven) calendar days after the date of issue thereof, such offer shall automatically lapse.

5.2. The Customer acknowledges and agrees that the Quoted Fees for the Goods and/or Services set out in the Quotation is based on:

5.2.1. the assumption that the Goods set out in the Quotation are readily available, and that Dontuwire would not be required to procure substitute Goods at a higher price to timeously supply the applicable Goods and/or render the applicable Services;

5.2.2. exchange rates and freight charges offered to Dontuwire by its respective service providers as at the date of the Quotation; and

5.2.3. the information provided by the Customer to Dontuwire in the Questionnaire.

5.3. The Customer hereby agrees that if the unavailability of Goods, exchange rate fluctuations, freight rate fluctuations and/or the inaccuracy and/or incompleteness of the information contained in the Questionnaire (collectively, the “**Relevant Factors**”) would have resulted in

higher Quoted Fees if the Relevant Factors were known at the time of issuing the Quotation (“**Revised Quoted Fees**”) and the amount by which the Revised Quoted Fees exceeds the Quoted Fees (“**Excess Fees**”) is:

- 5.3.1. **less than 2% (two percent) of the Quoted Fees, the Customer shall be obliged to pay the Excess Fees to Dontuwire on the basis contemplated in clause 6; or**
- 5.3.2. 2% (two percent) or more of the Quoted Fees, the Customer shall be entitled to:
 - 5.3.2.1. accept the Excess Fees, in which case the Customer shall be obliged to pay such Excess Fees (in addition to the balance of the Deferred Fees) to Dontuwire on the basis contemplated in clause 6; or
 - 5.3.2.2. reject the Excess Fees, in which case:
 - 5.3.2.2.1. the Customer's order for the Goods and/or Services shall be automatically cancelled with immediate effect;
 - 5.3.2.2.2. any Goods delivered to the Customer shall be collected by Dontuwire as soon as practically possible; and
 - 5.3.2.2.3. as soon as possible following the collection of the Goods (as contemplated in clause 5.3.2.2.2 above), Dontuwire shall refund to the Customer the Initial Fees, by electronic funds transfer (free of any deductions, set-off, or charges of any kind) into a bank account nominated by the Customer to Dontuwire in writing; and
 - 5.3.2.2.4. other than as contemplated in clauses 5.3.2.2.1 to 5.3.2.2.3 (both inclusive) above, neither Party shall have any further rights or obligations *vis-à-vis* the other Party and these Ts & Cs shall automatically terminate (after clauses 5.3.2.2.1 to 5.3.2.2.3 (both inclusive) have been implemented),

provided that the Customer shall be deemed to have rejected the Excess Fees if it does not accept such Excess Fees in writing within 5 (five) calendar days of being informed by Dontuwire of such Excess Fees.

5.4. If due to unforeseen complexities encountered by Dontuwire at the Site (which were not disclosed in the Questionnaire or reasonably anticipated based on the information disclosed in the Questionnaire), additional Goods and/or Services ("**Additional Work**") are required to enable Dontuwire to discharge its obligations in these Ts & Cs, then:

5.4.1. Dontuwire shall advise the Customer in writing of the Additional Work required and the fees for such Additional Work ("**Additional Work Fees**"); and

5.4.2. the Customer shall be entitled to:

5.4.2.1. accept the Additional Work Fees, in which case Dontuwire (or a sub-contractor of Dontuwire) shall perform the Additional Work (in addition to delivering the outstanding Goods and/or rendering the outstanding Services) and the Customer shall be liable for payment of the Additional Work Fees (in addition to the balance of the Deferred Fees) to Dontuwire on the basis contemplated in clause 6;

5.4.2.2. reject the Additional Work Fees, but procure performance of the Additional Work by a third party contractor, in which case Dontuwire shall deliver the outstanding Goods and/or render the outstanding Services after the Additional Work has been completed to its satisfaction; or

5.4.2.3. reject the Additional Work Fees without procuring performance of the Additional Work by a third party contractor, in which case:

5.4.2.3.1. the Customer's order for the Goods and/or Services shall be automatically cancelled with immediate effect;

5.4.2.3.2. any Goods delivered to the Customer, save for any special-order Goods that cannot be returned or used by Dontuwire for its other customers (acting reasonably and in good faith) ("**Non-Refundable Goods**") which shall be retained by the Customer, shall be collected by Dontuwire as soon as practically possible;

- 5.4.2.3.3. the Cancellation Fee shall become immediately due and payable by the Customer to Dontuwire;
- 5.4.2.3.4. Dontuwire shall be liable to refund to the Customer the difference between the Initial Fees and the portion of such Initial Fees which is attributable to the Non-Refundable Goods (“**Refund Amount**”);
- 5.4.2.3.5. the Customer’s obligation to pay the Cancellation Fee to Dontuwire (as contemplated in clause 5.4.2.3.3 above) shall be automatically set-off against Dontuwire’s obligation to pay a corresponding portion of the Refund Amount to the Customer (as contemplated in clause 5.4.2.3.4 above) in full and final settlement of both of the aforementioned obligations, and the balance of the Refund Amount shall be refunded by Dontuwire to the Customer by electronic funds transfer (free of any deductions, set-off, or charges of any kind) into a bank account nominated by the Customer to Dontuwire in writing; and
- 5.4.2.3.6. other than as contemplated in clauses 5.4.2.3.1 to 5.4.2.3.5 (both inclusive) above, neither Party shall have any further rights or obligations *vis-à-vis* the other Party and these Ts & Cs shall automatically terminate (after clauses 5.4.2.3.1 to 5.4.2.3.5 (both inclusive) have been implemented),

provided that the Customer shall be deemed to have rejected the Additional Work Fees if it does not accept such Additional Work Fees in writing within 5 (five) calendar days of being informed by Dontuwire of such Additional Work Fees. For the avoidance of doubt, it is recorded that “unforeseen complexities” contemplated in this clause 5.4 shall include, without limitation, the scenario where the distribution board that is to be integrated with the Goods does not comply with safety standards prescribed by the Applicable Laws or where, in the reasonable opinion of Dontuwire, it is not possible to safely and effectively integrate the Goods with such distribution board.

5.5. The Customer shall keep confidential and shall not, without the prior written consent of Dontuwire, disclose to any person the details of any Quotation or presentation prepared by Dontuwire for the benefit of the Customer. The provisions of this clause 5.5:

5.5.1. shall not preclude the Customer from making any disclosure which it is required to make under the Applicable Laws; and

5.5.2. shall survive the termination of these Ts & Cs for any reason whatsoever.

6. **CONSIDERATION**

6.1. As consideration for the Goods to be supplied and/or the Services to be rendered by Dontuwire to the Customer, Dontuwire is entitled to payment of the Consideration, which shall be paid as follows:

6.1.1. an amount equal to 85% (eighty-five percent) of the Quoted Fees (the “**Initial Fees**”); and

6.1.2. the sum of:

6.1.2.1. an amount equal to the difference between the Quoted Fees and the Initial Fees;

6.1.2.2. the Excess Fees (if applicable);

6.1.2.3. the Additional Work Fees (if applicable); and

6.1.2.4. the Site Inspection Fees (if any),

(collectively, the “**Deferred Fees**”).

6.2. Within 10 (ten) calendar days following delivery of the Goods and/or completion of the Services, Dontuwire shall issue a final invoice (“**Final Invoice**”) for the Deferred Fees.

6.3. The Customer shall settle the Consideration on the basis below:

6.3.1. on the Effective Date, the Customer shall pay the Initial Fees; and

6.3.2. upon receipt of the Final Invoice, the Customer shall pay the Deferred Fees.

6.4. All payments to be made by the Customer to Dontuwire in terms of these Ts & Cs shall be made by the Customer by electronic funds transfer (free of any deductions, set-off, or charges of any kind) into Dontuwire’s Bank Account.

6.5. Any amount falling due for payment in terms of these Ts & Cs which is not paid on the due date, including any amount which may be payable as damages, shall bear interest at:

6.5.1. the Prime Rate plus 2% (two percent), if the Customer is a Qualifying Customer;
or

6.5.2. 2% (two) percent, if the Customer is not a Qualifying Customer.

7. DELIVERY OF GOODS AND PROVISION OF SERVICES

7.1. Dontuwire (or, if applicable, the relevant entity/ies that deliver/s Goods and/or render/s Services under these Ts & Cs at the instance of Dontuwire) shall deliver the Goods and/or render the Services on or as soon as reasonably possible after the estimate date of performance communicated by Dontuwire to the Customer in writing ("**Estimated Performance Date**").

7.2. The Customer acknowledges that the Estimated Performance Date is a best estimate and shall not constitute a guaranteed date of delivery of the Goods and/or provision of the Services, provided that Dontuwire shall provide the Customer with reasonably notice of any changes to the Estimated Performance Date.

7.3. Dontuwire shall exercise reasonable care and skill in all aspects of providing the Services.

8. OWNERSHIP AND RISK

8.1. Ownership of the Goods shall not pass to the Customer until the Consideration has been settled in full (including all interest accrued, if any) by the Customer, and the Parties agree that all Goods, whether fixed to immovable property or not, shall be deemed to remain movable property until the Consideration has been settled in full and be deemed to be severable without injury to either property.

8.2. Notwithstanding that the ownership in the Goods shall not pass to the Customer until the Consideration has been settled in full, the Goods shall be at the risk of the Customer (the Customer will be responsible for all Loss or damage thereto howsoever arising), upon delivery thereof to the Site.

9. OBLIGATIONS OF THE CUSTOMER

The Customer shall:

9.1. co-operate with Dontuwire in all matters relating to the Services;

- 9.2. provide Dontuwire's Personnel with access to the Site to deliver the Goods and/or render the Services;
- 9.3. provide such documents and information as Dontuwire may reasonably request in order to render the Services, and ensure that any information provided to Dontuwire is accurate and complete;
- 9.4. be responsible for the timeous registration of all warranties with the manufacturer of the Goods. **The Customer hereby indemnifies Dontuwire and holds it harmless against any Loss which the Customer may suffer as a result of the Customer's failure to timeously register such manufacturer warranties;** and
- 9.5. be responsible to register any Goods installed at the Site at the local municipality (to the extent required by Applicable Laws).

10. **SOLAR ENERGY SOLUTIONS**

In respect of solar energy Goods and Services, notwithstanding that Dontuwire will endeavour to install the Goods in a position that is likely to maximise its performance, **the Customer acknowledges and agrees that:**

- 10.1. **the performance of the Goods installed by Dontuwire are subject to a number of variable factors including (i) the number of hours of sunlight, cloud cover and weather patterns; (ii) the location of such installed Goods and/or products; and (iii) the location of surrounding structures and flora; and**
- 10.2. **the Customer shall have no right of recourse against Dontuwire if the performance of these Goods is lower than anticipated, save to the extent that this is due to wilful misconduct or gross negligence on the part of Dontuwire.**

11. **SITE INSPECTIONS**

- 11.1. Dontuwire is entitled, but not obliged, to conduct an inspection of the Site prior to rendering the Services.
- 11.2. Should the Customer insist on an inspection of the Site, Dontuwire shall be entitled to attend to such Site Inspection and charge its standard hourly rates (including services fees and transport fees) from time to time for the time spent at the Site and travelling to and from the Site (collectively, the "**Site Inspection Fees**").

12. UNFORESEEN CIRCUMSTANCES

12.1. For the purposes of this clause 12.1, “**Unforeseen Circumstances**” means circumstance which:

12.1.1. as at the Effective Date is either:

12.1.1.1. unforeseeable; or

12.1.1.2. foreseeable as a possibility, but a reasonable person would not, or Dontuwire did not, expect the occurrence thereof would be likely to affect the ability of Dontuwire to supply the Goods and/or render the Services in terms of these Ts & Cs; and

12.1.2. is beyond the reasonable control of Dontuwire,

and shall include, without limitation, adverse weather conditions resulting in unsafe working conditions for Dontuwire’s Personnel, unavailability of all or any of the Goods, and distribution delays on the part of the manufacturers of such Goods. In addition, Unforeseen Circumstances shall expressly include adverse weather conditions (including rain and strong winds) resulting in unsafe working conditions for Dontuwire’s Personnel even if such weather conditions is a common occurrence for the applicable season.

12.2. If, during the currency of these Ts & Cs, Unforeseen Circumstances occur which prevents performance by Dontuwire of all or any of its obligations in these Ts & Cs, then:

12.2.1. Dontuwire shall by no later than 5 (five) calendar days after the start of the Unforeseen Circumstances, give written notice thereof to the Customer specifying the nature of the Unforeseen Circumstances, its anticipated duration and the anticipated effects that the Unforeseen Circumstances will have on the performance of Dontuwire’s obligations in terms of these Ts & Cs;

12.2.2. subject to clause 12.2.3:

12.2.2.1. these Ts & Cs, or the affected part of it, shall be suspended for the period during which the Unforeseen Circumstances continues and the time for performance of an obligation referred to in clause 12.2 shall be extended accordingly;

12.2.2.2. Dontuwire shall not, to the extent and for so long as Dontuwire is prevented from performing such obligation as a result of the Unforeseen Circumstances, be in breach of these Ts & Cs or

otherwise liable for the resulting failure or delay in the performance of such obligation; and

12.2.2.3. the Customer shall not be obliged to comply with reciprocal obligations to those obligations suspended in the period during which the Unforeseen Circumstances subsist; and

12.2.3. if the Unforeseen Circumstances affect any material part of these Ts & Cs and if it persists for a period exceeding 90 (ninety) days, each of Dontuwire and the Customer shall be entitled to cancel the Customer's order for the Goods and/or Services with immediate effect and the Parties shall be restored as near as may be possible to the position in which they would have been had the Quotation not been accepted by the Client and these Ts & Cs shall automatically terminate.

13. RETURNS POLICY IN RESPECT OF GOODS

13.1. If the CPA is applicable, and within 6 (six) months following the delivery of the Goods to the Customer, such Goods fail to satisfy the requirements and standards contemplated in section 55 of the CPA, then the Customer is entitled, without penalty and at Dontuwire's risk and expense, to:

13.1.1. the repair or replacement of the failed, unsafe or defective goods; or

13.1.2. a refund of the price paid by the Customer for the Goods only (and not for the Services).

13.2. If:

13.2.1. the CPA is applicable, and after 6 (six) months following the delivery of any Goods to the Customer, such Goods fail to satisfy the requirements and standards contemplated in section 55 of the CPA; or

13.2.2. the CPA is not applicable and the Customer wishes to return any failed, unsafe or defective Goods,

the Customer's recourse is limited to a claim under the manufacturer's warranty at the Customer's risk and expense (including in respect of the uninstallation and transportation of the Goods to the manufacturer's warehouse).

13.3. Should the Customer wish to utilise the services of Dontuwire to uninstall and/or transport the Goods to the manufacturer and/or to facilitate the warranty claim with the manufacturer, Dontuwire shall be obliged to render such services to the Customer, but shall be entitled to

charge its standard hourly rates (including services fees and transport fees) from time to time for the time spent at the Site and travelling to and from the Site.

14. MAINTENANCE OF THE GOODS

- 14.1. The maintenance of the Goods is the responsibility of the Customer, and nothing contained in these Ts & Cs imposes any maintenance obligations in relation to the Goods on Dontuwire.
- 14.2. Should the customer wish to utilise the services of Dontuwire in respect of the maintenance of the Goods, the Parties are entitled (but not obliged) to conclude a separate maintenance agreement in this respect (which maintenance agreement will govern, amongst other things, the maintenance fees payable by the Customer to Dontuwire).

PART C – WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

15. WARRANTIES

- 15.1. **Dontuwire gives no warranties or representations (whether express, implied or tacit) in relation to or in connection with the Goods and/or the Services, save to the extent that the CPA is applicable to these Ts & Cs, in which case Dontuwire gives only the implied warranties contemplated in section 56 and section 57 of the CPA.**
- 15.2. **The Customer hereby warrants to Dontuwire that:**
- 15.2.1. **the Site is structurally suitable for the installation of the Goods, and acknowledges that Dontuwire is a provider of electrical engineering services and does not have any expertise in the provision of structural engineering or any other services; and**
- 15.2.2. **to the extent that any Goods are installed on the roof of any building at the Site, such roof does not contain any asbestos.**

16. EXEMPTION AND INDEMNITY

- 16.1. **Dontuwire shall not be liable for any Losses suffered by the Customer pursuant to the delivery of the Goods and/or the provision of the Services in accordance with these Ts & Cs, save to the extent that such Losses are directly attributable to wilful misconduct or gross negligence on the part of Dontuwire or its Personnel.**
- 16.2. **The Customer hereby indemnifies Dontuwire and holds it harmless against any Loss which the Customer may suffer as a result of:**

- 16.2.1. any pre-existing condition, fault or defect relating to the Site which was not disclosed by the Customer to Dontuwire in writing;
 - 16.2.2. repairs or modifications made by the Customer or a third party to any Goods installed by Dontuwire; or
 - 16.2.3. the Customer's failure to operate the goods in accordance with the product manuals and any other written instructions provided by Dontuwire to the Customer.
- 16.3. If the roof at the Site contains asbestos and this was not disclosed by the Customer to Dontuwire in writing (whether in the Questionnaire or otherwise), and Dontuwire installs any Goods on such roof, the Customer hereby indemnifies Dontuwire and holds it harmless against any Loss which the Customer and Dontuwire may suffer as a result thereof.

PART D – GENERAL

17. PERSONAL INFORMATION

- 17.1. For the purposes of this clause 17:
- 17.1.1. "**Personal Information**" has the meaning ascribed thereto in POPIA;
 - 17.1.2. "**POPIA**" means the Protection of Personal Information Act, No. 4 of 2013;
 - 17.1.3. "**Processing**" has the meaning ascribed thereto in POPIA, and "**Process**" shall have a corresponding meaning; and
 - 17.1.4. "**Special Personal Information**" means the information defined in section 26 of POPIA.
- 17.2. Dontuwire will collect and Process the following Personal Information of the Customer:
- 17.2.1. identification information including first name, surname, identity number;
 - 17.2.2. contact details including delivery address, cell phone number and email address;
 - 17.2.3. transaction information including place of purchase, date of purchase, model of product, serial number, job number (in the case of product repair) and service centre location;

- 17.2.4. marketing and communications information, including the Customer's preferences in receiving marketing from Dontuwire;
 - 17.2.5. records of correspondence or enquiries from the Customer or anyone acting on the Customer's behalf; and
 - 17.2.6. any other Personal Information set out in the Customer's municipal accounts provided to Dontuwire.
- 17.3. Dontuwire does not collect any Personal Information relating to children or Special Personal Information about the Customer.
- 17.4. If the Customer fails to provide certain information when requested, Dontuwire may not be able to perform its obligations under these Ts & Cs (including its obligations to deliver the Goods and/or render the Services).
- 17.5. Where the Customer provides Dontuwire with Personal Information of third parties, the Customer warrants that it has complied with Applicable Laws in doing so and waives any claims it may have from a third party regarding Dontuwire's Processing of their Personal Information.
- 17.6. The purposes for which Dontuwire will use the Customer's Personal Information are:
- 17.6.1. providing the Customer with the Goods and/or Services, and notifying the Customer about important changes thereto;
 - 17.6.2. managing the Customer's account or relationship and complying with the Customer's instructions or requests;
 - 17.6.3. detecting and preventing fraud and money laundering and/or in the interest of security and crime prevention;
 - 17.6.4. assessing and dealing with complaints and requests;
 - 17.6.5. operational, marketing, auditing, legal and record keeping requirements;
 - 17.6.6. verifying the Customer's identity or the identity of the Customer's beneficial owner;
 - 17.6.7. transferring or Processing the Customer's Personal Information outside of South Africa to such countries that may not offer the same level of data protection as

- South Africa, including for cloud storage purposes and the use of Dontuwire's website;
- 17.6.8. complying with Applicable Laws, including lawful requests for information received from local or foreign law enforcement, government and tax collection agencies;
 - 17.6.9. recording and/or monitoring telephone calls and electronic communications with Dontuwire in order to accurately carry out the Customer's instructions and requests, to use as evidence and in the interests of crime prevention;
 - 17.6.10. conducting market research and providing the Customer with information about Dontuwire's products or services from time to time via email, telephone or other means;
 - 17.6.11. where the Customer has unsubscribed from certain direct marketing communications, ensuring that Dontuwire does not sent such direct marketing to the Customer going forward;
 - 17.6.12. disclosing the Customer's Personal Information to third parties for any reasons set out in this clause 17 or where it is not unlawful to do so;
 - 17.6.13. monitoring, keeping record of and having access to all forms of correspondence or communications received by or sent from Dontuwire or any of its employees, agents or contractors, including monitoring, recording and using as evidence all telephone communications between the Customer and Dontuwire; and
 - 17.6.14. improving or evaluating the effectiveness of Dontuwire's business or products, services or offerings.
- 17.7. The Customer may provide Personal Information to Dontuwire either directly or indirectly, by (i) completing an application for Dontuwire's products and services or requesting further information about Dontuwire's products and services (in each case, whether in writing, through Dontuwire's website, over the telephone or any other means); and (ii) completing the Questionnaire. Dontuwire may also collect the Customer's Personal Information from its appointed agent, any regulator, or other third party that may hold such information.
- 17.8. Dontuwire may share the Customer's Personal Information with the following categories of recipients:
- 17.8.1. affiliates and companies within Dontuwire's group of companies;

- 17.8.2. business partners;
- 17.8.3. legal and financial advisors;
- 17.8.4. governmental and non-governmental regulators; and
- 17.8.5. service providers.

17.9. Dontuwire may transfer the Customer's Personal Information outside of South Africa to countries that may not have data privacy laws equivalent to that of South Africa, as may be permitted under South African data privacy laws.

17.10. The Customer has the right to:

- 17.10.1. request access to its Personal Information;
- 17.10.2. request Dontuwire to correct inaccurate, irrelevant, excessive, outdated, incomplete, misleading or unlawfully obtained Personal Information;
- 17.10.3. request that Dontuwire does not contact the Customer for marketing purposes; and
- 17.10.4. complain to the Information Regulator of South Africa using the following email address: complaints.IR@justice.gov.za.

17.11. The Customer hereby consents and authorises Dontuwire to obtain and Process its Personal Information for the purposes set out in this clause 17.

18. **ADVERTISING MATERIAL**

18.1. The Customer hereby:

- 18.1.1. expressly authorises Dontuwire and its Personnel to take photographs (within the constraints of the Applicable Laws) relating to the use of the Goods and/or Services; and
- 18.1.2. grants Dontuwire a non-exclusive, worldwide, royalty-free license to use, reproduce, display, and distribute any photographs relating to the use of the Goods and/or Services (whether such photographs were taken by Dontuwire, or its Personnel, or provided to Dontuwire by, or on behalf of, the Customer), for the sole purpose of advertising and marketing Dontuwire's products and/or services.

18.2. The license granted to Dontuwire in terms of clause 18.1.2 above extends to both online and offline advertising materials (including but not limited to websites, social media platforms, print advertisements, brochures, and promotional materials), and shall remain in effect indefinitely unless terminated by either Party in writing.

19. BREACH

19.1. For purposes of this clause 19, "**Remedy Period**" means a period of 14 (fourteen) calendar days after receipt of a written notice requiring a Party to remedy a breach (or, in the case of clause 19.2.1, if it is not reasonably possible to remedy the breach within that period, then within such further period as may be reasonable in the circumstances provided that the defaulting Party furnishes evidence within the period of 14 (fourteen) calendar days, reasonably satisfactory to the aggrieved Party, that it has taken whatever steps are available to it to commence remedying the breach).

19.2. Unless there is another clause in these Ts & Cs which provides its own remedies, which remedies shall then prevail over the remedies in this clause 19, if:

19.2.1. a Party breaches any term of these Ts & Cs and if the breach is capable of being remedied, fails to remedy such breach within the Remedy Period; or

19.2.2. a Party breaches any term of these Ts & Cs which is not capable of being remedied,

then the aggrieved Party shall be entitled, in addition to any other remedy available to the aggrieved Party whether at law or under these Ts & Cs, to claim specific performance of any obligation whether or not the due date for performance has arrived by notifying the other Party in writing, but without prejudice to the aggrieved Party's right to claim damages or obtain an interdict.

19.3. Notwithstanding anything to the contrary contained in these Ts & Cs, the aggrieved Party shall not be entitled to cancel these Ts & Cs as a result of a breach (whether material or immaterial).

20. NOTICES AND ADDRESSES

20.1. For the purposes of the giving of notices and the serving of legal process in terms of these Ts & Cs, each of the Parties choose the address set out below:

20.1.1. **DONTUWIRE:**

20.1.1.1. Address: Unit 1, 7 Silver Street Business Park,

Brackenfell Industrial, 7560

Attention: Daniël Loubser

20.1.1.2. Email: daniel@dontuwire.co.za

20.1.2. **CUSTOMER:**

The details as set out in the Questionnaire.

- 20.2. Either Party may at any time, by notice in writing to the other Party, change its chosen address to any other address that is not a post office box.
- 20.3. Any notice given in connection with these Ts & Cs shall, save where a particular form of notice is stipulated, be (i) delivered by hand; (ii) sent by courier; or (iii) sent by email, to the address chosen by the Party concerned.
- 20.4. A notice given as set out above shall be deemed to have been duly given (unless a disputing Party proves the contrary):
- 20.4.1. if delivered by hand or by courier:
- 20.4.1.1. prior to 17h00 on a Business Day, on the date of delivery;
- 20.4.1.2. after 17h00 on a Business Day or on a day which is not a Business Day, on the Business Day following the date of delivery; or
- 20.4.2. if sent by email, on the 1st (first) Business Day after the date of transmission.
- 20.5. Any written notice (including any electronic mail) actually received by a Party shall be valid, notwithstanding that it may not have been given in accordance with the preceding provisions of this clause 20.

21. **INDEPENDENT ADVICE**

Each Party acknowledges that:

- 21.1. it has been free to secure independent legal, financial, tax and/or other professional advice as to the nature and effect of all of the provisions of these Ts & Cs and that it has either taken such independent advice or dispensed with the necessity of doing so; and

- 21.2. all of the provisions of these Ts & Cs and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with these Ts & Cs.

22. GENERAL

- 22.1. These Ts & Cs will be governed by and construed in accordance with the laws of South Africa.
- 22.2. These Ts & Cs together with the Quotation constitute the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise nor the like not recorded herein. These Ts & Cs together with the Quotation supersede and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 22.3. Neither these Ts & Cs nor any part, or interest therein or any rights or obligations hereunder may be ceded, delegated, assigned, or otherwise transferred by operation of law (including in the case of an amalgamation or merger), by either Party without the prior written consent of the other Party.
- 22.4. No relaxation, indulgence or extension of time granted by either Party (the “Grantor”) to the other Party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of the terms of these Ts & Cs or estop the Grantor from enforcing strict and punctual compliance with the terms of these Ts & Cs.
- 22.5. No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of these Ts & Cs (including this clause 22.5) shall be of any force or effect unless it is reduced to writing and signed by each of the Parties.
- 22.6. All provisions of these Ts & Cs and any annexure shall be independent of each other and deletion from or the invalidity of any such provision or annexure shall not affect the remainder of these Ts & Cs.