

STANDARD TERMS AND CONDITIONS OF SALE INCORPORATING DEED OF SURETYSHIP AND CESSION OF BOOK DEBT

1. Definitions

- 1.1. "the goods" shall mean any products sold by the seller to the purchaser and/or manufactured by the seller on behalf of the purchaser.
- 1.2. "person" shall mean any being or entity capable of rights and duties;
- 1.3. "the purchaser" shall mean any person whomsoever who purchases the goods from the seller and shall be deemed to include the person who completed the attached credit application form as Applicant and any person whose name and address appear on the face of the seller's order form/invoice/delivery note and shall include the purchaser's successors in title, orders and/or assigns.
- 1.4. "the seller" shall mean Transpaco Limited, Registration Number 1951/000799/06 and/or its subsidiaries and/or their associated companies - their successors in title, orders and/or assigns, from which the purchaser has purchased - or may in the future purchase - goods.
- 1.5. "the CPA" shall mean The Consumer Protection Act, No 68 of 2008, as amended.
- 1.6. "the NCA" shall mean the National Credit Act.
- 1.7. The foregoing expressions shall have the meanings set opposite them and cognate expressions shall bear corresponding meanings.
- 1.8. Unless the context indicates a contrary intention, expressions which denote:
 - 1.8.1. any gender shall include the other gender;
 - 1.8.2. a natural person shall include a juristic (or artificial) person and vice versa;
 - 1.8.3. the singular shall include the plural and vice versa.

2. Whole Agreement

The terms and conditions of the sale of the goods by the seller to the purchaser are governed solely by the terms and conditions hereof, save and except insofar as the terms and conditions hereof have been amended and/or modified in writing by a director of the seller and communicated to the purchaser. Accordingly, all and any tacit, implied and/or oral terms and all and/or any of the purchaser's terms and conditions of sale and/or order are hereby expressly excluded and shall not in any way whatsoever be incorporated herein and/or be binding on the seller.

3. Payment of Purchase Price

- 3.1. Prices are as quoted by the seller to the purchaser. The seller shall be entitled at any time prior to delivery of the goods, on notice to the purchaser, to increase the purchase price for all or any item/s forming part of the goods. The purchaser shall be entitled within (7) seven days from date of receipt of such notice to resile from the order in respect of those items which are subject to the price increase, and if it does not so resile it shall be deemed to have agreed to such price increase.
- 3.2. All sales of the goods are deemed cash sales unless credit has been granted to the purchaser and approved in writing by the seller.
- 3.3. The purchase price for the goods sold on credit shall be paid by the purchaser within thirty [30] days of the date of the seller's statement.
- 3.4. The purchase price is to be paid in full in South African Rand without deduction or set off at such address as the seller may direct from time to time, and the purchaser's obligation to the seller will not be discharged until the full purchase price is received in cash or is paid into the seller's bank account.
- 3.5. Notwithstanding the contents of clause 3.4, the seller may elect at its sole discretion to set off the purchase price against any amount the seller may owe to the purchaser.
- 3.6. Under no circumstances whatsoever does the seller authorize the purchaser to utilize the services of messengers, couriers, postal authorities/services to deliver any cheques, bank notes, promissory notes, bills of exchange and cash to the seller. Where the purchaser elects to utilize such services the purchaser does so at its own risk and the messenger, courier, postal authority and the like is and will be the agent of the purchaser. Payment by electronic transfer shall only discharge the purchaser of its obligations when the funds are received and cleared in the seller's bank account.
- 3.7. The purchaser is obliged and liable to pay to the seller on demand all charges levied by the seller's bankers arising out of the dishonor of any of the purchaser's cheques, bills of exchange, promissory notes, special clearances thereof and cash deposit fees.
- 3.8. All monies not timeously paid by the purchaser to the seller shall bear interest at the maximum permissible legal interest rate prescribed by law (Prime plus 2%).
- 3.9. No goods ordered by purchasers who carry on business outside the borders of the Republic of South Africa [as presently constituted] will be delivered to such purchasers unless prior to delivery, such purchaser has established in favor of the seller, an irrevocable letter of credit drawn on site and free of any exchange, deduction and/or any charges and interest, such draft to be expressed to be payable thirty [30] days from date of the seller's statement.

4. Delivery

- 4.1. Delivery shall be effected at the seller's premises as and when the goods are loaded on to the vehicle utilized for the purposes of delivering the same.

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- 4.2. Time shall not be of the essence and any delivery date stipulated therefore, is an approximation only. The seller shall not agree to any stipulated delivery date but will make all reasonable efforts to deliver the goods to the purchaser by a date specified by the purchaser.
- 4.3. Where the purchaser defers and/or postpones delivery, the purchaser is obliged to effect payment of the full purchase price of its order as if delivery had been effected and not deferred/postponed. Furthermore, the goods held/stored by the seller, pending delivery shall be held/stored at the purchaser's sole risk and the purchaser shall be liable for the seller's reasonable costs of storage. Should the purchaser require insurance, it shall be responsible for obtaining such insurance and shall be liable for payment of all premiums in connection therewith.
- 4.4. If the seller cannot deliver part or all of the goods ordered by the purchaser for any reason whatsoever and without limiting the generality hereof as a result of lack of instruction from the purchaser, stock shortage, industrial dispute and/or breakdown, government action, state of war, riot, civil disturbance, strike, lockouts or any act of God, the seller may forthwith in its sole discretion without notice to the purchaser suspend and/or cancel the whole or any part of any order/delivery. In the event of such cancellation and/or suspension, or in the event of late deliveries or delay in deliveries, the seller shall not be liable to the purchaser for any loss and/or damage consequential and/or otherwise whether in contract and/or delict, including without being limited thereto, any loss of profits thereby caused.
- 4.5. The seller is entitled, at its sole discretion, to suspend any deliveries of any goods to the purchaser for so long as the purchaser is in default of payment of any part or whole of its indebtedness to the seller and the purchaser hereby agrees that such suspension shall in the circumstances not be construed as a breach of any contract by the seller.
- 4.6. The signature by any employee of the purchaser on the invoice/delivery note of the seller shall be prima facie proof of receipt of the goods by the purchaser / delivery to it.
- 4.7. Unless agreed to the contrary in writing by the seller and the purchaser, all goods delivered by the seller to the purchaser will be delivered at the purchaser's risk and cost.
- 4.8. If packing materials or processes other than those ordinarily utilized by the seller are required, then the purchaser undertakes to be liable for any additional costs.
- 4.9. Notwithstanding the granting of credit and delivery of the goods and the passing of risk, it is expressly agreed between the seller and the purchaser that ownership in and to the goods shall remain vested in the seller and will under no circumstances whatsoever pass to the purchaser until such time as the purchaser has paid the full purchase price for the same.
- 4.10. The seller shall be entitled to make part-deliveries.
- 4.11. The seller shall not be responsible for non-delivery of goods and/or for delays in delivery occasioned by circumstances of vis major as set out in clause 12 of these conditions.
- 4.12. The seller shall not be liable for any damages sustained by the purchaser or any other party, consequential or otherwise, arising from the non-delivery of the goods for any reason whatsoever including the negligence and/or fault of the seller, except for gross negligence on the part of the seller.
- 4.13. Where goods comprising separate components are sold, ownership in and to each and every component making up the order will remain vested in the seller until such time as the purchaser has paid the full purchase price for the entire order.
- 4.14. The seller shall be entitled to deliver 15% [fifteen per centum] more or 15% [fifteen per centum] less than the quantity ordered by the purchaser, and to charge the purchaser for the same accordingly.
- 4.15. Unless specifically otherwise agreed between the seller and the purchaser, where delivery of any goods in terms of a contract is due and the seller tenders such delivery and the purchaser is not ready for delivery or refuses to take delivery, delivery shall be deemed to have taken place and the seller shall have the right, without detracting from any other legal remedies that the seller may have in law, to act as if delivery had taken place and to issue an invoice for payment. Payment shall then become due in accordance with the agreed terms, to store the goods at the purchaser's risk and cost, and to claim whatever costs and/or damages incurred or sustained by the seller as a result of the purchaser's failure or refusal to take delivery.

5. **Limitation of Liability**

- 5.1. The seller, its servants or agents shall not be liable for any loss or damage, consequential included, whether in contract or in delict, arising out of:
 - 5.1.1 breach of warranties implied by law in respect of latent defects;
 - 5.1.2 the unfitness of the goods for the purchaser's purpose;
 - 5.1.3 any representations or warranties relating to the goods which do not comply with the purchaser's specifications;
 - 5.1.4 any failure by the purchaser to comply with the provisions of the CPA.
- 5.2. The purchaser, by accepting the goods subject to the terms and conditions contained herein, acknowledges that the contents of this clause 5, including the limitations contained herein, have been specifically pointed out by the seller and drawn to the attention of the buyer, that the buyer has read it and fully understands and appreciates the implications of this clause 5, that it had sufficient time to consider the acceptability of this clause 5 before it entered into the transaction of purchase with the seller, and that notwithstanding the provisions of this clause 5 I freely and voluntarily decided to proceed with the transaction to which this clause 5 applies.

6. **Warranties and Specific Provisions Relating to the purchaser's specifications**

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- 6.1. The seller undertakes, to the best of its ability to:
 - 6.1.1. manufacture the goods in accordance with the purchaser's specifications;
 - 6.1.2. where apposite adhere to the specifications regarding colours, opacity, designs, and the like.
- 6.2. The seller will not be held responsible for any damages of whatsoever nature if the goods do not meet the purchaser's required specifications.
- 6.3. The purchaser will be obliged to accept goods manufactured by the seller which do not strictly adhere to the purchaser's specifications, provided the variation from the specifications does not exceed 10% [ten per centum] of the purchaser's specifications. In the event of a dispute arising as to whether the variation is within the 10% [ten per centum], such dispute will be referred for determination by either the seller or the purchaser to a person employed by the South African Bureau of Standards ("SABS"), who is qualified to deal with the dispute. Such person will act as an expert and not as an arbitrator nor mediator. The determination will be final and binding on the seller and the purchaser and may be made an Order of Court by either of them who hereby consent to such determination being made an Order of Court. The costs incurred in the resolution of the dispute by the SABS will be borne and paid for by the unsuccessful party.
- 6.4. The purchaser hereby warrants that specifications furnished by it are not in contravention of any copyright, design, patent and/or trademark.
- 6.5. The seller's liability in terms of the warranties provided by it shall under no circumstances exceed the invoiced selling price of the goods.

7. Return of Goods

Defective goods

- 7.1.1. The seller will be obliged to accept the return of defective goods subject to the following:
- 7.1.2. the seller's liability shall be limited to the replacement of the defective goods only;
- 7.1.3. a written complaint is to be received by the seller within 14 [fourteen] days of date of delivery of such goods;
- 7.1.4. the defective goods are, within the 14 [fourteen] day time period referred to in paragraph 7.1.2 above, to be made available for inspection at such address as the seller may direct;
- 7.1.5. the seller, having conducted an inspection of the goods, being of the opinion that the same are indeed defective as contended by the purchaser;
- 7.1.6. the costs of the return of the goods to the seller for inspection are initially borne and paid for by the purchaser and where it is found that the goods are in fact defective, such costs will be reimbursed by the seller to the purchaser;
- 7.1.7. such defect not arising out of any act or omission on the part of the purchaser, and/or the goods being used for a purpose other than the purpose for which such goods were manufactured.

Goods which are not defective

- 7.2. No goods may be returned by the purchaser to the seller without the seller's prior written consent which consent shall be within the seller's sole and absolute discretion. Should the seller so consent then the purchaser hereby agrees that:
 - 7.2.1. the costs of the return of such goods will be borne and paid for by the purchaser;
 - 7.2.2. the purchaser will pay a 10% [ten per centum] handling fee on the seller's invoiced value of the goods;
 - 7.2.3. risk in and to such goods will pass from the purchaser to the seller on such goods being safely received by the seller in an undamaged state;
 - 7.2.4. such goods and its wrapping/box will be undamaged.
- 7.3. The purchaser acknowledges that in the event of the seller accepting the return of goods from the purchaser, then the purchaser will remain liable for those costs incurred by the seller especially for the execution of the purchaser's order.

8. Waiver and indemnity in respect of the goods

The purchaser hereby waives all and any claims of whatsoever nature against the seller arising out of the use and/or application and/or possession of the goods. In this regard the purchaser indemnifies the seller against all or any claims of whatsoever nature which may be made against the seller by any person/s whomsoever. This indemnity shall include legal fees incurred by the seller in contesting such actions/claims calculated on the scale as between attorney and one's own client.

9. Breach

- 9.1. Notwithstanding anything herein contained to the contrary, if the purchaser's indebtedness to the seller is in arrears and/or the purchaser is unable to pay all or any of its indebtedness to the seller and/or any of its other debts and/or the purchaser seeks to effect any compromise with any of its creditors and/or compound any of its debts and/or is placed under an order of sequestration, judicial management and/or liquidation (whether provisional or final) and/or passes any resolution to enable the purchaser to be wound up and/or dissolved and/or is placed under business rescue as defined in the Companies Act, 71 of 2008, and/or is in breach of any one or more of its obligations to the seller in term of this agreement, then the seller may at its election:

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- 9.1.1. forthwith demand payment of all amounts outstanding;
 - 9.1.2. and/or vary the terms and conditions of the purchaser's payment terms to it;
 - 9.1.3. and/or insist upon advance payment for any goods sold and delivered and/or to be delivered to the purchaser;
 - 9.1.4. and/or decline to advance further credit;
 - 9.1.5. and/or demand cash payment for future orders; and/or suspend;
 - 9.1.6. delay and/or cancel delivery of all or any of the goods ordered by the purchaser;
 - 9.1.7. and/or terminate the contract whereupon the seller shall not be obliged to deliver any further goods to the purchaser and the purchaser shall be obliged forthwith, without notice, to make payment to the seller for all goods already delivered to the purchaser pursuant hereto or, in the discretion of the seller, to return such goods to the seller.
- 9.2. No suspension, delay and/or cancellation as a result of any of the foregoing events shall novate or waive any of the other rights which the seller may be entitled to in law in terms of this contract or otherwise, nor shall the same constitute a breach hereof by the seller.

10. Duties under the CPA

In the event that the purchaser will not be the end user of the goods and will on-supply the goods to third party users, the following shall apply:

10.1 The purchaser is familiar with the provisions of the CPA insofar as the supply of goods or services to "consumers", as defined in the CPA, is concerned, and the purchaser hereby agrees to comply with all the provisions of the CPA insofar as they relate to such "consumers".

10.2 The purchaser hereby indemnifies and agrees to hold the seller harmless from, any claims, losses or liability made against, suffered by or established by any third party end user against the seller, based upon or founded in the failure by the purchaser to comply with the provisions of the CPA.

11. General

- 11.1. Subject to paragraph 2 above, the terms and conditions herein contained shall constitute the entire agreement between the seller and the purchaser and no variation, amendment, consensual cancellation or otherwise shall be of any force or effect unless agreed to in writing by both the purchaser and a director of the seller.
- 11.2. No indulgences, latitude, extension of time or the like granted by the seller to the purchaser shall in any way whatsoever be constituted as a novation or waiver of any other rights which the seller may have against the purchaser nor may it operate as an estoppel against the seller.
- 11.3. This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa. The purchaser hereby consents to the jurisdiction of a court in the Republic of South Africa for the determination of any dispute and/or claim made by it against the seller and vice versa.
- 11.4. The purchaser agrees that a certificate signed by a director of the seller showing the amount owing by the purchaser to the seller shall be prima facie proof that the said amount is due, owing and unpaid and shall be satisfactory proof of what is contained therein for the purposes of any action (whether by way of provisional sentence, summary judgment, or otherwise), proof of the debt on insolvency, or for any other purpose whatsoever.
- 11.5. Any person who signs any credit application form or order or document on behalf of the purchaser warrants that he/she is authorized thereto by the purchaser.
- 11.6. These Standard Terms and Conditions of Sale form part of the application for credit facilities and the signatory or signatories thereto acknowledge that they have read, agreed and irrevocably accept and understand the Standard Terms and Conditions of Sale.
- 11.7. You, the purchaser, hereby authorize the seller, subject to the provisions of the NCA and the regulations issued subsequent thereto, to transmit any details contained in this document (including personal details if applicable), as well as any information relating to your performance in meeting obligations in terms of any agreement and/or transaction concluded between you and the supplier, to any credit bureau registered in terms of the NCA. You furthermore hereby acknowledge and agree that such credit bureau may, in the normal course of its business, share any such information with any of its customers and other credit providers registered in terms of the NC, for the Prescribed Purposes (as defined in terms of the Regulations published in Government Gazette No.8477, Notice 28864).
- 11.8. The purchaser hereby consents in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) to the jurisdiction of the Magistrate's Court over the purchaser for the determination of any action or proceedings otherwise beyond the jurisdiction of the said Court. It is hereby expressly understood that the seller shall be entitled and not obliged to bring any action in any other competent Court which has jurisdiction over the purchaser. In the event of any action being instituted by the seller against the purchaser for any cause whatsoever and/or for any amount due in terms hereof the purchaser hereby agrees to pay the seller's attorneys legal fees incurred on the scale as between attorney and one's own client, including collection commission, tracing agents fees and the like.
- 11.9. The purchaser undertakes to notify the seller in writing of any change of address where applicable.
- 11.10. The purchaser chooses as its "domicilium citandi et executandi" for the purposes of the service of all letters, notices, accounts, summonses, legal processes, applications and the like, the address reflected on the seller's Application for Credit Facilities completed by the purchaser as Applicant. The purchaser may change its domicilium citandi et executandi [30] thirty

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days after notifying the seller in writing of such change, provided such changed domicilium is in the same country as the domicilium referred to in the preceding sentence.

- 11.11. The purchaser cannot cede, transfer, assign and/or delegate any of its obligations and/or rights title and interest to any person whomsoever, without the seller's prior written consent. It is expressly recorded herein that the purchaser is in no way whatsoever an agent and/or representative of the seller for resale purposes or for any other purposes whatsoever.
- 11.12. The purchaser hereby contracts with the seller as principal only.
- 11.13. The purchaser hereby waives the right to apply set off of any indebtedness of the seller to the purchaser.
- 11.14. Where the purchaser is:
 - 11.14.1. a sole proprietor and sells or disposes of part or the whole of his/its business;
 - 11.14.2. a partnership and the partnership, for any reason whatsoever, whether by operation of law or agreement or otherwise, is dissolved;
 - 11.14.3. a company or a close corporation and one or more of its members/shareholders sells and/or disposes of his/her member's interest and/or shareholding [whichever is applicable] irrespective of the quantum of such person/member's interest/shareholding; without the prior written consent of the seller same will constitute a material breach of this agreement entitling the seller at its election to either suspend the further delivery of any goods on order to the purchaser, cancel this agreement or proceed in any manner whatsoever permitted by law as a result of such breach.
- 11.15. The purchaser acknowledges that, notwithstanding any sale of its business, and/or its shares/member's interest the purchaser shall still be held liable to discharge its debts to the seller in full. The purchaser expressly agrees that any debt incurred by the purchaser with the seller shall be binding upon the purchaser's successors-in-title, orders and/or assigns.
- 11.16. The seller reserves the right to review the extent, nature and duration of the purchaser's credit facilities at all times and reserves the right to withdraw such credit facilities at any time without prior notice to the purchaser.
- 11.17. The seller reserves the right to elect, at its sole discretion, to set off the purchaser's indebtedness to the seller against any amount the seller may owe to the purchaser.
- 11.18. The purchaser hereby acknowledges and agrees that the seller may upon receipt of this application form/agreement from the purchaser and at any time thereafter:
 - 11.18.1. conduct thorough searches with any credit bureau/s (registered or otherwise) and/or bank/s for the purposes of assessing and/or re-assessing the purchaser's credit rating and the risk of exposure to the seller;
 - 11.18.2. contact any of the purchaser's creditors and ask of them any questions of and concerning the purchaser which is necessary for the purposes of determining whether the seller will grant credit facilities to the purchaser and where applicable, the extent, terms and conditions thereof;
 - 11.18.3. make any enquiries of any person whomsoever necessary for the purposes of the seller assessing the credit worthiness or otherwise of the purchaser and the extent and terms and conditions of credit facilities to be awarded (if any) by it to the purchaser;
 - 11.18.4. record with any credit bureau/s the existence, suspension, termination, cancellation and nature and extent of credit facilities awarded by the seller to the purchaser and the details of the securities which the seller holds for the purchaser's indebtedness to it;
 - 11.18.5. record and transmit to any credit bureau/s details of the nature, extent, performance, non-performance or otherwise of the purchaser's payment of its obligations to the seller in terms of its dealings with the seller;
 - 11.18.6. without prejudice to any of the seller's rights and without conferring upon it any obligations, use any information which it secures from any credit bureau/s, bank/s, creditor/s of the purchaser or any other person whomsoever to assess, re-assess, suspend, modify, cancel, amend and/or terminate credit facilities awarded by the seller to the purchaser;
 - 11.18.7. make full disclosure to any of the other creditors of the purchaser, credit bureau/s and/or bank/s concerning (directly or indirectly) the purchaser's fulfilment of its obligations to the seller in terms hereof.
 - 11.18.8. Should any provision/s of this agreement be vague and/or unenforceable then same shall be severed from this agreement and the balance of the agreement shall remain of full force and effect.

12. **Vis Major**

- 12.1. Neither party will be liable to the other for any failure, delay or default in the performance of its obligations under this agreement, if and to the extent that such failure, delay or default is caused by vis major including (without detracting from any events covered by the rules and principles relating to vis major) casus fortuitis, acts of God, strikes, lock-out, fire, riot, flood, drought, state of emergency, inability to secure power or materials or supplies, embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any requirements of any authority or other competent local authority, war (whether declared or not), civil disturbance, any circumstances beyond its reasonable control, Court order, or failures, shortages, interruptions or fluctuations in electrical power, water supply or communications (collectively: "Circumstances of Vis Major").
- 12.2. On the occurrence of any Circumstances of Vis Major, the party disabled thereby shall:
 - 12.2.1 as soon as reasonably possible, notify the other party thereof by whichever means available and if possible thereafter, confirm the notification in writing;

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12.2.2 be released from further performances or observance of obligations so affected for so long as such Circumstances of Vis Major prevail;

12.2.3 continue to endeavor to re-commence performance or observance of observance whenever and to whatever extent reasonably possible without delay;

12.2.4 co-operate with the other party in implementing such contingency measures as the other party may reasonably require, until Circumstances of Vis Major cease.

12.3. Should the Circumstances of Vis Major continue or be likely to continue for any unreasonably long time, having regard to the nature of the affected obligation or obligations and the surrounding circumstances, then either party shall be entitled to terminate this agreement by giving written notice to the other party to that effect, subject to any other provisions contained in this agreement dealing with rights and obligations arising from termination, including but not limited to the payment of cancellation fees.

13. **Withdrawal of Credit Facilities**

The seller hereby reserves the right, in its sole discretion, to withdraw any credit facilities afforded to the purchaser, for any reason it may deem necessary.

14. **Cession of Book Debt**

14.1. The purchaser does hereby cede to the seller all the purchaser's right, title and interest in and to all debts and claims which are presently, and which in the future will become owing in the purchaser's favor. It is recorded that this cession has been executed to provide due security unto and in favor of the seller for the payment of all and any sums which are presently or which may in the future become owing by the purchaser to the seller from whatever cause arising.

14.2. This cession shall remain of full force and effect until such time as the purchaser's indebtedness to the seller has been fully discharged.

14.3. The purchaser warrants to the seller that it has not ceded all or any of its right, title and interest in and to its book debt to any other person, this being the sole and first cession thereof.

14.4. Notwithstanding the warranty in 14.3 above, if there be a prior cession in respect of that which is ceded herein, then this cession shall operate in respect of the purchaser's reversionary rights thereto.

14.5. For so long as this cession remains of full force and effect the purchaser undertakes to furnish to the seller all such information as is required to enable the seller to recover amounts owing by the purchaser's debtors.

14.6. The purchaser agrees that the seller may in its absolute discretion give notice of this cession to all or any of the purchaser's debtors

14.7. The claims hereby ceded to the seller shall include any of the purchaser's claims and rights of action against all sureties (including sureties and co-principal debtors) in respect of any indebtedness to the purchaser.