

INCIDENTAL CREDIT AGREEMENT

(INCORPORATING A DEED OF SURETYSHIP)

SHARP METAL PRESSINGS CC

(REGISTRATION NUMBER: 1999/029504/23)

(the "Creditor")

1. Registered Name: _____
2. Trading Name: _____
3. Registration number: _____
(the "Purchaser")

4. Nature of the Purchaser:

Company Ltd.	
Company (Pty) Ltd.	
Close Corporation (CC)	
Trust	
Partnership	
Sole Proprietor	
Private Individual	
Other	

(Please tick the relevant box with an "X")

5. If the Purchaser is a juristic person (Company Ltd, Company (Pty) Ltd or Close Corporation (CC):

Is the Purchaser's asset value or annual turnover <u>greater</u> than R1 000 000.00?	
Is the Purchaser's asset value or annual turnover <u>less</u> than R1 000 000.00?	

(Please tick the relevant box with an "X")

6. If the Purchaser is a natural person (Sole Proprietor or Private Individual):

Is the Purchaser's estate currently under debt review in terms of Section 85/86 of the National Credit Act 34 of 2005?	
Is the Purchaser's estate under administration in terms of Section 74 of the Magistrate's Court Act 32 of 1944?	
None of the above	

(Please tick the relevant box with an "X")

7. Physical Address: _____
8. Postal Address: _____
9. Telephone number: _____
10. Cellular number: _____
11. Fax number: _____
12. E-mail address: _____
13. VAT number: _____
14. Banking details: Name of Bank: _____
 Account Holder: _____
 Branch Number: _____
 Account Number: _____
15. Auditor's Details Name of Auditor: _____
 Contact Number: _____

16. Details of Purchaser's Directors/Members/Trustees/Owners:

<u>Full Names</u>	<u>Physical Address</u>	<u>ID Number</u>

17. Trade References:

<u>Name of Supplier</u>	<u>Telephone Number</u>	<u>Monthly Purchases</u>

I certify that:

- a) The above information is both true and correct;
- b) I have been duly authorised to enter into this agreement on behalf of the Purchaser; and
- c) I understand, acknowledge and accept the terms and conditions of trade attached hereto.

SIGNED at _____ on this ____ day of _____ 20__

Witnesses:

1. _____

Signature on behalf of
the Purchaser

Print name

2. _____

Designation

DEED OF SURETYSHIP

1. I, the undersigned, _____, hereby bind myself as Surety and co-principal debtor *in solidum* with the Purchaser in favour of the Creditor for the due and punctual payment and/or performance by the Purchaser of all obligations of the Purchaser to the Creditor from whatsoever nature arising.
2. I agree that this deed of Suretyship (hereinafter referred to as the "Suretyship") shall operate as a continuing covering Suretyship and I shall not be entitled to withdraw or cancel this Suretyship unless and until all indebtedness, commitments and obligations (including contingent obligations) of the Purchaser to the Creditor in terms of the agreement shall have been fully discharged or extinguished.
3. I hereby renounce the benefit arising from *beneficia excussionis et divisionis* with the force and effect of which I hereby declare myself to be fully acquainted with and I agree and declare that this Suretyship is to be in addition and without prejudice to any other Suretyship/s and security/ies now or hereafter to be held by the Creditor.
4. I acknowledge that all amounts due and payable by the Purchaser to the Creditor shall be recoverable from and paid by me notwithstanding that the Purchaser may have any claim or counter-claim of whatsoever nature and howsoever arising against the Creditor.
5. The Creditor shall be at liberty, without in any way affecting its rights against me or diminishing or otherwise affecting my obligations to it hereunder, to do any act or omit to do any act, whether pursuant to the provisions of any contract concluded with the Purchaser or otherwise, as it in its sole discretion may deem fit, notwithstanding that in doing or omitting to do any such acts, the Creditor may have acted negligently (whether grossly or otherwise) or in a manner calculated to cause, or in fact causing prejudice to me and, in particular, but without limiting the generality of the aforementioned, the Creditor shall without in any way affecting its rights against me or diminishing or otherwise affecting my obligations to it hereunder be entitled to:
 - 5.1 release securities and other sureties;

- 5.2 give time to or compound or make any other arrangements with the Purchaser or other parties aforementioned;
- 5.3 allow or grant to the Purchaser or any other surety any latitude or indulgence, without reference to or approval by me.
6. I shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by the Creditor in enforcing its rights in terms hereof including, without limitation, legal costs on the scale as between attorney and own client, collection commission and tracing fees irrespective of whether or not any action has been instituted against me.
7. The Creditor is irrevocably authorised to apply any monies received in terms of this Suretyship in such manner as the Creditor in its entire discretion may think fit.
8. I consent to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act 32 of 1944, notwithstanding the amount claimed, in the event that the Creditor institutes action against me in terms of this Suretyship.
9. Every provision of this Suretyship shall be severable and divisible and separately enforceable as such. Should any provision hereof be found to be unenforceable at law it shall not invalidate any of the remaining provisions hereof.
10. For the purposes of this Suretyship, including the giving of any notice required or committed hereunder, and any proceedings which may be instituted by virtue hereof, I hereby elect the address as indicated above as my *domicilium citandi et executandi*. Any notice sent to me by prepaid registered post at the aforementioned address shall be deemed to have reached me on the third day after the date of despatch, unless the contrary is proved.
11. No consensual cancellation, variation or modification of the terms of this Suretyship shall be binding on the Creditor unless reduced to writing and signed by or on behalf of the Creditor and me.

SIGNED at _____ on this ____ day of _____ 20__

1. _____

Signature

2. _____

Print name

TERMS AND CONDITIONS OF TRADE

All transactions between the Creditor and the Purchaser are subject to the following terms and conditions:

1. Payment in respect all goods sold and delivered are due, owing and payable within 30 days from date of statement unless otherwise agreed to in writing. This shall apply, notwithstanding whether or not the Purchaser has received such statement.
2. If any amount is not paid to the Creditor on or before the due date, interest at a rate of 15.5% per annum may be charged on all outstanding accounts.
3. Any certificate issued under the signature of the Creditor or authorised agent(s) that purports to certify the amount due in terms of this Agreement shall be accepted as *prima facie* proof of such indebtedness and shall have sufficient probative value to enable the Creditor to obtain summary judgment or provisional sentence against the Purchaser in any competent court for the amount stated in such certificate, and the Purchaser accepts the onus of disproving the amount so stated as not being the amount owing.
4. The Purchaser and the Surety nominate as their *domicilium citandi et executandi* the physical address on the face hereof for service of all notices and processes in connection with any claim due to the Creditor
5. The Purchaser consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act 32 of 1944, notwithstanding the claim amount exceeding the jurisdiction of the Magistrate's Court. The Creditor shall however, in its discretion, be entitled to proceed against the Purchaser in any other competent Court having jurisdiction.
6. In the event of the Creditor instructing attorneys to collect from the Purchaser any amount owing to the Creditor, the Purchaser agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing fees.
7. The Purchaser will inform the Creditor, in writing, of any change in the shareholding, membership interest or ownership (whichever applies) within 7 (seven) days of the effective date of change of the aforementioned. Any such change will in no way affect the Purchaser's indebtedness to the Creditor.
8. The risk in and to all goods sold and delivered in terms hereof shall pass to the Purchaser upon delivery thereof.
9. Should the Creditor consent to accept return of any of the goods sold and delivered to it, having regard to the fact that no agent acting or purporting to act on behalf of the Creditor is authorised to issue such consent, the Purchaser shall be liable to pay the Creditor a handling fee of no less than 10.00% on the invoiced price of the returned goods.
10. Consent by the Creditor shall only apply under the following conditions:
 - 10.1 If the Purchaser is credited with the lower of the price of goods invoiced and the ruling prices at that point of return;
 - 10.2 The goods credited are received from the Purchaser within 3 months of such consent being granted by the Creditor, in good condition to the satisfaction of the Creditor;
 - 10.3 Transport in respect of the goods is pre-paid by the Purchaser.
11. The Creditor, its authorised agent(s) and/or employees will not be liable to the Purchaser for any consequential damage and without prejudice to the foregoing generality, will not be liable for any consequential loss resulting from, *inter alia*, the following:
 - 11.1 A breach of contract or any act or omission of the part of the Creditor, its authorised agent(s) and/or employees;
 - 11.2 Any negligence on the part of the Creditor, its authorised agent(s) and/or employees.
12. The Purchaser, its authorised agent(s) and/or employees hereby indemnifies the Creditor against any third party claims for any damages, whether delictual or contractual, associated with any products sold and delivered by the Creditor to the Purchaser.
13. No relaxation or indulgence granted by the Creditor to the Purchaser shall be deemed to be a waiver of any of the Creditor's rights in terms of this agreement and no relaxation or indulgence or arrangement shall be deemed to be a novation of any terms or conditions contained herein.
14. Any agreement purporting to vary the terms and conditions as set out herein or any consensual cancellation, shall not be valid unless reduced to writing and signed by both the Purchaser and the Creditor.
15. In these terms and conditions, words importing one gender shall include the other gender, and words importing the singular shall include the plural and vice versa.
16. The Purchaser authorises the Creditor, or its duly authorised representative to conduct a full credit investigation in and to the Purchaser's affairs and to report the Purchaser to any Credit Bureau upon non-payment or late payment of any account.
17. Unless otherwise agreed between the Creditor and the Purchaser, all quotations and/or prices are subject to change prior to delivery and all invoices will be rendered at the ruling price as at the date of delivery of all goods.
18. The Creditor shall not be liable for any damages and/or losses to the Purchaser or any other party due to the late delivery of any goods for whatsoever reason. No orders may be cancelled due to any late deliveries regardless of the reason(s) therefore.
19. All payments by the Purchaser to the Creditor will be made free of any deductions or set-off and may not be deferred for any reason whatsoever.
20. In the event that it has been agreed that any goods are to be railed or transported by an independent carrier then, the railways, or the carrier, as the case may be, shall be the Purchaser's agent and delivery to the said railways or the carrier shall be deemed to be delivery to the Purchaser. Any cost incurred by the Creditor in connection with the delivery of goods to the Purchaser's agent is recoverable from the Purchaser.
21. The Creditor shall have the right to suspend all further deliveries to the Purchaser if any amount due by the Purchaser is not paid to the Creditor on or before the due date.
22. Unless written objection is delivered to the Creditor within 7 days of days of invoice and/or statement, the correctness of such invoice and/or statement shall be deemed to be accepted by the Purchaser and the onus to prove the incorrectness thereof shall thereafter rest on the Purchaser.