

Debt Purchase Terms and Conditions

1. What are the Debt Purchase Terms and Conditions?

In these terms, you'll find the terms and conditions that apply when we provide you with a debt purchase facility.

Where we refer to "this agreement" or "the agreement" throughout these terms, we don't just mean the Debt Purchase Terms and Conditions, but also all the terms and conditions that apply to the product(s) that you have with us. This includes the following:

General Terms and Conditions	This contains the general terms covering our relationship with you.
Debt Purchase Terms and Conditions	The terms contained in this document.
Credit Protection Terms and Conditions	If you have selected our credit protection product, the terms covering our credit protection product.
Commercial Terms	The commercial terms for the debt purchase product(s) that you have agreed.
Additional Terms and Conditions	Any additional terms and conditions that may be given to you for any debt purchase products or other products that you have taken out with us.

These Debt Purchase Terms and Conditions will always take priority over the General Terms and Conditions if there is ever a conflict

The Commercial Terms and/or the Additional Terms and Conditions will always take priority over the Debt Purchase Terms and Conditions if there is ever a conflict.

2. The Facility

We are providing you with a Debt purchase facility.

What are Debts?

Where we refer to **Debts** in this agreement, we mean any claim for the payment of money or another obligation which might exist now or in the future, or is dependent on something happening, of any of your customers, under the contract you have entered into with that customer (**Contract**) including (unless specified otherwise) Scottish Debts.

Where we refer to **Scottish Debts** in this agreement, we mean any Debt arising under a Contract governed by Scots law and/or with a customer whose address is stated to be in Scotland.

This also includes all the rights which are associated with the Debt and the Contract, for example retention of title rights over the goods supplied, any related insurance or any computer or electronic data or document recording the Debt.

We won't ever require you to assign to us any Debt which is owed by any customer which is listed or whose registered office or address for delivery of goods and/or services is located in a country listed as subject to Sanctions or where goods are shipped by a vessel listed as subject to a Sanction by HM Treasury or the US Treasury's Office from time to time (**Excluded Debts**). When we refer to Debts, we do not include Excluded Debts.

On your request, we will make advance payments to you of amounts up to the amount of the value of Eligible Debts which you notify to us multiplied by the Payment Percentage (as defined in the Commercial Terms) (**Payment**).

The total amount of all Payments made or to be made by us to you can't be more than your Availability.

What is Availability

Availability is the amount of money that is available to you at a point in time. It is calculated by applying the Payment Percentage against the value of Eligible Debts less the balance of the funds that you've already used. It is also limited by things such as the Concentration Limit and any other specified limits and reserves we tell you about.

The amount available to you won't ever exceed your Facility Limit.

What are Eligible Debts?

Eligible Debts are Debts which are not:

- a) Non-Notifiable Debts (Debts that's shouldn't be notified to us by you, as defined below);
- b) subject to a breach of any warranty or undertaking in this agreement;
- c) paid in cash;
- d) in excess of a what is known as a concentration limit, which is a figure we express as a percentage, to which we will fund one single customer out of all your outstanding Debts (**Concentration Limit**).
- e) in excess of any Automatic Funding Limit (the amount of Debts we will fund for any particular customer, as defined in the Commercial Terms) or any other monetary limit we set in relation to a customer (**Funding Limits**);
- f) in our opinion, materially overdue (unless we are providing credit protection services and it is a Credit Protection Debt (as defined in the Credit Protection Terms and Conditions)); and
- g) not able to be paid by your customer because of an event which is outside of our or your reasonable control, for example natural events (such as a flood).

We can designate any Debts (including all the Debts of a particular customer but excluding any Credit Protection Debt) as being ineligible at any time.

3. The assignment of your debts

On the date we have agreed with you as the start date of this Facility (**Commencement Date**) you absolutely assign to us with full title guarantee (or, in respect of any Scottish Debts, absolute warrandice) all of your Debts which are wholly or partly unpaid at that time (**Existing Debts**).

You also absolutely assign to us any Debts which are created after the Commencement Date (**Future Debts**).

Your Future Debts will automatically be assigned to us on their creation without either of us having to do anything.

If we ask you to, you will send to your customer(s) a notice notifying them of the assignment of the Debt in the form we provide you with. If you have chosen to use our Credit Management service (see clause 9 for what this means) we will ask you to do this when you enter into this agreement.

If a Debt which is supposed to have been assigned to us fails to be effectively assigned for any reason you will hold the proceeds of that Debt on trust for us.

We do not have to reassign any Debts back to you.

What do we mean by assignment?

You agree under this agreement to absolutely assign to us all of your Debts. This means that you agree to sell all your Debts to us and we are then entitled to receive payment of those Debts.

Where this agreement refers to assignment, this includes assignation (the Scots law equivalent of assignment) in relation to any Scottish Debts, and references to "assign", "reassign" and similar expressions should be interpreted accordingly

4. Scottish Debts

If you assign Scottish Debts to us, you are constituted as trustee for us to hold all Scottish Debts in trust for us until we receive payment in full for the Scottish Debts or we complete our title to the Scottish Debts. We acknowledge intimation of the creation of the trust described above.

If we ask you to, you will send to your relevant customer(s) or any other person we request a notice notifying them of the trust over the Scottish Debts, in the form we provide you with.

We may at any time require you (or any other person who may become our trustee), as trustee for us, to transfer to us absolutely the whole or any part of the property of the trust created under this agreement and to perform any other acts as we believe to be necessary to protect our interests. If you have chosen to use our Credit Management service (see clause 9 for what this means) we will ask you to do this when you enter into this agreement. If we ask you to serve a notice on your customer notifying them of the transfer, you will automatically cease to hold the relevant Scottish Debts on trust for us as beneficiary at the time such notice is received by your customer.

You shall not be entitled to resign as trustee or to assume a new trustee or trustees under the trust constituted under this agreement, unless we have provided our prior written consent.

The provisions of the trust constituted under this agreement may not be varied in any respect by you, or by you as trustee, without our prior written consent.

5. How you notify us of your Debts

You must notify to us your Debts and anything that may reduce the value of an outstanding invoice (**Dilutions**) for example:

- a) credit notes, deductions to the value of debts, retentions and set-off made by a customer; and
- b) any claims or defences by one of your customers.

You need to make these notifications on the Commencement Date and then at least once every 30

days unless we agree otherwise in writing.

You must notify Debts in the currency for payment on the relevant invoice. We will make a Payment to you in that currency provided that we have agreed to make Payments in that currency to you, or in sterling.

Each notification to us of a Scottish Debt is deemed to contain the following statement by you to us:

"Under the Debt Purchase Terms and Conditions made between you and us, we hereby assign to you each of the Scottish Debts evidenced by the invoices listed below and we confirm that they are now the property of the trust created under the Debt Purchase Terms and Conditions and shall be held in trust by us for you until you have received payment in full for such Scottish Debts or have completed your title to such Scottish Debts or if for any reason the above assignation may be ineffective."

6. Debts we don't want you to notify to us

Please don't notify to us any Debt which:

- a) is more than a year old;
- b) is payable by an Associate;
- c) is payable by a customer (i) which is subject to any insolvency proceedings; (ii) to whom you owe (or may owe) money to or (iii) who operates from a country that we haven't approved;
- d) relates to goods (i) supplied directly to one of your customer's own customers where your customer is not located in the UK, the Isle of Man or the Channel Islands (unless it's an Export Customer) or (ii) supplied on sale or return, approval, constructive delivery or consignment terms;
- e) is disputed;
- f) is payable by one of your group companies, a company of which you are a director or by one of your employees or partners (or an employee or partner of another member of your group);
- g) relates to tooling that remains in your control;
- h) is payable in cash or relates to proforma sales.

These are **Non-Notifiable Debts**. We may also confirm to you in writing other Debts which should not be notified to us.

You can retain any sums received in satisfaction of Non-Notifiable Debts unless we have told you to notify the Debt.

We may tell you to notify to us a Non-Notifiable Debt. If we do this you will hold it and its proceeds on trust for us and, if we are not providing Credit Management, collect it as our agent. If we make a Payment in respect of a Non-Notifiable Debt it will be considered a notified Debt.

7. How you receive payments from us

You can check your account with us online and see what the Availability is. If you have Availability, you can draw down; either all of the available funds or just the amount that you need.

We will maintain a **Current Account** for you. The Current Account will record the dealings that take place between you and us. The closing balance is usually a credit balance and will represent the amount we owe you for Debts which have been notified to us.

The main item that will increase or credit the Current Account is:

- Debts notified to us.

The main items that will reduce or debit it are:

- Payments to you
- Credit Notes issued to your Customers
- Our charges (e.g. our Discounting Charge).

You won't see your Current Account when you log into HSBCnet but it will be on your monthly statement.

We will also maintain an account called the **Discounting Account**. This account is normally in debit as it is a liability account. It represents amounts which you owe us under the Facility at any one time and is used to calculate charges. If the account is in credit we will pay you a Discounting Allowance (which we explain in clause 7).

The main items that increase or debit the account are:

- Payments to you
- Our charges

The main item that reduces or credits the account is:

- Payment of Debts from customers

8. What happens when we receive payments of Debts from your customers?

In this clause

Discounting Charge is the fee we charge you for the money you use. It's like an interest rate on an overdraft, which is calculated on the amount of money that you draw down. We calculate it by adding the Discounting Margin (a percentage figure confirmed in your Commercial Terms) to the Base Rate.

Discounting Allowance means a sum of money we will pay to you if there is a credit balance on the Discounting Account. This will be calculated taking into account the Base Rate less an Allowance Margin (a percentage figure confirmed in your commercial terms).

Base Rate means (i) for sterling, the Bank of England's base rate, (ii) for euro, the European Central Bank base rate, (iii) for US dollar, a rate up to the upper limit of the federal funds target rate as quote by the Federal Open Market Committee of the Federal Reserve and (iv) for each other currency the rate quoted to us from time to time by the relevant central bank for that currency or, if no such rate is available, the rate quoted to us by HSBC Holdings plc

If the rate is ever less than zero, the rate shall be deemed to be zero.

Any sums received in payment of a Debt will be credited to the Discounting Account:

- a) if a cheque capable of routine collection through automated clearing and honoured on first presentation, 2 business days after the date of receipt by us or the date of presenting a post-dated cheque;
- b) if a cheque not capable of routine collection through automated clearing, within 1 business day of the date we receive notice that it has cleared;
- c) if by electronic transfer, the date we receive the payment, provided that date is a business day and before 4.00pm. Otherwise, the payment will be credited on the first business day after we receive the payment; and
- d) if any other form of payment, or if we cannot carry out normal procedures for any reason, the date we receive notice that it has cleared.

If any cheque sent for clearing is returned, any credit given by us will be reversed by a debit.

We will pay the balance of the amount we receive in payment of a Debt (once we have deducted any Payments made to you, our Discounting Charge and any currency conversion costs) into your Current Account.

We will:

- a) credit the Discounting Allowance and debit the Discounting Charge to each of a Current Account and the Discounting Account on the last business day of the calendar month for the Discounting Allowance or Discounting Charge that has accrued in that month;
- b) debit the Discounting Account and Current Account with any fee and charges that you owe to us.
- c) provide you with monthly statements showing both the Current Account and Discounting Account.

We can allocate any amounts received in payment of a Debt and any credit notes at our discretion.

9. Collecting payment of your Debts – if you have chosen to use our Credit Management service

You have chosen to use our credit management service, which means that we will collect the Debts and manage your sales ledger accounts on your behalf. We will decide the best method to do this depending on your customer base.

Unless we have transferred the Debt back to you, we have the sole right to enforce the payment of and to collect that Debt and we may reduce, defend or commence proceedings in relation to a Debt as we see fit.

Any amount received in payment of a Debt should be paid into the collection account detailed in your Commercial Terms (**Collection Account**). If you receive any payment of a Debt directly you will promptly pay it into that Collection Account and, until you do so, you will hold such amount on trust for us, separate to your own monies.

You will ensure that Debts paid by direct debit are paid into the Collection Account and you will be liable for any liabilities arising under or in connection with any direct debit guarantee given to your customer.

10. Collecting payment of your Debts – if you have chosen not to use our Credit Management service

We appoint you as our collection agent for the Debts and you agree to collect and enforce payment of the Debts at your own expense.

Whilst you are our agent, we will only communicate with your customers to confirm that any of your notified Debts comply with the warranties and undertakings you have given under this agreement. We may carry out this communication by email or other non-secure electronic means, but we won't be liable to you for any loss, cost or liability arising from this.

We can end your agency to collect the Debts at any time with immediate effect. If we do so you will not claim to be, or hold yourself out as being, our agent.

Unless we have transferred the Debt back to you, we have the sole right to enforce the payment of and to collect that Debt. We have chosen to appoint you as our agent to do this but, if we want to, we may reduce, defend or commence proceedings in relation to a Debt as we see fit. You agree to assist us with any collection, settlement or enforcement.

Any amount received in payment of a Debt should be paid into the collection account detailed in your Commercial Terms (**Collection Account**). If you receive any payment of a Debt directly you will promptly pay it into that Collection Account and, until you do so, you will hold such amount on trust for us, separate to your own monies.

You will ensure that Debts paid by direct debit are paid into the Collection Account and you will be liable for any liabilities arising under or in connection with any direct debit guarantee given to your customer.

11. Your confirmations to us

You confirm to us that:

- a) you will comply with the terms applicable to any electronic or web based platform that we publish from time to time;
- b) if you have chosen not to use our Credit Management service, you will devote the necessary time, attention and skill that is required to the administration and collection of the Debts and you will do so in line with good industry practice;
- c) you have made and will continue to make your own assessment of the accounting treatment of any Debt assigned to us and you will consult with your auditors as appropriate;
- d) you are not relying on any information provided by us regarding possible accounting treatment; and
- e) you are satisfied that the services we are providing to you under this agreement are appropriate for your circumstances and that the Facility is suitable for your working capital requirements.

12. Your confirmations about the Debts

You make the following representations and warranties to us on the date of each notification of a Debt or Debts, in relation to all Debts in that notification:

- a) you have originated the Debt and it legally exists and is payable by one of your customers;

- b) you have raised an invoice evidencing the Debt which includes the correct details of the customer and a purchase order number appears on the invoice;
- c) all the goods and/or services to which that Debt relates have been, in relation to goods, either (i) dispatched in the United Kingdom, Isle of Man or Channel Islands to a customer located in one of those locations or (ii) received by the customer or, in relation to services, completed by you in accordance with the relevant Contract;
- d) the Debt:
 - a. is payable within the Standard Payment Terms (as defined in the Commercial Terms) or other payment terms agreed by us in writing;
 - b. is not a Non-Notifiable Debt (unless we have told you to notify it) or an Excluded Debt;
 - c. is payable in a Payment Currency;
 - d. has not previously been notified to us;
 - e. is payable without any deduction or withholding;
 - f. unless we agree otherwise, is not overdue by more than 30 days;
- e) the relevant customer is
 - a. not subject to insolvency proceedings;
 - b. obliged to pay the full amount of that Debt on its due date and the Contract is valid, legal, binding and enforceable so far as that Contract relates to the Debt;
- f) the person delivering the notification has authority to do so;
- g) there is no dispute (existing or threatened) between you and a customer that may result in your customer exercising any right of set-off, deduction or counterclaim against its obligation to pay the Debt;
- h) your rights under the relevant Contract (so far as they relate to the Debt):
 - a. are legally and beneficially owned by you;
 - b. are not subject to any security or other third party rights; and
 - c. may be freely assigned to us;
- i) the information set out in the relevant notification, the invoice and any documents related to the invoice (**Debt Records**) are true, complete and up to date;
- j) if a customer is located outside the United Kingdom, the Isle of Man or the Channel Islands, the relevant Contract includes relevant INCOTerms and is in writing;
- k) each Contract is governed by (i) English, Scots or Northern Irish law and you or the customer is located in the jurisdiction whose law governs the Contract or (ii) any other law approved by us in writing;
- l) the due date for the Debt falls within a period agreed with us and has not yet occurred;

- m) you have not agreed a prompt settlement discount exceeding 5% of the notified value of the Debt (or such other percentage agreed by us in writing); and
- n) the Debt is not a claim against a customer who is a private individual or a debt due under a regulated credit agreement in accordance with article 60B of Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended, re-enacted or supplemented from time to time).

13. Your general obligations to us

Unless we agree otherwise in writing:

- a) if you have chosen not to use our Credit Management service, you will provide a report to us (in a form approved by us) containing an aged analysis by each of your customers of all unpaid notified Debts and your sale ledger statement reconciliation form, made up to the last day of the preceding calendar month, by the 15th day of each calendar month;
- b) you will immediately on demand pay to us any amount owed to us in connection with this Facility and any amount paid by us to you in error;
- c) you will provide us with such information relating to any customer domiciled in an Approved Country (as shown on our Financial Crime Country Risk Model list) (**Export Customers**) as we may reasonably require.

14. Your obligations to us in respect of the Debts

- a) You will tell us, promptly, if:
 - a. any of your customers is (or is highly likely to be) subject to any insolvency proceedings;
 - b. you have any information which you know might adversely impact our recovery of a Debt;
 - c. one of your customer's has a right to retention, set-off, a deduction or a counterclaim against a Debt;
 - d. there is any dispute in connection with a Debt and you will endeavour to resolve any such dispute;
 - e. a customer breaches a Contract and the breach suggests that it will be unable to pay any Debt or it becomes (or is highly likely to become) illegal for a customer to pay all or part of a Debt out of its jurisdiction in the currency in which it is due;
- b) You will comply with your material obligations under each Contract;
- c) You will not, without our prior written consent:
 - a. change or waive any term of a Contract that may negatively affect a Debt or cancel a Contract;
 - b. assign, transfer, declare a trust over or grant any interest or security over all or any part of a Debt or a Contract;
 - c. raise invoices requiring payment in any currency which is not agreed with us;

- d. create Debts in relation to goods or services:
 - i. delivered or performed over a period exceeding 60 days;
 - ii. where payment is due, or an invoice is issued, 6 months or more after delivery or performance; or
 - iii. where payment is due over a period longer than permitted by any currency exchange control or other regulation;
- d) You will provide us with any information we request in respect of a Debt, Debt Records, a customer or you;
- e) If we ask you to:
 - a. you will exercise any retention of title rights under a Contract; and
 - b. you will not issue any credit notes without our consent.;
- f) If you issue a credit note, you will provide us with the relevant details within 7 days or, if earlier, your next notification.

15. Surveys

You agree that we may conduct regular surveys of your Contracts, Debts and Debt Records at your premises during normal business hours. We will give you reasonable notice of any survey unless a Termination Event has occurred in which case we can arrive at your premises without notice.

You might need to pay us a fee for conducting a survey and this is set out in our current price list, available on request.

16. Funding Limits

We can set Funding Limits, or increase, reduce or cancel them at any time.

17. Operational Covenants

In this clause, when we use the words highlighted in bold below we mean the following:

Debt Turn: the measure used by us to show the average length of time taken for debts to be paid. We can provide you with a worked example of how we calculate this if you ask us to.

Debt Turn Covenant: As set out in your Commercial Terms.

Dilution Percentage: As set out in your Commercial Terms.

Dispute Percentage: As set out in your Commercial Terms.

Tangible Net Worth: the aggregate value of your ordinary share capital, retained profits (after Tax) and capital reserves less intangible assets, as shown in your current annual audited accounts or otherwise evidenced to our satisfaction.

Tangible Net Worth Covenant: As set out in your Commercial Terms.

Testing Date: As set out in your Commercial Terms.

You will comply with the following operational covenants on each Testing Date:

- a) Tangible Net Worth will not be less than the Tangible Net Worth Covenant.
- b) Debt Turn must not exceed the Debt Turn Covenant.
- c) Dilutions as a percentage of all Debts notified in the immediately preceding 90 days (or another period we tell you) must not exceed the Dilution Percentage.
- d) the aggregate value of all Debts which are disputed, as a percentage of all Debts notified in the immediately preceding 90 days (or another period we tell you) must not exceed the Dispute Percentage.

We may reduce the Payment Percentage on or after a Testing Date by 1%:

- a) for each day (or part thereof) that Debt Turn exceeds the Debt Turn Covenant;
- b) for each percent (or part thereof) that Dilutions as a percentage of all Debts notified in the 90 days immediately preceding the Testing Date exceed the Dilution Percentage; and
- c) for each percent (or part thereof) that disputed Debts as a percentage of all Debts notified in the 90 days immediately preceding the Testing Date exceed the Dispute Percentage.

Following subsequent Testing Dates, we may reinstate the original Payment Percentage or further reduce it.

If you breach the Tangible Net Worth covenant, it will be a Termination Event. Breach of any of the other covenants will not trigger a Termination Event.

18. Recourse

Either on or following a Termination Event, or immediately prior to the date on which this agreement is terminated, we can require you to repurchase a Debt from us. This is called **Recourse**.

We can also exercise Recourse in respect of Debts which are not Eligible Debts or the balance of an outstanding Debt at any time.

Once you have paid us the repurchase price for the Debt(s) (which is the value of the unpaid amount of that Debt or, if all Debts are being repurchased, the debit balance on your Discounting Account plus any other sums you owe to us), the Debt becomes your property.

If a Debt becomes an Excluded Debt, it will automatically be reassigned to you and the repurchase price will be debited to your Current Account.

Once you have repurchased any Scottish Debt, you will automatically cease to hold it on trust for us as beneficiary.