

DEED OF GUARANTEE AND INDEMNITY

Please read carefully before you sign - if more than two personal guarantees/indemnities are to be provided, a separate application form must be completed and signed.

This deed is made by the person named and signing as guarantor below (**Guarantor**) in favour of [insert company name] (ABN [insert]) (**Supplier**) on the following terms. This guarantee is provided in consideration of the Supplier agreeing with the applicant specified below (**Applicant**) to provide the credit facilities set out in the Applicant's Credit Application with the Supplier.

1. Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Supplier the due and punctual performance of all present and future obligations and payment of all present and future liabilities of the Supplier under the Credit Application or the Supplier Trading Terms and must on demand by the Supplier perform those obligations or pay those liabilities if the Supplier fails to do so.

2. Indemnity

As a separate and independent obligation from those contained in clause 1, the Guarantor indemnifies the Supplier from and against (and must pay the Supplier on demand for the amount of) any liability, loss, cost, liability, damage, expense, claim, demand, action or proceeding of any kind suffered or incurred by the Supplier arising directly or indirectly out of or in connection with any failure by the Applicant to perform any obligation or pay any liability under the Credit Application or the Supplier Trading Terms.

3. General

- a. The Guarantor acknowledges and agrees that each of the obligations under clauses 1 and 2:
 - i. is a principal and continuing obligation and will not be affected by any principle of law or equity which might otherwise reduce or limit in any way the liability of the Guarantor under clause 1 or clause 2;
 - ii. continues notwithstanding any amendment of the Credit Application, the Supplier Trading Terms, or any waiver, consent or notice given under this deed by any party to another;
 - iii. are continuing obligations which will survive the expiry or termination of this deed for any reason in respect of any liabilities which arose prior to the date of expiry or termination;
 - iv. are not affected by any waiver, extension or non-enforcement of payment terms in favour of the Applicant;
 - v. are owed jointly and severally with any other individual or corporate entity that has provided an identical or similar guarantee and indemnity in respect of the Applicant's obligations and liabilities to the Supplier; and
 - vi. can be enforced entirely against the Guarantor without the Supplier pursuing its rights equally, or at all, against any other guarantors.
- b. Each Guarantor must not exercise any right of indemnity or subrogation which that Guarantor might otherwise be entitled to claim and enforce against or in respect of the Applicant and each Guarantor irrevocably waives all those rights of indemnity or subrogation that Guarantor may have.
- c. Each Guarantor irrevocably appoints the Supplier as their attorney to prove in the insolvency of the Applicant for all money to which that Guarantor may be entitled from the Applicant up to an amount which does not exceed the amount which may be payable by each Guarantor under this deed. Each Guarantor acknowledges that the Supplier may, subject to the terms of this deed, retain any money which the Supplier may receive from any proof on account of each Guarantor's liability under this deed.
- d. Each Guarantor warrants that they have read and understood the Credit Application.
- e. Each Guarantor warrants that the information provided on page 1 of this application is true and correct.
- f. This deed is governed by the laws of [insert state] and the parties submit to the jurisdiction of the courts of [insert state] and of the Federal Court of Australia.
- g. No right under this deed is waived or deemed to be waived, except by written notice signed by the party waiving the right, or its authorised officer. A party does not waive its rights under this deed by granting an extension or forbearance to another party.
- h. Rights arising out of or under this deed may only be assigned by a party with the prior written consent of the other party.

Applicant Name:

Applicant ABN:

Date of Applicant's Credit Application:

Executed as a deed on

Signed, sealed and delivered by the Guarantor in the presence of the witness whose name appears below:

Guarantor Name: _____ Guarantor Signature: _____

Witness Name: _____ Witness Signature: _____

SUPPLIER TRADING TERMS

IMPORTANT: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1. Payment of orders/ accounts

If the Supplier advises the Applicant that an order is "non-cancellable", then that order (when accepted by the Supplier) will be irrevocable and non-cancellable by the Applicant for any reason. The Applicant must pay for all non-cancellable orders in full within days after the date of invoice. If payment for a non-cancellable order is not received within days after the date of invoice, the Supplier may cancel the order at its sole discretion (without any liability to the Applicant) and the Applicant will be liable from the date of the cancellation for a cancellation fee equivalent to percent of the invoiced cost.

All other orders made to the Supplier must be paid for within days after the date of the Supplier's invoice (the "Payment Period") and where payment in full is not received by the Supplier prior to the expiry of the Payment Period then the Applicant will be liable to pay interest on the amount outstanding at the rate of 1% per month until payment in full is received by the Supplier. The Supplier is irrevocably authorised to allocate the payment of any monies received from time to time from the Applicant towards any outstanding account incurred with the Supplier by the Applicant. All prices quoted are exclusive of Goods and Services Tax ("GST") and GST will be payable on the sale price on payment of the invoice.

2. Property in and delivery of goods

- (a) The Goods supplied by the Supplier to the Applicant will be at the Applicant's risk immediately on delivery to the Applicant or immediately on delivery as directed by the Applicant or immediately on collection by the Applicant's transport contractor (as applicable).
- (b) Despite risk in the Goods passing to the Applicant in accordance with sub-paragraph 2(a), property in and ownership of the Goods will not pass to the Applicant until payment in full for the relevant Goods has been received by the Supplier.
- (c) Until payment in full of the invoiced cost of the relevant Goods has been received by the Supplier, the Applicant holds those Goods on a fiduciary basis as a bailee only for the Supplier and the Applicant must (at its own expense) keep the Goods properly and safely stored separately from any other goods and stock of the Applicant and any other third party and so that the Goods can be readily identified as the Goods of the Supplier and the Applicant must not, subject to sub-clause d(i), grant any other person a Security Interest in respect of the Goods, allow an Excluded Interest to exist over the Goods or part with the Goods or attempt to do so without the prior written consent of the Supplier.
- (d)
 - (i) Despite property in the Goods remaining with the Supplier, the Applicant may resell the Goods or any part thereof but only in the ordinary course of business and as fiduciary agent for the Supplier.
 - (ii) Any amount paid to the Applicant by the buyer of such re-sold Goods from time to time (the "sale proceeds") will be held by the Applicant in trust for the Supplier, banked in a separate bank account relating only to the sale proceeds of the Goods and the Applicant must immediately account to the Supplier for the sale proceeds.
- (e) If the Applicant has not received the proceeds, it assigns to the Supplier all rights against the person owing the proceeds.
- (f) The Applicant irrevocably authorises the Supplier (at any time if there has been a default, or otherwise during business hours) to enter any premises:
 - (i) where the Supplier's Goods are stored:
 - (1) to inspect the Goods; and
 - (2) if the Applicant has breached this Agreement, to reclaim possession of the Goods;
 - (ii) where the Applicant's records relating to the Goods are held, to inspect and copy the records (including without limitation bank account records regarding the sale proceeds).
- (g) Until the Supplier has received payment for the Goods in full, the Applicant acknowledges that the Supplier will have a Purchase Money Security Interest which attaches over such Goods and their proceeds and a Security Interest in relation to other amounts owed by the Applicant to the Supplier.

- (h) For the avoidance of doubt, after the Registration Commencement Time, the Supplier may register its Purchase Money Security Interest and Security Interest on the PPS Register established by the PPSA and, where necessary, amend the registration.
 - (i) The Applicant agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Supplier asks and considers necessary for the purposes of:
 - (i) ensuring that a Security Interest created under this Agreement is enforceable, perfected and otherwise effective; or
 - (ii) enabling the Supplier to apply for any registration, or give any notification, in connection with a Security Interest created under this Agreement so that the Security Interest has the priority required by the Supplier, including anything the Supplier reasonably asks the Applicant to do in connection with the PPSA.
 - (j) To the extent permitted by law, if the PPSA applies, the Applicant irrevocably waives any rights the Applicant may have to:
 - (i) receive notices or statements under sections 95, 121(4), 125, 130, 132(3) (d), 132(4) and 135 of the PPSA;
 - (ii) redeem the Goods under section 142 of the PPSA;
 - (iii) reinstate this Agreement under section 143 of the PPSA; and
 - (iv) receive a verification statement (as defined in the PPSA).
 - (k) The Applicant will have committed an act of default under this Agreement if any of the following events occur (each an "Act of Default"):
 - (i) the Applicant fails to make payment in full of the invoiced cost of the Goods in accordance with this Agreement;
 - (ii) the Applicant fails to insure the Goods in accordance with this Agreement or as otherwise required by the Supplier from time to time or fails to provide evidence of such insurance to the Supplier;
 - (iii) any distress or execution is levied on the Applicant's goods or property;
 - (iv) the Applicant, being a company, is unable to pay its debts as they fall due, offering to enter into any scheme of arrangement with its creditors, the passing by the Board of Directors of the Applicant of any resolution to wind up the Applicant, the filing of any petition to wind up the Applicant or the appointment of an administrator or receiver /manager in respect of the Applicant's affairs or the Applicant, in the case of a natural person, commits any act of bankruptcy.
 - (l) Immediately on the Applicant committing any Act of Default, any right to sell any Goods in which the title remains vested in the Supplier will cease immediately and the Applicant must immediately (at its cost) place all of the Goods in its possession or under its control at the disposal of the Supplier. The Applicant irrevocably authorises the Supplier to nominate a person to enter the Applicant's premises during normal business hours for the purpose of repossessing those Goods and where necessary to use reasonable force to repossess the Goods. If the Goods are stored in a third party warehouse the Applicant will be deemed to have irrevocably appointed the Supplier as its attorney with the authority (in the name of the Applicant) to direct the third party warehouse to release the Supplier's Goods (regardless of whether or not the Payment Period has expired) and the Supplier may keep or resell the Goods after repossession at its discretion.
 - (m) Until the full amount of the price of the Goods due to the Supplier is received by the Supplier, the Applicant will maintain and keep full and up to date records of the Goods supplied by the Supplier including those Goods re-sold by the Applicant.
- ### 3. Returns
- (a) This Agreement does not exclude or limit the application of any laws, including the Australian Consumer Law of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those laws or cause any part of this Agreement to be void.
 - (b) This Agreement excludes all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void ("Non- Excludable Condition").
 - (c) To the extent that the Supplier is providing services, the Supplier's liability for breach of a Non-Excludable Condition is limited, at the Supplier's option, to supplying the services again, or the cost of supplying the services again.

- (d) To the extent that the Supplier is supplying Goods, the Supplier's liability for breach of a Non-Excludable Condition is limited, at the Supplier's option, to the replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or of acquiring equivalent goods or the payment of the cost of having the Goods repaired.
- (e) Despite any other provision in this Agreement, the Supplier excludes all liability to the Applicant or any other person for indirect or consequential loss or damage, loss of profits, loss of revenue, loss of anticipated saving, loss of opportunity, loss of business, loss of production, loss of data, loss of reputation, loss of goodwill, punitive or exemplary damage or any other loss or damage beyond the normal measure however incurred in connection with this Agreement (including without limitation through negligence or breach of contract or statutory duty or otherwise) and regardless of whether the loss or damage was reasonably foreseeable.
- (f) The Supplier will not be responsible for any defect unless the Applicant notifies the Supplier within 7 days after the date of delivery of the Goods to the Applicant, and unless the Supplier has been given the first opportunity to remedy the defect. In every case the Supplier's liability is limited to the cost of replacing all or such parts of the Goods which have been proven to be defective. The Supplier will not be liable for any defect to the extent caused or contributed to by any misuse or negligence by the Applicant or its personnel or any failure by the Applicant or its personnel to properly maintain the Goods or to comply with any instruction manuals or directions provided by the Supplier in connection with the Goods.
- (g) The Supplier will bear its own costs in responding to a warranty claim. However, the Applicant must bear its own costs in making a warranty claim.

4. Miscellaneous Provisions

- (a) This Agreement is governed by the laws of the State or Territory in which the Supplier's head office is located and the parties irrevocably submit to the jurisdiction of the courts of that State or Territory and of the Commonwealth of Australia.
- (b) Freight and transport costs from the Supplier's nominated warehouse and in-transit insurance incurred in respect of the Goods are at the cost and liability of the Applicant and are not included in the invoiced price of the Goods.
- (c) The Applicant will be liable for and must promptly pay to the Supplier on demand;
 - (i) any legal costs incurred by the Supplier on a solicitor/client basis,
 - (ii) any court fees, bailiff costs and services fees incurred by the Supplier, and
 - (iii) any fees paid to a debt collector,
 in connection with any action or court proceedings taken by or on behalf of the Supplier for the recovery of any monies due by the Applicant to the Supplier under this Agreement.
- (d) The Supplier may (without cause) terminate the Applicant's Credit Account immediately by written notice to the Applicant.
- (e) The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980, known as the Vienna Sales Convention 1980) is expressly excluded from this Agreement.
- (f) The Applicant acknowledges and agrees that by signing the credit application on page 1 of this document and / or the credit application conditions on page 2 of this document, it accepts these Supplier Trading Terms and agrees that any orders the Applicant provides to the Supplier for the Goods will be supplied subject to and in accordance with these Supplier Trading Terms and the credit application conditions on page 2 of this document (despite any Applicant terms and conditions which may be set out on an order or otherwise).

5. Conflicts

If there is any conflict between the documents forming the Agreement, the documents will be interpreted in accordance with the following descending order of priority:

- (i) the credit application conditions on page 2 of this document;
- (ii) these Supplier Trading Terms; and
- (iii) any conditions set out in an order.

6. Force Majeure

- (a) A party ("Affected Party") is not liable for any delay or failure to perform an obligation (other than to pay money) under this Agreement caused by a circumstance beyond the reasonable control of a party ("Force Majeure").
- (b) The Affected Party must notify the other party as soon as practical of any anticipated delay or failure caused by Force Majeure.
- (c) The performance of the Affected Party's obligations (other than to pay money) are suspended for the period of delay caused by the Force Majeure.
- (d) The Affected Party must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

7. Indemnity

- (a) The Applicant indemnifies the Supplier from and against (and must pay the Supplier on demand for) any loss, cost, damage, expense, liability, claim, demand, action or proceeding of any kind (whether actual, prospective or contingent and whether ascertained or for the time being unascertainable) arising directly or indirectly from or in connection with:
 - (i) A breach of this Agreement by the Applicant or its personnel;
 - (ii) Any negligent, reckless, wilful or unlawful act or omission of the Applicant or its Personnel.
- (b) This indemnity is a continuing obligation and will survive the expiry or termination of this Agreement.

8. Definitions

In this Agreement, the following definitions apply:

- (a) "Agreement" means these Supplier Trading Terms, the credit application conditions on page 2 of this document and any order accepted by the Supplier from time to time;
- (b) "Excluded Interest" means any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property;
- (c) "Goods" means any Goods obtained by the Applicant from the Supplier from time to time under this Agreement;
- (d) "PPSA" means the Personal Property Securities Act 2009 (Cth);
- (e) "PPS Register" means the Personal Property Securities Register;
- (f) "Purchase Money Security Interest" has the same meaning as under the PPSA;
- (g) "Registration Commencement Time" has the same meaning as under the PPSA; and
- (h) "Security Interest" has the same meaning as under the PPSA.