

**1. INTERPRETATION**

1.1 Terms defined in the Terms and Conditions have the same meaning when used in this document unless otherwise defined in this document.

1.2 Defined terms:

**Contract** means obligations entered into, either direct or implied, between the Buyer and the Supplier at any time, presently or in the future for the supply of Goods and/or Services by the Supplier to the Buyer.

**Guarantee and Indemnity** means the guarantee and indemnity in this document between the Supplier and the Guarantor.

**Loss** means any loss claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

**Money Owing** means all money and amounts that the Buyer is or may become liable at any time, presently, prospectively or contingently, to pay to or for the account of the Supplier under or in connection with any Contract. It includes money and amounts:

- (a) in the nature of Purchase Price, interest, fees, costs, charges, expenses, duties, indemnities, guarantee obligations or damages;
- (b) whether arising or contemplated before or after the date of this document or as a result of the assignment (with or without the Buyer's consent) of any debt, liability or Contract; and
- (c) which a person would be liable to pay but for an insolvency in respect of that person.

**Terms and Conditions** means, as applicable, the document entitled Terms & Conditions of Sale and Supply - Service and Parts – February 2014 and/or the document entitled Terms & Conditions of Sale and Supply – Unit Sales – February 2014, as signed by the Buyer.

1.3 In this Guarantee and Indemnity:

- (a) the term 'Guarantor' whenever used will, if there is more than one person named as Guarantor, mean and refer to each of them individually and both of them together, unless the context requires otherwise and binds them jointly and severally.
- (b) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (c) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings.

**2. CONSIDERATION**

Each Guarantor acknowledges entering the Guarantee and Indemnity in return for the Supplier agreeing to supply and continuing to supply Goods and/or Services to the Buyer at the Guarantor's request and that the Supplier relies on the Guarantee and Indemnity.

**3. GUARANTEE AND INDEMNITY**

3.1 Each Guarantor irrevocably and unconditionally guarantees to the Supplier:

- (a) the payment of the Money Owing in accordance with any Contract; and
- (b) the performance by the Buyer of all its other obligations contained or implied in any Contract.

3.2 If the Buyer does not:

- (a) pay any Money Owing (or money which would be Money Owing if its payment was enforceable, valid and not illegal) in accordance with any Contract, each Guarantor must pay that money on demand as if it was the principal debtor; or
- (b) perform any of its other obligations contained in any Contract, each Guarantor must perform, or procure the performance of, those obligations (without the need for demand by the Supplier) in accordance with the Contract.

3.3 Each Guarantor indemnifies the Supplier against, and must pay on demand, amounts equal to any Loss of the Supplier as a result of or in connection with:

- (a) any obligation or liability of, or obligation or liability guaranteed by, a Guarantor under this document (or which would be such an obligation or liability if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
- (b) the Buyer failing, or being unable, to pay any Money Owing or to perform any of its other obligations in accordance with any Contract;
- (c) any Money Owing (or money which would be Money Owing if it were recoverable) not being recoverable from the Buyer; and
- (d) insolvency in respect of the Buyer (but only to the extent that the Loss relates to the Money Owing),

in each case, for any reason and whether or not the Supplier knew or ought to have known anything about those matters.

**4. OTHER GUARANTEE AND INDEMNITY PROVISIONS**

4.1 Each Guarantor waives any right it may have to require the Supplier to proceed against, or enforce any other rights or claim payment from, any other person before claiming from that Guarantor under the Guarantee and Indemnity.

4.2 The Guarantee and Indemnity:

- (a) extends to the present and future balance of all the Money Owing (including in respect of any contingent liability of the Buyer in connection with any Contract);
- (b) is not wholly or partially discharged by the payment of any Money Owing, the settlement of any account or anything else; and

(c) continues until all Money Owing has been paid in full and the Guarantor has received a deed of release from the Supplier.

4.3 Each Guarantor's liability under any Contract is not adversely affected by anything which would otherwise reduce or discharge that liability (whether or not any Guarantor or the Buyer is aware of it or consents to it and despite any legal rule to the contrary), including:

- (a) any time, waiver, concession or consent granted to, or composition with, each Guarantor or the Buyer or other person;
- (b) any opening of further accounts in connection with, or any increase in, change or replacement of the type, amount or terms of, Goods and Services provided to any person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Contract), between the Supplier and the Buyer or another person;
- (d) insolvency in respect of a Guarantor or the Buyer or another person;
- (e) any judgment or order being obtained or made against, or the conduct of any proceedings by, a Guarantor or the Buyer or another person;
- (f) a Guarantor or the Buyer's obligation or any Contract (or any provision of a Contract), being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, the Guarantee and Indemnity;
- (h) the Money Owing not being recoverable or the liability of a Guarantor or the Buyer or any other person to a Contract ceasing or reducing (including due to a release or discharge by the Supplier or by law);
- (i) any Contract not being executed by, or binding against, any Guarantor or the Buyer;
- (j) the exercise or non-exercise of any power (including any right to terminate a contract);
- (k) any set-off or counterclaim;
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to a Guarantor or the Buyer) by the Supplier or any other person; or
- (m) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Guarantor or the Buyer or any other person.

4.3 Each guarantee, indemnity and other obligation of each Guarantor in this Guarantee and Indemnity is:

- (a) a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation; and
- (b) is in addition to, and not prejudiced by, any other guarantee held by the Supplier.

4.4 Until all Money Owing has been received and the Supplier is satisfied that all Contracts are satisfied, no Guarantor may (either directly or indirectly) without the Supplier's prior written consent:

- (a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defense:
  - (i) against the Buyer; or
  - (ii) which another guarantor may have against the Supplier, which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity; or
- (b) claim or exercise a right of subrogation or contribution or otherwise claim the benefit of the Guarantee and Indemnity relating to the Money Owing.

**5. GENERAL**

5.1 Each Guarantor must not assign this Guarantee and Indemnity, or any rights under this Guarantee and Indemnity, without the prior written consent of the Supplier.

5.2 This Guarantee and Indemnity is governed by the law applicable in Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.

**6. EXECUTION**

Each Guarantor has been advised to obtain independent legal advice before executing this Guarantee and Indemnity and has done so or has either waived or declined to take independent legal advice.

**Guarantor 1**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature of witness: \_\_\_\_\_

**Guarantor 2**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature of witness: \_\_\_\_\_

Date: \_\_\_\_\_