

## GUARANTEE AND INDEMNITY

In consideration of Tambavale agreeing at the request of the Customer named in the Application for a Commercial Trading Account of which this Guarantee forms part to sell products and/or services or give credit to the Customer from time to time, each person named as guarantor in the Schedule ("Guarantor") enters into this Guarantee in favour of Tambavale in the following terms:

1. **Guarantee:** The Guarantor unconditionally and irrevocably guarantees to Tambavale the due and punctual payment of the Guaranteed Moneys and agrees:
  - (a) on demand from time to time to pay an amount equal to the Guaranteed Moneys then due and payable, which amounts must be paid in full without deduction, retention or set-off of any kind and for any reason;
  - (b) any statement signed by an Officer certifying the amount of Guaranteed Moneys, or the money owing by the Guarantor under the Guarantee, is, in the absence of manifest error, binding and conclusive on and against the Guarantor;
  - (c) this Guarantee is a continuing guarantee and remains in full force and effect until all the Guaranteed Moneys are paid or satisfied in full and is in addition to, and not prejudiced or affected by any other security or guarantee held by Tambavale for the payment of Guaranteed Moneys;
  - (d) the liabilities of the Guarantor and the rights of Tambavale under this Guarantee are not affected by anything which might otherwise affect such liabilities and rights at law or in equity;
  - (e) if any payment by the Guarantor under this Guarantee or the Customer is avoided, set aside, ordered to be refunded or reduced rendered unenforceable by any laws relating to bankruptcy, insolvency or liquidation, that payment will be taken not to have been made and Tambavale is entitled to recover from the Guarantor the value of that payment as if that payment had never been made and this clause continues after this Guarantee is discharged; and
  - (f) Tambavale may enforce this Guarantee without first having resort to any other guarantee or security in relation to the Guaranteed Moneys.
2. **Warranty:** Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to Tambavale all information relevant to this Guarantee.
3. **Indemnity:** As a separate and independent obligation, the Guarantor agrees to unconditionally and irrevocably indemnify Tambavale from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by Tambavale in relation to the non payment or non recovery of the Guaranteed Moneys. Tambavale need not incur any expense or make any payment before enforcing any right of indemnity.
4. **Notification of Change of Details:** The Guarantor will immediately provide written notice to Tambavale of any change in the Guarantor's details set out in this Guarantee or the Application for a Commercial Trading Account.
5. **Waiver:** Any waiver by Tambavale must be in writing. No failure or delay by Tambavale to exercise any power, right or remedy under this Guarantee operates as a waiver, nor does any single or partial exercise of any power, right or remedy preclude any other or further exercise of that power, right or remedy. Tambavale's rights and remedies under this Guarantee are in addition to any rights and remedies arising at law.
6. **Claim in Administration:** Until this Guarantee is released by Tambavale, the Guarantor will not without Tambavale's consent, prove in any Administration of the Customer in competition with Tambavale or any related body corporate of Tambavale.
7. **Continuing Guarantee:** All guarantees will be continuing guarantees and will terminate only with Tambavale's written agreement.
8. **Application of Moneys Received:** If Tambavale receives or recovers money in respect of debts of the Customer or anyone else, Tambavale may use the money to pay off whichever part of those debts Tambavale chooses and does not have to apply the money for the Guarantor's benefit.
9. **Charge and Security Interest:** As security for payment to Tambavale of all moneys payable by the Guarantor and for the Guarantor's obligations generally under this Guarantee, the Guarantor charges in favour of Tambavale the whole of the Guarantor's undertaking, property and assets (including without limitation all of the Guarantor's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Guarantor irrevocably appoints each Officer as the Guarantor's attorney to do all things necessary to create and register each such charge. Upon demand by Tambavale, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to Tambavale to further secure payment of the money payable by the Guarantor. If the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Guarantor acknowledges that Tambavale may execute such mortgage or other instrument as the Guarantor's attorney pursuant to the appointment of Tambavale as the Guarantor's attorney set out in this Guarantee.
10. **Personal Property and Securities Act (Cth) 2009 ("PPSA"):** Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA. As security for payment to Tambavale of all moneys payable by the Guarantor and for the Guarantor's obligations generally under this Guarantee, the Guarantor grants a "security interest" in favour of Tambavale over all of the Guarantor's "personal property" both current and later acquired.

The Guarantor consents to Tambavale registering a "financing statement" in the Personal Properties Securities Register to perfect the "security interest" created under this Guarantee. The Guarantor must promptly, on request by Tambavale, execute all documents and do anything else reasonably required by Tambavale to ensure that the "security interest" created under this Guarantee constitutes a "perfected" "security interest". The Guarantor acknowledges and agrees that: -

  - (a) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to this Guarantee;
  - (b) The "Security Agreement" created by this Guarantee may be reinstated on the terms considered appropriate by Tambavale at its complete discretion.

The Guarantor acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of the "security interest" created under this Guarantee, and the Guarantor waives its right to: -

  - (a) not have goods damaged or be inconvenienced any more than necessarily incidental if Tambavale removes an "accession" under s.92 PPSA;
  - (b) to receive notice of any intention to remove an "accession" under s.95(1)(a);
  - (c) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to Tambavale for the retention of the "accession" under s.97 PPSA
  - (d) to receive notice of a decision to enforce the "security interest" in "personal property" in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
  - (e) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
  - (f) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
  - (g) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
  - (h) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
  - (i) to receive notice of a "verification statement" in relation to any "registration event" (including registration of a "financing statement" or a "financing change statement") relating to the "security interest" created under this Guarantee under s.157 PPSA.
11. **Trusts:** This document binds the Guarantor both personally and as trustee of any trust of which the Guarantor is a trustee.
12. **Set-Off:** Tambavale may at any time set-off amounts owed by Tambavale to the Guarantor against amounts owed by the Guarantor to Tambavale.
13. **Expenses:** The Guarantor must pay to Tambavale all costs, charges, fees and expenses (including, without limitation, all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by Tambavale in connection with any entry into this Guarantee, the exercise or attempted exercise of any power, right or remedy under this Guarantee and/or the failure of the Guarantor to comply with any obligations under this Guarantee.
14. **Acknowledgement:** The Guarantor acknowledges that the Guarantor:
  - (a) has entered into this Guarantee voluntarily;
  - (b) has read and understood the nature and consequences of entering in to this Guarantee;
  - (c) has not signed this Guarantee on the basis of any representation of Tambavale, Tambavale's employees, agents or representatives or under the duress of any person; and
  - (d) is entitled to seek independent legal and financial advice before signing this Guarantee.

15. **Joint and Several:** If there is more than one Guarantor, the obligations of each Guarantor are joint and several.
16. **Severance:** Each clause, subclause and part of this Guarantee is separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
17. **Amendments:** This Guarantee may only be amended with Tambavale's express written agreement.
18. **Assignment:** The Customer may not assign this Guarantee without Tambavale's prior written agreement.
19. **Application of Laws:** This Guarantee is governed by the laws of the state as determined by Tambavale in its sole discretion. The Guarantor submits to and consents to the laws of the state (as determined by Tambavale in its sole discretion) having jurisdiction over this Guarantee.
20. **Definitions:** In this Guarantee unless the context requires otherwise:
- Administration** includes any administration or liquidation of a corporation, arrangement, receivership, receivership and management or anything similar;
- Credit-related information** includes "credit information", "credit reporting information" and/or "credit eligibility information" " and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.
- Customer** means the Customer named in the Application for a Commercial Trading Account of which the Guarantee and Indemnity forms a part;
- Guarantee** means this Guarantee and Indemnity;
- Guaranteed Moneys** means all Moneys which are, will or may be at any time in the future, owing or payable to Tambavale by the Customer for any reason whatsoever including, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Customer would have been liable but for the Customer's Administration, the Customer and Guarantor will still be taken to be liable;
- Officer** means each director, secretary, credit manager and authorised representative of Tambavale; and
- Privacy Act** means the *Privacy Act 1988 (Cth)* as amended from time to time.

21. **Interpretation:**

- (a) In this Guarantee unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
- (b) No provision of this Guarantee will be construed adversely against a party solely because the party was responsible for drafting the provision.

**GUARANTOR'S PRIVACY AND CREDIT REPORTING ACKNOWLEDGMENT AND CONSENT**

**PRIVACY AND COLLECTION NOTICE (APP 5)**

Tambavale's Privacy Policy contains information about how Tambavale handles personal information (including personal information collected via its website) and complies with its obligations under the Privacy Act and the Australian Privacy Principles (**APPs**). Tambavale must take reasonable steps, before or at the time it collects personal information, to notify the Guarantor of certain matters or to ensure that the Guarantor is aware of certain matters.

**Tambavale's Collection Notice (APP 5) and Privacy Policy are published on Tambavale's website at [www.liquidsb.com.au](http://www.liquidsb.com.au). Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Tambavale's Privacy Officer on 1300 668 736**

**CREDIT REPORTING AND STATEMENT OF NOTIFIABLE MATTERS** Tambavale's Credit Reporting Policy contains information about credit reporting, including how Tambavale manages the personal information it obtains from credit reporting bodies (**CRBs**) and how it manages other types of credit-related personal information. Under the Privacy Act and Privacy (Credit Reporting) Code there are several matters that Tambavale is required to notify the Guarantor of at or before it collects personal information that is likely to be disclosed to a CRB.

**Tambavale's Statement of Notifiable Matters and Credit Reporting Policy are published on Tambavale's website at [www.liquidsb.com.au](http://www.liquidsb.com.au). Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Tambavale's Privacy Officer on 1300 668 736**

I/We have read and understood this document. I/We have not relied on anything said to me/us by the Customer or Tambavale as to what it means or what its effects may be.

I/We understand that I/we need not give any of the personal information requested in this Guarantee. However without this information it may not be possible for Tambavale to accept this Guarantee or provide an appropriate level of service. By signing this Guarantee I/we authorise Tambavale to collect, hold, use, and disclose my/our personal information in the manner set out in this Guarantee and/or in Tambavale's Privacy Policy and Credit Reporting Policy (as may be amended from time to time) set out in this Guarantee and on Tambavale's website at [www.liquidsb.com.au](http://www.liquidsb.com.au). I/We acknowledge having read and understood Tambavale's Privacy Policy and Credit Reporting Policy on [www.liquidsb.com.au](http://www.liquidsb.com.au) and that I/we am/are aware that copies of those policies are available on Tambavale's website at [www.liquidsb.com.au](http://www.liquidsb.com.au) or in an alternative form and free of charge from Tambavale's Privacy Officer upon request

SIGNED by each Guarantor in the presence of the witnesses whose names appear below.

DATED this                      day of    20

<b>Guarantor's Full Name:</b>		<b>Signature:</b>	
Witness' Name (Print):		Signature:	
Witness' Address:			

<b>Guarantor's Full Name:</b>		<b>Signature:</b>	
Witness' Name (Print):		Signature:	
Witness' Address:			

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Witness' Name (Print):		Signature:	
Witness' Address:			

<b>Guarantor's Full Name:</b>		<b>Signature:</b>	
Witness' Name (Print):		Signature:	
Witness' Address:			

**IMPORTANT NOTICE: This is an important document. It may require you to pay someone else's debts. You should ensure that you read and understand the terms of this Guarantee. If necessary, seek independent legal advice.**