

DEED TO GUARANTEE & INDEMNITY TO BALDICO PTY LTD (ACN 146 938 365)

WARNING: THIS IS AN IMPORTANT DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE

A. Details of Guarantors

Name:	Name:
Private Address:	Private Address:

B. IN CONSIDERATION of Baldico Pty Ltd (ACN 146 938 365) (hereafter called “the Credit Provider”) agreeing to provide goods, services or credit or actually providing or continuing to provide goods, services or credit, including any time or indulgence, to:

Customer Name:	ABN/ACN:
Trading Name:	
Trading Address:	

The Guarantor (or if more than one, each of the Guarantors jointly and severally) detailed above, who has signed this document below, agrees to guarantee to the Credit Provider the due and punctual performance by the Customer of all its obligations under the Credit Provider’s Terms and Conditions of Supply of Goods and/or Services (including any variation of them), as if the Guarantor(s) were the Customer, and to indemnify the Credit Provider against loss or damage in the event of default of the Customer in compliance with those Terms and Conditions of Supply.

And it is further agreed by each Guarantor (whether one or more), that:

1. If more than one Guarantor is named, this Guarantee and Indemnity is not conditional upon its execution by more than one of the named guarantors and may be enforced against any of them, who has signed or otherwise executed it, jointly or severally as if that or those guarantor(s) were the only guarantor(s).
2. In the event, that the Customer is unable or fails to pay any monies to the Credit Provider as and when they fall due for payment or otherwise fails to comply with the Credit Provider’s Terms and Conditions
 - a) Each Guarantor agrees to pay those monies to the Credit Provider and make good any default of the Customer *without the need for any demand* by the Credit Provider and the Credit Provider may enforce the obligation to pay those monies and all other obligations owed by the Customer under the Credit Provider’s Terms and Conditions of Supply of Goods and/or Services against the Guarantor, as if the Guarantor were the Customer and a principal debtor (without need of any prior default by the Customer).
 - b) Each Guarantor agrees on demand by the Credit Provider to indemnify and keep indemnified the Credit Provider from and against all loss and damage, including consequential loss or damage, claims, costs (including legal costs), charges, disbursements and expenses whatsoever that the Credit Provider may incur by reason of the inability or failure of the Customer to so pay or comply.
3. This is a continuing Guarantee and Indemnity and applies to all moneys and obligations which are now or may from time to time be owing or unpaid or unperformed by the Customer to the benefit of the Credit Provider. It may be revoked as to future transactions of the Customer by any Guarantor (without affecting the obligations of any other Guarantor) by at least one calendar month’s written notice to the Credit Provider given at any time by the Guarantor or the legal representative of the Guarantor. The receipt by the Credit Provider of a written notice revoking the Guarantee and Indemnity by any Guarantor will be acknowledged in writing to confirm that the notice has been received by the Credit Provider.
4. This Guarantee and Indemnity shall not otherwise be determined or discharged by reason of the liquidation (voluntary or otherwise), reconstruction, reconstitution, amalgamation with any other entity, death or bankruptcy of the Credit Provider, Customer or Guarantor(s) and shall continue to apply in relation to the rights and obligations under the Credit Provider’s Terms and Conditions of Supply of Goods and/or Services of their successors or assigns (to the extent law allows).
5. All rights and remedies of the Credit Provider under this guarantee and indemnity shall be unaffected and not released or waived by any postponement, forbearance, indulgence, compromise, waiver or release extended to the Customer or any Guarantor(s) by the Credit Provider nor by any failure by the Credit Provider to enforce, register or otherwise perfect any right of the Credit Provider under the Credit Provider’s Terms and Conditions of Supply of Goods and/or Services or any security nor by any proposal or agreement by the Credit Provider to vary the Credit Provider’s Terms and Conditions of Supply of Goods and/or Services (to which once varied this Guarantee and Indemnity shall equally apply) nor by any other thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Guarantor(s).
5. Each Guarantor shall not take any steps to recover or enforce a right or claim against the Customer or apply rights over property of the Customer to the satisfaction of its obligations to the Credit Provider and shall not prove in any insolvency administration, bankruptcy or liquidation of the

Customer unless or until all debts and obligations of the Customer to the Credit Provider have been satisfied in full and shall in any such case exercise any voting rights held as directed by the Credit Provider until it has been so satisfied.

6. If any payment made by or on behalf of the Customer is alleged to be void or voidable by any liquidator or like officer of the Customer under any law related to insolvency each Guarantor indemnifies the Credit Provider against any costs or losses it may incur in connection with such claim.
7. If the Guarantor is a trustee of a trust, the Guarantor enters into this Agreement in both the Guarantor's personal capacity and as trustee of that trust.
8. The Credit Provider may assign the benefit of this Guarantee and Indemnity at any time without the consent of or notice to the Customer or any guarantor.
9. The Guarantor agrees that nothing in sections 125, 132(3)(d), 132(4), 135, 142 or 143 of the Personal Property Securities Act 2009 (Cth) ("the Act") will apply to the guarantee between the Guarantor and the Credit Provider, or the security under this guarantee.
10. The Guarantor agrees to waive its right to do any of the following or to receive any of the following notices or for the Credit Provider to carry out the following obligations under the following provisions of the Act:
 - (a) Receive notice of removal of an accession under section 95
 - (b) Receive notice of a decision, under paragraph 117(2)(b), to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law under section 118;
 - (c) Receive notice of any action to be taken in accordance with subsection 120(2) under section 121(4)
 - (d) Receive notice of intention to seize collateral under section 123
 - (e) Receive notice of disposal of collateral under section 130;
 - (f) Receive a statement of account if there is disposal of collateral under section 132(3)(d);
 - (g) Receive every six months statements of account until there is disposal of collateral under section 132(4);
 - (h) Receive notice of retention of collateral under section 135;
 - (i) Receive notice to receive a verification statement in relation to registration events under section 157.
11. The Guarantor and the Credit Provider also contract out of each other provision of Part 4.3 of the Act, under sections 115(7) and 116(2), but only to the extent that the provision impose obligations on the Supplier.
12. The Guarantor and the Credit Provider agree that neither the Guarantor nor the Credit Provider will disclose information of the kind mentioned in section 275(1).
13. The Guarantor hereby charges with payment of any indebtedness to the Credit Provider all legal and beneficial interest (freehold or leasehold) in land and property, other than Personal Property to which the Personal Property Securities Act 2009 applies, held now or in the future by the Guarantor and upon non-payment of any monies due to the Credit Provider pursuant to this guarantee the Credit Provider may take possession of such land or property and exercise and do all or any acts, powers and authorities vested in or given to mortgagees by any statutory provision or at common law or in equity. The Guarantor agrees that if demand is made by the Credit Provider, the Guarantor receiving such a demand will immediately execute a mortgage (incorporating the covenants contained in Memorandum No.Q860000 registered at the Land Titles Office in Sydney) or other instrument of security, or consent to a caveat, as required, and against the event that the Guarantor fails to do so within a reasonable time of being so requested, the Guarantor hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Credit Provider to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the Credit Provider may lodge a caveat noting the interest given by this charge on the title of any property of the Guarantor whenever it so wishes.
14. The Guarantor grants a security interest to the Credit Provider in all of its present and after acquired property and in all of its present and future rights in relation to any personal property as defined in the Personal Property Securities Act 2009.
15. Any notice or demand for the purposes of this Guarantee and Indemnity shall be deemed to be duly made and given:
 - (a) to a guarantor, if it is forwarded in writing by ordinary pre-paid post to the Guarantor to be bound by it at the address of the Guarantor shown above or any other address given by the Guarantor to the Credit Provider, in which case it shall be deemed received by the Guarantor on the business day after posting, and
 - (b) to the Credit Provider, if it is delivered to the Credit Provider at its registered office and receipted in writing by a duly authorised officer of the Credit Provider.
16. Each Guarantor acknowledges and agrees, that:
 - a) He or she, if an individual, is above the age of 18 years.
 - b) The Credit Provider may in accordance with the Privacy Act 1988 (Cth.)[the PA] and related or similar legislation provide to and seek from credit reporting bodies, other credit providers, other prospective or current guarantors of the Customer or debt collection agencies personal information (including the above information, identification, credit, credit eligibility, payment, default, court proceedings or personal insolvency information) about the Guarantor and that information may be used for purposes including:
 - i) assessing the Account Application of the Customer and this Guarantee and Indemnity,
 - ii) assessing whether to provide or continue to provide goods, services or credit to the Customer,
 - iii) a credit reporting body or another credit provider assessing any other application for credit or managing any credit obtained by or concerning the Guarantor.
 - iv) the internal management purposes of the Credit Provider that are directly related to the provision or management of consumer, commercial or other credit by the Credit Provider,
 - v) for a particular commercial credit related purpose of the Credit Provider in relation to the Customer or Guarantor.
 - vi) a credit guarantee purpose of the Credit Provider in relation to the Customer or Guarantor,
 - vii) assisting the Customer or Guarantor to avoid defaulting on his or her obligations in relation to consumer credit provided by the provider to the Customer or Guarantor.
 - viii) assessing an application for consumer credit or commercial credit made to the recipient.
 - ix) for the purpose of a prospective Guarantor of the Customer considering whether to offer to act as a Guarantor in relation to the credit or to offer property as security for the credit,
 - x) for a purpose related to the enforcement, or proposed enforcement, of any Guarantor's guarantee, including this guarantee.

xi) for the purpose of collecting payments that are overdue in relation to consumer or commercial credit provided by the Credit Provider to the Customer of Guarantor.

c) The Guarantor is aware:

(i) The Credit Provider's website at www.baldico.com.au includes a statement of information about credit reporting under clause 4.1 of the Privacy (Credit Reporting) Code 2014 [the Code], including the names and contact details of the Credit Reporting Bodies (CRB), to which it is likely to disclose credit information;

(ii) the key issues contained in the statement under the Code are:

- A. that the CRB, to whom the credit information is provided, may include the information in reports provided to other credit providers to assist them to assess the credit worthiness of the Customer, its proprietors, directors, partners or trustees and the Guarantor;
- B. that if the Customer or any of its Guarantors fails to meet its payment obligations in relation to consumer credit or commits a serious credit infringement, the Credit Provider may be entitled to disclose this to the CRB;
- C. how the Customer, its proprietors, directors, partners, trustees or guarantors may obtain the Credit Provider's policy about the management of credit-related personal information required by section 21B of the PA and the CRB's policy about the management of credit-related personal information required by Section 20B;
- D. the right to access the information from the Credit Provider to request it to correct the information and to make a complaint to the Credit Provider;
- E. the right to request CRBs not to use their credit reporting information for the purposes of pre-screening of direct marketing by a Credit Provider;
- F. the right to request the CRB not to use or disclose credit reporting information about an individual, if the individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud.

(iii) a statement of these matters (available on the website) may be obtained in hard copy upon request.

d) The Guarantor is further aware:

- A. that the policy (the *credit reporting policy*) of the Credit Provider contains information about how an individual may access the credit eligibility information about the individual that is held by the Credit Provider;
- B. that the policy contains information about how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the Credit Provider;
- C. that the policy contains information about how an individual may complain about a failure of the Credit Provider to comply with Division 3, Part IIIA of the PA or the Code;
- D. that the policy contains information about how the Credit Provider will deal with such a complaint;
- E. that the Credit Provider is unlikely to disclose credit information or credit eligibility information to entities that do not have an Australian link; but if it were likely and practicable, the countries in which those entities are likely to be located would be specified in the policy.

Executed as a Deed by the Guarantor of the Customer

Dated this _____ day of _____ 20 _____

SIGNED, SEALED AND DELIVERED BY

in the presence of:

Signature of Guarantor

Signature of Witness

Print name of Guarantor

Print name of Witness

Address of Witness

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in the presence of

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