

# DEED OF GUARANTEE

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This Deed of Guarantee ("**the Guarantee**") dated \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Between:       **DIRECT WHOLESALE SUPPLIES PTY LTD ("DWS")**        ABN: 98 614 574 373

And:(insert DIRECTORS names)\_\_\_\_\_   
 (and if more than one, jointly and severally "**the Guarantor**")

Whereas:        DWS has agreed to provide a credit facility to the person or company whose name is set out as the Applicant in the attached New Account Application and Agreement ("**the Agreement**") on the terms set out in that Agreement provided that the Guarantor guarantees the performance of such terms by the Applicant and indemnifies DWS for all moneys owing under the Agreement and in respect of any other loss or damage which DWS may sustain should any term or warranty of the Agreement be breached by the Applicant.

**NOW THIS DEED WITNESSES AND THE GUARANTOR HEREBY COVENANTS AND AGREES (AND IF MORE THAN ONE JOINTLY AND SEVERALLY) WITH DWS AS FOLLOWS:**

1. The Guarantor shall guarantee and be fully liable to DWS not only as guarantor but also as principal debtor for the due and prompt payment by the Applicant when the payment of same falls due in accordance with the terms of the Agreement for all goods and services which DWS has provided and may in the future provide at the Applicant's request.
2. This Guarantee shall be a continuing guarantee and:
  - (a) Shall not be affected or discharged by any indulgence or forbearance granted by DWS to the Applicant or the Guarantor or by any failure on the part of DWS or to give any notice to the Applicant or the Guarantor of any default by the Applicant under the terms of the Agreement or by any circumstances whatsoever whereby but for the terms of this Guarantee the provision of the guarantee by the guarantor would be affected or discharged or by the compounding with, compromising, releasing or granting of any other indulgence to the Applicant or to any other person or company with respect to the payment of any money or otherwise;
  - (b) Shall not be considered as wholly or partially discharged by the payment at any time hereafter by the Applicant or the Guarantor or any of them of any moneys owing pursuant to this Guarantee, by the settlement of any account or by the death bankruptcy or liquidation of the Applicant or Guarantor or any of them or by any other matter or thing whatsoever and shall be binding on the Guarantor's personal representatives and shall ensure for the benefit of DWS its administrators and permitted assigns.
3. The liability of the Guarantor hereunder shall not be affected by the determination or suspension of the Agreement by DWS for non-payment of moneys owing under the Agreement or otherwise or by the failure of any person intended or contemplated as a party to this document to properly execute the document (either at all or in a manner legally binding upon that person) or if any payment by the Applicant is later avoided by operation of law and the Guarantor hereby guarantees the payment to DWS of all moneys which may be payable by the Applicant by way of damages or otherwise following upon a breach of the Agreement or any determination thereof.
4. A statement in writing by DWS and signed by any director or manager or responsible officer thereof as to the amount owing pursuant to this Guarantee shall be prima facie evidence at such amount is due and owing and of all other matters therein set forth.

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5. The Guarantor hereby charges with the due payment of all moneys payable by the Applicant to DWS all of the Guarantor's beneficial interests in freehold or leasehold property held by it now or in the future as security for payment of all and any moneys payable by the Applicant to DWS and consents to DWS lodging a caveat or caveats noting its interest in such property, and upon demand by DWS the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to DWS to further secure payment of such moneys. The Guarantor hereby and by way of security irrevocably appoints every officer and legal practitioner of DWS jointly and each of them severally as the Guarantor's lawful attorney with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form as determined by such attorney over any real property of the Guarantor to secure such moneys.
6. Despite the provisions of Section 21 of the Partnership Act 1891 or any other legislation to the contrary, where the Applicant is a partnership, no change in the constitution of the partnership shall affect, impair or in any other way discharge the Guarantor's liability under this Guarantee.
7. Any demand to be served pursuant to this Guarantee may be served upon the Guarantor by delivering the same or posting by prepaid post to the Guarantor at his address stated above or last known to the Applicant provided however that the making of any demand shall not be a condition precedent to the Guarantor's liability as herein set out.
8. Notwithstanding anything herein contained in this Guarantee and notwithstanding that the whole or any part of the moneys or damages hereinbefore described are or may be irrecoverable by DWS from the Applicant whether by reason of any legal limitations, disability or incapacity affecting the Applicant or by any reason or any fact or circumstance whatsoever and whether the transactions or any of them relating to such moneys, damages or the Agreement or any part thereof have been void from the beginning or have substantially been avoided and whether or not any of the matters or facts relating thereto have been or ought to have been within the knowledge of the Applicant then in every such case the Guarantor hereby as a separate and additional liability under this instrument and (if more than one Guarantor then jointly and severally) as principal debtor hereby indemnifies DWS in respect of such moneys and damages as the Applicant now or may from time to time in the future owe to DWS pursuant to the Agreement or as a result of the breach of warranties therein, and the guarantor hereby agrees to pay such moneys or damages when demanded in writing from DWS and the terms of this instrument shall so far as is possible apply equally to this indemnity.
9. DWS may assign the benefit of this Guarantee to any person and whether for consideration or otherwise.

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10. This guarantee shall be interpreted according to the law of Queensland and words incorporating the singular number shall include the plural number and vice versa and words meaning one gender shall include the other gender. Where this Guarantee is given by more than one person then all of the obligations on the persons giving the guarantee shall be joint and several.

**Names and Addresses of all Guarantors:**

**Guarantor No.1** Name:.....

Home Address:.....

**Guarantor No.2** Name:.....

Home Address:.....

**Guarantor No.3** Name:.....

Home Address: .....

**IN WITNESS WHEREOF** the parties here to have set their hands and seals the day and year first herein before written.

SIGNED SEALED AND DELIVERED by **Guarantor No.1**.....

In the presence of: **(Witness)**.....

SIGNED SEALED AND DELIVERED by **Guarantor No.2**.....

In the presence of: **(Witness)**.....

SIGNED SEALED AND DELIVERED by **Guarantor No.3**.....

In the presence of: **(Witness)**.....