

# DEED OF GUARANTEE, INDEMNITY AND CHARGE

TO: **HILTI (AUST) PTY. LTD.** of Lvl 5 1G Homebush Bay Drive, Rhodes NSW 2138 (ACN 007 602 100) (ABN 44 007 602 100) and its subsidiary companies

In consideration of the Company providing or continuing to provide Goods or supplying credit accommodation to the Customer or not commencing or continuing legal action against the Customer at the request of the Guarantor and for the business purposes of the Customer, the Guarantor enters this Deed and agrees with the Company as follows:

## Guarantee

1. To guarantee and be responsible for the payment of the Money Secured to the Company by the Customer.
2. This guarantee and indemnity is given for valuable consideration and is a continuing guarantee to the Company for the whole of the Money Secured.
3. The Company may at any time or times at its discretion and without giving any notice whatsoever to the Guarantors refuse to provide further Goods to the Customer.
4. Where the Guarantor consists of more than one person, this Deed is enforceable against all persons signing as Guarantor and each Guarantor will be jointly and severally liable immediately on signing this Deed.
5. If it is intended that more than one person be a Guarantor, this Deed will remain enforceable against each person signing as Guarantor even if any person proposed or contemplated to sign this Deed does not in fact do so.
6. The Company may at any time release or discharge the Guarantor or any of the persons included as Guarantor from the obligations of this Deed or grant time to pay, accept a composition from or enter other arrangements with the Customer or any Guarantor without affecting the liability of any other Guarantor under this Deed except that any payment received by the Company under such composition or arrangement will operate as a discharge of liability to the extent of the payment.
7. Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's indebtedness and in such any event the parties are to be restored to rights which each respectively would have had if the payments had not been made.
8. Where the Guarantor has the right to prove in any insolvency administration of the Customer, the Guarantor must do so and hold any dividends received on trust for the Company.

## Indemnity

9. The Guarantor indemnifies the Company against any and all losses and expenses of any nature including the costs of preparation of this Deed, stamp duty (if any) and legal costs on a solicitor/client basis arising in any way out of its dealings with the Customer, the intent being that the Guarantor is primarily liable for payment to the Company of such losses and expenses and of the Money Secured.

## Charge

10. For the purpose of securing payment to the Company of the Money Secured, the Guarantor:
  - 10.1 Hereby charges all of its, his or her beneficial interest in real and personal property (including all property acquired after the date of this Deed) in favour of the Company whether or not a demand has been made on the Customer or the Guarantor;
  - 10.2 Agrees to deliver to the Company within seven (7) days of written demand a Memorandum of Mortgage in registrable form and that the Money Secured is payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where the Guarantor has any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
  - 10.3 Authorises and consents to the Company taking all actions necessary to give effect to this security including the lodgment of a Caveat upon Title of the Guarantor's Real Property. The Guarantor hereby irrevocably appoints the Company and any person nominated by the Company severally the attorney of the Guarantor with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
  - 10.4 If the charge created by Clause 10.1 is or becomes void or unenforceable, it may be severed from this Deed without any effect on its validity and the Guarantor shall not be exonerated in whole or in part, nor shall the Company's right, remedies or recourse against the Guarantor be in any way prejudiced or adversely affected by such severance.
11. A Certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Company shall be prima facie evidence of the amount of the Money Secured owed by the Customer or Guarantor at that time.
12. The Guarantor acknowledges that the Company has afforded him, her or it full and unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under the Deed prior to the signing of this Deed of Guarantee and Indemnity.
13. The Guarantor acknowledges that the Guarantor has made his, her or its own enquiries of the Customer regarding the Customer's past and prospective dealings with the Company and is satisfied as to the extent of his, her or it's obligations arising from this Deed and that the Company is under no obligation to notify the Guarantor of any changes to its trading terms or dealings with the Customer even if these changes increase the Guarantor's liability under the Deed.
14. This Deed will be construed according to the laws of the State or Territory as the Company in its sole discretion determines. Proceedings may be instituted in such State or Territory as the Company may in its sole discretion determine. Failing such determination the Guarantor consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.
15. He/She/They irrevocably grant permission to the Company before, during or after the provision of credit to the Customer to give and receive information about the Guarantor to and from any Credit Reporting Agency, Credit Provider, Bank or Financial Institution or any other corporation, association or person in accordance with the Privacy Act, 1988 or otherwise. This information may concern the Guarantor's Consumer Credit and/or Commercial Credit and trading arrangements, may consist of Credit Reports and other credit and trading information concerning the Guarantor and their business and may be used to assess or review at any time this guarantee or to collect any overdue payments and/or to provide credit references in accordance with the provisions of the Privacy Act, 1988 or otherwise.
16. In accordance with the provisions of the National Privacy Principles for the fair handling of personal information, as set out in the Privacy Act, 1988, and the Company's privacy policy, persons will be given access to their personal information on request. Further, the parties hereto acknowledge that personal information obtained for the purpose of assessment and management of the Company's accounts may be disclosed to related companies, contractors, other credit providers, risk insurers, debt

**THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING  
AND EFFECT YOU SHOULD SEEK LEGAL ADVICE**

**Definitions and Interpretations**

"**Company**" means HILTI (AUST) PTY. LTD. 1G Homebush Bay Drive, Rhodes NSW 2138 (ACN 007 602 100) (ABN 44 007 602 100) and its subsidiary companies (within the meaning of Section 50 of the Corporations Law) and successors or assigns.

"**Customer**" means the person or company set out in Item 1 of the Schedule.

"**Guarantor**" means the person or company set out in Item 2 of the Schedule or any other person or persons signing or purporting to sign this Deed as Guarantor and that person's personal representative.

"**Goods**" means all goods, merchandise and services supplied or which may be supplied in the future at the Customer's request or credit extended by the Company to the Customer.

"**Money Secured**" means all monies now payable or which may become payable in the future or contingently by the Customer to the Company for any reason whether alone or jointly with another person including without limitation; money owed by the Customer for the supply of Goods; all money the Company pays or becomes liable to pay at the request of the Customer; all losses and expenses including legal costs on a solicitor/client basis however directly or indirectly arising from any dealing or default by the Customer under its contract with the Company or by the Guarantor under this Deed; all the costs incurred by the Company for recovering monies under any related security.

"**Deed**" means this Deed of Guarantee, Indemnity and Charge.

In interpreting this Deed words incorporating the singular number denotes the plural and vice versa; any gender denotes the relevant gender; and a person denotes an individual, a body corporate, a partnership or any unincorporated association.

SCHEDULE

Item 1: The Customer

..... (ACN .....

Item 2: The Guarantor

Name ..... Address .....

Name ..... Address .....

**EXECUTED AS A DEED**

IN WITNESS I SET MY HAND AND SEAL AT ON THIS DAY OF , 20 .

SIGNED by

..... )  
(Print Name of Guarantor) )  
..... )  
of ..... )  
(Address of Guarantor) )  
..... )  
X..... )  
(Guarantor)

Before .....  
(Signature of Witness)

.....  
(Print Name of Witness)

.....  
(Address of Witness)

IN WITNESS I SET MY HAND AND SEAL AT ON THIS DAY OF , 20 .

SIGNED by

..... )  
(Print Name of Guarantor) )  
..... )  
of ..... )  
(Address of Guarantor) )  
..... )  
X..... )  
(Guarantor)

Before .....  
(Signature of Witness)

.....  
(Print Name of Witness)

.....  
(Address of Witness)

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