

GUARANTEE and INDEMNITY

Name of Customer:
Name of Guarantor:
Name of Guarantor:
Name of Guarantor:
Name of Guarantor:

Background

- A. The Customer has submitted a Credit Application to be supplied goods or services (or both) on credit by the Supplier.
- B. The Guarantors have, as security for any trade credit which the Supplier may agree to provide to the Customer, agreed to provide the Supplier with the Guarantee on the terms outlined below.

Terms and Conditions

1. Definitions:
- (a) **"Credit Application"** means the online credit application and the accompanying terms and conditions.
 - (b) **"Corporations Act"** means the *Corporations Act 2001* (Cth).
 - (c) **"Customer"** means the customer named in the Credit Application.
 - (d) **"Guarantee"** means the guarantee and indemnity provided herein.
 - (e) **"Guarantor"** means each of the abovenamed guarantors jointly and severally.
 - (f) **"Ipso Facto Event"** means the Customer is the subject of:
 - (i) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Corporations Act; or
 - (ii) any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.
 - (g) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
 - (h) **"Supplier"** means Bestbar Pty Ltd ACN 068 713 539 and each wholly owned subsidiary including but not limited to Bestbar (NSW) Pty Ltd ACN 087 961 135 and Bestbar (VIC) Pty Ltd ACN 086 622 273.
 - (i) **"Trading Terms and Conditions"** means the trading terms and conditions governing the supply of goods or services by the Supplier.

Application for trade credit

2. The persons named above as Guarantors request that the Supplier accept the Customer's Credit Application.
3. Each of the persons named as Guarantors acknowledge receipt of the Supplier's Trading Terms and Conditions for the provisions of goods and services (as amended by the Supplier from time to time) and gives the consents set out in the Guarantee.

Guarantee

4. In return for the Supplier accepting the Customer's Credit Application, each Guarantor agrees to be bound by the Guarantee, and to take reasonable steps to ensure that the Customer complies with the Trading Terms and Conditions.
5. Each of the Guarantors, jointly and severally, hereby:
- (a) guarantees the punctual payment to the Supplier of all amounts which the Customer does now or may at any time in the future owe to the Supplier under the Credit Application;
 - (b) if an Ipso Facto Event is continuing, undertakes to immediately on demand pay all amounts the Customer owes to the Supplier under the Credit Application, as if it were the Customer;

- (c) guarantees the punctual and correct compliance with all obligations (other than payment obligations) which the Customer owes now or may in the future owe to the Supplier under the Credit Application; and
 - (d) indemnifies the Supplier against any loss it may suffer if the Customer does not meet any of its obligations under the Credit Application, except to the extent that such loss is caused or contributed to by the Supplier.
- 6. This Guarantee creates a principal obligation from each and every Guarantor jointly and severally to the Supplier and is in addition to any security which the Supplier may hold from the Customer. This Guarantee may be enforced against any one Guarantor without the Supplier having to take any steps against the Customer.
- 7. This Guarantee is not affected by and is still enforceable if:
 - (a) the Supplier grants any time, release or other concession to the Customer or any one or more of the Guarantors;
 - (b) there is an event of death, incapacity, administration, bankruptcy or insolvency of the Customer or of any of the Guarantors;
 - (c) a payment by the Customer or by any Guarantor to the Supplier is set aside in bankruptcy, liquidation or official management of the Customer or any of the Guarantors;
 - (d) a Guarantor ceases to be a director of or involved with the Customer, or the status or structure of the Customer changes; and
 - (e) any amounts owing to the Supplier by the Customer are not recoverable from the Customer for any reason at all.
- 8. This Guarantee is a continuous guarantee and indemnity and is not discharged until all trade credit arrangements between the Supplier and the Customer are terminated, all amounts owing and payable to the Supplier by the Customer are fully paid, and all material obligations of the Customer to the Supplier are complied with in full.
- 9. The Guarantors waive all rights inconsistent with anything in this Guarantee.
- 10. Each Guarantor hereby agrees to grant a security interest in favour of the Supplier, as security for the payment of all monies due to the Supplier under this Guarantee, all legal, equitable and beneficial interests in any Goods (as defined in the Trading Terms and Conditions) purchased by the Customer in respect of which this Guarantee relates to.
- 11. In addition to the rights available under clause 10, each Guarantor hereby consents to the Supplier lodging a caveat over any land in which the Guarantor holds an interest with respect to any outstanding amounts payable to the Supplier by the Customer under the Trading Terms and Conditions.
- 12. The Supplier may, in order to assess whether to accept each Guarantor as a guarantor, use or disclose personal information, including credit information, about each Guarantor to:
 - (a) obtain a report from a credit reporting body and any other information in relation to the Guarantor's commercial credit activities;
 - (b) obtain credit reporting information from a credit reporting body containing personal information about each Guarantor pursuant to section 21H of the *Privacy Act 1988* (Cth);
 - (c) obtain credit information from a referee or other agency; and
 - (d) give to and obtain from any credit provider, named in the accompanying 30 day credit account application, information or any credit reporting information from a credit reporting body about the Guarantor's credit arrangements, including any information about their creditworthiness, credit standing, credit history or credit capacity (in accordance with section 21J of the *Privacy Act 1988* (Cth)).
- 13. The Supplier may also use or disclose personal information, including credit information, about each Guarantor to other third parties for collecting overdue payments relating to commercial debts owed by the Customer (or acquiring the services of third parties to make such collections on the Supplier's behalf), for the purposes of making a default listing with a credit reporting body against a Guarantor if they default on the commercial debts owed by the Customer, for the Supplier's internal management directly related to the management and provision of trade credit, or for other purposes as required by law.
- 14. By making this Guarantee, each Guarantor agrees to the above collection, use and/or disclosure of

personal information, including credit information, about the Guarantor.

15. More information on how and why the Supplier may collect, use and disclose personal information of the Guarantor can be found at the Supplier's Privacy Policy (located at <https://www.bestbar.com.au/privacy-policy/>) and the Supplier's Credit Information Management Policy (available free of charge upon request). These policies also include information regarding how a Guarantor can access, request, or amend any personal and/or credit information (as applicable) that the Supplier holds about the Guarantor, how to make a complaint to the Supplier, as well as the right to make certain requests to a credit reporting body regarding credit reporting information.
16. The Supplier and any authorised representative of the Supplier can give a demand or notice to any of the Guarantors. A demand or notice can be served on the Guarantors either by post (at the last known address of the Guarantor) or by email.
17. The Guarantors agree that the Supplier can serve any court documents related to the enforcement of the Guarantee on them by ordinary prepaid post to the last known address of the Guarantor.
18. The Guarantors acknowledge that the Guarantee is addressed to all branches, subsidiaries and related bodies corporate of the Supplier and will govern the provision of goods or services (or both) on credit by that branch, subsidiary or related body corporate to the Customer. Each branch, subsidiary or related body corporate of the Supplier who has provided trade credit to the Customer may call upon the Guarantee.
19. This Guarantee must, notwithstanding that the same was made elsewhere in Australia, be deemed to have been made in the State of Victoria. The courts in the State of Victoria shall be deemed to have jurisdiction in all matters related to the Guarantee.

Warranties

20. Each Guarantor warrants to the Supplier that:
 - (a) the above information is true and correct in all respects;
 - (b) where the Guarantor is a company, the person signing this Guarantee is duly authorised by the Guarantor's board of directors to sign the Guarantee to bind the trade credit of the Customer;
 - (c) where the Guarantor is a company, the company is duly incorporated under the laws of the place of their incorporation; and
 - (d) where the Guarantor is a company, it will notify the Supplier prior to a change in the ownership structure or control in the Guarantor occurring.
21. If a party enters into this document as trustee of a trust, the party warrants that at the date of this document:
 - (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked, and the trust is a valid and subsisting trust;
 - (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust, and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
 - (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists, or will be created or permitted to exist, and that right will have priority over the rights of the beneficiaries to the trust's assets.

IMPORTANT NOTE TO GUARANTORS: By signing this document below, you are agreeing to be bound by the terms of the Guarantee and Indemnity. This is an important document and you should seek independent legal advice before executing this document and agreeing to be bound by the Guarantee and Indemnity.

Executed as a Deed:

DATED

DATED

Signature of Guarantor

Signature of Guarantor

Name of Guarantor

Name of Guarantor

Address of Guarantor

Address of Guarantor

Signature of Witness

Signature of Witness

DATED

DATED

Signature of Guarantor

Signature of Guarantor

Name of Guarantor

Name of Guarantor

Address of Guarantor

Address of Guarantor

Signature of Witness

Signature of Witness