

AGREEMENT TO GUARANTEE AND INDEMNIFY ["this Agreement"] (08/05)

To DAISY'S:

1. **We guarantee** payment to DAISY'S of all monies and performance of all obligations including any past, present and/or future indebtedness and/or obligation of the **Customer** and/or any of us arising from any past, present and/or future dealing with DAISY'S.
2. **We indemnify** DAISY'S against all loss and/or damage arising from any past, present and/or future dealing with the Customer and/or any of us including all legal costs on an indemnity basis.
3. **We jointly and severally agree:** (a) to pay to a stake-holder nominated by DAISY'S the amount DAISY'S certifies is payable before being entitled to dispute whether or not that amount is payable; (b) that this Agreement shall remain effective notwithstanding any conduct or event (including any arrangement or deed of company arrangement whether or not agreed to by DAISY'S) which but for this clause may have released or varied any obligation of the Customer and/or any of us and even if the Customer and/or any of us execute(s) in favour of DAISY'S any later agreement, guarantee and/or security; (c) that any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid; (d) that we sign both in our personal capacity and as Trustee of every trust of which we are trustee; and (e) to notify DAISY'S within 7 days of any change in the structure, management and/or position of the Customer including: (i) any sale or disposition of any part of the business of the Customer; (ii) any change in director, shareholder, management, partnership and/or trusteeship; (iii) any new charge, mortgage and/or security given to any supplier and/or financier; and/or (iv) any involvement in any franchised business in any capacity.
4. **Charge:** We charge in favour of DAISY'S with payment of all monies owed to DAISY'S by the Customer and/or any of us (whether pursuant to this Agreement or otherwise) all our estate and interest in any land and/or in any other assets whether tangible and/or intangible in which we now have any legal and/or beneficial interest and/or in which we later acquire any such interest and we agree to execute on request a registrable mortgage in favour of DAISY'S.
5. **Consideration:** DAISY'S agrees at its discretion to grant credit from time to time to the Customer and/or to forbear from taking any legal action against the Customer for the time being.
6. **Proper law:** We agree that this Agreement and any claim or dispute between DAISY'S, the Customer and/or any of us shall be governed by the law applicable in the State nominated by DAISY'S and we agree to submit to the jurisdiction of the appropriate Court nominated by DAISY'S in the capital city of that State. If no State is nominated then Victoria shall be deemed to be the nominated State.
7. **Several guarantors:** If more than one **Guarantor** is named and/or intended to sign as guarantor we each agree to be bound and liable for the full amount owed to DAISY'S even if all of us don't sign and whether or not any amount is extinguished and/or compromised in any way. DAISY'S may make any arrangement and/or compromise with any of us, obtain additional guarantees, indemnities and/or securities from any party and/or release and/or compromise with any of us and/or any other party without affecting our liability to DAISY'S. Neither DAISY'S nor the Customer is required to sign this Agreement.
8. **Credit limit:** Any credit granted by DAISY'S to the Customer is at the discretion of DAISY'S and shall not affect our joint and several liability.
9. **Privacy Act:** We hereby consent to DAISY'S (subject to its obligations under the *Privacy Act 1988* (Cth)) at any time collecting, using and/or disclosing commercial and/or consumer information about us: (i) which relates to but is not limited to identity, credit history and/or solvency; (ii) for the purpose(s) of assessing creditworthiness, risk and/or solvency and/or enforcing any rights of DAISY'S; and/or (iii) by arrangement with any authorised agent(s), credit provider(s) and/or reporting service(s) and the like (including any banker(s), the ASIC, ITSA etc.). DAISY'S may refuse to grant credit if any information to which it is entitled is inaccurate or not provided and otherwise agrees to allow us access to all such information. This Agreement may be produced as conclusive evidence of our consent.
10. **Severability:** Any part of this Agreement shall be severable without affecting any other part of this Agreement.
11. **Acknowledgment of current debt:** We acknowledge that the Customer is indebted to DAISY'S in the sum noted below as at the date noted below and we agree that our guarantee is unlimited.
12. **Definitions:** (a) "DAISY'S" means each of **THE PARTIES** listed below as "DAISY'S" jointly and severally; (b) "We" and "us" means any and all of the **Guarantors** listed below and if more than one jointly and severally and in any event (to the extent applicable) the joint and several successors and/or assigns of each; and (c) "Customer" means the party entered below as the "Customer" (or if there is no entry the party described on Page 1. of the applicable Application for Commercial Credit Account), all related and/or associated companies, trusts and/or other entities, all successors and/or assigns, any party or parties who acquire, have any beneficial interest in and/or conduct any part of the business of the Customer (until notice is given pursuant to sub-clause 3(e) of this Agreement) and each member of any franchise/network group of which the Customer is a member (whether as franchisee, franchisor or otherwise).
13. **Demand:** We agree that our liability to DAISY'S arises without any demand by DAISY'S upon the Customer and/or any of us.
14. **Stamp duty:** We agree to pay any stamp duty applicable to this Agreement and/or to any document created pursuant to clause 4. of this Agreement.
15. **Attornment:** To give effect to our obligations arising under this Agreement we irrevocably appoint any solicitor for DAISY'S as attorney for each of us.
16. **Read and understood:** We have each read and understood this document before signing it (*refer below).

THE PARTIES:

A. DAISY'S: Daisy's Garden Supplies Pty Ltd A.C.N. 006 464 464 and all subsidiaries, related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns whether trading as "Daisy's Garden Supplies" and/or otherwise.

B. Customer: (** PLEASE COMPLETE - refer below)
..... **A.C.N.** (if applicable)

C. Current debt acknowledged: \$

D. Guarantors: 1. (Full name of the first Guarantor – please print)
.....

(Full home address of first Guarantor – please print)
.....

2. (Full name of the second Guarantor – please print)
.....

(Full home address of second Guarantor – please print)
.....

DATED:

SIGNED in accordance with sub-clause 3(d) of this Agreement by the Guarantor(s) in the presence of a witness:

1.
(Signature of first Guarantor)

Signature of Witness
.....

Name of Witness – please print
.....

2.
(Signature of second Guarantor)

Signature of Witness
.....

Name of Witness – please print
.....

* **IMPORTANT NOTICE:** If you sign this Agreement you may be required to pay someone else's debts. You should ensure that you read and understand all terms of this Agreement. If necessary seek independent legal advice.

** *If this section is incomplete for any reason DAISY'S may treat as the Customer the party so described on Page 1 of the document headed "Application for Commercial Credit Account" of which this Agreement can be found on Page 4.*