

DEED OF GUARANTEE & INDEMNITY

To Kommand Pty Ltd ACN 634 103 674 and its related bodies corporate **(Kommand)**

Name of guarantor		Address	
Name of guarantor		Address	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

Jurisdiction

1. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws Queensland, and the laws of the Commonwealth of Australia which are in force in that state.
2. The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

Consideration

3. In consideration of Kommand extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold and/or supplied on hire from time to time, the Guarantors guarantee payment to Kommand of all money which is now or at any time in the future becomes due and payable to Kommand by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to Kommand arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

4. The Guarantors agree to guarantee and indemnify Kommand against all losses damages or expenses that Kommand may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to Kommand whether for goods sold or otherwise or to observe the terms of any agreement between the Customer and Kommand, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by Kommand to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to Kommand.
5. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by Kommand to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for Kommand, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
6. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and Kommand will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
7. Kommand will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, Kommand will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
8. This guarantee and indemnity will continue in force until such time as Kommand releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.
9. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of Kommand against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - (a) any other security taken by Kommand from the Customer or from any other person;
 - (b) any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
 - (c) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
 - (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

Right of subrogation

10. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until Kommand has been paid in full.
11. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until Kommand has been paid in full.

Insolvency of Customer

12. No sum of money which the Customer pays to Kommand and Kommand later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations Act 2001, Bankruptcy Act*

1966 or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

Costs

13. Kommand is at liberty from time to time to charge the account of the Customer with all costs, charges and expenses, legal or otherwise that Kommand incurs in connection with:
 - (a) the account of the Customer;
 - (b) this guarantee and indemnity;
 - (c) any other security in respect of the indebtedness of the Customer to Kommand;
 - (d) the preparation, completion and stamping of this deed; or
 - (e) the exercise or attempted exercise of any right, power or remedy conferred on Kommand under or by virtue of this deed;
 and the same will be part of the monies secured by this deed.

14. The Guarantors agree to pay Kommand's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.

15. The Guarantors appoint as their duly constituted attorney Kommand's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat Kommand may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation

16. The Guarantors authorise Kommand to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to Kommand, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
17. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by Kommand making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance

18. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

Security/charge

19. The Guarantors charge in favour of Kommand all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
20. The Guarantors charge in favour of Kommand all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
21. This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
22. Where the Guarantors have previously entered into an agreement with Kommand by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. Kommand may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Personal Property Securities Act

23. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of Kommand constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
24. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPSR.

Service of notices

25. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Kommand by the Guarantors or the Guarantors' authorised representative.

Privacy Act

26. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

Dated

Signed, sealed and delivered by the guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Name (print)	
Signed, sealed and delivered by the guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Name (print)	