



***This is a legal document: if you are uncertain about its meaning and effect, you should seek independent legal, financial or other advice before you sign.***

***By signing this document, you will become directly, immediately and personally liable for all debts incurred by the Customer.***

## **DEED OF GUARANTEE, INDEMNITY AND CHARGE**

**TO:** Marano Enterprises (Miallo) Pty Ltd as Trustee for The Marano Family Unit Trust trading as Marano's Fuel ACN 009 952 443 ("**Marano**")

### **1. Guarantor's Requests**

1.1. In consideration of Marano, at the request of the Guarantor, for the business purposes of the Customer, doing any of the following:

- 1.1.1. accepting the application for a credit account made to Marano by the Customer in pages 1 to 8 (both inclusive) above;
- 1.1.2. opening a credit account in the name of the Customer;
- 1.1.3. providing or continuing to provide Goods and/or Services to the Customer;
- 1.1.4. giving credit to the Customer; or
- 1.1.5. not commencing or continuing legal action against the Customer,

the Guarantor enters into this Deed and agrees to perform the Guarantor's obligations under this Deed.

### **2. Definitions**

In this deed, unless the context otherwise requires:

- 2.1. **Customer** means the person or company or other entity named in section A on page 1 above and described as the Applicant.
- 2.2. **Deed** means this Deed of Guarantee, Indemnity and Charge which takes effect as a deed.
- 2.3. **Goods** has the same meaning given to that term in clause 1 of the Terms and Conditions above;
- 2.4. **Guarantor** means any person or company or other entity named in section F on page 2 above or any other person signing or purporting to sign this Deed as Guarantor and that person's personal representative.
- 2.5. **Law** includes common law, principles of equity and any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.
- 2.6. **Money** means all moneys which are now payable or which may become payable in the future (whether contingently or otherwise) by the Customer to Marano for any reason, whether alone or jointly with another person. The term includes, without limitation, money owed by the Customer for the supply of Goods and/or Services, all money Marano pays or becomes liable to pay at the request of the Customer (including loans), amounts or obligations assigned to Marano before or after the date of this Deed and all losses and expenses (including taxes, fees, charges, interest and legal, debt collection, debtor location and enforcement costs on a full indemnity basis) arising directly or indirectly from any dealing or default by the Customer or by the Guarantor or otherwise incurred by Marano in connection with entering, administering, enforcing or terminating the Terms and Conditions (against the Customer) and/or this Deed (against any Guarantor).
- 2.7. **Personal Information** has the meaning given to it in the Privacy Act.
- 2.8. **Personal Information about the Guarantor** means Personal Information (if any) about the Guarantor collected by Marano in connection with this Deed and includes, but is not limited to, information about the Guarantor's financial circumstances, credit worthiness, credit history, credit standing and credit capacity.
- 2.9. **Privacy Act** means the *Privacy Act 1988*.
- 2.10. **Property** means all property of the Guarantor, wherever situated, including (without limitation) all real and personal property, business and trading assets, stock, choses in action, goodwill and uncalled capital and called but unpaid capital from time to time.
- 2.11. **Services** has the same meaning given to that term in clause 1 of the Terms and Conditions above.
- 2.12. **Terms and Conditions** means the terms and conditions of the Customer's credit account on pages 5 to 8 above.

### **3. Guarantor's Obligations**

The Guarantor:

- 3.1. unconditionally and irrevocably guarantees and will be responsible for the due and punctual payment of the Money by the Customer;
- 3.2. agrees to pay the Money to Marano on demand, without set-off, deduction or counterclaim;

- 3.3. waives any right the Guarantor has of first requiring Marano to enforce any other right, security or power against the Customer or to claim from the Customer or any other person, before claiming from the Guarantor under this Deed;
- 3.4. agrees that Marano may, at any time, in its absolute discretion, and without giving any notice to the Guarantor, refuse to provide further Goods and/Services to the Customer;
- 3.5. where there is more than one Guarantor, acknowledges and agrees that this Deed is enforceable jointly against all persons signing as Guarantor and against each Guarantor separately; and
- 3.6. promises that the Guarantor will provide Marano with information about the Guarantor's financial position, business, assets and (where the Guarantor is a company) its shareholders and any person or entity related to or associated with the Guarantor as may be reasonably required by Marano from time to time.

#### **4. Indemnity**

- 4.1. The Guarantor indemnifies and agrees to keep Marano indemnified against any and all liabilities, claims, debts, losses, costs, expenses or interest (including stamp duty and legal and debt collection, debtor location and enforcement costs on a full indemnity basis) which arise in any way out of Marano's dealings with the Customer or the Guarantor, including liabilities, claims, debts, losses, costs, expenses, or interest incurred if the Customer or a Guarantor does not, or is not obliged to or is unable to pay the Money to Marano, when due or in connection with any person exercising or not exercising rights under this Deed.
- 4.2. It is unnecessary for Marano to have paid any liability, claim, cost or expense before enforcing a right of indemnity under this Deed.
- 4.3. The indemnity in this clause 4 is a continuing obligation, independent of the Guarantor's other obligations under this Deed.

#### **5. Charge**

- 5.1. For the purpose of securing payment to Marano of the Money, the Guarantor:
  - 5.1.1. charges to Marano, all its Property (wherever situated) to secure its obligations under this Deed and authorises and consents to Marano lodging a caveat (in a form and subject to conditions as Marano in its absolute discretion sees fit) on the title to the Property;
  - 5.1.2. if requested by Marano, will deliver to Marano, within five business days of written demand, a mortgage in respect of any Property in a form acceptable to Marano with any documents required by Marano to obtain registration of the mortgage over the Property; and
  - 5.1.3. irrevocably appoints each director of Marano, from time to time, as the attorney of the Guarantor with power to sign and lodge for registration a caveat, mortgage or other similar document to give effect to this Deed.

#### **6. Facilitation**

- 6.1. If any part of this Deed is or becomes void or unenforceable, it may be deleted from this Deed without any effect on the validity of other parts of this Deed.
- 6.2. A certificate signed by a director of Marano will be *prima facie* evidence of the amount of any Money owed by the Customer or the Guarantor (or both) at the time the certificate is signed.
- 6.3. The Guarantor will promptly do all things reasonably necessary or desirable or otherwise required by Marano to give full effect to this Deed and the transactions contemplated by it.
- 6.4. Time is of the essence of this Deed.
- 6.5. Marano may assign or otherwise deal with its rights under this Deed in any way that, in its absolute discretion, it considers appropriate.
- 6.6. If any provision in this Deed is void, voidable or otherwise unenforceable, but would not be so if certain words were omitted, then those words may be severed without affecting the validity or enforceability of the other provisions of this Deed.
- 6.7. This Deed is governed by the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland and waive any right to claim that courts outside Queensland are the proper or a more appropriate forum.

#### **7. Guarantor's Acknowledgements**

The Guarantor acknowledges that:

- 7.1. the Guarantor has read and understood this Guarantee;
- 7.2. the Guarantor has not relied upon any representation made or information provided by Marano or any of Marano's directors, employees or agents in agreeing to sign this Deed;
- 7.3. the Guarantor has made his or her own enquiries of the Customer about the Customer's dealings with Marano and ability to pay the Money to Marano and is satisfied with those enquiries;
- 7.4. Marano is under no obligation to notify the Guarantor of any change to its trading terms or dealings with the Customer, even if those changes increase the Guarantor's liability or risk under this Deed;
- 7.5. this Deed is a continuing guarantee and indemnity to Marano for the Money;
- 7.6. Marano is not obliged to make any demand of the Customer or claim on any other security before demanding payment of the Money by the Guarantor;

- 7.7. Marano's rights under this Deed are not affected by any act or omission by Marano or by anything else that may affect those rights at Law or otherwise, including:
  - 7.7.1. any variation or replacement of Marano's agreement with the Customer;
  - 7.7.2. any extension of time given by Marano to the Customer to pay the Money;
  - 7.7.3. any failure by Marano to register or enforce any right, security or power;
  - 7.7.4. any failure by Marano to first pursue the Customer for payment of the Money;
  - 7.7.5. any invalidity or unenforceability of the Customer's obligations to pay the Money to Marano;
  - 7.7.6. any legal limitation, disability, incapacity or other fact (actual or asserted) relating to the Customer, the Guarantor or any other person (irrespective of whether Marano had or should have had knowledge of those matters); and
  - 7.7.7. any fact that could or might have the effect of prejudicing or discharging the Guarantor's liability under this Deed;
- 7.8. this Deed is enforceable against each person signing as Guarantor even if a person proposed or contemplated as a party to this Deed does not in fact sign this Deed;
- 7.9. any payment made by or on behalf of the Customer, which is later avoided by the application of any Law, will be deemed not to discharge the Customer's indebtedness and will be treated as if the payment had not been made; and
- 7.10. the Guarantor is not entitled to the discharge of any security which secures the Guarantor's obligations under this Deed until all Money has been paid to Marano.

Executed as a deed on d d / m m / y y y y by

\_\_\_\_\_  
 [insert full name of Guarantor]

in the presence of: .....  
Signature

.....  
 Signature of witness

.....  
 Full name of witness

Executed as a deed on d d / m m / y y y y by

\_\_\_\_\_  
 [insert full name of Guarantor]

in the presence of: .....  
Signature

.....  
 Signature of witness

.....  
 Full name of witness