



# GUARANTEE & INDEMNITY

PLEASE PRINT CLEARLY

**IN THIS GUARANTEE AND INDEMNITY** "The Co-operative" means The Independent Liquor Group Distribution Co-operative Limited ("Co-operative") and "the Member" means the person, firm or corporation (being a Member of the Co-operative) particulars of which are set out under the heading "Member" in the Schedule to this Guarantee ("Member") and the expression "guarantors" (including "I", "we", "me", or "us") are the person or persons who sign this Guarantee and Indemnity and particulars of whom are set out under the heading "guarantors" in the Schedule.

**IN THIS GUARANTEE AND INDEMNITY** the following defined terms apply:

**Administration** includes bankruptcy, administration (including any arising out of insolvency, mental illness or incapacity), compromise or arrangement with creditors, assignment for creditors, receivership, winding up, dissolution or anything similar;

**Deferred Payment Terms** means deferred payment terms as defined in the Terms and Conditions;

**Goods** mean goods as defined in the Terms and Conditions;

**guarantee** means this deed of guarantee and indemnity including any schedules;

**Schedule** means the schedule to this guarantee; and

**Terms and Conditions** mean the general terms and conditions issued by the Co-operative to a Member, as varied from time to time and provided with this guarantee.

**In Consideration of the Co-operative granting the Member the Deferred Payment Terms for the purchase of Goods, I/WE GUARANTEE payment to the Co-operative of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Member/s or any of us arising from any past, present or future dealing with it ("Guaranteed Amount").**

**INDEMNITY:** As a separate obligation, I/we indemnify the Co-operative against any liability, indebtedness, loss, damage or expense the Co-operative incurs as a result of the Member not paying the Co-operative any part of the Guaranteed Amount when due for payment. I/we must pay to the Co-operative on demand a sum equal to any indebtedness or loss in respect of which I/we indemnify the Co-operative under this clause.

**I/WE AGREE:**

1. That this is a continuing guarantee and,
2. That my/our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by the Co-operative or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this guarantee and indemnity and,
3. That my/our liability under this guarantee shall not be affected, waived or discharged by the Member entering into a Deed of Company Arrangement (DOCA) or by the Co-operative voting in favour of or against, or abstaining from voting, in relation to any proposal by the Member to enter a DOCA and,
4. That this guarantee becomes binding on me/such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee and,
5. That the Co-operative may obtain from a credit reporting agency a credit report containing personal credit information on me/such of us that sign this guarantee and,
6. That if the Member does not pay any amount of the Guaranteed Amount on time, the Co-operative can demand that I/we pay that amount to the Co-operative and,
7. That the Co-operative is entitled to recover against a Guarantor without having first taken steps to recover against the Member or any other Guarantor and,
8. That if I/we do not pay an amount when the Co-operative demands, among other things the Co-operative can sue me/us or enforce any security interest pursuant to this guarantee and,
9. That any payments must be made by me/us in Australian dollars unless otherwise agreed by the Co-operative and,
10. That the Co-operative may at any time in its absolute discretion and without giving notice to a Guarantor, or any of the Guarantors, refuse further deferred payment terms or trade facilities or supply of Goods or services to the Member and,
11. That this guarantee may not be unilaterally revoked by me/any of us and remains in force until such time as I/we receive written confirmation from the Co-operative that I/we are released from my/our obligations and liabilities under this guarantee and,
12. That any payment in respect of the debts of a Member may be used by the Co-operative to pay off whichever part of those debts it chooses and,
13. That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid and,
14. That a demand is effective even if, when it is made, I/we are under Administration, insolvent, dead or mentally disabled, or not at the place where the notice is sent or delivered and,
15. That I/we sign in both my/our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary and,
16. That if we are a partnership: (a) this guarantee binds all the partners jointly and severally, and all references to I/ we are to the partners jointly in the partnership and to each partner alone; and (b) this guarantee continues to bind the partners despite the dissolution, or any change at any time in the constitution, of the partnership. The guarantee continues to bind a partner even if that partner ceases to be a partner of the partnership (unless otherwise agreed in writing by the Co-operative) and,

**the independent liquor group distribution co-operative ltd.**

16 Tyrone Place Erskine Park NSW 2759 p 02 9675 8400 Credit f 02 8886 3523 e ilg@ilig.com.au

17. This guarantee is all respects valid and binding on me/us and is enforceable in accordance with its terms and,
18. To notify the Co-operative of any change in the Member's name, structure or management including any sale or disposition of any part of the business of the Member, any change in directorships, shareholders or management or change in partnership or trusteeship 14 days prior to the date of the date of any such change taking effect.

**I/WE HEREBY GRANT** an equitable interest and a caveatable interest in all the guarantor's estate and interest in any land (freehold or leasehold) or other caveatable property for any unpaid money due and owing by the Guarantor to the Co-operative and hereby consent to the lodging by the Co-operative of a caveat or caveats which notes the equitable interest of the Co-operative in or over all the guarantor's estate and interest in any land (freehold or leasehold) or other caveatable property.

**I/WE FURTHER AGREE** that:

- (a) this guarantee shall be governed by and construed in accordance with the laws of the state of New South Wales and, where applicable, the Commonwealth of Australia, and the Member submits to the non-exclusive jurisdiction of the courts of New South Wales;
- (b) notices in writing to either party may be served personally or by being delivered to the party's address shown in the Schedule or by being posted by ordinary pre-paid mail addressed to such party at such address. In the case of service by post the notice shall be deemed to have been served two days following the date of posting;
- (c) except where the context otherwise requires, singular shall include the plural and vice versa. Each gender shall include the other genders and words importing a person shall extend to and include a corporation and vice versa; and
- (d) if any provision of this guarantee is held to be illegal, unenforceable or otherwise invalid, that provision is deemed to be severed from this guarantee and the remainder of this guarantee will continue in full force and effect.

**Notice of Disclosure of Your Credit Information to a Credit Reporting Agency - Section 18E (1) Privacy Act 1988**

The Co-operative may give information about you to a credit reporting agency for the following purposes:

- To obtain a consumer credit report about you and/or,
- To allow the credit reporting agency to create or maintain a credit information file containing information about you.

The information is limited to:

- Identity particulars – your name, sex, address (and your previous two addresses), date of birth, name of employer and driver's licence number.
- Your application for credit or commercial credit – the fact that you have applied for credit, and the amount.
- The fact that the Co-operative is a current credit provider to you.
- Loan repayments which are overdue by more than 60 days and for which debt collection action has started.
- Advice that loan repayments are no longer overdue in respect of any default that has been listed.
- Information that, in the opinion of the Co-operative, you have committed a serious credit infringement (e.g. fraudulently, or shown an intention, not to comply with your credit obligations).
- Dishonoured cheques – cheques drawn by you for \$100 or more and which have been dishonoured more than once.
- That credit provided to you by the Co-operative has been paid or otherwise discharged.

**Agreement that the Company may seek consumer credit information - Section 18K (1) (b), Privacy Act 1988**

If the Co-operative considers it relevant to assessing me/us in respect of this Guarantee and Indemnity, I/we agree to the Co-operative obtaining from a credit reporting agency a credit report containing personal credit information about me/us as it pertains to commercial credit provided by the Company.

**Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a guarantor – Section 18K (1) (c) Privacy Act 1988**

I/we agree that the Co-operative may obtain from a credit reporting agency a consumer credit report containing information about me/us for the purpose of assessing whether to accept me/us as a guarantor for credit applied for, or provided to, the applicant named in the Credit Application. I/we agree that this agreement commences from the date of this agreement and continues until the credit covered by the Member's application ceases.

**Agreement to use personal credit information for the purpose of collection of commercial debt - Section 18K (1) (h) Privacy Act 1988**

I/we agree that the Company may obtain and use, from a credit reporting agency, a consumer credit report about me/us for the purpose of collecting overdue payments owed by me/us in relation to commercial credit.

**The Exchange of Information with other credit providers - Section 18N (1) (b), Privacy Act 1988**

I/we agree to the Company obtaining personal information about me/us from other credit providers whose names we may have provided or that may be named in a credit report for the purposes of assessing my/our application for commercial credit. I/we understand that such a report can include information about my/our creditworthiness, credit standing, credit history or credit capacity which credit providers are permitted to exchange under the Privacy Act.

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**Period to which this understanding applies**

This information may be given before, during or after the provision of credit to you.

**A guarantor must be:**

- (a) if the Member is a company, a director or directors of the Member company;
- (b) if the Member is a partnership, a partner in that partnership; or
- (c) a person otherwise approved by the Co-operative including a beneficiary of any trust.

**I/We have read and understood this guarantee and the Terms and Conditions and have been advised, and given opportunity, to seek independent legal and financial advice. I/We understand that there are financial risks involved in signing this guarantee.**

**Executed as a deed:**

**Signed, sealed and delivered by:**

Guarantor Print Name: .....

Signature: ..... Date: .....

Witness Print Name: .....

(JP or ILG Rep): ..... Signature: ..... Date: .....

Guarantor Print Name: .....

Signature: ..... Date: .....

Witness Print Name: .....

(JP or ILG Rep): ..... Signature: ..... Date: .....

Guarantor Print Name: .....

Signature: ..... Date: .....

Witness Print Name: .....

(JP or ILG Rep): ..... Signature: ..... Date: .....

**OFFICE USE ONLY**

Signed sealed and delivered by the Independent Liquor Group Distribution Co-operative Ltd

Dated: ..... Authorised Officer: .....

**Guarantee Schedule**

Please include the following details:

- (a) for each individual or an individual in a partnership include, insert full name and residential address.
- (b) for each company, insert full name, registered office address and ACN/ABN.

Member: .....

Address: ..... Drivers Licence No. #: .....

Guarantors: .....

Address: ..... Drivers Licence No. #: .....

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