



GUARANTEE AND INDEMNITY

1. IN CONSIDERATION OF TFH Hire Services Pty Ltd ACN 128 947 759 as trustee for the TFH Hire Trust ABN 30 063 810 679 ("the Supplier") agreeing to supply (either now or at some future time) or to continue to supply or to cause to be supplied at the Supplier's cost to the Customer (being the Customer identified in the accompanying Credit Application and Hire Agreement) goods and services on credit the person identified below as guarantor ("the Guarantor") HEREBY GUARANTEES the due payment by the Customer of all moneys now due and owing or which become due and owing by the Customer on any account whatsoever (including on account of goods sold and services supplied and work done) to the Supplier AND the Guarantor agrees:

2. That in this Guarantee, unless a contrary intention appears from the context, persons is defined to include but not limited to a company, trust, partnership or incorporated association and the singular number shall include the plural and vice versa.

3. That this Guarantee:
- (a) will be a continuing Guarantee;
 - (b) will be irrevocable irrespective of any amount or amounts which may be paid to the Supplier by or on behalf of or for the credit of the Customer at any time during the continuance of any credit which may be given by the Supplier to the Customer;
 - (c) shall not be determined or affected by the death, bankruptcy, liquidation, official management, administration, control or receivership (as the case may be) of the Customer;
 - (d) shall remain in full force and effect until all moneys owing to the Supplier from time to time by the Customer have been paid or satisfied and this Guarantee has been discharged in writing by the Supplier;
 - (e) shall be a principal obligation and shall not be treated as ancillary to or collateral with any other obligation however created and in particular shall be independent of any other security which the Supplier may hold now or in the future in respect of the moneys intended to be secured by this Guarantee to the effect that this Guarantee shall be enforceable without first having recourse to any such security and without taking any steps or proceedings against the Customer regardless of whether any other security shall be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supplier of any other security through acts or omissions on the Supplier's part;
 - (f) shall be governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the Courts in Brisbane for any claim or matter arising under this Guarantee.

4. The Guarantor will not, while any moneys are owing to the Supplier by the Customer, claim or receive the benefit of any dividend or payment in a winding up/bankruptcy of the Customer and will not prove or claim in a winding up/bankruptcy of the Customer nor in any arrangement relating to the Customer in competition with the Supplier so as to diminish any dividend or payment which but for such proof or claim the Supplier would be entitled to receive and that the receipt of any payment by the Supplier out of a winding up/bankruptcy of the Customer or any arrangement relating to the Customer shall not affect the Supplier's right to recover from the Guarantor under this Guarantee.

5. Any settlement, discharge or release between the Guarantor and the Supplier will be conditional upon no security or payment to the Supplier by the Customer or any other person being voided or reduced by virtue of any provisions or enactments relating to insolvency or bankruptcy, and the Supplier may recover the value or amount of any such security or payment so voided or reduced from the Guarantor subsequently as if that settlement, discharge or release had not occurred.

6. That the liability of the Guarantor under this Guarantee will not be impaired or discharged:
- (a) by any reason of any time or other indulgence granted by the Supplier to the Customer or by any arrangement entered into whereby the Supplier's rights are in any way modified or abrogated and that no notice of the granting of any time or indulgence or of the entering into of any arrangement need be given to the Guarantor;
 - (b) if any amounts owed by the Customer may be unrecoverable (temporarily or permanently) for any reason at all;
 - (c) if any change in the status or structure of the Customer occurs;
 - (d) by any release or compromise with the Customer or any one or more Guarantors by operation of law or otherwise;
 - (e) by the omission of any name or address of any Guarantor.

7. That the liability of the Guarantors (if more than one):

- (a) is joint and several and every reference to the Guarantor in this Guarantee will bind each of those persons;
- (b) will be effective even if any of the intended co-Guarantors have not executed the Guarantee or that the Guarantee has been held to be ineffective or unenforceable against one or more of the Guarantors.

8. A statement in writing signed by any Director, Secretary, Administration Manager or Credit Manager of the Supplier stating the balance of the moneys due to the Supplier by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at the date of that statement.

9. The Supplier will be at liberty at any time in the Supplier's absolute discretion and without giving any notice to the Guarantor to refuse or limit further credit or supplies of goods or services to the Customer without affecting in any way the liability of the Guarantor.

DATED this _____ day of _____ 20__

SCHEDULE

Name & Address of Guarantor(s) (1): _____

Name & Address of Guarantor(s) (2): _____

Name & Address of Guarantor(s) (3): _____

Signature of Guarantor to be witnessed by an adult person.

(1) SIGNED by the Guarantor _____ Name of Witness (Print): _____ Signature of Witness: _____

(2) SIGNED by the Guarantor _____ Name of Witness (Print): _____ Signature of Witness: _____

(3) SIGNED by the Guarantor _____ Name of Witness (Print): _____ Signature of Witness: _____

10. The Guarantor:
- (a) will pay interest on the moneys secured by this Guarantee at the same rate as the Customer is required to pay interest pursuant to the Credit Application and Hire Agreement;
 - (b) will pay the Supplier for any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under this Guarantee together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under this Guarantee. Such costs, duties and other expenses as well as interest payable pursuant to clause 9.1 may be recovered as a liquidated debt.
 - (c) has made independent investigations and enquires and has not entered into this Guarantee nor executed this instrument as a result of or by reason of any promise, information, representation or statement of any kind whatsoever given by or on behalf of the Supplier.

11. This Guarantee and the Supplier's rights under it may be absolutely assigned or transferred by way of security by the Supplier without the consent of the Customer or the Guarantor.

12. Subject to the terms of this Guarantee, the Monthly Credit Account Terms and Conditions of Agreement and this Guarantee constitutes the sole and entire Agreement between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement has no force or effect.

13. In the event that the whole or any part or parts of any clause in this Guarantee is judged to be unenforceable by a court of competent jurisdiction then such clause or part thereof shall be to that extent severed from this Guarantee without effect to the validity and enforceability of the remainder of these clauses.

14. To secure payment of all moneys which are or may become payable by the Guarantor to the Supplier under this Guarantee the Guarantor hereby charges with the due payment of all of those moneys all of the Guarantor's interests in real property wherever located both present and future and the Guarantor consents to the Supplier lodging a caveat or caveats to protect its interests.

- (a) Upon demand by the Supplier, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Guarantor's indebtedness to the Supplier.
- (b) Should the Guarantor fail within a reasonable time of such demand to execute such mortgage or other instrument then the Guarantor appoints irrevocably the credit manager or a duly authorised officer of the Supplier to be the Guarantor's lawful attorney to execute any such mortgage or other instrument.

15. If the whole or any part of the monies hereby secured are or may be irrecoverable from the Customer by the Supplier for any reason whatever whereby the amount thereof or resulting therefrom is not recoverable from the Guarantor as a surety, then and in each such case:

- (a) the Guarantor as a separate and additional liability under this Guarantee indemnifies the Supplier in respect of the monies secured by this Guarantee;
- (b) the Guarantor as a principal debtor agrees to pay to the Supplier when demanded in writing a sum equal to the amount of the monies secured by this Guarantee; and
- (c) for the purposes of this indemnity, this clause shall be construed as if the monies secured by this Guarantee were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.

16. Where the guarantor is a trustee:

- (a) the Guarantor agrees to produce a stamped copy of the Trust Deed (including all amendments) at any time in the future when requested by the Supplier in writing;
- (b) the Guarantor warrants that it has full power and authority to enter into this Guarantee on behalf of the trust and that it shall be bound by the terms of this Guarantee both personally and as Trustee.

17. In further consideration of the Supplier agreeing to supply or continue to supply at the Supplier's cost to the Customer goods and services on credit, the Guarantor hereby guarantees the due payment by the Customer of all monies now due and owing or which become due and owing by the Customer on any account whatsoever to any subsidiary or any related entity (as those terms are defined in the Corporations Act 2001) of the Supplier ("the Extended Supplier").

18. The provisions of this Guarantee shall apply mutatis mutandis as between the Guarantor and the Extended Supplier except where:

- (a) there is a separate guarantee between the parties; or
- (b) the resulting guarantee constitutes a breach of any legislation.

19. Each Guarantor (if there is more than one) acknowledges and agrees that for the purpose of assessing whether to accept the Guarantor for credit provided to the Customer that the Supplier may obtain from a credit reporting agency a credit report containing personal information about each Guarantor.