

**DEED OF GUARANTEE AND INDEMNITY** \*\*To be completed by Partnerships, Trusts and Directors of a Company\*\*

To Athian Pty Ltd ABN 60 053 275 344 t/a Midwest Foods & Liquor (Supplier), the Guarantors hereby covenant and undertake and if more than one, jointly and severally, as follows.

**General**

1. In this Deed, the term 'Applicant' refers to .....(write name of legal entity of the Applicant) who has opened an account with the Supplier in order to purchase Goods and services from the Supplier from time to time and who has accepted the Supplier's terms and conditions of trade.

**Jurisdiction**

2. The Guarantors acknowledge and agree that this Guarantee and Indemnity is governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.  
3. The parties to this Guarantee and Indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant Federal Courts and Courts competent to hear appeals from those courts.

**Consideration**

4. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for Goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant 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 Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

**Guarantee and Indemnity**

5. The Guarantors agree to guarantee and indemnify the Supplier against all losses, damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for Goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a Court to be paid by the Supplier to the Applicant 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 the Supplier.  
6. This Guarantee and Indemnity shall be a continuing Guarantee and Indemnity and shall 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 the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and shall be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 4 and 5 of this Guarantee and Indemnity.  
7. Where two or more persons execute this Guarantee and indemnify the guarantees, covenants and obligations in this Guarantee and Indemnity given or undertaken by the Guarantors shall be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier shall be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.  
8. The Supplier shall have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further the Suppliers shall 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.  
9. This Guarantee and Indemnity shall continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.  
10. This Guarantee and Indemnity is without prejudice to, and shall not be affected by, nor shall the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:  
(a) any other security taken by the Supplier from the Applicant or from any other person;  
(b) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantor 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**

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

**Insolvency of Applicant**

13. No sum of money which the Applicant pays to the Supplier and the Supplier 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 Applicant by reason of the Corporations Act 2001, Bankruptcy Act 1966 or otherwise shall, for the purpose of this Guarantee and Indemnity, be considered as discharging or diminishing the Guarantor's liability and this Guarantee and Indemnity shall continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

**Costs**

14. The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:  
(a) the account of the Applicant;  
(b) this Guarantee and Indemnity;  
(c) any other security in respect of the indebtedness of the Applicant to the Supplier;  
(d) the preparation, completion and stamping of this deed; or  
(e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed; and the same shall be part of the monies secured by this deed.  
15. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.  
16. The Guarantors appoint as their duly constituted attorney the Supplier'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 the Supplier 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**

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

**Severance**

19. 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**

20. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that 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 4 and 5.  
21. The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property that 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 4 and 5.  
22. This Guarantee and Indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee.  
23. Where the Guarantors have previously entered into an agreement with the Supplier 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. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

**Personal Property Securities Act**

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

**Privacy Act**

26. The Guarantors agree to the terms of the Privacy Act 1988 authorisation contained in this document.

**Acknowledgements**

27. By signing this Guarantee and Indemnity, the Guarantor/s acknowledge that they have been advised to obtain independent legal advice before executing this Guarantee and Indemnity.

**Authorisation**

28. The Guarantor/s irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes and further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about the Guarantor/s or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity.

**Signed, sealed and delivered by the Guarantors:**

1. Guarantor Name (print)..... Signature ..... Date ...../...../.....  
Address .....  
Witness (print) ..... Signature ..... Date ...../...../.....  
2. Guarantor Name (print)..... Signature ..... Date ...../...../.....  
Address .....  
Witness (print) ..... Signature ..... Date ...../...../.....  
3. Guarantor Name (print)..... Signature ..... Date ...../...../.....  
Address .....  
Witness (print) ..... Signature ..... Date ...../...../.....