



## Guarantee and Indemnity

### RECITALS:

- A. The customer identified at item 1 of the Particulars in Part 2 ("Customer") has requested one or more of the Beneficiaries to supply various goods and/or services.
- B. In connection with the provision of those goods and/or services, each Beneficiary supplying such goods and/or services intends to provide the Customer with a credit account ("Credit Account") to facilitate the Customer's payment of invoices issued by a Beneficiary from time to time under the terms and conditions that apply to the supply of goods and/or services to the Customer ("Terms").
- C. The Guarantor acknowledges that the Beneficiaries require this guarantee and indemnity (this "Guarantee") as a precondition to any of the Beneficiaries supplying any goods and/or services to the Customer and for the establishment of the Credit Account.

### Guarantee

1. In consideration of:
- any financial accommodation that any of the Beneficiaries may make available, or continue to make available, to or for the benefit of the Customer under or in connection with any Beneficiary supplying goods and/or services to the Customer; and
  - the Beneficiaries or any of them supplying the Customer with goods and/or services, the Guarantor unconditionally guarantees the due and punctual payment by the Customer to each Beneficiary on demand of all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Customer to that Beneficiary on any account at any time;
  - under or in connection with the Terms or any trans-action contemplated by the Terms; or
  - otherwise for any goods and/or services that have been, are being or are to be supplied by that Beneficiary to the Customer, whether present or future, actual or contingent or incurred alone, jointly, severally, or jointly and severally and without regard to the capacity in which the Customer is liable ("Guaranteed Moneys").

### Nature of guarantee

2. This Guarantee:
- is a principal obligation and is not ancillary or collateral to any other right or obligation however created or arising;
  - may be enforced against the Guarantor without a Beneficiary first being required to exhaust any remedy it may have against the Customer or to enforce any security it may hold relating to the Guaranteed Moneys;
  - is a continuing guarantee and indemnity for the whole of the Guaranteed Moneys; and
  - is absolute, unconditional and irrevocable, and remains in full force and effect until the Guaranteed Moneys have been irrevocably paid in full despite any transaction or other thing (including a settlement of account or intervening payment).

### Interest

3. The Guarantor must pay any interest on each amount from time to time owing under this Guarantee that is not paid when due, from the day on which it falls due, the rate and calculation of interest being that as set under the Terms applicable to the supply to the Customer of those goods and/or services for which the amount remains owing.

### Guarantor's liability absolute

4. The liability of the Guarantor is absolute and is not affected by any circumstance, act, omission, matter or thing which, but for this provision, might otherwise affect it at law or in equity.

### Limitations on Guarantor's rights

5. Until the Guaranteed Moneys have been irrevocably paid in full the Guarantor will not:
- be entitled to share in any security held or money received by any Beneficiary or exercise any right of subrogation to the Beneficiaries; b. take any steps to enforce a right or claim against the Customer in respect of any money paid by the Guarantor to any Beneficiary under this Guarantee; or
  - exercise any rights as surety in competition with the Beneficiaries.

### Insolvency of Customer

6. If the Customer becomes insolvent, the Guarantor authorises the Beneficiaries to prove for all moneys which the Guarantor has paid under this Guarantee and to retain and to carry into a suspense account and appropriate at the discretion of the Beneficiaries any dividends received in the liquidation, bankruptcy or other insolvency of the Customer and other moneys received in relation to the Guaranteed Moneys until the Guaranteed Moneys have been irrevocably paid in full.

### Settlement, discharge and release

7. If an amount is applied against any of the Guaranteed Moneys and the Beneficiaries form the opinion in good faith that any one or more of them is obliged to pay the amount paid by the Customer or Guarantor to any person under any law relating to bankruptcy, winding up or the protection of creditors:
- each Beneficiary's rights are to be reinstated and will be the same in relation to that amount as if the application or the payment against the Guaranteed Moneys or transaction giving rise to it, had not been made; and
  - the Guarantor must immediately do anything (including the signing of documents) required by the Beneficiaries to restore to each Beneficiary any guarantee or security which it was entitled immediately before that application or the payment or transaction giving rise to it.

### Indemnity



8. If the whole or any part of the Guaranteed Moneys are not recoverable by any one or more Beneficiary for any reason whatever then:
- a. the Guarantor as a separate and severable liability under this Guarantee unconditionally and irrevocably indemnifies each Beneficiary in respect of the Guaranteed Moneys owing to that Beneficiary;
  - b. as a principal debtor, the Guarantor agrees to pay each Beneficiary, on demand in writing, a sum equal to the amount of the Guaranteed Moneys owing to that Beneficiary; and
  - c. for the purposes of this indemnity, this clause must be construed as if the Guaranteed Moneys were recoverable and the terms of this Guarantee apply as far as possible to this indemnity.

### **Security**

9. The Guarantor must not take, without the written consent of the Beneficiaries, any security from the Customer for or in connection with this Guarantee. The Guarantor must hold any security it does take from the Customer in trust for the Beneficiaries and as security for the Customer's liability to the Beneficiaries under this Guarantee.
10. The Beneficiaries are under no obligation to marshal in favour of the Guarantor any security whatever held by the Beneficiaries or any funds or assets that the Beneficiaries may be entitled to receive or claim.

### **Joint and several guarantee**

11. As the Beneficiaries comprise more than one person, the rights of those persons contained in this Guarantee take effect as joint and several rights and references to the Beneficiaries take effect as references to those persons or any of them.
12. Where this Guarantee is given by more than one person, the obligations on the part of the Guarantor contained in this Guarantee take effect as joint and several obligations and references to the Guarantor take effect as references to those persons or any of them.
13. This Guarantee binds each of the persons executing it notwithstanding that any one or more of the persons named in this Guarantee as Guarantor does not execute, or is not or ceases to be bound by this Guarantee, or the Beneficiaries do not execute or only subsequently execute this Guarantee.
14. A release by the Beneficiaries of any Guarantor from this Guarantee will not affect the liability of the other Guarantors.

### **Beneficiaries' calculation**

15. A statement by an authorised representative of the Beneficiaries as to the amount for the time being owing by the Customer or the Guarantor to the Beneficiaries or as to the interest from time to time payable is conclusive unless clearly wrong on its face.

### **Expenses**

16. The Guarantor must indemnify the Beneficiaries against all reasonable expenses incurred by the Beneficiaries in connection with the entry into, enforcement of, or the preservation of any rights under, this Guarantee including legal expenses on a full indemnity basis and any stamp duty.

### **Assignment**

17. The Beneficiaries may dispose of, declare a trust over, or otherwise create an interest in its rights under this Guarantee without the consent of any other party.

### **Notices**

18. Any demand, notice or other communication under this Guarantee must be in writing and signed and may be sent to the addressee either by hand, mail or fax. If it is sent by mail, it is taken to have been received on the second business day after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.

### **Waivers, remedies cumulative**

19. No failure or delay by any Beneficiary in exercising any right or remedy under this Guarantee constitutes a waiver. No single or partial exercise of any right or remedy will preclude any further exercise of that or any other right or remedy.
20. The rights and remedies provided to the Beneficiaries in this Guarantee are cumulative and are not exclusive of any rights or remedies provided by law.

### **Acknowledgements of Guarantors**

21. Each Guarantor acknowledges that:
- a. In executing this Guarantee, the Guarantor has not relied on any representations by the Beneficiaries or any of them or any of their officers, employees or representatives regarding the present or future financial position of the Customer;
  - b. The Guarantor is satisfied regarding the Customer's financial position; and
  - c. The Guarantor executes this Guarantee freely and voluntarily after having been given an opportunity to receive independent legal and financial advice.

### **Governing law and jurisdiction**

22. This Guarantee is governed by and will be construed in all respects in accordance with the laws of Victoria and the parties submit to the jurisdiction of the courts of that State.

### **Severability of provisions**

23. Any provision in this Guarantee which is prohibited or unenforceable is to be severed to the extent necessary to make this Guarantee enforceable, unless it would materially change the intended effect of this Guarantee.



Ovato Limited (ABN 39 050 148 644)  
trading as Ovato Print, Ovato Residential Distribution, Ovato Book Printing  
Ovato Print Cairns Pty Ltd (ABN 72 050 487 879), Ovato Packaging Pty Ltd (ABN 98 050 411 759)  
Ovato Creative Services Clayton Pty Ltd (ABN 76 004 386 672)  
Ovato Creative Services Pty Ltd (ABN 12 001 098 157), Ovato Creative Services Geebung Pty Ltd (ABN 91 010 958 200)  
Ovato Technology Pty Ltd (ABN 40 092 342 375), Ovato Communications Pty Ltd (ABN 54 125 826 655)

PO Box 455, Pyrmont NSW 2009  
Email: gss.credit@ovato.com.au

b. the Guarantor must immediately do anything (including the signing of documents) required by the Beneficiaries to restore to each Beneficiary any guarantee or security which it was entitled immediately before that application or the payment or transaction giving rise to it.

**GUARANTEE**

In Consideration of: Ovato Limited (**ACN 050 148 644**), trading as Ovato Print, Ovato, Residential Distribution, Ovato Book Printing, Ovato Print Cairns Pty Ltd (**ACN 050 487 879**), Ovato Packaging Pty Ltd (**ACN 050 411 759**), Ovato Creative Services Clayton Pty Ltd (**ACN 004 386 672**), Ovato Creative Services Pty Ltd (**ACN 001 098 157**), Ovato Creative Services Geebung Pty Ltd (**ACN 010 958 200**), Ovato Technology Pty Ltd (**ACN 092 342 375**), Ovato Communications Pty Ltd (**ACN 125 826 655**) (the "Companies"), granting credit to:

Registered Company Name: .....

Of (insert Address): .....  
**(the "Customer")**

I (insert Name): .....

Of (insert Address): .....

**(the "Guarantor")** guarantee and bind myself jointly and severally with the Customer in favour of the Companies for the payment of any amount which is now due or owing or which may hereafter become due or owing by the Customer to the Companies.

It is agreed:

1. THAT this Guarantee shall be a continuing Guarantee and shall not be determined by the death of the Guarantor, nor, in the case where the Guarantor is a company, by its liquidation.
2. THAT all compositions and payments received by the Companies shall be taken as payments in gross and the Guarantor's right to be subrogated in respect thereof shall not arise until the Companies shall have received the full amount of the Customer's indebtedness to it.
3. THAT no time or other indulgence granted to the Customer nor any variation in the terms of any contract agreement or arrangement between the Companies and the Customer nor the release by the Companies of any guarantee of security held by the Companies shall in any way affect the liability of the Guarantor.
4. THAT as between the Companies and the Guarantor no cheque, bill of exchange or promissory note received by the Companies in respect of the Customer's indebtedness to it shall be regarded as whole or part satisfaction of the obligations in respect of which it is given unless and until the same shall have been met.
5. THAT the discharge extinguishment of postponement by bankruptcy, operation of law or otherwise of any part of the indebtedness of the Customer shall not impair, limit or affect the liability of the Guarantor.
6. THAT if any payment made to the Companies by or on behalf of the Customer or Guarantor shall subsequently be avoided by any Statutory Provision or otherwise such payment shall be deemed not to have discharged the Guarantor's liability and in such event the Companies and the Guarantor shall be restored to the position in which they would have been if such payment had not been made.
7. THAT the Companies shall be entitled to recover from the Guarantor without first taking any steps or proceedings against the Customer.

AS WITNESS our hands this: ..... day of ..... 20 .....

SIGNED by the said (the Guarantor): .....

**in the presence of:**

Signature of Witness: .....Occupation .....

Name of Witness (Please Print): .....

Address of Witness: .....