

Personal Guarantee and Indemnity

1. Definitions

In this Personal Guarantee and Indemnity the following expressions apply:-

- a. "Customer" means the entity to whom the Company has supplied goods, either in its own right or as agent under the UBD Conditions of Sale published at <http://www.unitedbookdistributors.com.au/>.
- b. "Company" means Penguin Random House or any other party which has contracted with the Customer through Penguin Random House as agent or has received goods from Penguin Random House as agent or otherwise.
- c. "Guaranteed Moneys" means all moneys which are, will be or may be at any time in the future, owing or payable to the Company by the Customer for any reason whatsoever. It includes, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Customer would have been liable but for it becoming subject to any Insolvency Event, it will still be taken to be liable.
- d. "Guarantor" means the person or persons signing this Personal Guarantee and Indemnity.
- e. "Insolvency Event" means where:
 - i. the Customer ceases to do business, becomes unable to pay its debts when they fall due, or becomes or is deemed to be insolvent;
 - ii. the Customer has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business;
 - iii. any composition or arrangement is made with any one or more classes of the Customer's creditors;
 - iv. the Customer takes or suffers any similar action in consequence of debt, or an order or resolution is made or passed for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction);
 - v. the Customer enters into liquidation whether compulsorily or voluntarily; or
 - vi. any analogous or comparable event takes place in any jurisdiction.
- f. "Penguin Random House" means Penguin Random House Australia Pty Ltd (ABN 28 004 815 703) trading as United Book Distributors.

2. Consideration

In consideration of the Company agreeing to supply goods or give credit to the Customer, the Guarantor has agreed to enter into this Personal Guarantee and Indemnity in favour of the Company.

3. Guarantee

The Guarantor unconditionally guarantees to the Company the due and punctual payment of the Guaranteed Moneys and agrees:

- a. on demand from time to time to pay an amount equal to the Guaranteed Moneys then due and payable;
- b. any statement signed by a secretary, director or authorised representative of the Company showing the amount of Guaranteed Moneys or the money owing by the Guarantor under this Personal Guarantee and Indemnity shall, in the absence of manifest fraud or error, be binding and conclusive on and against the Guarantor;
- c. this Personal Guarantee and Indemnity is a continuing guarantee and shall remain in full force and effect until all the Guaranteed Moneys are paid or satisfied in full and in addition to, and shall not be prejudiced or affected by, any other security or guarantee held by the Company for the payment of the Guaranteed Moneys;
- d. the liabilities of the Guarantor and the rights of the Company under this Personal Guarantee and Indemnity are not affected by anything which might otherwise affect them at law or in equity;
- e. if any payment by the Guarantor under this Personal Guarantee and Indemnity or the Customer is avoided, set aside, ordered to be refunded or reduced or rendered unenforceable by any laws relating to bankruptcy, insolvency or liquidation, that payment will be taken not to have been made and the Company shall be entitled to recover from the Guarantor the value of that payment as if that payment had never been made. This clause continues after this guarantee is discharged; and
- f. this Personal Guarantee and Indemnity shall bind the Guarantor and his or her respective personal representatives or assigns and is not affected by the death or bankruptcy of the Guarantor

4. Indemnity

If the obligation of the Customer to pay the Guaranteed Moneys to the Company is unenforceable for any reason, the Guarantor as a separate undertaking unconditionally and irrevocably indemnifies the Company against any loss that the Company suffers as a result.

Full names, addresses and signatures of Guarantors

Name of Guarantor:

1.

Address:

Signature:

Date: dd / mm / yyyy

Name of Guarantor:

3.

Address:

Signature:

Date: dd / mm / yyyy

5. Nature and Preservation

- a. The liability of the Guarantor under this Personal Guarantee and Indemnity is absolute and is not subject to the performance of any condition precedent or subsequent.
- b. The liability of the Guarantor will not be affected by any act, omission, matter or thing, which might release or discharge the Guarantor from that liability including any of the following:
 - i. any act or payment which would otherwise form part of payment of the Guaranteed Monies being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrevocable in whole or in part for any reason;
 - ii. the Company granting time, waiver or other concession to the Guarantor or any third party in respect of the Guaranteed Monies;
 - iii. any variation to any obligation under this Personal Guarantee and Indemnity whether or not the variation is substantial or material or imposes an additional liability on or disadvantages the Guarantor;
 - iv. the release of any property from any encumbrance which the Company holds over it, or the substitution of property in place of any other property subject to any encumbrance held by the Company; or
 - v. the transfer, assignment or novation by the Company or the Guarantor of all or any of its rights or obligations under this Personal Guarantee and Indemnity.

6. Set-off

The Guarantor's liability under this Personal Guarantee and Indemnity will not be reduced by any defence, set-off or counterclaim available to the Guarantor against the Company.

7. Waiver

No failure or delay by the Company to exercise any power, right or remedy under this Personal Guarantee and Indemnity shall operate as waiver, nor shall any single or partial exercise of any power, right or remedy preclude any further or other exercise of that or any other power, right or remedy. The rights and remedies under this Personal Guarantee and Indemnity are cumulative to any rights and remedies arising at law.

8. Claim and Administration

Until this Personal Guarantee and Indemnity is released by the Company, the Guarantor will not without the Company's prior written consent (which shall be at the Company's sole discretion) prove in competition with the Company if the Customer becomes subject to any Insolvency Event.

9. Application of Money Received

If the Company receives or recovers money in respect of debts of the Customer, the Company may use it to pay off whichever part of those debts it chooses and does not have to apply the payment for the Guarantor's benefit.

10. Security for Payment / Charge Clause

The Guarantor as beneficial owner hereby charges all freehold and leasehold interests in land which the Guarantor now owns or may acquire hereafter, with the payment of the Guaranteed Monies, and the Guarantor consents to the Company registering a caveat to protect its interests under this clause.

11. Effective Law

All laws which limit the Company's power or require notices to be given are excluded to the maximum extent permitted by law. If any part of this Personal Guarantee and Indemnity is prohibited or unenforceable, it will not affect the remaining parts.

12. Trustee

This document will bind the Guarantor both personally and as trustee of any trust of which the Guarantor is a trustee if the Guarantor signs as trustee of that trust.

13. Expenses

The Guarantor shall pay to the Company all costs, charges and expenses incurred by the Company in connection with any exercise or attempted exercise of any power, right or remedy under this Personal Guarantee and Indemnity or any failure of the Guarantor to comply with the Guarantor's obligations under this Personal Guarantee and Indemnity (including legal fees, stamp duty and other government duties and charges).

14. Privacy and Credit Reporting Consent

The Guarantor consents to the Company handling the Guarantor's personal information (including credit information) in accordance with the above Privacy and Credit Reporting Collection Statement and the Company's Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters.

Name of Guarantor:

2.

Address:

Signature:

Date: dd / mm / yyyy

Name of Guarantor:

4.

Address:

Signature:

Date: dd / mm / yyyy