

**GUARANTEE AND INDEMNITY**

<b>Customer Details</b>	
Name:	..... ACN .....
Address:	..... .....
<b>Guarantor Details</b>	
Name of Director:...	
Address:	..... .....
Name of Director:...	
Address:	..... .....

**TERMS AND CONDITIONS OF GUARANTEE**

**1. Definitions**

“Application” means an Application For Credit made by the Customer to ResourceCo for trade credit.

“Credit Account” means the credit account between ResourceCo and the Customer whether arising pursuant to an Application or otherwise.

“Customer” means the customer of ResourceCo as detailed above.

“Guaranteed Amount” means the amount presently owing and all future amounts owing to ResourceCo by the Customer pursuant to the Credit Account including interest and any costs of enforcement of this guarantee (irrespective of any credit limit that may be specified in the Application).

“Guarantor” means the person or if more than 1, the persons whose details appear above.

“ResourceCo ” means, jointly and severally, each legal entity specified in section 1 of the Application.

**2. Guarantee**

In consideration of ResourceCo agreeing at the request of the Customer and the Guarantor to provide the Customer with credit pursuant to the Credit Account and forbearing from the recovery of the present indebtedness under the Credit Account, if any, the Guarantor unconditionally guarantees the due and punctual payment by the Customer to ResourceCo of the Guaranteed Amount.

**3. This Guarantee:-**

- 3.1 is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising;
- 3.2 may be enforced against the Guarantor without ResourceCo first being required to exhaust any remedy it may have against the Customer or to enforce any security it may hold with respect to the Credit Account or the Guaranteed Amount;
- 3.3 is a continuing guarantee and indemnity for the whole of the Guaranteed Amount and will be irrevocable and will remain in full force and effect until discharged; and
- 3.4 will not be considered as wholly or partially discharged by the payment at any time of any of the Guaranteed Amount or by any settlement of account or by any other matter or thing whatsoever and will apply to the present and future balance of the Credit Account.

**4. The liability of the Guarantor is absolute and will not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from their obligation in whole or in part including but not limited to:-**

- 4.1 the grant to the Customer or any other person of any time, waiver or other indulgence or concession, or the discharge or release of any other security or guarantee held by ResourceCo in respect of the Credit Account;
- 4.2 the insolvency, which in this Guarantee includes; administration, bankruptcy, official management, compromise, arrangement, amalgamation, reconstruction, winding up, dissolution and assignment for or compromise with creditors, of the Customer;
- 4.3 ResourceCo exercising or refraining from exercising any other security or guarantee, or any other rights, powers or remedies conferred on it by law or by agreement, or any other agreement with any other person, or taking or failing to take any other security or guarantee;
- 4.4 the variation (including a variation which increases the Guaranteed Amount), extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole of in part of the Credit Account or any security or guarantee now or in the future held by ResourceCo from any person;
- 4.5 the Customer’s obligations under the Credit Account or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
- 4.6 the failure by ResourceCo to give notice to the Guarantor of any default by the Customer under this Guarantee; or
- 4.7 any legal limitation, disability, incapacity or other circumstances related to the Customer.

**5. Until the Guaranteed Amount have been discharged in full the Guarantor shall not:**

- 5.1 be entitled to share in any security held or money received by ResourceCo or to stand in the place of ResourceCo in respect of any security or money;

- 5.2 take steps to enforce a right or claim against the Customer in respect of any money paid by the Guarantor to ResourceCo under this Guarantee; or
- 5.3 have or exercise any rights as surety in competition with ResourceCo.
- 6 If the Customer becomes insolvent, the Guarantor authorise ResourceCo to prove for all moneys the Guarantor will have paid under this Guarantee and to retain and to carry into a suspense account and to appropriate at the discretion of ResourceCo any dividends received in the liquidation, bankruptcy or other insolvency of the Customer and all other moneys received in respect of the Guaranteed Amount until ResourceCo has been paid the Guaranteed Amount in full.
- 7 Any settlement, discharge or release between the Guarantor and ResourceCo will be conditional upon no security or payment to ResourceCo by the Customer or any other person being avoided or reduced by virtue of any provision or enactments relating to insolvency for the time being in force, and ResourceCo may recover the value or amount of any such security or payment from the Guarantor subsequently as if that settlement, discharge or release had not occurred.
- 8 If the whole or any part of the Guaranteed Amount are or may be irrecoverable from the Customer by ResourceCo for any reason whatever whereby the amount thereof or resulting therefrom is not recoverable from the Guarantor as surety, then and in each such case:
  - 8.1 the Guarantor as a separate and additional liability under this Guarantee indemnifies ResourceCo in respect of the Guaranteed Amount;
  - 8.2 as a principal debtor agrees to pay ResourceCo when demanded in writing a sum equal to the amount of the Guaranteed Amount; and
  - 8.3 for the purposes of this indemnity, this clause shall be construed as if the Guaranteed Amount were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.
- 9 The obligations on the part of the Guarantor, if more than one, 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.
- 10 The Guarantor irrevocably acknowledges that the Guarantor's liability under this Guarantee is not limited to any credit limit specified in the Application and extends to all amounts due to ResourceCo incurred by the Customer with the knowledge or authority of the Guarantor.

**General**

- 11 This Agreement and the rights and obligations of the parties will be construed pursuant to the laws of South Australia. The courts of South Australia and courts of appeal shall have jurisdiction in relation to this Guarantee.
- 12 If any part of this Guarantee is invalid, that invalidity will be severed from this Guarantee and will not affect the validity or the enforceability of any other part of this Guarantee.
- 13 The Customer must pay stamp duty and other government fees or charges in respect of this Guarantee and all other documents associated with it.

Signed by the Guarantor as a Deed on the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**SIGNED BY DIRECTOR** .....

Print Name of Director.....

Signature of Witness.....

Print Name of Witness.....

**SIGNED BY DIRECTOR** .....

Print Name of Director.....

Signature of Witness.....

Print Name of Witness.....