



PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

- (a) 'COVID-19 pandemic' means the pandemic globally named 'COVID-19' (and any subsequent strains or other variants evolving therefrom);
- (b) 'Delivery date' means the date set out in the Purchase Order;
- (c) 'Date for Completion' means the date set out in the Purchase Order;
- (d) 'Date of Completion' means the date on which the Vendor reaches the stage when the Works are complete, clean and free from defects except for minor defects;
- (e) which the Vendor has reasonable grounds for not promptly rectifying; and
- (f) the rectification of which will not prejudice the intended use of the completed Works;
- (g) 'DLP' has the meaning provided in clause 16;
- (h) 'Due Date for Payment' means the time by which payment is to be made by the Purchaser as set out in the Purchase Order;
- (i) 'merchandise' means all goods, chattels, plant, equipment, machinery, stores and the like;
- (j) 'Purchase Order' means the 1-page document in which these terms and conditions have been referenced and hyperlinked to;
- (k) 'Purchaser' means Urbane Projects Pty Ltd;
- (l) 'the Works' means the work to be carried out by the Vendor including the supply of merchandise, labour, supervision, equipment and plant as specified in this Order;
- (m) 'this Order' means the Purchase Order, these terms and conditions and all documents attached hereto or incorporated herein by reference;
- (n) 'Vendor' means the person, firm or corporation from whom the merchandise and/or the Works have been ordered.

2. CONTRACT

This form when properly signed and bearing an order number is the only form which will be recognised by Purchaser as authority for charging merchandise and service to its account and supersedes all previous communications and negotiations. No terms by another Vendor in making a quotation or accepting or acknowledging this Order and which differ from the terms of this Order shall be binding upon the Purchaser or shall be deemed to be any part of the agreement between Vendor and Purchaser.

No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach, or of any other provision.

3. INSPECTION IN PROGRESS

Vendor agrees that Purchaser or its authorised agent shall have the right of inspection of all work contained in the order including any subcontracted work while in any stage of engineering, manufacture or installation. The Purchaser or its designated agent may reject any work performed or being performed that does not comply with the terms and conditions in this Order. Work that is rejected shall be rectified or removed and replaced properly at no additional cost to Purchaser. Any acceptance or approval of work upon inspection by the Purchaser will be deemed to be no more than prima facie evidence of completion and shall not relieve the Vendor of its obligations contained in this Order.

4. CANCELLATION

Purchaser may at its option cancel the delivery of any merchandise which has not been dispatched if this Order covers any standard stock merchandise. Purchaser's only obligation shall be to pay for the merchandise which has been dispatched prior to cancellation.

If this Order covers merchandise which the Vendor must arrange to be manufactured or fabricated to the Purchaser's specifications (if any), then upon receipt of a notice of cancellation the Vendor shall cease to manufacture, supply or work in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any costs after such cancellation. Then, provided that the Vendor is not in default:

- (a) the Vendor may, within 10 days of the cancellation, submit a written claim for payment of the cost incurred by Vendor in connection with this Order prior to the date of cancellation (if any) along with sufficient information and supporting documentation to evidence the amount claimed; and
- (b) if the claims are valid, the Purchaser may make such payment by the Due Date for Payment.

Upon such payment by the Purchaser, title to and property in material or merchandise which has been completed shall be passed to the Purchaser.



5. DEFAULT BY VENDOR

- (a) In the event that the Vendor:
- (i) breaches any of the terms, conditions or warranties contained in this Order; or
 - (ii) becomes insolvent; or
 - (iii) a receiver of its business assets is appointed; or
 - (iv) makes any assignment or arrangement for the benefit of credits, then in any one or more of such cases, without prejudice to any other rights it may have, Purchaser may by written notice:
 - (v) cancel the delivery of any undelivered merchandise; or
 - (vi) terminate this Order.
 - (vii)
- (b) The Purchaser shall not be obliged to make any payment thereafter or in respect of a delivery which has been cancelled in accordance with this clause 5.
- (c) The Purchaser shall be entitled to recover any loss or damage it suffers by reason of a default by the Vendor as moneys due and payable under clause 20 (including any release or deduction of retention money if applicable).

6. WARRANTIES

The Vendor warrants that:

- (a) it is at all times suitably qualified and experienced to complete the Works;
- (b) it shall use proper and tradesmanlike workmanship;
- (c) it shall comply with all applicable legislative requirements;
- (d) all Vendors, employees and agents of Vendors engaged by Vendor are suitably qualified and experienced to complete the work it is engaged to complete;
- (e) the merchandise supplied by Vendor:
 - (i) comply with the description and specification set out in this Order;
 - (ii) are new and fit for the known purposes for which it is supplied;
 - (iii) have a warranty period of the number of months stated in the Purchase Order after the Works are complete; and
 - (iv) are in proper working condition.

These warranties are in addition to any warranty or service guarantee contained in the order or implied by law. In the event that the Vendor breaches any of the warranties included in this clause 6, the Vendor agrees to indemnify the Purchaser against any loss or damage (including legal fees and costs) arising from or in connection with such breach.

7. PATENTS, TRADEMARK AND COPYRIGHTS

Vendor warrants to Purchaser and its successors in interest that the manufacture, sale or use of the merchandise will not infringe or contribute to the infringement of any patents, trademarks, designs or copyrights in Australia. Vendor indemnifies Purchaser and its successors in interest against any loss or damage (including legal fees and costs) arising from a breach of this warranty or any prevention or hindrance of use of the merchandise arising out of or in connection with a breach of this warranty.

8. TRANSPORTATION

Immediately after the Vendor has dispatched the merchandise, Vendor shall notify Purchaser of the date and time of dispatch, the number of the order, the kind and amount of merchandise to be transported.

All merchandise shall be:

- (a) packed, marked and transported in a safe, secure and suitable manner; and
- (b) delivered in good order and condition by an internationally certified courier,
 - in accordance with the proper and legislative requirements of the carriers and the Australian States and Territories in which the Works are provided.

As soon as practicable after becoming aware of any factors which may affect the delivery, the Vendor must notify the Purchaser and keep the Purchaser updated on the effects of such factors. Upon delivery of the merchandise, the Vendor shall obtain a receipt from the consignee showing the materials delivered, the condition of such materials at the time of deliver and the date of deliver.

9. RETENTION

If applicable, Purchaser will deduct 'X'% of the progress payments (as stated in the Purchase Order) up to a maximum of 'Y'% of purchase price (as stated in the Purchase Order). An amount equivalent to 'Z'% of the retention (as stated in the Purchase Order) shall be released to the Vendor at the completion of the Works and the balance to be released at the end of the DLP.



10. PERFORMANCE OF WORK

Where the Vendor is required to perform work on or near the premises specified in this Order, the following conditions apply:

- (a) Vendor shall supply all labour, tools, equipment, services and material necessary to perform and complete the work specified in this Order;
- (b) Vendor shall not prevent the Purchaser or any of its other vendors from performing their work;
- (c) Vendor enters the premises on which the work is to be performed at its own risk and indemnifies the Purchaser against any loss, damage claims and liability arising out of or in connection with the performance of the Works or presence of Vendor and its workmen, agents and sub-contractors on the said premises;
- (d) Vendor shall not subcontract or assign work under this Order, which is to be performed on the said premises, without the written consent of the Purchaser.

11. TIME FOR COMPLETION

The Vendor agrees to complete the Works by the Date for Completion and in accordance with all of the terms and conditions stated herein. When, in the opinion of the Vendor, the Works have been completed, it shall provide the Purchaser with a written notice requesting the Purchaser to inspect the Works within 10 business days and provide the Vendor with a written notice stating that it has accepted the Works as complete except for minor defects (if any) (Notice of Completion).

If, upon completion of its inspection, the Purchaser is unable to issue a Notice of Completion, the Purchaser must provide the Vendor with a list of things it considers needs to be done in order for the Works to be completed. The Vendor must promptly do those things (if any) and liaise with the Purchaser until the Purchaser is able to issue the Notice of Completion required under this clause 11.

11A. DELAY NOTICE REQUIREMENTS

The Vendor shall only be entitled to an extension of time under this clause 11B if:

- (a) the Vendor has been or will be delayed in completing the Works by any of the following causes or conditions resulting from the causes (each referred to as a 'qualifying cause of delay'):
 - (i) a variation directed by the Purchaser;
 - (ii) severe weather conditions which make it unsafe or unreasonable for the Vendor to perform any work;
 - (iii) proceedings being taken or threatened by, or disputes with, adjoining or neighbouring owners or residents to the Site;
 - (iv) any civil commotion, strike, lockout affecting the Works or the manufacture or supply of materials;
 - (v) any act, default, omission on the Purchaser's part;
 - (vi) unavailability of labour, transport or materials;
 - (vii) the COVID-19 pandemic and any directions by local, state, national, public or other statutory authorities issued due to the COVID-19 pandemic; or
 - (viii) any other matter, cause or thing beyond the Vendor's control;
- and
- (b) the Vendor has given the Purchaser:
 - (i) within 5 business days of becoming aware of that qualifying cause of delay, a written notice of the qualifying cause of delay and any related estimated delay; and
 - (ii) within 28 days of when the Vendor should reasonably have become aware that such causation or condition was occurring, a detailed written claim for an extension of time.

11B. EXTENSION OF TIME

An extension of time shall be the Vendor's sole remedy in the event of a qualifying cause of delay. The Vendor will be barred from making any claim for an extension of time if it fails to comply with the notice requirements set out in clause 11A.

Within 28 days after receiving a claim for an extension of time from the Vendor under clause 11A(b)(ii), the Purchaser shall give to the Vendor a written rejection or approval of the extension of time. If the Principal rejects the Vendor's claim, the Principal must include in writing reasonable reasons for its rejection.



11C. LIQUIDATED DAMAGES

If the Vendor does not complete the Works by the Date for Completion, the Vendor shall be indebted to the Purchaser for liquidated damages at the daily rate set out in the Purchase Order from the Date for Completion to and including the Date of Completion, termination of this Order under clause 5 or the Purchaser taking the whole or part of the Work out of the hands of the Contractor under clause 5.

The parties agree that the liquidated damages provided for in this clause are fair, reasonable and genuine pre-estimates of the loss and damage which the Purchaser is likely to suffer and incur if the Works are not completed by the Date for Completion and does not constitute a penalty.

12. INSURANCE

Prior to commencing the Works, and for the duration of this Order, the Vendor shall effect and maintain the following insurances:

- (a) Workers Compensation insurance for death of or injury to persons employed by the Vendor in relation to any work or other act associated with the performance of the Works carried out by the Vendor, Vendor's employees or its agents until the Date of Completion;
- (b) Public and products liability insurance policy for an amount not less than \$10 million (for any one occurrence) covering the respective rights and interests and liabilities to third parties of the parties and their subcontractors (if any) from time to time whenever engaged in the Works;
- (c) Motor vehicle insurance policy for cover against bodily injury and death in accordance with the laws of the State of Western Australia for vehicles owned or under the control of the Vendor or its employees, subcontractors and agents, whilst being driven in connection with the subject of the Works.

12A. INDEMNITY

The Vendor is solely liable for and must indemnify the Purchaser for any theft, loss or damage arising from or in connection with the Works but excludes:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude any loss or damage resulting therefrom;
- (b) the cost of making good faulty workmanship and materials, but shall not exclude any loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude any loss of or damage to the Works;
- (d) damages for the failure to complete the Works.

13. VARIATIONS

The Purchaser may direct the Vendor in writing to vary the Works by any one or more of the following as and when it believes such work is required (using its reasonable judgment):

- (a) increasing, decreasing or omitting any part;
- (b) changing the character or quality;
- (c) changing the levels, lines, positions or dimensions;
- (d) carry out additional work;
- (e) demolish or remove material or work no longer required by the Purchaser.

The Vendor shall not vary the Works except as directed by the Purchaser and the Vendor shall not be entitled to payment upon completion of a variation unless it has received written approval from the Purchaser as required under this clause 13.

It is a condition precedent to the Vendor's entitlement to make any claim for or receive payment for the cost of performing a variation that the Vendor has given to the Purchaser its quotation for the cost of executing the variation within 10 days of the Purchaser's direction to vary the Works.

If the variation is approved, the Purchaser shall give to the Vendor its written approval and direct the Vendor to execute the variation in accordance with the Vendor's quotation (or otherwise as advised) within 10 days of receipt of the Vendor's quotation.

If the Purchaser has directed the Vendor to vary the Works by omitting any part, the Purchaser may, by written notice, engage a third party to perform and complete the omitted part.

14. PAYMENT

The Vendor shall submit a written claim for payment fortnightly or monthly as specified in the Purchase Order. Each progress claim shall include details of the value of the Works done and other moneys which, in the Vendor's opinion, is then due from the Purchaser to the Vendor in accordance with these terms and conditions, and any other information or documentation in support of its claims.

Except where the Vendor has failed to provide sufficient evidence in its progress claim, the Purchaser shall make payment of a progress claim by the Due Date for Payment specified in the Purchase Orders. In the event that the Purchaser does not agree with any portion of the value of Works stated in a progress claim, the Purchaser may reject that portion, provide reasons for its rejection and pay only the portion which it has agreed to on or before the date payment is due.

14A. PAYMENT IN ADVANCE OF MERCHANDISE

(a) If the Vendor claims payment for merchandise intended for incorporation into the Works but not yet delivered to Site, the Purchaser shall make payment if:

(i) the Vendor is able to satisfy the Purchaser by way of evidence that:

(A) ownership of the merchandise will pass to the Purchaser upon payment;

(B) such merchandise is (or will be) properly stored, and adequately protected;

(ii) the Vendor agrees to provide security by way of a bank guarantee in a form acceptable to the Purchaser in an amount equal to the claim for payment of the merchandise, as the case may be.

(b) If the Vendor fails to deliver the merchandise, the Purchaser shall be entitled to have recourse to the bank guarantee in part or in full as the case may be and receive and use the proceeds of the bank guarantee to remedy the non-performance of the Vendor.

(c) Otherwise, the Purchaser shall release the relevant bank guarantee to the Vendor within 10 business days after the Vendor has completed the delivery of the merchandise and after it has deducted any amounts from the bank guarantee to which the Purchaser is entitled to.

(d) Alternatively, to subclause 14A(a)(ii) above, where the Vendor is a corporation duly incorporated with the Corporations Act 2001 (Cth), the Purchaser may request for the Vendor to provide a Personal Deed of Guarantee and Indemnity in the form of Annexure Part B. The Personal Deed of Guarantee and Indemnity shall be given by a director of the Vendor, in its personal capacity and the Purchaser shall be entitled to reject any proposed director on reasonable grounds.

14B. PERSONAL DEED OF GUARANTEE AND INDEMNITY

The Purchaser may, at any time, prior to the commencement of or during the Vendor's performance of the Works, request for the Vendor to provide a Personal Deed of Guarantee and Indemnity in the form of Annexure Part B for the performance of the obligations and the discharge of the liabilities of the Vendor under this Order from a director of the Vendor (if any).

15. DEFECTS

As soon as practicable after the Purchaser becomes aware of any work done (including material provided) by the Vendor which does not comply with the terms and conditions in this Order, it shall give the Vendor written details thereof. The Vendor shall, at his own expense, obtain all licenses and permits, labour supervision and equipment to make good, remove or demolish and replace or reconstruct the defective materials or work.

If the Vendor fails to rectify the defective materials or work, the Purchaser shall, by written notice to the Vendor, take out of the Vendor's hands the whole or part of the defective work or materials which need to be rectified and engage a third party to complete the work taken out. The Vendor must pay to the Purchaser, the costs of completing the work taken out.

16. DEFECTS LIABILITY PERIOD

The DLP shall commence at 4:00pm on the date the Notice of Completion is issued by the Purchaser and continue for the duration stated in the Purchase Order. During the DLP, the Vendor shall carry out the rectification of any defects at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

17. FINAL PAYMENT CLAIM

Within 28 days after the later of the expiry of the DLP or the rectification of all defects identified during the DLP, the Vendor may give the Purchaser a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of this Order which the Purchaser has previously been notified of in accordance with the terms under this Order.

Within 14 days of receiving the final payment claim:

(a) the Purchaser shall provide a written notice evidencing the moneys finally due and payable (including any release or reduction of any retention money if applicable) between the Vendor and the Purchaser on any account whatsoever in connection with the subject matter of this Order (Final Certificate); and

(b) if the Purchaser rejects an amount claimed by the Vendor in the final payment claim, the Purchaser shall state the reasons for such rejection in the Final Certificate.

If the Purchaser fails to issue a Final Certificate under this clause 17, the final payment claim will be deemed to be disputed.

17A. PAYMENT OF THE FINAL PAYMENT CLAIM

Within 5 business days of receipt of the Final Certificate, the Vendor must issue a tax invoice to the Purchaser for the amount stated as then payable in the Final Certificate.

Within 5 business days of receipt of the Vendor's tax invoice, the parties must pay to each other the moneys certified as due and payable in the Final Certificate, as the case may be (regardless of whether the Vendor issues a tax invoice in the form stated above within time or not).

The Vendor agrees to accept payment by the Purchaser of the amount specified in the Final Certificate and release by the Purchaser of any retention moneys in accordance with the Final Certificate as full and final payment to the Vendor of all amounts due and payable at the time of the issue of the final payment claim or in the future in connection with this Order and the Works or any other works executed by the Vendor and/or its subcontractors and suppliers on or about the Site of the Works. In consideration of such payment, the Vendor waives, releases and forever discharges the Principal from all or any claims, actions, proceedings, demands and the like which the Vendor may have at the time of the issue of the final payment claim or in the future whether arising under or in connection with this Order or in any way connected with the execution of the Works or for the work performed or materials supplied at the Site.

18. WORK HEALTH & SAFETY

- (a) ensure, so far as is practicable, that the conditions of the premises on which work is to be performed is safe and without risk to health for its employees, Vendors and agents and members of the public;
- (b) at all times identify and exercise all necessary precautions for the safety and health of all persons including its employees, Vendors and agents who may be affected directly or indirectly by or as a result of the Works;
- (c) comply with all statutory requirements in relation to occupational safety and health, including but not limited to the Occupational Safety and Health Act 1984 (WA) and regulations made under that Act.

19. INDUSTRIAL RELATIONS

The Vendor shall be fully responsible for all matters concerning its labour force and shall not claim nor be entitled to claim any compensation from the Purchaser nor any adjustment to this Order for any cost or loss of time arising from any cause which is associated with or which arises from the provision of labour for the Works or from industrial relations connected with or arising on the site.

The Vendor shall indemnify the Purchaser from and against any cost or increased cost arising from any cause which is associated with or which arises from the provision of labour for the Works or from industrial relations connected with or arising on the site.

The Vendor shall immediately notify and provide full details to the Purchaser if industrial action or any other form of industrial dispute is threatened or occurs, and keep the Purchaser fully informed of all matters including any proceedings, negotiations or dealings regarding the industrial action or any other form of industrial dispute.

20. RIGHT TO SET OFF

The Purchaser may deduct from moneys due to the Vendor any money due from or payable by the Vendor to the Purchaser (including liquidated damages under clause 11C) under this Order or otherwise and if those moneys are insufficient, the Purchaser may, have recourse to retention moneys retained under clause 9 (if applicable).

The Purchaser may elect to set off and deduct from moneys due to the Vendor, any other moneys due and owing by the Vendor to the Purchaser under other contracts or agreements not in connection with the subject matter of this Order.

The Purchaser's entitlement to set off or have recourse to retention moneys (if applicable) will not be affected by:

- (a) whether the Works have been completed or not; nor
- (b) the existence of a dispute regarding the Purchaser's right to set off or have recourse to or the amount which the Principal intends to set off or have recourse to.



21. DISPUTE RESOLUTION

If a dispute between the Purchaser and the Vendor arises out of or in connection with this Order, then either party shall give to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

Unless the dispute has been settled within 5 business days after the notice, either party must refer the dispute to mediation. The mediator shall be appointed by Resolution Institute failing agreement by the parties. The mediation shall be conducted in accordance with Resolution Institute's 2016 Edition of the Mediation Rules. The parties must comply with the directions of the mediator for the conduct of the mediation and share the costs of the mediation equally.

If the parties are unable to resolve the dispute by mediation, only then either party may issue proceedings to have the dispute determined in a court of competent jurisdiction. The parties agree to irrevocably submit themselves to the exclusive jurisdiction of the courts of Western Australia.

Nothing in this clause 21 shall prejudice the right of a party to institute proceedings to enforce payment due under this Order or to seek injunctive or urgent declaratory relief.



Annexure Part A to the Purchase Order Terms & Conditions

Deed of Novation
(Subclause 5A(b)(i))

This Deed made the _____ day of _____ 20_____

Between _____ (“Continuing Party”)
of _____ ACN: _____
and _____ (“the Outgoing Party”)
of _____ ACN: _____
and _____ (“the Incoming Party”)
of _____ ACN: _____

witnesses that—

1. Upon receipt by the Continuing Party of all moneys owing under the prior secondary contract—
 - 1.1 the Incoming Party shall punctually perform the obligations of the Outgoing Party under the prior contract prescribed in the schedule hereto as far as they are not performed. The Incoming Party acknowledges itself bound by the provisions of the prior contract as if the Incoming Party had been named as the Outgoing Party in the prior contract;
 - 1.2 the Continuing Party shall punctually perform like obligations and be bound to the Incoming Party as if the provisions of the prior contract were incorporated herein; and
 - 1.3 the Outgoing Party and the Continuing Party shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The Outgoing Party and the Continuing Party each warrant to the Incoming Party that the Works, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Purchaser and the Vendor in accordance with the law for the time being in force in the State or Territory in which the Works are being carried out.

Schedule

Documents: _____



In witness whereof the parties have executed this Deed of Novation by affixing the seals.

THE COMMON SEAL of the Continuing Party (Purchaser)
was affixed to this document in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

THE COMMON SEAL of the Outgoing Party (Vendor)
was affixed to this document in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

THE COMMON SEAL of the Incoming Party (supplier)
was affixed to this document in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)



Annexure Part B to the Purchase Order Terms & Conditions

Personal Deed of Guarantee and Indemnity

(Clause 14B)

This Deed made the _____ day of _____ 20_____

Between the person/s specified in the Schedule _____ (“Guarantor”) of _____

and Urbane Projects Pty Ltd (ABN 78 009 438 662) _____ (“Purchaser”) of 32A McCoy Street, Melville WA 6156.

Recitals

- A. The Vendor and the Purchaser are parties to a Subcontract Agreement.
- B. As a condition of the Purchaser entering into the Subcontract Agreement with the Vendor, the Purchaser has requested that the Guarantor give this Guarantee and Indemnity.

Agreement

1. Definitions and Interpretation

- 1.1 “Guarantor” means:
 - (a) If the Vendor is an individual, that individual and party to this Guarantee and Indemnity so described above and that party’s personal representatives, transferees and assigns;
 - (b) If the Vendor is an entity, the Director of the Vendor and party to this Guarantee and Indemnity so described above and that party’s personal representatives, transferees and assigns; and
 - (c) If there is more than one person described as so described above and that party’s personal representatives, transferees and assigns.
- 1.2 “person” includes a corporation.
- 1.3 “Primary Instrument” means the Subcontract Agreement entered into (or to be entered into) contemporaneously with this Deed between the Vendor and the Purchaser in respect of the supply of merchandise (as described in the Subcontract Agreement) and/ or performance of the Works (as described in the Subcontract Agreement).
- 1.4 “Purchaser” means the party named as the ‘Purchaser’ under the Subcontract Agreement and the party to this Guarantee and Indemnity so described above and that party’s personal representatives (or, in the case of a corporate party, its successors), transferees and assigns.
- 1.5 “Vendor” means the party named as the ‘Vendor’ under the Subcontract Agreement.
- 1.6 A word importing:
 - (a) the singular number includes the plural;
- 1.7
 - (b) the plural number includes the singular; and
 - (c) any gender includes every other gender.

A reference to this Guarantee and Indemnity includes a reference to any schedule to this Guarantee and Indemnity and a schedule, clause or paragraph refers to a schedule, clause or paragraph of this Guarantee and Indemnity.

- 1.8 A reference to an Act, Law, Regulation or By-law includes any amendment or re-enactment of it that is for the time being in force.

- 1.9 A reference to “writing” or “written” includes any such communication sent electronically.

- 1.10 “Including” and similar expressions are not words of limitation.



2. Guarantee and Indemnity

2.1 Guarantee

In consideration of the transactions secured by this Guarantee and Indemnity, the Guarantor guarantees to the Purchaser:

- (a) the due and punctual payment by the Vendor of all moneys payable under the Primary Instrument; and
- (b) the due and punctual performance and observance of every obligation imposed on the Vendor under the terms of the Primary Instrument (“Guaranteed Obligation”).

2.2 Indemnity

(a) As a separate and severable liability, the Guarantor indemnifies the Purchaser, and agrees to keep the Purchaser indemnified, against any loss, damage, cost, claim, demand or liability or expenses suffered or incurred by the Purchaser arising out of:

- (i) a failure by the Vendor to observe or perform a Guaranteed Obligation whether actual or prospective;
- (ii) a Guaranteed Obligation being ineffective for any reason (whether or not the Purchaser knew or ought to have known of that reason) including:
 - (iii) a legal limitation, disability or incapacity of, or a lack or improper exercise of a power or authority in relation to, the Vendor;
 - (iv) the Vendor making an arrangement, assignment or composition for the benefit of its creditors or an order made or resolution effectively passed for its winding up or going into liquidation or a receiver, receiver and manager, administrator or provisional liquidator is appointed to the Vendor; or
 - (v) a Guaranteed Obligation being or becoming illegal, invalid, void, voidable or unenforceable.

(b) Any moneys payable by the Guarantor under this Guarantee and Indemnity are due and payable by the Guarantor to the Purchaser on demand without deduction or set off.

2.3 Continuing Security

Each of the guarantees and indemnities in this clause 2 shall be a continuing guarantee and indemnity and accordingly:

- (a) each shall constitute a principal obligation of the Guarantor to the Purchaser and shall not be affected by any claim or demand which the Vendor may at any time assert against the Purchaser on any account whatsoever; and
- (b) neither shall be discharged or released by any payment made by the Vendor or the Guarantor which is thereafter avoided by statute as a preference of for any other reason whatsoever.

2.4 Rights and Obligations of Guarantor

(a) The Purchaser shall not be required to give any notice to the Guarantor of a default by the Vendor nor to give any notice to or obtain any consent from the Guarantor before any variation is made to the terms of this Deed, the Primary Instrument or of any transaction which is subject to each of the guarantees and indemnities in this clause 2.

(b) The Guarantor waives:

- (i) any limitation on the liability of any of them which, but for this waiver, would arise by reason of the status of any of them as a surety;
- (ii) all rights of contribution, marshalling, consolidation and subrogation which the Guarantor would otherwise be entitled to assert; and
- (iii) all other rights which are inconsistent with the provisions of the guarantees and indemnities in this clause 2.



3. General

3.1 Joint and several liability

If more than one person is named in this Guarantee and Indemnity as Guarantor, this Guarantee and Indemnity shall bind every person who has signed this instrument as guarantor jointly and severally, and each of those signatories shall be bound by this Guarantee and Indemnity notwithstanding that any other person who is named herein as Guarantor may never sign this instrument.

3.2 Notices and Demands

(a) Any demand, notice, certificate, consent or other communication may be given or made under this Guarantee and Indemnity in writing by the Purchaser or by any other person authorised to do so on the Purchaser's behalf by pre-paid mail or hand delivery and may be addressed or delivered to the party to receive it at the address shown in this Guarantee and Indemnity or later notified to the Purchaser.

(b) Any instrument sent or communication made in accordance with clause 3.2(a) will be deemed to have been effectively received:

(i) if hand delivered, on the day of its delivery; or

(ii) if sent by pre-paid mail, on the second day after the day of its posting (or, if sent to an address outside Australia, on the date when it could be expected to have been received in the ordinary course of airmail post).

3.3 Severance

(a) If any provision of this Guarantee and Indemnity:

(i) is or becomes void, voidable, illegal or unenforceable in its terms;

(ii) would not be void, voidable, illegal or unenforceable if it were read down; and

(iii) is capable of being read down,

then that provision will be read down accordingly.

(b) If notwithstanding sub-clause (a), a provision of this Guarantee and Indemnity is still void, voidable, illegal or unenforceable:

(i) if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and

(ii) otherwise, the whole provision is severed, and the rest of this Guarantee and Indemnity will be of full force and effect.

3.4 Governing Law and Jurisdiction

This Guarantee and Indemnity will be governed by, take effect and be construed in accordance with the laws in force in the State and the parties submit to the jurisdiction of the Courts of the State.

3.5 Costs

All solicitors' costs of the instructions for and preparation of this Guarantee and Indemnity must be paid by the Guarantor.

Executed by the Guarantor as a Deed

Signed by

In the presence of:

} _____

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness

