

Guarantee and Indemnity

THIS IS AN IMPORTANT DOCUMENT

YOU SHOULD OBTAIN INDEPENDENT LEGAL AND ACCOUNTING ADVICE PRIOR TO EXECUTING IT.

In consideration of Middendorp Electric Co Pty Ltd (ACN 004 798 270) or any affiliated and/or related entities and companies (**Company**) supplying goods on credit (**Goods**) to the Customer (as noted below) or on their account (**Customer**), I / we agree as follows:

- 1) **Guarantee** – I/We guarantee to the Company the due and punctual:
 - (a) payment by the Customer of all moneys including current, outstanding, present and future debts (**Moneys**) which the Customer may now or in the future be liable to pay to the Company actually or contingently on any account (including all of the Company's costs, fees and expenses associated with this Guarantee and Indemnity and the enforcement of this Guarantee and Indemnity); and
 - (b) observance, performance and fulfilment by the Customer of all of the Customer's obligations (**Obligations**) under the any application for credit for supply of the Goods by the Company to the Customer.
- 2) **Indemnity** – I/We indemnify the Company, its servants or officers against any and all loss, damage, costs and expenses (including unpaid Moneys) suffered or incurred by the Company as a result of failure by the Customer to pay the Moneys or to perform, observe or fulfil the Obligations. I/We acknowledge that this obligation on my/our behalf shall extend also to any legal and other costs and expenses incurred by the Company in seeking payment from the Customer or in enforcing this Guarantee and Indemnity.
- 3) **Payments** – I / We will pay to the Company immediately upon demand by the Company any Moneys due to the Company under any application for credit (which includes any terms of credit and the Terms and Conditions of the Company) or in respect of the supply of goods by the Company to the Customer. A signed certificate from the Company stating the amount of the Moneys payable or any other matter or fact is proof of that amount or other matter or fact as at the date stated unless the Guarantor proves to the contrary.
- 4) **Nature of my/our obligation** – I / We acknowledge that my/our obligations under this Guarantee and Indemnity:
 - (a) cannot be revoked by me/us and I/we remain bound by this Guarantee and Indemnity for all Moneys which are now or may be from time to time owing or remain unpaid by the Customer until a written release is given by the Company. The Company may release, or come to a separate arrangement with, any one or more Guarantor, without affecting the liability of any other Guarantor.
 - (b) continues despite any changes in the amount of Money owed by the Customer to the Company.
 - (c) are principal obligations and the Company is not required to take any action first against the Customer or make a demand first against the Customer.
 - (d) are unconditional and not affected by anything which might otherwise affect them under the law relating to sureties, including:
 - (i) any change in the legal capacity, rights or obligations of the Guarantor, the Customer, a co-surety or any other person; or
 - (ii) the fact that, in relation to any of the Moneys or any security, guarantee or indemnity for them, the Company;
 1. obtains a judgment against the Customer, a co-surety or any other person; or
 2. gives up, releases, varies or exchanges or fails to obtain, perfect, register or realise, or deal in any other way with any security, guarantee or indemnity; or
 3. grants time or any other concession to, or compounds or compromises with, or does or omits to do anything which affects the obligations of the Customer, a co-surety or any other person to the Company or to the Guarantor; or
 4. receives any dividends out of the estate or assets of the Customer, a co-surety or any other person for any reason; or
 - (iii) the fact that any security, guarantee or indemnity held or taken by the Company is void, defective or informal or ranks after any other security or obligation for any reason; or
 - (iv) the death, mental or physical disability or insolvency of the Customer, a co-surety or any other person; or
 - (v) a variation or extension to, or a stopping, replacement or refusal of any credit or other arrangement (including an increase in any credit or a variation in the terms of supply of Goods) given to the Customer whether with or without my/our consent or knowledge; or
 - (vi) the fact that any Moneys may not be recoverable from the Customer, a co-surety or any other person for any reason; or
 - (vii) the cessation of business by any firm or partnership which the Customer or I/we comprise or any change in its members.
 - (e) continues and remains unaffected despite anything that happens to the Customer and despite the Company allowing the Customer any time to rectify any default.
 - (f) continues even if any terms of credit or Terms and Conditions of Sale of the Company are altered at any time.
 - (g) continue even if for any reason the Customer is not required to meet its obligation to pay for any Goods provided by the Company to the Customer or if the terms of credit or the Terms and Conditions of the Company become unenforceable, so that despite anything that may happen, I / we will ensure the Company is paid for any Goods provided by the Company to the Customer.
- 5) **Insolvency of Customer** – I / We agree that insofar as this Guarantee and Indemnity applies to the payment of any money by the Customer to the Company, I/we will not (unless the Company consents in writing):
 - (a) prove in the winding up of the Customer;
 - (b) claim the benefit of any security which the Company may hold, until the Company has received payment in full of all money to which this Guarantee and Indemnity applies.
- 6) **PPSA** – I / We acknowledge that this document constitutes a security agreement for the purposes of the *Personal Properties Securities Act 2009* (Cth).
- 7) **Security** – I / We agree that to secure payment of any money owed from time to time by the Customer to the Company:
 - (a) I / We charge as beneficial owner and as trustee of every trust all my/our real and personal property (including land acquired in the future) in favour of the Company to secure payment of any Moneys which is or becomes payable by me to the Company because of this Guarantee and Indemnity and the performance and observance of the Guarantors covenants under this Guarantee and Indemnity. In this clause "trust" means each trust for which the Guarantor holds land as trustee.
 - (b) If required by the Company and without affecting the charge created under subclause (a), each Guarantor irrevocably and unconditionally consents to lodgement by the Company of a caveat noting the interest given by this charge, security interest, or any other mortgage or any other instrument of security on the title of any property of the Guarantor whenever the Company so wishes.
- 8) **Financial information** – I / We acknowledge that the Company has relied upon the financial information provided by me/us in relation to my/our assets and liabilities. Each of the Guarantors:
 - (a) consents to the Company obtaining from a credit reporting agency a credit report containing personal credit information for the purpose of assessing whether to accept each Guarantor for the obligations of the Customer, and acknowledges that if the Company agrees to extend credit to the Customer, this consent remains in force so long as the Guarantee remains in force;
 - (b) acknowledges that the Company may provide to a credit reporting agency certain personal information relating to each of the Guarantors as allowed by the Privacy Act 1988 (Commonwealth); and
 - (c) consents to the Company obtaining credit information from Trade References supplied for the purpose of assessing whether to accept each Guarantor as a guarantor for the obligations of the Customer.

Guarantee and Indemnity

- 9) **My warranty** – I / We warrant that the financial information which has been provided to the Company is a true record of my/our assets and liabilities at the time of this document.
- 10) **Miscellaneous** – I/ We agree that:
- (a) Any obligations imposed by this Guarantee and Indemnity fall upon each Guarantor signatory jointly and severally. Co-surety includes any other person named as Guarantor or who otherwise guarantees payment of the Moneys.
 - (b) This Guarantee and Indemnity binds each of the signatories hereto as Guarantors. This Guarantee and Indemnity binds the Guarantor's successors, assigns administrators and executors and is a continuing and irrevocable Guarantee and Indemnity until the Guarantor is expressly released by the Company and it is not discharged by any intermediate payment or settlement of accounts.
 - (c) The Guarantor fully understands the risks associated with this Guarantee and Indemnity and freely elects to execute this Guarantee and Indemnity.
 - (d) Each Guarantor hereby acknowledges that it had read the terms of this Guarantee and Indemnity and has been advised and given the opportunity to seek independent legal advice prior to execution.
 - (e) This Guarantee and Indemnity is governed by the laws of Victoria and the applicable laws of the Commonwealth of Australia. Each Guarantor submits to the non-exclusive jurisdiction of the courts of that state of the Commonwealth of Australia elected by the Company.

Customer Name _____ **ACN** _____

Customer Trading Name _____ **ABN** _____

Customer Address _____

23. SIGNATURES OF GUARANTORS

Guarantor Name _____	Guarantor Name _____
Guarantor Address _____	Guarantor Address _____
Guarantor Signature _____	Guarantor Signature _____
Witness Name _____	Witness Name _____
Witness Signature _____	Witness Signature _____
Date _____	Date _____