

BSH HOME APPLIANCES PTY LTD

Guarantee

This deed of Guarantee and Indemnity is made on the date set out in Item 1 of the Schedule to this Deed

By: The Guarantors set out in Item 2 of the Schedule to this Deed ('the Guarantors')
In favour of: BSH Home Appliances Pty. Ltd., A.C.N. 109 198 405, a company incorporated in Victoria and having its registered office at 7-9 Arco Lane, Heatherton in that State ('BSH').

Whereas:

- A BSH has agreed at the request of the Guarantors to supply goods and services to the Buyer set out in Item 3 of the Schedule to this Deed ('the Buyer') in accordance with BSH's Terms of Delivery and Sale (as amended from time to time) and to grant credit to the Buyer.
- B The Guarantors have an interest in the Buyer.
- C The Guarantors have agreed to guarantee the due and punctual payment by the Buyer of all moneys payable by the Buyer to BSH for goods and services supplied by BSH to the Buyer.

Now This Deed Witnesses as follows:

1. In consideration of BSH agreeing to supply goods and services [and to grant credit to the Buyer at the request of the Guarantors] (which is hereby acknowledged) the Guarantors unconditionally and irrevocably do hereby jointly and severally guarantee (a) the due and punctual payment by the Buyer of all moneys due and payable or which may become due and payable by the Buyer to BSH for goods and services supplied or to be supplied by BSH to the Buyer and all other moneys which the Buyer either alone or jointly with any other person now or hereafter from time to time is or may become actually, presently, prospectively or contingently liable to pay to or for the account of BSH (whether alone or not and in any capacity) under or on any agreement, security or negotiable or other instrument or as a result of any matter or thing or on any account whatsoever, including interest and all amounts for which the Buyer is or may become liable whether as a result of proceedings in Court or otherwise on account of the breach or repudiation by the Buyer of any order or contract for the purchase of goods or services, whether such moneys and amounts arise or are contemplated before or after the date of this deed or as a result of the assignment (with or without a Guarantor's consent) of any debt, liability or this deed and including moneys and amounts which a person would be liable to pay but for the insolvency, liquidation or bankruptcy of that person, **and also** (b) the due performance and observance by the Buyer of all its other liabilities and obligations to BSH, including the covenants, provisions, stipulations, terms and conditions contained or implied in BSH's Terms of Delivery and Sale (as amended from time to time).
2. This Guarantee and Indemnity constitutes a continuing guarantee and indemnity and shall not be considered as wholly or partially discharged by the payment at any time hereafter of any part of the moneys due and payable by the Buyer to BSH or by any settlement of account or any intervening payment or by any other matter or thing whatsoever and shall remain in full force and effect until the whole of all moneys due and payable by the Buyer to BSH and any interest or other moneys have been received by BSH and the other liabilities and obligations of the Buyer have been duly performed.
3. The Guarantors shall (a) pay to BSH on demand by BSH all moneys due and payable by the Buyer to BSH and which have not been paid by the Buyer in accordance with BSH's Terms of Delivery and Sale (or other relevant agreement or instrument) and (b) if the Buyer has not performed or observed any of its other liabilities and obligations to BSH in accordance with BSH's Terms of Delivery and Sale (or other relevant agreement or instrument), perform, or procure the performance of, those obligations (without the need for demand by BSH), in each case whether or not any demand has been made on or proceedings taken against the Buyer in respect thereof and whether or not recourse has been had by BSH to any other security or against any other person.
4. The Guarantors represent and warrant on each day while any money is owing by the Buyer to BSH (with reference to the facts and circumstances at the time) that:
 - (a) they have in full effect the authorisations necessary to enter into this deed, perform obligations under it and allow it to be enforced;
 - (b) their obligations under this deed are valid, binding and enforceable against them in accordance with the terms of this deed and (except in the case of a Guarantor which is an individual) the transactions contemplated by this document are for their commercial benefit;
 - (c) their obligations under this deed rank at least equally with all other unsecured and unsubordinated indebtedness of the Guarantors except liabilities mandatorily preferred by law;
 - (d) they have the power and (except in the case of a Guarantor which is an individual) corporate authority to enter into and observe their obligations under this deed;
 - (e) this deed and the transactions under it do not contravene their obligations or (except in the case of a Guarantor which is an individual) constituent documents or cause a limitation of their powers or the powers of their directors to be exceeded;
 - (f) neither the Guarantors nor (except in the case of a Guarantor which is an individual) any of their subsidiaries have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
 - (g) except in the case of a Guarantor which is an individual, they are properly registered and incorporated as a corporation and validly exist in their jurisdiction of incorporation; and
 - (h) they are solvent and there are no reasonable grounds to suspect that they are unable to pay their debts as and when they become due and payable.
5. If any payment or other transaction in connection with this Guarantee is void, voidable, unenforceable or defective or is claimed to be so and that claim is upheld or settled then:
 - (a) the liability of the Guarantor is to be what it would have been if the payment or other transaction had not been made; and
 - (b) immediately BSH requests it, the Guarantor must do everything necessary to put BSH back into the position it would have been if the payment or other transaction had not been made.

This clause survives any termination or full or partial discharge or release of this deed.

6. The liabilities of the Guarantors under this deed shall not be impaired or discharged by reason of anything which would otherwise reduce or discharge that liability (whether or not a Guarantor, the Buyer or BSH is aware of it or consents to it and despite any legal rule to the contrary), including any time or other indulgence granted by BSH to the Buyer or by reason of any arrangement entered into or composition accepted by BSH modifying (by operation of law or otherwise) any order or contract for the purchase of goods or services or other rights and remedies of BSH against the Buyer.
7. Any settlement, discharge or release between the Guarantor and BSH shall be conditional upon no security or payment to BSH by the Buyer or any other person being avoided or reduced by virtue of any provisions or enactments relating to bankruptcy or liquidation for the time being in force and BSH shall be entitled to recover the value or amount of any such security or payment from the Guarantor subsequently as if such settlement, discharge or release had not occurred.

8. For the consideration aforesaid and as a separate and severable covenant the Guarantors unconditionally and irrevocably hereby jointly and severally agree to indemnify BSH against, and must pay on demand amounts equal to, all damages, loss, liabilities, penalties, costs, charges and expenses, whatsoever which BSH may incur by reason of (a) the non-payment by the Buyer of any moneys due and payable by it to BSH; (b) such moneys not being recoverable from the Buyer for any reason; (c) any other default in the performance of its obligations to BSH including in respect of the supply by BSH of goods and/or services to the Buyer; and (d) the insolvency, bankruptcy, liquidation, appointment of a receiver and manager, administrator, trustee or similar official, provisional liquidator of or to the Buyer or a Guarantor.
9. The indemnity contained in paragraph 8 remains effective even if any of the Buyer's obligations to BSH including in respect of the supply by BSH of goods and/or services to the Buyer or any of the Guarantor's obligations under this deed are or may be unenforceable, invalid or illegal or at any time not immediately enforceable against the Buyer or Guarantor and whether or not BSH knew or ought to have known anything about those matters.
10. A certificate signed by any officer of BSH shall, in the absence of manifest error, be conclusive evidence of the amount owed by the Buyer or Guarantor to BSH on the date specified therein or of any other fact or determination relevant to the rights or obligations of BSH, a Guarantor or the Buyer under this deed.
11. Any demand for payment hereunder shall be in writing by BSH or by the solicitors to BSH and shall be properly served if delivered personally or sent by pre-paid mail or facsimile to the Guarantors at their addresses set out in Item 2 of the Schedule to this Deed or such other address as they may advise BSH as being their new or alternate address for service. Any such demand shall be deemed to be served on the day of delivery (in the case of personal delivery), on the day of transmission (in the case of facsimile transmission) or on the day following that on which it is posted (in the case of sending by pre-paid mail).
12. This Guarantee and Indemnity shall not be determined prejudiced or affected by any change in the constitution, ownership or control of the Buyer, or by the bankruptcy, liquidation, appointment of a receiver and manager, administrator, trustee or similar official, provisional liquidator of or to the Buyer, or by the release or discharge of any Guarantor.
13. In the bankruptcy, liquidation, official management, scheme of arrangement or composition with creditors of the Buyer the Guarantors will not prove in competition with BSH and the Guarantors irrevocably authorise BSH as its agent to prove for all moneys for which the Buyer is liable to the Guarantor, including any moneys which the Guarantor has paid hereunder until BSH has been paid in full in respect of the Buyer's obligations and BSH is satisfied that it will not have to repay any such money.
14. BSH may retain and carry to a separate account and appropriate at BSH's discretion any amounts received in or towards satisfaction of moneys owing to it by the Buyer (including dividends received in a bankruptcy, liquidation, official management, scheme of arrangement or composition).
15. No Guarantor may, until BSH has been paid in full all moneys owed to it by the Buyer and BSH is satisfied that it will not have to repay any such money:
 - (a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence against another Guarantor or the Buyer or which a Guarantor or the Buyer may have against BSH, which might reduce or discharge a Guarantor's liability under this deed;
 - (b) claim or exercise a right of subrogation or contribution or otherwise claim the benefit of a guarantee and/or indemnity, irrespective of whether or not that guarantee and/or indemnity relates to moneys owing by the Buyer to BSH, is given by a Guarantor or is in favour or for the benefit of BSH, and any money a Guarantor receives in breach of this paragraph (b) will be held on trust for BSH; or
 - (c) demand, or accept payment of, any money owed to the Guarantor by the Buyer.
16. BSH may at any time or times at its absolute discretion and without giving any notice whatsoever to the Guarantors refuse further credit or supplies of goods or services to the Buyer and grant to the Buyer any time, credit or other indulgence and compound with it without discharging or impairing the Guarantors' liability under this Guarantee and Indemnity.
17. Each guarantee, indemnity and other obligation of a Guarantor in this deed is a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation and is in addition to, and not prejudiced by, any other guarantee and/or indemnity now or later held by BSH. In order to give effect to this Guarantee and Indemnity the Guarantors declare that BSH shall be at liberty to act as though the Guarantors were the principal or primary debtor and the Guarantors hereby waive all and any of their rights as sureties which may at any time be inconsistent with any of the above provisions.
18. This Guarantee and Indemnity is valid and fully enforceable against any executing party notwithstanding that one or more of the persons named in this Guarantee and Indemnity as a guarantor may not execute, may execute in a defective manner, or may not be bound by, this Guarantee and Indemnity.
19. The Guarantors waive any right which they may have to require BSH to proceed against or enforce any other right, power, remedy or security against or to claim payment from the Buyer or any other person before claiming from the Guarantors under this deed.
20. The Guarantors must pay on demand all costs and expenses of BSH in connection with enforcing this deed and all taxes, duties, imposts and charges in connection with this deed.
21. The Guarantors must pay to the Lender on demand interest on any money owing by the Buyer to BSH which is due and payable by a Guarantor (including on unpaid interest under this clause) but unpaid from and including the due date (or, for an amount payable by reimbursement or indemnity, any earlier date the amount was incurred), up to but excluding the date of actual payment, at the rate of 4% per year above the 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (of if no such rate is published, another rate set by BSH in good faith).
22. All payments by the Guarantor under this deed must be made without set-off, counterclaim, deduction or withholding.
23. BSH may assign its rights under this deed and is not obliged to give notice to, or obtain the consent of, the Guarantors in respect of the deed. No Guarantor may assign or otherwise deal with its rights, interests or obligations under this deed without the prior written consent of BSH.
24. This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
25. This deed may only be altered in writing signed by each party.
26. Each party must do, at its own expense, everything reasonably necessary to give full effect to this deed.
27. This Guarantee and Indemnity is governed by the laws of the State of Victoria and each Guarantor unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
28. The failure or delay of BSH at any time to require performance by the Guarantors of an obligation under this deed is not a waiver of BSH's right at any time to later insist on performance of that or any other obligation under this deed. A waiver by BSH in relation to this deed is effective only if in writing.
29. BSH need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in this deed. Each such indemnity or reimbursement obligation is separate and independent of each other obligation of the party giving it, is absolute, irrevocable, unconditional and payable on demand and continues despite any settlement of account, termination of this deed or anything else.
30. To the extent permitted by law this deed prevails to the extent of inconsistency with any law and any present or future legislation operating to reduce a Guarantor's obligations under this deed or the effectiveness of BSH's rights or powers is excluded.
31. A provision of this deed that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of this deed in any jurisdiction.
32. Any undertaking, representation, warranty or indemnity by two or more parties binds them jointly and severally.
33. This deed may be executed in any number of counterparts. A counterpart unconditionally executed and delivered by a party binds that party.

In Witness Whereof this Deed has been duly executed by the Guarantors on the date set out in Item 1 of the Schedule to this Deed.

Signed Sealed and Delivered by [#] in the presence of

Signature of witness: _____ [name of signatory]: _____

Name of witness (print): _____

Signed Sealed and Delivered by [#] in the presence of

Signature of witness: _____ [name of signatory]: _____

Name of witness (print): _____

Signed Sealed and Delivered by [#] in the presence of

Signature of witness: _____ [name of signatory]: _____

Name of witness (print): _____

Signed Sealed and Delivered by [#] in the presence of

Signature of witness: _____ [name of signatory]: _____

Name of witness (print): _____

Schedule

Item 1.

Date of Deed: The _____ day of _____ 20____

Item 2.

The Guarantors:

Full Name: _____

Residential Address: _____

Full Name: _____

Residential Address: _____

Full Name: _____

Residential Address: _____

Full Name: _____

Residential Address: _____

Full name: _____

Residential Address: _____

Item 3.

The Buyer: _____

Full Name: _____

Address: _____