

GRAHAM BAILEY TERMS AND CONDITIONS

1. ACCEPTANCE

By this Deed ("the agreement") Graham Bailey Pty Ltd trading as Baileys Marine Fuels Australia (BMFA) may accept this application by notice to the Applicant in writing or by extending credit. Upon acceptance, the terms and conditions contained, or incorporated by reference, in this agreement will apply and binding on the parties and the parties agree that this agreement shall operate as a Deed between the Applicant, any guarantors and Graham Bailey Pty Ltd.

2. USE OF THE ACCOUNT

- a) The Applicant or anyone authorized by the Applicant to use the account may obtain goods or services on credit from BMFA.
- b) The Applicant is wholly responsible and liable for any account opened in the Applicant's name. No account may be assigned to any other party under any circumstances whatsoever.

3. PAYMENT and SECURITY

- a) The Applicant agrees to pay the amount included on any invoice or statement for goods or services provided by BMFA, plus any additional fees and charges applicable.
- b) Where more than one person or entity is the 'Applicant' then such persons and/or entities shall be jointly and severally liable to pay all amounts, and comply with all obligations, owed to BMFA.
- c) Statements will be issued bimonthly with the due date for payment of the total amount owed to BMFA in respect to goods and services supplied and included in any statement or invoice rendered to the Applicant is the 30th of the month for transactions made between the 1st and the 15th of the month and the 15th of the following month for transactions made between the 16th and the 31st.
- d) Account payments made by credit / debit card will incur a fee not more than the average annual cost of accepting the card type as provided by American Express, VISA and Mastercard.
- e) Time shall be of the essence with regard to the payment of all monies due and payable under the terms of this agreement.
- f) BMFA can for any reason whatsoever (in its sole discretion) and without incurring any liability to the Applicant (including where the Applicant is in default of any obligation under this agreement) cancel this agreement or withhold supply of any goods or services to the Applicant.
- g) If requested at any time by BMFA to do so, the Applicant agrees to provide security to BMFA for the payment of any amount outstanding under this agreement. Such security is to be provided for an amount and in a form acceptable to BMFA in its sole discretion. BMFA can require the Applicant to provide security for payment prior to supply of any fuel by way of a credit card voucher duly executed by the Applicant but with the amount being left blank. The Applicant by execution of this application authorizes BMFA to insert the relevant amount and negotiate the voucher and complete the payment transaction in the event of non payment of any sum due to BMFA under this agreement.
- h) Payment to BMFA of any sums due shall be made to its address shown on the invoice or statement or to such other address as may be nominated by BMFA from time to time.

4. PRICES

4.1 These provisions apply to supply from BMFA owned and operated fixed fuelling facilities.

Prices are for bulk supply and shall unless otherwise stated be;

- a) either as shown in the latest Customer Price Advice, as quoted or as displayed on the dispensing equipment.
- b) in AUD per litre.
- c) inclusive of any port differentials including third party costs.
- d) subject to additional fees for deliveries in drums, pails or any other specially requested packages.
- e) subject to an increase or reduction by reason of any change in Supplier Price Movements, Supplier Contract Prices and Customer Price Advices applicable at the date of delivery.
- f) exclusive of Goods and Services Tax (GST) unless displayed on the Dispensing Equipment where the price displayed will be inclusive of all charges including GST.
- g) inclusive of all duties and taxes unless accompanied by an endorsed Customs Declaration Form authorising supply of duty free goods to the vessel.

4.2 These provisions apply to bulk supply from non BMFA owned fixed fuel facilities

Prices quoted are for bulk supply and shall unless otherwise stated be;

- a) either as shown in the latest Customer Price Advice or as Quoted.
- b) quoted in AUD per litre (equivalent prices per metric tonne may be provided).
- c) subject to any port differentials including third party costs.
- d) subject to additional fees for deliveries in drums, pails or any other specially requested packages.
- e) subject to an increase or reduction by reason of any change in the Supplier Price Movements, Supplier Contract Prices and Customer Price Advice applicable at the date of delivery.
- f) exclusive of Goods and Services tax (GST).
- g) inclusive of all duties and taxes unless accompanied by an endorsed Customs Declaration Form authorising supply of duty free goods to the vessel.
- h) be exclusive of any imposts, dues and charges of any description levied or imposed directly or indirectly on the supplied product or on BMFA in respect thereof in the country in which delivery takes place, and if one of these charges is applied, it shall be paid by the Applicant to BMFA at the rate applicable on the actual date of delivery, over and above the said price.

5. PRODUCT AVAILABILITY AND DELIVERY (This provision applies to bulk supply from non BMFA owned fixed fuel facilities)

- a) BMFA is not liable for any loss or delay which may be caused by or contributed to reason of temporary unavailability of product; and no representation is made by BMFA that product ordered can be delivered on or before the date requested by the Applicant.
- b) The Applicant must ensure that BMFA or its servants or agents are given safe and unimpeded access to the required delivery location.
- c) Unless otherwise agreed at the time the order is made, BMFA shall not be required to effect delivery outside normal working hours, the ports limits or delivery zone.
- d) The Applicant must pay to BMFA all and any costs incurred by BMFA in the event the delivery is refused or delayed for any reason which is beyond the control of BMFA.
- e) Deliveries shall be free alongside the ship (FAS) in accordance with the ICC Incoterms current as the date of delivery except that if, in the opinion of BMFA, delivery is impracticable alongside the ship, it shall be made at the closest point to the ship that BMFA consider practicable.
- f) If requested by BMFA, the Applicant must provide BMFA at no cost to BMFA, with a clear berth alongside the Applicant's vessel for executing a delivery by barge.
- g) It is the Applicant's responsibility, at its risk, to provide safe reception for the full quantity of marine fuel ordered. The Applicant indemnifies BMFA and its servants, agents and suppliers against any damage or loss howsoever caused to any property occurring during delivery unless such loss and damage is directly caused by or contributed to BMFA or its servants, agents or suppliers.
- h) True bulk deliveries may be organized subject to availability and the minimum quantities set. If in the opinion of BMFA a bulk delivery is not feasible, BMFA reserves the right to deliver the marine product in drums with the consent of the Applicant first being obtained which consent shall not be unreasonably withheld. Where bulk quantities are ordered at a level below the minimum bulk quantity indicated, BMFA will use its best endeavours to supply such quantity in bulk but reserves the right to charge the price which would apply for delivery in drums for such delivery.
- i) The Applicant shall provide adequate length of hose and pressure to load the marine product into the vessel's tanks under normal conditions. Loading requiring hoses exceeding 20 meters (65.6 feet) in length shall be the responsibility of and be at the cost of the Applicant. The Applicant must take all necessary steps to receive the marine product at the agreed time of delivery and to facilitate the supply operations. The Applicant is responsible for connecting the hoses to the vessel's deck installations and for giving the necessary instructions for commencement and termination of pumping of each grade of marine product. The Applicant must ensure that the delivery time is kept to a minimum and that no delays are caused to BMFA or its servants or agents.
- j) BMFA shall not be liable for damage or prejudice resulting from any delay in commencement or completion of the delivery operations on board the vessel and without limitation BMFA shall in particular not be liable for demurrage due to;
 - (i) congestion of the terminal,
 - (ii) previous commitments of the available barges,
 - (iii) inadequate tank storage capacity,
 - (iv) misidentification of storage tanks,
 - (v) non-observance of safety rules during delivery of products

6. PRODUCT GRADES AND MEASUREMENT (This provision applies to bulk supply from non BMFA owned fixed fuel facilities)

- a) BMFA's measurements shall be accepted by the Applicant as being conclusive proof of the quantities delivered and shall be deemed to have been correctly made.
- b) In the event of bulk delivery by barge, the quantity shall be measured when the barge tank is loaded and shall be noted in writing on the delivery receipt. Any measurement taken on board the ship by the Applicant shall not be binding on BMFA. The Applicant can if prior arrangements are made, be present when measurements are made by BMFA.
- c) BMFA is not required to consider any complaint concerning quantities of products in drums, pails or packs unless the complaint is made in writing and given to BMFA's representative at the time of delivery.
- d) Unless written evidence to the contrary is supplied by the Applicant within 30 days of delivery thereof, the product will be deemed to have complied with all applicable specifications relevant to such product and otherwise be deemed to be product of the type and characteristic ordered by the Applicant.
- e) BMFA is not in any event liable for any non conformity of the marine products with any relevant specification where such non conformity arises from any act or omission of the Applicant including without limitation non conformity caused by or contributed to storage or transport in portable containers provided by the Applicant.

7. SHIPS RECEIPT (This provision applies to bulk supply from non BMFA owned fixed fuel facilities)

- a) The Applicant or its agent must sign a ship's receipt in the form approved by BMFA for all deliveries of marine products. As a minimum the certificate will confirm that the marine products have been duly delivered and accepted as regards not only quantity but also grade and delivery terms.
- b) Where the Applicant is not the owner of the vessel to which the product is supplied, the Applicant undertakes to produce a certificate from the ship-owner stipulating that the Applicant is authorized to give such certificate on behalf of the ship-owner.

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8. CHARGES

- a) An Account Opening and Induction fee of \$55.00 will be charged for each new BMFA Business account.
- b) Overdue accounts and direct debit authorities which are dishonoured will incur a \$35.00 administration fee.
- c) Replacement fuel cards will incur a \$20.00 replacement card fee.
- d) A default charge of 2% per month applies to amounts not paid by the due date.
- e) Default charges shall accrue daily on the outstanding balance and shall be compounded monthly.
- f) The Applicant agrees to pay any recovery and or enforcement expenses incurred by BMFA in enforcing its rights under this agreement or recovering amounts owed, including without limitation, any fees paid to BMFA's solicitors (on an indemnity basis), as well as any charges relating to dishonoured cheques.
- g) This agreement is governed by and construed in accordance with the laws of Western Australia, and the Applicant agrees to submit to the exclusive jurisdiction of the Courts in that State. The Applicant hereby irrevocably waives any objection to the venue of any legal process selected by BMFA.
- h) The Applicant agrees that any claim or dispute under or arising out of this agreement shall be dealt with as a case under the general procedure as envisaged by the Magistrates Court (Civil Proceedings) Act 2004 (WA) ("the Act") and that if BMFA is a successful party in the case then the Applicant agrees to pay all of the costs incurred by BMFA regardless of the value of the claim or the relief claimed, and the Applicant agrees, as envisaged by s25(7) of the Act, to pay BMFA's costs on an indemnity basis or under the applicable costs determination whichever is the greater.
- i) The Applicant agrees to pay all government charges and duties of any kind incurred or in connection with the operation of the account, including without limitation, all stamp duties, financial institution duties and any other charges or duties of any kind.
- j) Payment received by BMFA shall be applied firstly in payment of any default charges, secondly, in payment of any enforcement charges, thirdly, in payment of any government charges and duties and fourthly in payment for goods and services supplied.

9. ADDITIONAL CHARGES (This provision applies to bulk supply from non BMFA owned fixed fuel facilities)

- In addition to the price of the product, the Purchaser must pay any relevant additional charges, at the rates applicable at the time of supply for such work or services at the port in question relating to but not limited to the following:
- a) Additional charges that apply to all other packaging other than bulk requested by the Applicant shall be subject to inquiry with BMFA.
 - b) Delivery made in bulk for any quantity below the minimum bulk quantity indicated and any delivery made by pumping from drums shall be regarded as a drum delivery where additional fees will apply.
 - d) Charges for all work related to the delivery outside normal working hours, on weekdays that are public holidays or normally non-business days, or outside the normal boundaries of the port, including for waiting time. Such charges are to be in accordance with rates set by BMFA from time to time.
 - e) The costs of lighterage or other transport of any kind reasonably incurred by the BMFA for the purposes of the delivery. BMFA shall use its best efforts to notify the Applicant before using a barge or any other means of transport involving additional costs but if prior notification is not practicable in the circumstances the Applicant shall nevertheless be obliged to pay such costs incurred.
 - g) All deliveries to vessels that are inaccessible to road transport shall incur an additional charge in accordance with rates set by BMFA from time to time.
 - h) Costs of any necessary hire of additional equipment, including but not limited to tugboats, vessels, cranes or hoses necessitated by specific local regulations are to be paid by the Applicant in accordance with rates set by BMFA from time to time.
 - i) Where any delivery is required to a port not listed in the Price List, the Applicant must pay the price applicable in the listed port closest to the delivery port, plus all additional costs incurred by BMFA in effecting delivery at the requested port.
 - j) If the Applicant for any reason whatsoever fails or is unable to take delivery when it is made, any costs BMFA thereby incurs will be paid by the Applicant.
 - k) Any duties or taxes which may be incurred by reason of BMFA being unable to effect delivery of marine products from bonded stock, plus any GST thereon shall be paid by the Applicant.

10. MAGNETIC CARD SALES, EQUIPMENT DAMAGE AND CLEANUP

- a) The Applicant must notify BMFA at the earliest available opportunity of any damage to the refuelling equipment whether the damage has been caused by or contributed to the Applicant or not.
- b) The Applicant accepts responsibility for and indemnifies BMFA against all and any costs, loss, expense or damages caused or incurred in connection with any fuel spillages caused or contributed to by the Applicant. The Applicant acknowledges that he/she has been notified of the after hours emergency phone number and the whereabouts of the emergency stop buttons in case of spillage or mishap.
- c) Without limitation of the generality of the foregoing the Applicant is liable for and releases and indemnifies BMFA against any loss, liability or cost arising in connection with any:
 - (i) investigations, remediation, or other action carried out by BMFA in respect of any contamination, pollution, spill or leakage caused by or contributed to the Applicant;
 - (ii) notice issued or action taken by the Minister pursuant to the Marine Pollution Act 1987 (NSW) in respect of the premises arising out of any discharge of oil caused by or contributed to the Applicant;

- (iii) environment protection notice issued pursuant to the Protection of the Environment Operations Act 1997 (NSW) in respect of the premises arising out of any pollution, spill or leakage caused by or contributed to the Applicant;
- (iv) preliminary investigation, management, or ongoing maintenance orders issued pursuant to the Contaminated Land Management Act 1997 (NSW) in respect of the premises arising out of any contamination caused by or contributed to the Applicant;
- (v) breach of any environment law by the Applicant relating to the supply of any goods or products (including marine lubricants) at the premises;
- (vi) any claim for damages, compensation, loss, injury or death caused by or contributed to or arising out of or otherwise in respect of any contamination or pollution present in, over or under, emanating from or migrating to or from the premises caused by or contributed to the Applicant.
- (vii) breach of BMFA's contractual obligations to third parties caused by or contributed to the Applicant.
- (viii) claim for damages, compensation, loss, injury or death caused by or contributed to or arising out of the Applicant's misuse of the refuelling equipment or any damage to the premises caused by or contributed to the Applicant

For purposes of this agreement the word 'premises' means and includes any premises, facility, installation, structure, barge, jetty or other object (located anywhere including off shore) which is owned, occupied, or operated by BMFA

11. CHANGES OF OWNERSHIP/REGISTERED DETAILS

- a) The Applicant shall no later than 14 days prior to any proposed change of its ownership or registered details, or alteration or addition to the share holding, directors or internal structure of the Applicant, or change of ownership of any vessel belonging to the Applicant, notify BMFA of the proposed change in writing.
- b) BMFA reserves the right to cease supply of goods or services until terms acceptable to BMFA have been agreed with any new owner, director or shareholder.
- c) The Applicant remains liable for all sums due under this agreement unless BMFA has expressly released the Applicant from such liability in writing.

12. TRANSFER OF RISK IN THE GOODS

- Except as may be otherwise agreed, deliveries of any goods or product at a delivery port shall be deemed to be complete and risk shall pass to the Applicant either:
- a) for bulk deliveries as the product pass the flange connecting the delivery facilities with the receiving facilities provided by the Applicant; or
 - b) for delivery in containers upon delivery of the product alongside the ship according to the ICC Incoterms which are current as the date of delivery, or when they have been delivered to the point closest to the vessel that BMFA considers practicable.

13. RETENTION OF TITLE OF GOODS

- a) As long as the Applicant owes BMFA any part of the price of the goods or products (including marine lubricants) supplied at any time BMFA shall retain the legal title to all goods supplied and not yet used or resold in the ordinary course of business. When such goods are used, even where there is commingling with other goods or loss of identity, the legal title to the resultant (or mixed) product shall vest in BMFA. The proceeds of sale of the goods or resultant products shall be received by the Applicant as agents of BMFA and such proceeds are to be kept in a separate account or are to be accounted for upon demand.
- b) If goods are in the possession of the Applicant to which title has not passed, the Applicant is under an obligation to retain the goods in a good and merchantable condition and to ensure that they are stored separately and marked the property of BMFA until either paid for or collected and to allow BMFA and/or its servants and/or agents on to the premises (or vessel) where they are stored separately and marked as the property of BMFA until either paid for or collected and to allow BMFA and/or its servants and/or agents on to the premises (or vessel) where they are stored for the purpose of collecting the goods.

14. HEALTH SAFETY AND THE ENVIRONMENT

- a) The Applicant must ensure that its personnel (and customers) have and are familiar with Material Safety Data Sheets ("MSDS") and any other information on health, safety and the environment (the "other information") provided from time to time by BMFA.
- b) The Applicant must ensure that the provisions of any MSDS or recommendations in other information, relating to the handling and utilization of the marine products are observed and BMFA shall not be liable for any failure on the part of the Applicant to do so.
- c) The Applicant indemnifies BMFA against any action, claims or proceedings whatsoever arising from any default in the observance by the Applicant of the provisions of this clause.
- d) BMFA shall not be liable for losses or damage suffered by the Applicant its servants or agents, arising from risks inherent in the nature of the marine products delivered under the provisions of this agreement.
- e) The Applicant must ensure all refuelling personnel (and customers) have successfully completed the BMFA Induction Program prior to accepting delivery of marine products.

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15. LIABILITY

- a) Without limitation of any other indemnity in this agreement, the Applicant indemnifies BMFA and holds it harmless against any costs, loss, expense or damage of BMFA arising or contributed to, whether directly or indirectly, from any breach of the terms and conditions by the customers action arising from any act or omission of the Applicant, in connection with the supply of any goods, products (including marine lubricants) or which otherwise arises in connection with this agreement.
- b) BMFA shall not (unless required by any statute or provision of the common law) be liable to the Applicant for any loss or damage whatsoever suffered by the Applicant whatsoever which arises in connection with the supply of any goods, products (including marine lubricants) or which otherwise arises in connection with this agreement including any breach thereof by BMFA and including any act or omission by BMFA or its officers, servants or agents.
- c) In any event and without limitation of the foregoing, the period of limitation for any action against BMFA arising out of this agreement is one year after the date of delivery of the product in connection with which such action is brought and BMFA shall be discharged from all liability whatsoever unless an action is brought within this period.

Signature and acceptance of Terms and Conditions by Applicant

I/We have read the Terms and Conditions contained in this application and agree that the standard conditions of sale as set forth in this application shall apply to all sales of goods and provision of services by BMFA to the Applicant or any one authorized by the Applicant to use the account.

PRIVACY AGREEMENT

BMFA needs to collect Personal Information about the Applicant ("you"), for the purposes of your credit application. If BMFA cannot collect this information, it will be unable to process your application. BMFA respects your privacy and will only use or disclose personal information in accordance with the *Privacy Act 1988 (Cth)*. You can assess your personal information in accordance with the *Privacy Act 1988*. To request access, ask a privacy-related question or get a copy of BMFA's Privacy Policy, please write to:

The Privacy Compliance Officer, Graham Bailey Pty Ltd, Level 24, 2 Market Street SYDNEY, NSW 2000.

"Personal information" means information about you collected by BMFA in this Application form and from other sources, including information about you, your financial circumstances, credit worthiness, credit history, credit standing and credit capacity.

By submitting this Application, you agree that, subject to the *Privacy Act 1988*, BMFA may:

- disclose Personal Information to BMFA's associated entities or third parties engaged to provide services to BMFA;
- obtain credit reports about you from credit reporting agencies to assess your application for commercial credit or to collect overdue payments from you;
- obtain and verify Personal information about you from a motor vehicle or land title registry or from a business that provides commercial credit worthiness information;
- provide to and exchange your Personal Information with any person whose name you give to BMFA in connection with your credit Application or facility;
- provide to and exchange your Personal Information with BMFA's collection agents if you default on your credit obligations;
- disclose your Personal Information to credit reporting agencies before, during or after providing credit to you. This includes, but is not limited to:
 - identity particulars – name, sex, address (and the previous two addresses), date of birth, employer and drivers licence number;
 - the fact that you have applied for credit and the credit limit/amount, and that BMFA is a credit provider to you;
 - advice about payments at least 60 days overdue and which are in collection (and advice that payments are no longer overdue or in collection);
 - advice that cheque(s) drawn by you which are more than \$100 has been dishonoured;
 - the fact that you have committed a serious credit infringement; and
 - the fact that credit provided to you has been discharged.
- exchange your Personal Information with another credit provider who is named in your Application or a credit report issued by a credit reporting agency or who proposes to provide credit to you or has provided credit to you. This is for purposes including but not limited to:
 - assessing your credit worthiness, this Application and any subsequent application by you for personal or commercial credit;

16. ENTIRE CONTRACT

This contract contains all the terms and conditions with respect to the sale of and purchase of the goods and supersedes all enquiries, proposals, agreements and negotiations, whether written or oral prior to the date of execution of this agreement. No modifications of these terms and conditions shall be of any force unless the modification is reduced to writing and authorized by BMFA and signed by the Applicant and no modification shall be affected by the acknowledgement or acceptance of purchase order forms containing different conditions.

17. ASSIGNMENT

BMFA can assign this entire agreement or any payment, right, title, interest or other benefit in or under the agreement at any time and shall provide reasonable notice of any such assignment to the Applicant. The Applicant waives its right to object to any such assignment.

- assisting you to avoid defaulting in your credit obligations;
- assessing your position if you fall into arrears;
- notifying other credit providers of your default;
- exchanging information about your credit obligations with other credit providers; and
- administering your credit facility.

You also agree that, when, for the purposes of your credit Application, you provide BMFA with personal information about another person, you must, prior to providing such information, inform that person that:

- you intend to provide his/her personal information to BMFA for the purposes of your credit Application;
- without that information, BMFA may not be able to process your Application; and
- that person can access the information about him/her held by BMFA by writing to the Privacy Compliance Officer at the address above.

You also agree that BMFA may:

- use your Personal Information to send you marketing material and offers about products and services including products and services supplied by third parties. If you do not wish to receive this material, please write to BMFA's Privacy Compliance Officer at the address above;
- monitor and record your telephone conversations with BMFA's staff for training, recording and service quality control purposes; and
- provide Personal Information, as reasonably necessary, to a likely or actual buyer of the whole or part of BMFA's business.

APPLICANT'S ACKNOWLEDGEMENTS

The Applicant acknowledges that he/she/it has reviewed BMFA Standard Terms and Conditions prior to the signing of this Application.

The person(s) signing this Application warrants that he/she/they have read and fully understands BMFA Standard Terms and Conditions and that:

- a) He /she/they have authority to sign on behalf of and to bind the Applicant;
- b) The information provided on behalf of the Applicant and any signatory is true and correct in every detail;
- c) He /she /they agree to provide such updated and regular financial and trading information as BMFA may require from time to time;
- d) He/she/they indemnify BMFA in respect to any claims or actions against it or losses suffered by it in connection with obtaining or providing information concerning the Applicant; and
- e) He/she/they agree to the above conditions regarding BMFA's use and disclosure of personal information.

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DEED OF GUARANTEE INDEMNITY AND CHARGE

TO: Graham Bailey Pty Ltd. A.C.N. 008 677 370

In consideration of BMFA doing any one or more of the following, at the request of the Guarantor, for the business purposes of the Applicant:

- providing or continuing to provide Goods, or
- giving credit to the Applicant, or
- not commencing or not continuing legal action against the Applicant,

the Guarantor enters this Deed and agrees to perform his, her or its obligations under this Deed.

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Deed, unless the context requires otherwise:

"BMFA" means Graham Bailey Pty Ltd. A.C.N. 008 677 370 and its associated and related companies and successors or assigns.

"Applicant" means the person or company or other body set out in Item 1 of the Schedule.

"Deed" means this Deed of Guarantee, Indemnity and Charge.

"Goods" means all goods, produce, products, merchandise and services which have been supplied or which may be supplied in the future at the Applicant's request on credit extended by BMFA to the Applicant.

"Guarantor" means any person or company or other body set out in Item 2 of the Schedule or any other person signing or purporting to sign this Deed as Guarantor and that person's personal representative.

"Law" includes common law, principles of equity and any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

"Money" means all moneys which are now payable or which may become payable in the future (whether contingently or otherwise) by the Applicant to BMFA for any reason, whether alone or jointly with another person. The term includes, without limitation, money owed by the Applicant for the supply of Goods, all money BMFA pays or becomes liable to pay at the request of the Applicant (including loans), amounts or obligations assigned to BMFA before or after the date of this Deed and all losses and expenses (including taxes, fees, charges, interest and legal costs on a full indemnity basis) arising directly or indirectly from any dealing or default by the Applicant or by the Guarantor or otherwise incurred by BMFA in connection with entering, administering, enforcing or terminating this Deed.

"Personal Information" has the meaning given to it in the Privacy Act.

"Personal Information about the Guarantor" means Personal Information (if any) about the Guarantor collected by BMFA in connection with this Deed that includes but is not limited to information about the Guarantor's financial circumstances, credit worthiness, credit history, credit standing and credit capacity.

"Privacy Act" means the *Privacy Act 1988 (Cth)*.

"Property" means all property of the Guarantor, wherever situated, including without limitation all real and personal property, business and trading assets, stock, choses in action, goodwill and uncalled capital and called but unpaid capital from time to time.

1.2 Interpretation

In this Deed, "includes" and "including" are not words of limitation; the singular includes the plural and vice versa; a gender includes all genders; and "person" includes an individual, a body corporate, a partnership or any unincorporated association.

2. GUARANTOR OBLIGATIONS

The Guarantor agrees:

- a) to unconditionally and irrevocably guarantee and be responsible for the due and punctual payment of the Money by the Applicant, notwithstanding that at times there may be no Money owed by the Applicant to BMFA or any Guarantor's obligations;
- b) to pay the Money to BMFA on demand without set-off, counterclaim or deduction;
- c) to waive any rights the Guarantor has of first requiring BMFA to enforce any other right or power against the Applicant or to claim payment from the Applicant or any other person before claiming from the Guarantor under this Deed;
- d) that BMFA may at any time in its discretion and without giving any notice to the Guarantor refuse to provide further Goods to the Applicant;
- e) that where the Guarantor consists of more than one person, this Deed is enforceable against all persons signing as Guarantor together and against each Guarantor separately;
- f) that where the Guarantor has the right to prove in any insolvency administration of the Applicant or another guarantor of the Applicant's obligations or to claim an amount from the Applicant or another guarantor of the Applicant's obligations under a right of indemnity, the Guarantor may do so only with BMFA's consent and must hold any dividends received on trust for BMFA;
- g) that the Guarantor will provide BMFA with information concerning the Guarantor's financial position, business, assets and (where the Guarantor is a company) its shareholders and any person or entity related to or associated with the Guarantor as may be reasonably required by BMFA from time to time.

3. GUARANTOR ACKNOWLEDGEMENTS

The Guarantor acknowledges that:

- a) it has read and understood this Guarantee;
- b) BMFA has afforded it full and unrestricted opportunity to seek independent legal advice on the Guarantor's obligations under this Deed prior to signing this Deed and has strongly recommended that it obtain independent legal advice;

c) it has not relied upon any representation made by BMFA or any of BMFA's servants or agents in agreeing to guarantee the obligations owed by the Applicant to BMFA;

d) it has made his own enquiries of the Applicant regarding the Applicant's past and prospective dealings with BMFA and is satisfied as to the extent of its obligations as Guarantor under this Deed;

e) BMFA is under no obligation to notify it of any changes to BMFA's trading terms or dealings with the Applicant, even if these changes increase the Guarantor's liability under this Deed;

f) this Deed is a continuing guarantee to BMFA for the Money;

g) BMFA is not obliged to make any demand of the Applicant or claim on any other security before requesting payment of the Money by the Guarantor;

h) BMFA's rights under this Deed are not affected by any act or omission by BMFA or by anything else that may affect those rights at Law or otherwise, including:

- (i) the variation or replacement of BMFA's agreement with the Applicant;
 - (ii) arrangements BMFA makes with the Applicant such as releases or time concessions;
 - (iii) the fact that BMFA releases, loses the benefit of, does not obtain or fails to register any security;
 - (iv) the fact that BMFA releases any other guarantor of the Applicant's obligations;
 - (v) the fact that the obligations of another guarantor of the Applicant's obligations may be unenforceable or that another guarantor has failed to effectively guarantee the Applicant's obligations;
 - (vi) any legal limitation, disability, incapacity or other fact (actual or asserted) relating to the Applicant, the Guarantor or any other person (irrespective of whether BMFA had or should have had knowledge of that fact); and
 - (vii) any fact which could or might have the effect of prejudicing or discharging the Guarantor's liability under this Deed;
- (i) this Deed is enforceable against each person signing as Guarantor even if any person proposed or contemplated to sign this Deed does not in fact do so;
- (j) BMFA may at any time release or discharge any Guarantor from the Guarantor's obligations under this Deed or grant time to pay or other indulgence, accept a composition from or enter other arrangements with the Applicant or any Guarantor, delay or make mistakes or omissions without affecting the liability of any other Guarantor under this Deed;
- (k) any payment which is made by or on behalf of the Applicant and which is later avoided by the application of any Law shall be deemed not to discharge the Applicant's indebtedness and in such a case, the parties are restored to the position which each respectively would have had if the payment had not been made;
- (l) the Guarantor's obligations under this Deed are valid and binding, that if the Guarantor is a corporation it benefits under this Deed, that the Guarantor is solvent and does not enter this Deed in the capacity of trustee of any trust or settlement; and
- (m) the Guarantor will not be entitled to the discharge of any security which secures the Guarantor's obligations under this Deed until all Money has been paid to BMFA and the Guarantor has provided evidence to BMFA's reasonable satisfaction that no further Money will become owing.

4. INDEMNITY

a) The Guarantor indemnifies BMFA against any and all losses and expenses of any nature (including stamp duty if any and legal costs on a full indemnity basis) which arise in any way out of BMFA's dealings with the Applicant or the Guarantor, including losses and expenses incurred if the Applicant or the Guarantor does not, is not obliged to or is unable to pay the Money to BMFA when due or in connection with any person exercising or not exercising rights under this Deed.

b) It is not necessary for BMFA to incur expense before enforcing a right of indemnity under this Deed.

c) The indemnity in clause 4(a) is a continuing obligation, independent of the Guarantor's other obligations under this Deed.

5. CHARGE

For the purpose of securing payment to BMFA of the Money, the Guarantor:

- a) agrees to deliver to BMFA, within seven (7) days of written demand, a mortgage in respect of any Property in a form acceptable to BMFA together with any documents required to obtain registration of the mortgage;
- b) charges to BMFA all its Property (wherever situated) to secure its obligations under this Deed and authorises and consents to BMFA lodging a caveat (in a form and subject to any conditions as BMFA sees fit) upon the title to the Property in BMFA's absolute discretion; and
- c) irrevocably appoints BMFA and persons nominated by BMFA separately as the attorney of the Guarantor with power to sign and lodge such caveat or other similar document to give effect to this Deed.

GRAHAM BAILEY TERMS AND CONDITIONS

6. MISCELLANEOUS PROVISIONS

- a) If any provision of this Deed is or becomes void or unenforceable, it may be deleted from this Deed without any effect on the validity of the remainder of this Deed.
- b) A certificate signed by a Director, Secretary or other officer of BMFA shall be prima facie evidence of the amount of the Money owed by the Applicant or Guarantor (or both) at that time.
- c) Each party agrees to promptly do all things reasonably necessary or desirable to give full effect to this Deed and the transactions contemplated by it, including obtaining consents and signing documents.
- d) Time is of the essence of this Deed.
- e) BMFA may assign or otherwise deal with its rights under this Deed in any way it considers appropriate in its absolute discretion.
- f) If any provision of this Deed is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed without affecting the validity or enforceability of the remaining provisions of this Deed.
- g) This Deed will be governed by the laws of the State or Territory where BMFA has its registered office or such other State or Territory as BMFA in its sole discretion determines. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory determined in accordance with this clause.

7. PRIVACY

- a) BMFA needs to collect Personal Information about the Guarantor for the purposes of this Deed. If BMFA cannot collect this information, it may be unable to process the credit application by the Applicant. BMFA will only collect, use and disclose Personal Information about the Guarantor in accordance with the Privacy Act.
- b) The Guarantor can access Personal Information about the Guarantor held by BMFA in accordance with the Privacy Act. To request access, ask a privacy-related question or request a copy of BMFA's Privacy Policy Statement, the Guarantor must write to the Privacy Compliance Officer, Caltex Australia Petroleum Pty Ltd, Level 24, 2 Market Street, SYDNEY, NSW 2000.
- c) The Guarantor agrees that, subject to the Privacy Act, BMFA may:
- (i) disclose Personal Information about the Guarantor to BMFA's associated entities or third parties engaged to provide services to BMFA;
 - (ii) obtain credit reports about the Guarantor from credit reporting agencies to assess the Applicant's application for commercial credit or to collect overdue payments from the Guarantor;
 - (iii) obtain and verify Personal Information about the Guarantor from a motor vehicle or land title registry or from a business that provides commercial credit worthiness information;
 - (iv) provide to and exchange Personal Information about the Guarantor with any person whose name the Guarantor provides to BMFA;
 - (v) provide to and exchange Personal Information about the Guarantor with BMFA's collection agents if the Guarantor defaults on its obligations under this Deed;
 - (vi) disclose Personal Information about the Guarantor to credit reporting agencies. This includes, but is not limited to:
 - (A) identity particulars - name, sex, address (and the previous two addresses), date of birth, employer and drivers licence number;
 - (B) the fact that the Guarantor is a guarantor under this Deed;
 - (C) advice about payments at least 60 days overdue and which are in collection (and advice that payments are no longer overdue);
 - (D) advice that a cheque(s) drawn by the Guarantor which is for an amount greater than \$100 has been dishonoured;
 - (E) the fact that the Guarantor has committed a serious credit infringement; and
 - (F) the fact that this Deed has been discharged;
 - (vii) exchange Personal Information about the Guarantor with another credit provider who is named in the credit application of the Applicant or a credit report issued by a credit reporting agency or who provides credit to the Applicant or who is a beneficiary of a guarantee by the Guarantor. This is for purposes including but not limited to:
 - (A) assessing the Guarantor's financial position in connection with giving the guarantee under this Deed;
 - (B) assisting the Guarantor to avoid defaulting in the Guarantor's obligations as guarantor;
 - (C) assessing the Guarantor's position if the Guarantor falls into arrears;
 - (D) notifying other credit providers of the Guarantor's default;
 - (E) exchanging information about the Guarantor's obligations as guarantor with other credit providers; and
 - (F) administering this Deed;
- d) The Guarantor agrees that, when the Guarantor provides BMFA with Personal Information about another person, the Guarantor must, prior to providing such information, inform that person that:
- (i) the Guarantor intends to provide the person's Personal Information to BMFA for the purposes of this Deed;
 - (ii) without that information, BMFA may not be able to accept the execution of this Deed; and
 - (iii) that person can access the information about him/her held by BMFA by writing to the Privacy Compliance Officer at the address at clause 7(b);

- e) The Guarantor agrees that BMFA may:
- (i) use Personal Information about the Guarantor to send the Guarantor marketing material and offers about products and services including products and services supplied by third parties. If the Guarantor does not wish to receive this material, the Guarantor must write to BMFA's Privacy Compliance Officer at the address in clause 7(b);
 - (ii) provide Personal Information about the Guarantor, as reasonably necessary, to a likely or actual buyer of the whole or part of BMFA's business.