

DEED OF GUARANTEE AND INDEMNITY

Specific Details	
1. Date of Guarantee	
2. Contractor (Legal name)	Southtile Limited
3. Guarantor (Legal name)	
4. Customer (Legal name)	
5. Customer (Trading name)	
6. Relationship to Customer (director, shareholder etc.)	
7. Terms of Trade	In the Terms of Trade and this Guarantee, the Contractor is referred to as 'our', 'us' or 'we'. The Terms of Trade between the Customer and the Contractor dated _____.

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We have, at the request of the Customer, agreed to enter into the Terms of Trade with the Customer on the condition that (amongst other things) the Guarantor enters into this Guarantee.

It is agreed:

PART A: GUARANTEE AND INDEMNITY

1. Guarantee

- 1.1 The Guarantor irrevocably and unconditionally guarantees to us the due and punctual payment of the Amount Owed by the Customer.
- 1.2 If the Customer does not pay the Amount Owed when due, for any reason, the Guarantor agrees to pay the Amount Owed on demand from us, together with all costs incurred by us in relation to the Customer, the Terms of Trade or this Guarantee.
- 1.3 All payments made by the Guarantor under this Guarantee are to be made without set-off or counterclaim, free and clear of any deductions or withholdings.

2. Indemnity

- 2.1 The Guarantor indemnifies us for all loss, damage, liability, claims and expenses that we may suffer or incur as a direct or indirect result of any failure by the Customer to pay the Amount Owed or to comply with its obligations under the Terms of Trade.

PART B: NATURE OF GUARANTEE AND INDEMNITY OBLIGATIONS

3. Liability as sole principal debtor

- 3.1 As between the Guarantor and us (but without affecting the obligations of the Customer) the Guarantor is liable under this Guarantee in relation to the Amounts Owed as a sole and principal debtor and not as a surety.
 - 3.2 If there is more than one Guarantor, their liability under this Guarantee will be joint and several.
- 4. No discharge**
- 4.1 The Guarantor will not be discharged, nor are its obligations affected or impaired, by any matter or thing which, but for this clause 4.1, would or might have discharged the Guarantor or affected or impaired its obligations, including:

- (a) the giving of time, credit or other indulgence or concession to the Customer, the Guarantor or any other person or any other dealings, transactions or arrangements between us and the Customer; or
- (b) anything done or omitted to be done by us in the exercise or non-exercise of our right and powers; or
- (c) any variation in the terms of the Terms of Trade (whether or not this might increase the liability of the Guarantor); or
- (d) the Customer or the Guarantor or other person being incompetent to enter the Terms of Trade or this Guarantee respectively or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provisions of this Guarantee; or
- (e) any release, discharge, compromise or other arrangement given to or made with the Customer, the Guarantor or any other person; or
- (f) any clause in this Guarantee or any other security, guarantee, indemnity or other agreement not having been provided, or being void, defective or informal, or being released or discharged (in whole or in part); or
- (g) the dissolution of the Customer, any change in the status, solvency, function, control or ownership of the Customer, or any consolidation, merger or conveyance of us; or
- (h) any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety and the Guarantor remains liable irrespective of whether any present or other obligations would be enforceable against the Customer,

it being the intention of the parties that this Guarantee and the obligations of the Guarantor under it are to be absolute and unconditional in all circumstances, and we are under no liability to the Guarantor in respect of the items listed in this clause 4.1.

1. Waiver

- 1.1 The Guarantor waives and releases all rights it may have to take the benefit (by way of subrogation or otherwise) of any of our rights against the Customer.

2. Continuing guarantee

- 2.1 This Guarantee is a continuing guarantee and indemnity, in addition to any other guarantee, indemnity or security which we may hold at any time, and it is enforceable by us without any need to proceed first against the Customer or under any other guarantee or security.
- 2.2 This Guarantee will remain in full force and effect until the execution by us of an unconditional discharge of the Guarantor's obligations under this Guarantee.

PART C: DEFAULT INTEREST AND COLLECTION FEES

3. Default interest

- 3.1 If the Guarantor does not pay, on demand, any amounts owing to us under this Guarantee then, without prejudice to its other obligations, the Guarantor will pay interest on those amounts owing (including interest payable under this clause) calculated from its due date to the date of receipt by us (after as well as before judgment), compounded and payable at intervals selected by us at our discretion. This obligation to pay default interest arises without the need for a notice or demand. The rate of default interest will be charged at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid.

4. Collection fees

- 4.1 Without limiting clause 2.1, the Guarantor must reimburse us for any costs and expenses we incur to recover any Amount Owing, or exercise our rights to recover Amounts Owing, including any debt collection fees or commission and full legal expenses.

PART D: REPRESENTATIONS

5. Representations

- 5.1 The Guarantor represents to us that:
- (a) it is solvent and able to pay its indebtedness as it falls due;
 - (b) any financial statements or other financial information delivered to us give a true and fair view of its financial position;
 - (c) it is not in default under any agreement relating to indebtedness, any guarantee or any other agreement, to an extent or in a manner that has, or might have, a material adverse effect on it;
 - (d) it is duly incorporated, has full power and authority to enter into and comply with its obligations under this Guarantee and has taken all corporate and other action and obtained all consents needed to enable it to do so;
 - (e) its obligations under this Guarantee are legal, valid, binding and enforceable in accordance with their terms, subject to equitable principles and insolvency laws of general application;
 - (f) in relation to litigation:
 - (i) no litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened that has or could have a material adverse effect on it or on our ability to exercise or enforce its rights under this Guarantee; and
 - (ii) no judgement or order of a court of tribunal or any order or sanction of any governmental agency that is reasonably likely to have a material adverse effect on it or on our ability to exercise or enforce its rights under this Guarantee has (to the best of its knowledge and belief) been made against it.
 - (g) in relation to information:
 - (i) all information provided by the Guarantor, or any other person on its behalf to us in connection with this Guarantee was true in all material respects as at the date that information was provided, and remains so; and
 - (ii) there are no facts or circumstances that have not been disclosed to us that would make that information untrue or misleading in any material respect.
6. **Timing of representations**
- 6.1 Each of the representations in this clause will be deemed to be repeated continuously while this Guarantee remains in effect, by reference to the facts and circumstances then existing.

PART E: REMEDIES AND WAIVERS

7. Exercise of rights and waivers

- 7.1 No failure to exercise, and no delay in exercising, our rights under this Guarantee will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by us of our rights under this Guarantee is effective unless it is in writing signed by us.

8. Remedies cumulative

- 8.1 Our rights under this Guarantee are cumulative and not exclusive of any rights provided by law and are to remain in force until we discharge all of our obligations under the Terms of Trade.

PART F: PRIVACY AND CREDIT INFORMATION

9. Privacy

- 9.1 We may collect, use and share Personal Information for the purposes of exercising our rights under this Guarantee, in accordance with the Privacy Act 2020.
- 9.2 We may use the services of credit reporters and debt collection agencies. We may provide the Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
- 9.3 We may obtain any other information that we require for credit reference purposes from any other person or company (with prior authorisation from the Guarantor).
- 9.4 The Guarantor has the right to access, and request correction of, any of its Personal Information held by us.
- 9.5 We may collect Personal Information from, or share Personal Information with, our related companies in relation to this Guarantee or any other guarantee that Guarantor has provided to any of our related companies.

PART G: GENERAL

10. General

- 10.1 **Amendments:** Any amendment to this Guarantee must be in writing signed by each party, except where we are required to make changes to ensure compliance with applicable laws (in which case we will notify you of the changes in writing).
- 10.2 **Previous Agreements:** This Guarantee constitutes the entire agreement of the parties about its subject matter and supersedes any previous written agreements and written representations.
- 10.3 **Counterparts:** This Guarantee may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.
- 10.4 **Partial invalidity:** The illegality, invalidity or unenforceability of a provision of this Guarantee under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 10.5 **Certificates conclusive:** In the absence of evidence to the contrary, a certificate provided by us of any amount payable under this Guarantee is conclusive evidence for all purposes, including for any proceedings in the absence of manifest error.
- 10.6 **Delivery:** For the purposes of section 9 of the Property Law Act 2007, without limiting any other mode of delivery, this Guarantee will be delivered by the Guarantor immediately on the earlier of:
- (a) physical delivery of an original or a counterpart of this Guarantee, executed by the Guarantor, into our (or our solicitors') custody; or
 - (b) transmission by the Guarantor or its solicitors (or any other person authorised in writing by the Guarantor) of a photocopy or scanned copy of an original or a counterpart of this Guarantee, executed by the Guarantor, to us (or our solicitors).
- 10.7 **Assignment:** We may assign or transfer any of our rights or obligations under this Guarantee without the consent of the Guarantor. The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee without our prior written consent.
- 10.8 **Benefits:** For the purposes of Part 2, Subpart 1, of the Contract and Commercial Law Act 2017, we are entitled to enforce this Guarantee against the Guarantor.
- 10.9 **Disclosing information:** We may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Guarantee are contemplated, any information about the Guarantor or any of its subsidiaries for the time being whether or not that information was obtained in confidence and whether or not that information is publicly available.
- 10.10 **Governing law:** This Guarantee is governed by and is to be construed in accordance with the laws of New Zealand and each party submits to the non-exclusive jurisdiction of the courts of Invercargill, New Zealand.

PART H: DICTIONARY

11. Definitions

Customer means the Customer identified in the Specific Details.

Amount Owing means all amounts owing by the Customer to us at any time, including contingent amounts and any amounts referred to in clauses 7 and 4.

Guarantee means this Deed of Guarantee and Indemnity (including the Specific Details outlined on page 1).

Guarantor means the Guarantor(s) identified in the Specific Details. For clarity, if there is more than one Guarantor, each reference to a Guarantor is to both Guarantors (and clause 3.2 will apply)

Personal Information means personal information (as defined in the Privacy Act 2020), relating to the Guarantor and collected by us for the purposes of this Guarantee.

Contractor means the Contractor identified in the Specific Details, Southtile Limited. For clarity, references to **our**, **us** or **we** are references to the Contractor.

Terms of Trade means the terms of trade entered into between us and the Customer, identified in the Specific Details.

12. Interpretation

12.1 In this Guarantee, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
- (c) a reference to "in writing" includes by email;
- (d) the words "include" or "including", or similar expressions, are to be construed without limitation;
- (e) a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- (f) a word importing the singular includes the plural and vice versa.

By signing this Guarantee, each Guarantor confirms that they have read, understood, and accept the terms of this Guarantee and agree to be bound by this Guarantee. Each Guarantor confirms they have been instructed by us to obtain independent legal advice as to the terms and effects of this Guarantee. Each Guarantor confirms that they have received independent legal advice (or chosen not to take independent legal advice). Each Guarantor confirms that entry into this Guarantee is at its own request, freely and voluntarily given with full knowledge and understanding of the contents of it and of the circumstances under which the liabilities in it have been undertaken.

Executed as a Deed

EXECUTED BY GUARANTOR

Authorised Signatory 1: _____

Print Name: _____

Capacity: _____
(e.g. Individual, Director, Partner, or Trustee)

DOB: _____

Date: _____

Witness to signature (if required, refer to signing guide below)

Signature: _____

Print Name: _____

Occupation: _____

Address: _____

Authorised Signatory 3: _____

Print Name: _____

Capacity: _____
(e.g. Individual, Director, Partner, or Trustee)

DOB: _____

Date: _____

Witness to signature (if required, refer to signing guide below)

Signature: _____

Print Name: _____

Occupation: _____

Address: _____

Authorised Signatory 2: _____

Print Name: _____

Capacity: _____
(e.g. Individual, Director, Partner, or Trustee)

DOB: _____

Date: _____

Witness to signature (if required, refer to signing guide below)

Signature: _____

Print Name: _____

Occupation: _____

Address: _____

Authorised Signatory 4: _____

Print Name: _____

Capacity: _____
(e.g. Individual, Director, Partner, or Trustee)

DOB: _____

Date: _____

Witness to signature (if required, refer to signing guide below)

Signature: _____

Print Name: _____

Occupation: _____

Address: _____

User Guide: Second execution block included for use if there are two Guarantors.

Signing Guide: The following signing requirements must be strictly followed when executing this Deed:

- Individual: Signature of individual + witness signature
- Company: Signature of two Directors. If a company only has one director, sole director + witness signature.
- Limited Partnership: Signature of General Partner (if a company, refer above)
- Partnership: Signature of authorised signatory + witness signature
- Sole Trader: Signature of Owner/Sole Trader + witness signature
- Trust: Signature of Trustee (+ witness signature if an individual OR if a company, refer above)
- Incorporated Society (registered pre-5 October 2023): Signature of authorised signatory + witness signature
- Incorporated Society (registered or re-registered post-5 October 2023): Signature of two officers