

# PERSONAL GUARANTEE & INDEMNITY

## RCJ Group



In this application:

- a) "RCJ" means Russell Curtis & Janes Advertising Pty Ltd ABN 15 005 856 575 (T/A RCJ Media; RCJ Media Group; Media Credit Australia; and Media Buying Services) and, where applicable, any of the other entities within the RCJ Group which supplies goods and/or services to you (whether or not that fact is disclosed).
- b) "RCJ Group" means, collectively, RCJ and each of the following entities and their successors and assigns:
  - (i) Leapfrogger Pty Ltd ABN 91 607 722 109; and
  - (ii) Brand Asia Pty Ltd ABN 72 666 692 119,together with any additional entities that become subsidiaries of RCJ from time to time.
- c) "We" and "Us" means RCJ and "Our" means belonging or pertaining to Us

### Section 1 – GUARANTOR DETAILS

I/We, the Guarantor(s), \_\_\_\_\_  
(insert Guarantor(s) name as applicable)

have requested RCJ to supply, \_\_\_\_\_  
(insert company name/partnership/sole trader)

trading as, \_\_\_\_\_  
(insert registered business name)

(the "Customer") of \_\_\_\_\_  
(street address) (State) (Postcode)

with goods and/or services on credit.

In consideration of Us or any agent or sub agent of Ours (whether disclosed or not) giving credit to the Customer, the guarantors named above ("Guarantors") hereby **JOINTLY AND SEVERALLY GUARANTEE** the due and punctual payment of all monies owing or remaining unpaid by the customer named above ("Customer") to Us under Our terms and conditions of trade ("Trading Terms") and also the due and punctual performance by the Customer of its obligations pursuant to Our Trading Terms (the "Guarantee"), on the following terms:

1. Subject to clause 3, the Guarantors will pay to Us on demand without deduction or set-off, all monies then owing or from time to time remaining unpaid by the Customer including without limitation all interest, administration, collection and legal costs of recovery of such moneys, and We need not first take recovery proceedings against the Customer.
2. Subject to clause 3, this Guarantee shall be a continuing guarantee to Us for the whole of the Customer's indebtedness or liability to Us from time to time howsoever and whenever arising and shall not be wholly or partially discharged by any payment until payment in full of all monies due by the Customer and will be valid and enforceable against the Guarantors notwithstanding:
  - a) that no demand for payment has been made to the Customer;
  - b) that the Customer was prohibited (whether expressly or by implication) by law, contract or otherwise from entering into the Trading Terms or lacked capacity, power or authority to enter into the Trading Terms;
  - c) Our granting any time or other indulgence, compounding or compromising with or releasing the Customer or any Guarantor or co-surety;
  - d) Our taking or failing to take, or enforcing or failing to enforce, or holding any other security for the Customer's indebtedness or varying or surrendering any such security;
  - e) any change in the identity or proprietorship of the Customer;
  - f) any failure to notify the Guarantors of any dealings between Us and the Customer, including any variation in the amount of credit allowed to the Customer or any failure to pay the Customer;
  - g) Our obtaining judgment against the Customer; or
  - h) the death, bankruptcy or incapacity of any of the Guarantors.
3. If the Guarantors give written notice to Us that this Guarantee is not to cover any further liabilities the Customer may incur to Us, then this Guarantee will be limited to the amounts already incurred by the Customer as at the date We receive such written notice.
4. If any payment made by the Customer to Us is subsequently avoided or set aside by reason of any statutory provision or otherwise, such payment shall not prejudice or otherwise affect this Guarantee, or Our rights pursuant to this Guarantee, to the intent that We shall, with respect to Our rights under this Guarantee to recover any monies secured, be restored to the same position in which We would have been had such payment not been made.
5. The Guarantors hereby indemnify Us in respect of all costs, charges and expenses whatsoever which We may suffer by reason of any default by the Customer under or in relation to the Trading Terms or the Customer becoming bankrupt or going into liquidation, or dying, including any amount which might be paid to Us by the Customer but is required to be repaid to the trustee in bankruptcy or liquidator of the Customer. The Guarantors are liable to pay, and indemnify Us for, all reasonable costs incurred by Us in enforcing this Guarantee.
6. The Guarantors undertake to Us that this Guarantee will not be altered by any act of a third party including without limitation any deed of arrangement unless We agree in writing to such third party act. If this Guarantee howsoever ceases to be effective or is avoided then this Guarantee shall be reinstated as a guarantee given immediately after it has become ineffective or avoided, as if it was a fresh guarantee
7. The Guarantors acknowledge and specifically agree that We may request a credit report on the Guarantors and such a report may contain consumer credit information to be given to it for the purpose of assessing the Customer's application by credit reporting agency, bank or financial institution. The Guarantors agree that a credit reporting agency, bank or financial institution may give a credit report on the Guarantors to Us.
8. The Guarantors authorise Us to obtain personal and/or confidential information about the Guarantors for the purposes of assessing the Customer's

application for a credit account and the administration and collection of the account. The Guarantors consent to Us, collecting, using, disclosing to its personnel and others, the Guarantors' information for these purposes and for credit control generally.

9. In consideration for Us entering into the Trading Terms with the Customer, the Guarantors hereby charges in Our favour the whole of the Guarantors' estate and interest, legal and equitable, in the Guarantors' personal and real property to secure the Guarantors' obligations pursuant to this Guarantee. Without limiting Our rights under the Trading Terms, the Guarantors acknowledge that the charge on the Guarantors' property shall provide a caveatable interest in Our favour and the Guarantors consent to Us registering Our interest in the Guarantors' property, including by way of caveat.
10. The Guarantors grants to Us a security interest in all present and after acquired property except any personal property of the Guarantors which is not from time to time subject to a security agreement in favour of a secured party.
11. The Guarantors will do all things necessary, including providing all information We require to register a financing statement or financing change statement on the Personal Properties Security Register ("PPSR") as a security interest pursuant to the Personal Properties Security Act 2010 (PPSA).
12. The Guarantor waives its right to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created pursuant to this Guarantee.
13. To the extent permitted by law, sections 130, 142, and 143 of the PPSA are excluded.
14. To the extent permitted by law, the Guarantors waive any rights they may have under sections 95, 123, 129(2), 132, 134(2), and 135 of the PPSA.
15. Any notice, instrument, process, demand or document required to be served under, or in connection with the enforcement of, this Guarantee will be sufficiently served if delivered or posted by pre-paid post to the address of that party as specified in this Guarantee, unless We are notified of a change of address and such change is acknowledged by Us in writing. If the notice or document is posted, then to the extent permitted by law, service will be deemed to have been effected 3 business days after the date on which the document or notice was posted, if posted within Australia (7 business days if posted from outside of Australia).
16. Any entity within the RCJ Group may assign its rights under this Guarantee to any other entity within the RCJ Group.

**NOTE:** This is an important document, if you do not understand the terms outlined in clause 1-13 above, or the meaning of this document, you should seek independent legal advice prior to signing.

**NOTE:** The definitions in the Credit Application Terms and Conditions shall apply in this Guarantee, except "Real Property" shall mean all real property owned by the Guarantor(s) now or in the future, solely or jointly.

## Section 2 – CERTIFICATE OF GUARANTEE (EXECUTED AS DEED)

By signing below as Guarantor(s), I/we certify that I/We understand the terms of this Guarantee. In particular, I/we understand that if the Customer fails to make any required payments to RCJ, RCJ may recover the amount of these payments from me/us personally. In that case, RCJ may also, amongst other steps, take a charge or mortgage over any real property.

I/we certify that I/we have had the opportunity to seek independent legal advice in relation to the meaning and effect of this Guarantee.

### Who must sign this deed?

Company: Where there is only one director for the Customer, then that director must sign. Where there are two or more directors for the Customer, then all directors of the Customer must sign.

Sole Traders: The individual.

Partnerships: All Partners of the Partnership must sign.

### Signed as a Deed by:

### Independent Witness *(not spouse or family member)*

Print Name	Print Name
Position	Address
Signature	Signature
Date / /	Date / /

<b>Signed as a Deed by:</b>	<b>Independent Witness</b> <i>(not spouse or family member)</i>
Print Name	Print Name
Position	Address
Signature	Signature
Date            /       /	Date            /       /

  

<b>Signed as a Deed by:</b>	<b>Independent Witness</b> <i>(not spouse or family member)</i>
Print Name	Print Name
Position	Address
Signature	Signature
Date            /       /	Date            /       /

  

<b>Signed as a Deed by:</b>	<b>Independent Witness</b> <i>(not spouse or family member)</i>
Print Name	Print Name
Position	Address
Signature	Signature
Date            /       /	Date            /       /

## HOW TO USE THIS FORM

<b>GUARANTEE AND INDEMNITY</b>
<p>Section 1 – Guarantor Details</p> <ul style="list-style-type: none"> <li>Ensure that this section is filled out correctly, and that the details match those provided in the Credit Application.</li> <li>The first box should read “I/We, the Guarantor(s), <i>Joe Bloggs and Mary Bloggs</i>, have requested RCJ to supply <i>Joe+Mary Pty Ltd</i>, trading as <i>Mary’s Florist</i> (the “Customer”) of <i>100 Collins Street Melbourne, Victoria</i> with goods and/or services on credit.”</li> <li>It is advisable to obtain a company search to ensure that the directors have all signed the guarantee and that the names and addresses are correctly stated.</li> </ul> <p>Section 2 – Certificate of Guarantee</p> <ul style="list-style-type: none"> <li>Ensure that each signatory has signed and dated the form, and that it has been witnessed by an independent witness, not being a spouse or family member.</li> <li>If the Guarantors are the directors of a company, ensure that their signatures match those provided in the Credit Application.</li> </ul>